



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)

[PR/174/12-DD/189/12/DC/444/2016]

DISCIPLINARY COMMITTEE [BENCH – I (2019-2020)]
[Constituted under Section 21B of the Chartered Accountants Act, 1949]

ORDER UNDER SECTION 21B(3) OF THE CHARTERED ACCOUNTANTS ACT, 1949
READ WITH RULE 19(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF
INVESTIGATION OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT
OF CASES) RULES, 2007.

In the matter of:

Biharilal Bansal, Gangtok

-Vs-

CA. Krishan Kumar Singhal (M.No.050140), Kolkata

[PR/174/12-DD/189/12/DC/444/2016]

MEMBERS PRESENT:

Shri Jugal Kishore Mohapatra, I.A.S.(Retd.), Government Nominee & Presiding Officer

Ms. Rasmi Verma, I.A.S. (Retd.), Government Nominee,

CA. Babu Abraham Kallivayalil, Member

CA. Dayaniwas Sharma, Member

1. That vide report dated 08.02.2018, the Disciplinary Committee was of the opinion inter-alia that **CA. Krishan Kumar Singhal (M.No.050140)** (hereinafter referred to as the “**Respondent**”) was **GUILTY** of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

2. That pursuant to the said report, an action under Section 21B (3) of the Chartered Accountants (Amendment) Act, 2006 was contemplated against the Respondent and a communication dated 24th October, 2019 and e-mail dated 25th October, 2019 were addressed to him thereby granting an opportunity of being heard in person and/or to make a written representation before the Committee on 7th November, 2019 at Kolkata.

3. The Committee noted that on 7th November, 2019, the Respondent was present and he made his submissions on the findings of the Disciplinary Committee. The Committee also noted that the Respondent vide his letter dated 25th May, 2018 and e-mail dated 3rd



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)

[PR/174/12-DD/189/12/DC/444/2016]

November, 2019 made his written representations on the findings of the Disciplinary Committee.

4. The Committee noted that the Respondent through his oral and written representations made the following submissions:-

4.1 Regarding Share Transfer Deed dt. 04.02.2000 used by the Respondent on 17.11.2009 and consideration for such transfer made on 18.11.2009:-

i) The transfer deed was not used by the Respondent but by the Transferor (Complainant) himself. The Transfer Deed was obtained by the Transferor (Complainant) and after signing the same (by Transferor – Complainant) was sent to Transferee for filing up other particulars of Transferee for being sent to the Company for transfer of shares.

ii) In case of physical transfer of shares, payment of consideration is generally made on transfer of shares but in instant matter, the payment was made on next day.

iii) The Transferor had signed the Transfer Deed knowingly that the Transfer Deed is dated 04.02.2000 for transfer of shares in November, 2009 and as he had also accepted the consideration amount. Further, the Company had accepted the transfer deed and accordingly, transferred the shares.

iv) On the basis of signed transfer deed by the Transferor and consideration money having been paid by the Transferee and as per Board Minutes, he had only certified the Annual Returns as true and correct.

4.2 In respect of allegation related to certification of Form 32 for cessation of the Complainant as director under Section 283 (1) (g) of the Companies Act, 1956

i) The Company had never sent any written notices to any of the Directors (including complainant) for convening any meetings. Only verbal or by phone communication was made for meetings to be held and accordingly, the directors (including the Complainant) had always attended the Board Meetings and had also signed the Minute Books as evidences for attending Board Meeting, without receiving any written notices.

ii) The fact that the Complainant had been verbally informed or over phone, had been recorded in Board meeting held on 18.05.2012 and the said fact had also been stated in Form 32 certified by the Respondent and filed with ROC and the Company had till now has also not received any observations from ROC in this regard.



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

[PR/174/12-DD/189/12/DC/444/2016]

iii) That the compliance of provisions of Sections 283 and 286 of Companies Act, 1956 vests with the Company and he had nowhere certified in Form 32 that the Company had complied with the above provisions.

5. The Committee considered the reasoning (s) as contained in paras no. 1 to 17 of the Disciplinary Committee report, holding the Respondent Guilty of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

6. The Committee considered the findings as contained in the Disciplinary Committee Report along with oral and written representations of the Respondent.

7. Keeping in view the facts and circumstances of the case, material on record and the oral and written representations of the Respondent made/submitted before it, the Committee ordered that **the name of the Respondent i.e. CA. Krishan Kumar Singhal (M.No.050140) be removed from the register of members for a period of 3 (Three) Years and a fine of Rs.1,00,000/- (Rupee One Lakh only) (excluding taxes, if any) be imposed upon the Respondent i.e. CA. Krishan Kumar Singhal (M.No.050140) to be paid within 30 days of receipt of this order.**

Sd/-

**(SHRI JUGAL KISHORE MOHAPATRA, I.A.S.(RETD.)
GOVERNMENT NOMINEE & PRESIDING OFFICER**

Sd/-

**(MS. RASMI VERMA, I.A.S. (RETD.)
GOVERNMENT NOMINEE**

Sd/-

**(CA. BABU ABRAHAM KALLIVAYALIL)
MEMBER**

Sd/-

**(CA. DAYANIWAS SHARMA)
MEMBER**

DATE : 07th November, 2019

PLACE : Kolkata



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

[PR/174/12-DD/189/12/DC/444/2016]

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2017-2018)]

[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

Ref. No. [PR/174/12/DD/189/12/DC/444/2016]

In the matter of:

**Shri Biharilal Bansal
C/o Bansal Trading Company
M G Marg, Gangtok,
Sikkim 737 101**

..... **Complainant**

-Vs.-

**CA. Krishan Kumar Singhal (M. No. 050140),
M/s K. Singhal & Co.,
Chartered Accountants,
50, Weston Street,
4th Floor, Room No.407,
Kolkata 700 012**

..... **Respondent**

MEMBERS PRESENT:

**CA. Naveen ND Gupta, Presiding Officer
Shri Amit Chatterjee, Government Nominee
CA. Sanjay Kumar Agarwal, Member
CA. Manu Agarwal, Member**

DATE OF FINAL HEARING : 09.01.2018

PLACE OF FINAL HEARING : ICAI, Russel Street, KOLKATA

PARTIES PRESENT:

Counsel for Complainant : Ms. Anjana Banerjee

Respondent : CA. Krishan Kumar Singhal

Witness : Mr. Sumit Agarwal (son of Complainant)



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)

[PR/174/12-DD/189/12/DC/444/2016]

Finding of the Committee

1. The office apprised the Committee that in this case the Complainant (Mr. Biharilal Bansal) has already expired on 04.11.2017 and at the time of last hearing, it was decided to give an opportunity to the son of the Complainant (Mr. Sumit Agarwal) to step into the shoes of the Complainant as per the intention shown vide letter dated 13/11/2017 from the Counsel for the Complainant. Office further informed the Committee that till date, there was no formal request from the side of son of the Complainant to substitute his name in place of the Complainant.
2. The Committee observed that already more than 60 days have been passed since the Complainant has expired and there is no formal application / request from his son in this regard. Further, the authorisation of the Counsel also became null and void with the death of the Complainant, therefore, the Committee decided to proceed in the matter without the Complainant.
3. First of all, the witness was put on oath and was examined by the Committee followed by cross examination by the Respondent. During his deposition, the witness placed on record that the share transfer form was dated 4th February, 2000 which was used by the Respondent after nine years on 17.11.2009 for transfer of shares of Complainant. He further submitted that the annual return of the Company for FY 2009-10 was filed by the Respondent with his digital signatures.
4. Thereafter, the Respondent made his submissions and contended that the payment against the said transfer deed was made to the Complainant on 18.11.2009. The Committee enquired from the Respondent as the date when the original and revised annual return of the company was filed by him for the year 2009-10 for which he informed that he does not remember the dates however he will inform the dates within one week's time.
5. The Respondent vide letter dated 11.01.2018 had informed that the Company had filed original Annual Return in Form 20B for the financial year ending 31.03.2010 on 07.09.2010 and the Revised form 20B on 19.09.2010 on detecting the error in original return.
6. The Committee noted that charges of the Complainant is that the Respondent, being his son-in-law broke his trust, charged fees for years on false grounds, misused Power of Attorney and sold the Complainant's property for his self benefit.



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)

[PR/174/12-DD/189/12/DC/444/2016]

A land measuring 20 kathas was purchased and registered in the name of the Company "Bisakha Vihar Pvt. Ltd.," Since the Complainant lacked in knowledge of Company laws and other related issues, he requested the Respondent to look after the legal formalities of the Company. On this request the Respondent asked the Complainant to sign "Power of Attorney" in his name reasoning that it is necessary for managing the company's day to day affairs.

With the help of power of Attorney, the Respondent allotted additional shares to himself, his daughter, wife and his friends making the Complainant minority share holders. He appointed his friends as additional directors of the Company. At the same time, he removed the Complainant from his directorship post without his knowledge. He also appointed his son Neeraj Singhal as director of the Company for his own benefit retiring one of the directors without taking his consent. He transferred the Complainant's holding to his wife without the Complainant's consent.

7. The Committee heard the submissions of the Respondent and duly considered various documents made available on record by both the parties.

8. The Committee noted the contents of the defence of the Respondent dated 12/11/2012 in which he has stated that he simply assisted the Complainant in incorporation of Company for which a limited authorisation letter was given in his favour only for limited purpose of making corrections in documents filed with the Registrar of Companies in the year 1999 for which he had not charged /received any professional fees or expenses

Except as stated above the Respondent or his proprietorship concern is in no other way involved either professionally or otherwise. Neither the Respondent nor his proprietorship concern received any amounts (either in fees or in any other capacity) either from the Complainant or from the Company.

Regarding removal of persons from Directorship and or transfer/allotment of shares in the Pvt. Ltd. Company the Respondent verbally requested the Directors of the Company to clarify the matters to the Complainant, as the Respondent is not in a position to clarify these matters as they belong and or are related to a Pvt. Ltd. Company.

9. On perusal of the documents on record, the Committee noted that the Complainant was one of the first directors of the Company and one of the subscribers to the memorandum holding $\frac{1}{4}$ of the shareholding of the Company. Further, the Complainant alongwith the other subscribers to the memorandum of the Company vide an undated power of attorney authorised the Respondent to make any addition/alterations in the Memorandum and Articles of Association and Form no. 1,



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)

[PR/174/12-DD/189/12/DC/444/2016]

18 and 32 filed by the company with the ROC for registration. The Respondent also became holder of 15000 equity shares of the Company out of the total issued and paid up share capital of 19000 equity shares of Rs. 10/- each as on 31st March 2000.

10. The Complainant as one of the director of the Company authenticated the financial statements of the Company from the F.Y. 1998-99 to 2003-04. It is also noted that Sh. Neeraj Singhal, son of the Respondent, was appointed as a director of the Company w.e.f 5th June 2004 to fill up the casual vacancy caused by the resignation of Sh. Motilal Agarwala and the relevant Form 32 for the same had been signed by the Complainant as one of the director of the Company and filed with ROC. Thereafter, the financial statements of the Company from the F.Y.2004-05 to 2011-12 have been authenticated by the Respondent's wife and son in the capacity of the directors of the Company.

11. It is further noted that 21000 equity shares of the Company were further allotted on 31st March 2012 and notified with the Registrar of Companies by the Respondent's wife and son in the capacity of the directors of the Company. Further, Form 32 for the cessation of the Complainant' directorship from the Company w.e.f.18th May 2012 due to vacation of office u/s 283 had been filed with the ROC by the Respondent's wife in the capacity of the director of the Company and certified by the Respondent. Also, on perusal of the minutes of the meeting of the Board of Directors held on 18th May 2012, it is noted that it was resolved therein that the office of the Complainant as a director be considered vacant as per Sec 283(g) of the Companies Act 1956.

12. In this regard, the Committee noted that Sec 283(1)(g) of the Companies Act 1956 prescribes:

“(1) The office of a director shall become vacant if-]

(g) he absents himself from three consecutive meetings of the Board of directors, or from all meetings of the Board for a continuous period of three months, whichever is longer, without obtaining leave of absence from the Board;”

The word 'absents himself' imply voluntary or deliberate absence and do not cover cases of involuntary absence such as that caused by illness etc. due to causes beyond his control.



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)

[PR/174/12-DD/189/12/DC/444/2016]

On further perusal of the minutes of the meeting of the Board of Directors held on 18th May 2012, it is noted that it was stated therein:

“The Chairman informed the meeting that Sri Biharilal Bansal aged about 83 years.....vacated u/s 283(g) of the Companies Act 1956” .

13. It is also noted that the annual return of the Company for the F.Y. 2009-10 has been filed after the same been verified by the Respondent showing the Complainant as a holder of 1000 equity shares of the Company. Further, a revised return has been filed for the F.Y. 2009-10 after the same had been verified by the Respondent showing that the 1000 equity shares held by the Complainant has been transferred to the Respondent.

14. The Committee observed that the share transfer deed brought on record by the Complainant was dated 04.02.2000 which was used by the Respondent on 17.11.2009 for transfer of Complainant's shares when the said deed was already expired. Further the payment of this transaction was made to the Complainant on 18.11.2009 i.e., after the date of transfer of shares.

15. Moreover, the Committee noted that the Respondent certified the Form 32 regarding cessation of the Complainant as Director of the Company on the basis of the provisions of section 283(1)(g) of the Companies Act 1956, however he failed to produce any evidence to show that the proper notices of the Board meetings were served to the Complainant by the Company and the Complainant voluntarily / deliberately chosen not to attend those meetings which compelled the Company to invoke the provisions of section 283(1)(g) of the Companies Act 1956.

16. In view of above noted findings, the Committee was of the opinion that the Respondent is GUILTY of professional misconduct within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 as he failed to exercise due diligence while performing attest functions. Further, the Committee noted that Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 would not be applicable in this case and hence be dropped.

Conclusion



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)

[PR/174/12-DD/189/12/DC/444/2016]

17. Thus in the considered opinion of the Committee, the Respondent is **GUILTY** of professional misconduct falling within the meaning Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

Sd/-
(CA. NAVEEN ND GUPTA)
PRESIDING OFFICER

Sd/-
(SHRI AMIT CHATTERJEE)
GOVERNMENT NOMINEE

Sd/-
(CA. SANJAY KUMAR AGARWAL)
MEMBER

Sd/-
(CA. MANU AGARWAL)
MEMBER

DATE : 08th February, 2018
PLACE : New Delhi