



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

[PR-261/2017-DD/325/2017]-DC/1020/2019]

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.

Ref. No. : [PR-261/2017-DD/325/2017]-DC/1020/2019]

In the matter of:

Shri Manish Kumar,

No.105, 1st Floor,

Sopariwala Estate,

Prasad Chamber Compound, Opera House,

Mumbai – 400 004

.....Complainant

Versus

CA. Gautam Jain (M.No.218612)

Proprietor, M/s. Gautam Jain & Co.,

Chartered Accountants,

No.2, 13th Floor, Building No.3,

Navjivan Commercial Premises Ltd.,

Lamington Road,

Mumbai – 400 008

.....Respondent

Members present:

CA. Atul Kumar Gupta, Presiding Officer

Smt. Anita Kapur, Member (Govt. Nominee)

Shri Ajay Mittal, Member (Govt. Nominee)

CA. Manu Agrawal, Member

Date of Final Hearing: 23rd January, 2021

Place of Final Hearing: New Delhi

1. Vide report dated 16.12.2020(**copy enclosed**), the Disciplinary Committee was of the opinion that **CA. Gautam Jain (M.No.218612)** 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. with respect to allegation relating to not uploading the Balance Sheets of Ratnam Infotech Pvt. Ltd (hereinafter referred to as the "**Company**") on ROC website for the period 2012-13, 2013-14 and 2014-15. It was stated that the "**Company**") which started in the year 2008 and work related to filing and accounts were taken care of by the Respondent firm , M/s. Gautam Jain & Co. from 2012 to 2017.

Accordingly, the Respondent is held guilty of Clause (7) of Part I of Second Schedule which states as under:-



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“does not exercise due diligence, or is grossly negligent in the conduct of his professional duties.”

2. An action under Section 21B (3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and communication dated 4th January, 2021 was addressed to him thereby granting him an opportunity of being heard in person and/or to make a written representation before the Committee on 23rd January 2021.
3. The Respondent appeared before the Committee on 23rd January 2021 through video conferencing from his personal location, and made his oral representations on the findings of Disciplinary Committee. The Committee, considered both the oral submissions as well written submissions dated 7th January, 2021. The Respondent, inter-alia, submitted that Sh. S L Jain, being his father-in-law and advocate by profession, was deployed on case to case basis in respect of certain selected assignments. The Respondent was not aware of any understanding between the Complainant and Shri S L Jain and it was when he received the information from Disciplinary Directorate, he realised that Shri S L Jain was working in dual capacities without the Respondent's knowledge. He had never met the Complainant and his matter was always dealt through Shri S L Jain. Further, the Respondent had never received the fees from the complainant and that invoice raised on the Complainant was raised by Shri S L Jain since the bill although bear the name of the Respondent but the mobile, email, etc. mentioned on the bill was that of Shri S L Jain. He, further, stated that he could not take any formal action against Sh. S L Jain considering the family, traditions, customs and age of Sh S L Jain though he and his family had severed relationship with Sh S L Jain. He also stated that he had never undertaken the filing work too.
4. The Committee considered the written as well oral submissions made by the Respondent and noted that the charge in the extant matter was that Respondent had failed to upload the Balance Sheets of Company on ROC website for the period 2012-13, 2013-14 and 2014-15 despite receipt of fees. It was noted that that although the Complainant had, in extant matter, failed to bring on record any appointment letter showing appointment of the Respondent firm for filing compliances with ROC, it is a fact that the Respondent had never denied to own the responsibility of filing the returns. In fact a bill of Rs. 16 Lakhs was raised as a professional charge which was signed by the Respondent. The Committee further noted that as per the Complainant submission, the Respondent was never paid the fees charged and it seems that it was Sh S L Jain who misused the Respondent's letter head and also misrepresented. However, still the Respondent should have worked with due precaution lest to allow any body to misuse his stationary or infrastructure of his office.



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5. The Committee thus viewed that the misconduct on the part of the Respondent has been held and established within the meaning of Clause (7) of Part I of Second Schedule and keeping in view the facts and circumstances of the case as aforesaid, ordered that a fine **of Rs 25000 (Rupees Twenty Five Thousand Only)** be imposed upon the Respondent CA. **Gautam Jain (M.No.218612)**.

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

Sd/-
[Smt. Anita Kapur]
Member (Govt. Nominee)

Sd/-
[Shri Ajay Mittal, IAS (Retd)]
Member (Govt. Nominee)

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

Date : 23rd January, 2021



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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

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Lamington Road,

Mumbai – 400 008

.....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: 17th August 2020 through Video Conferencing

PARTIES PRESENT:

(i) Shri Manish Kumar – Complainant (appeared from his residence at Hyderabad)

(ii) CA. Suneel Appaji – Counsel for the Respondent (appeared from Centre of Excellence, Hyderabad)

Allegations of the Complainant:

1. The Complainant was the Director of Ratnam Infotech Pvt. Ltd (hereinafter referred to as the “**Company**”) which started in the year 2008 and work related



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to filing and accounts were taken care of by the Respondent firm , M/s. Gautam Jain & Co. from 2012 to 2017. The Complainant had raised following allegations against the Respondent:

- i) The Respondent, who was providing service of filing of balance sheet and others documents to the Complainant Company, did not upload the Balance Sheets of the Company on ROC website for the period 2012-13, 2013-14 and 2014-15 inspite of the fact that all the fees were paid to him.
- ii) It was alleged that fake capital / wealth was created by showing the ornaments of Rs.1 crore in HUF account and that Shri S.L. Jain, tax consultant in Respondent firm, was demanding 10% of the fake capital for filing the balance sheet of 2015, 2016 and 2017.
- iii) The Complainant also alleged that demand notice has been issued against the Company due to wrong advice of Shri S.L. Jain.
- iv) Without asking from the Complainant, Shri S.L. Jain invested complainant's money in shares.

Proceedings:

2. At the outset on 17th August 2020, the Committee noted that the Complainant and the Counsel for the Respondent were present during the hearing. Being the first hearing, the Complainant was put on oath. Thereafter, the Committee asked the Counsel for the Respondent whether he wished the charges to be read out or it could be taken as read. The Counsel for the Respondent stated before the Committee that 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, his Counsel replied that the Respondent did not plead guilty and opted to defend his case.

Thereafter, the Complainant explained the charges alleged against the Respondent. Thereafter the Counsel for the Respondent made his submissions on the allegations. Both the Complainant and the Respondent were examined by the Committee on the submissions made by the parties.

Based on the documents available on record and after considering the oral and written submissions made by both parties before it, the Committee concluded hearing in the matter.



Findings of the Committee:

3. The Committee noted that the Complainant raised three charges against the Respondent and except one charge as mentioned in sub-para (i) of Paragraph (1) above, rest all charges were dropped by the Director (Discipline) while forming his prima facie opinion. Accordingly, the Committee considered only one charge against the Respondent for further inquiry wherein it was alleged against the Respondent, who was providing service of filing of balance sheet and others documents to the Complainant Company, did not upload the Balance Sheets of the Company on ROC website for the period 2012-13, 2013-14 and 2014-15 inspite of the fact that all the fees were paid to him by the Complainant.

4. The Committee noted the submissions made by the Respondent with respect to the allegation wherein he had stated that Shri S.L. Jain, Tax Consultant was an employee of his firm who was looking after verification of pre-audit and accounts work of the Company. The Respondent firm was asked for 3 years' accounts writing works and the said work was having the task of 600 bank entries in every weeks which he had to prepare with the help of 4 fulltime employees and accordingly, the bill was raised. Shri S.L. Jain on behalf of his firm filed Income Tax Returns of the Complainant's Company for the Assessment years 2013-14 and 2014-15. The Respondent only acted only as the statutory auditor of the Company and after the accounts were certified by him, the same used to be handed over to Shri S.L. Jain for uploading on ROC website.

5. The Committee, in respect of allegation related to filing of financial statements on ROC website, perused submissions made vide letter dated 16th August 2018 wherein a bill of Rs.16 lakhs as professional charges was raised on the letter head of the Respondent for writing the accounts and auditing the Financial Statements which was noted to have been signed by the Respondent. The Committee, in this regard, examined the Counsel for the Respondent who submitted that the assignment related to the Complainant Company was being looked after by Sh. S.L. Jain and accordingly after certifying the financials the Respondent used to hand them over to Sh. S.L. Jain for uploading on ROC website. However, the Respondent had no proof in his possession of such handing over of the documents to Sh. S.L. Jain. The Committee further asked from the Counsel for the Respondent as well as the Complainant about the final status of uploading Returns/ Financial Statements



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on ROC website and payment of fees of 16 Lakhs respectively, the Respondent submitted that the same were not uploaded and the Complainant submitted that fees of the said amount was not paid to the Respondent.

6. The Committee in this regard noted that the Respondent was appointed by the Complainant as statutory auditor of his Company for the F.Y. 2012-13 and he had been issued an appointment letter dated 26th February 2013 in this regard (**W-7**). Although the Complainant has failed to brought on record that he had appointed the Respondent for carrying out the work relating to uploading of financial statement of the Company but at the same time, it is a fact that the Respondent never denied to own the responsibility of filing the returns and that he had also raised the bill for Rs. 16 Lakhs as professional charges which was signed by the Respondent could not be negated. The Committee, accordingly, viewed that although the Respondent was claiming to be not responsible for uploading financials of the Complainant Company for the F.Y 2012-13 and 2013-14 since the same was required to be done by Sh. S.L. Jain. However, the fact that the bill raised on the Complainant Company was signed by the Respondent and that too on his letterhead, so the argument that Respondent's name was being used by Sh. S.L. Jain to claim fees from the Complainant is not acceptable. Further, with respect to the plea of the Respondent's Counsel that the Respondent did not take any action against Sh. S.L. Jain since latter was the father-in-law of the Respondent also substantiate that the Respondent had no objection to such practice adopted by Sh. S L Jain in the name of the Respondent. Thus, in the considered opinion of the Committee, since the Respondent, being the statutory auditor of the Company, had sought professional charges from the Complainant for rendering various services but did not accomplish the same by way of uploading the financial Statements on ROC website, the non-exercise of due diligence on part of the Respondent in conduct of his professional duties is evident on his part.

Conclusion :

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



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Presiding Officer

mail)

Sd/-
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Member, (Govt. Nominee)
(approved & confirmed through e-

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Sd/-
[CA. Chandrashekhar Vasant

Member
(approved & confirmed through e-

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

Date: 16th December, 2020 (passed through VC)