



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

DISCIPLINARY COMMITTEE [BENCH-I (2020-2021)]
[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 :-

Shri Man Mohan Varma, Director, M/s. Mars Mercantiles Private Ltd., Dhanbad
-Vs-
CA. Anand Agarwal, (M.No.410528), Dhanbad
[PR-157/17-DD/188/17-DC/984/2019]

MEMBERS PRESENT (Through Video Conferencing):-

CA. Nihar Niranjana Jambusaria, Presiding Officer
Shri Jugal Kishore Mohapatra, I.A.S. (Retd.) (Government Nominee)
Ms. Rashmi Verma, I.A.S. (Retd.) (Government Nominee)
CA. G. Sekar, Member
CA. Pramod Jain, Member

1. That vide findings dated 16th December, 2019 under Rule 18 (17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Disciplinary Committee was inter-alia of the opinion that **CA. Anand Agarwal (M.No.410528)** (hereinafter referred to as the **Respondent**) was **GUILTY** of professional misconduct falling within the meaning of Clause (7) of Part I of Second Schedule and also Clause (1) of the Part II of the Second Schedule to the Chartered Accountant Act 1949.

2. That pursuant to the said findings, an action under Section 21B (3) of the Chartered Accountants (Amendment) Act, 2006 was contemplated against the Respondent and communications dated 4th March, 2020 and 21st August, 2020 were addressed to him thereby granting an opportunity of being heard in person and/or to make a written representation before the Committee on 17th March, 2020 and 2nd September, 2020 respectively.

3. The Committee noted that on hearing fixed for 17th March, 2020 was adjourned at the request of the Respondent and on 2nd September, 2020, the Respondent was not present. However, the Committee observed that the Respondent has made his written



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representations dated Nil, received on 18th February, 2020, on the said findings of the Committee.

4. The Committee observed that in the written representations as made by the Respondent before the Disciplinary Committee, he denied the charges levelled against him and stated that charges levelled against him were false and were not supported by corroborative evidence. He was not an employee of the Company.

4.1 He also stated that the Statutory Auditors of the Company for the financial year 2015-16 and financial year 2016-17 could not detect any amount of embezzlement / fraud / suspicious transactions in the Company. The Internal auditor did not inform the matter of embezzlement / fraud / suspicious transactions and appointment of Internal auditor to Statutory auditors of the Company.

4.2 He stated that Directors and Statutory auditors in their report for the financial year 2015-16 and financial year 2016-17 failed to report any embezzlement. Actually, no embezzlement / fraud / suspicious transactions occurred in the Company.

4.3. He stated that the Complainant was not required to sign the blank cheque book regularly from 2011 to 2016 and give them to the Respondent.

4.4 He stated that the Prima Facie Opinion and findings u/r 18(7) of the aforesaid Rules 2007, were Ex-Parte the Respondent.

4.5 He further stated that the Complainant even after receiving amount from the Respondent, did not incorporate such payment in the books of the Company as on 31.03.2016. The matter is sub-judice at present and pending in Dhanbad District Court.

5. The Committee has considered the reasoning as contained in findings dated 16th December, 2019 holding the Respondent Guilty of professional misconduct vis-à-vis written representations of the Respondent on the findings of the Disciplinary Committee. It is viewed that apart from other professional misconduct as mentioned in the findings dated 16th December, 2019, the Respondent had committed a serious offense by embezzling money to the extent of Rs.3.75 crores and the same was established from the signed handwritten note of the Respondent by which he agreed to return the amount of embezzlement to the Complainant.

6. Keeping in view the facts and circumstances of the case, material on record and representations of the Respondent made before it, the Committee is of the view that the professional misconduct on the part of the Respondent is established and accordingly, ends of justice can be met if severe punishment is given to him. Accordingly, the



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Committee ordered that the name of the Respondent i.e. CA. Anand Agarwal (M. No. 410528) be removed from the Register of Members permanently and a fine of Rs.5,00,000/- (Rupee Five Lac Only) be imposed on the Respondent, CA. Anand Agarwal (M.No. 410528) to be payable within 30 days from the date of receipt of this Order.

sd/-
(CA. NIHAR NIRANJAN JAMBUSARIA)
PRESIDING OFFICER

(approved and confirmed through e-mail)
(SHRI JUGAL KISHORE MOHAPATRA, I.A.S. (RETD.))
GOVERNMENT NOMINEE

sd/-
(MS. RASHMI VERMA, I.A.S. (RETD.))
GOVERNMENT NOMINEE

(approved and signed)
(CA. G. SEKAR)
MEMBER

sd/-
(CA. PRAMOD JAIN)
MEMBER

Certified to be true copy

Anurag Sharma

Assistant Secretary,
Disciplinary Directorate

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

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2019-2020)]

[Constituted under Section 21B of the Chartered Accountants (Amendment) 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-157/17-DD/188/2017/DC/984/2019]

In the matter of:

Shri Man Mohan Varma
Director
M/s Mars Mercantiles Private Ltd.
4F, Ashok Nagar, Dhansar
Dhanbad - 828106

.....Complainant

Versus

CA. Anand Agarwal(M. No. 410528)

103A, Bhawan, 1 st floor, More, Dhanbad-826001.	Shanti Bank	C/o Sri Dilip Helwal Sugam Park 12A/5C South Dadhka Adda Anansol-713302.
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.....Respondent

MEMBERS PRESENT:

CA. Atul Kumar Gupta, Presiding Officer
CA. Amarjit Chopra, Member (Govt. Nominee)
CA. Rajendra Kumar P, Member
CA. Chandrasekhar Vasant Chitale, Member





DATE OF FINAL HEARING : 06.08.2019

PLACE OF FINAL HEARING : ICAI Bhawan, New Delhi

PARTIES PRESENT

Respondent : Not Present
Complainant : Shri Man Mohan Varma

Charges in Brief:-

1. The Committee noted that in the Prima-Facie Opinion formed by Director (Discipline) in terms of Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Respondent is Guilty under "Clause (7)" of the Part I And Guilty under "Clause (1)" of the Part II of the Second Schedule to the Chartered Accountant Act 1949. The aforesaid Clause (7) of Part I of the Second Schedule states as under:-

"(7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties;"

"Clause (1)" of the Part II of the Second Schedule states as under:-

"A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he-

(1) contravenes any of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council;"

2. The issue in the present case is that the Respondent was a Statutory Auditor of M/s Mars Mercantiles Private Limited who signed the Balance Sheet for Financial year 2014-2015 inspite of the Respondent being indebted to the company to the tune of more than Rs. 9 lakh. There was additional charge that the Respondent was drawing salary through vouchers with M/s Mars Mercantiles Pvt. Ltd.





3. The next charge on the Respondent alleged by the Complainant is that the Respondent failed to report embezzlement of funds of Rs. 3.75 Crores approx. by the company which were revealed by M/s Vivek B. Agarwal & Company, Chartered Accountant vide its special audit report dated 22 October, 2016 carried out for the financial years 2008-2009 to 2015-16.

Brief facts of the Proceedings:

4. On the day of hearing, the Complainant was present; on other side, the Respondent did not appear before the committee nor did he seek any adjournment in the matter whereas on the last hearing which was scheduled at 9th July 2019 there was an adjournment request from the Respondent. And as per the Principle of natural justice one adjournment was already granted by the Committee. Now considering the Proviso to Rule 18(7) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 which states as follows :-

"Provided that if the respondent does not appear for the first hearing even after one adjournment, the reading out of charge or charges along with summary of prima facie opinion shall be made in his absence and the case proceeded with in accordance with the provisions of this Chapter."

5. After considering the above provisions provided under the Rules, the Committee decided to proceed further. The Complainant was put on oath. In the absence of the Respondent, The Committee asked the Complainant to open the Charges before them. The Complainant briefs the charges before the Committee. The Complainant relied upon his written submission dated 08th July, 2019 before the Committee in the form of paper book. After considering all papers available on record and Oral Submissions of the Complainant, the Committee decided to proceed with the matter.

Findings of the Committee

6. The Committee noted that in the case of the Respondent who was working the Company M/s. Mercantile Private Limited as an employee and was drawing various cheques through vouchers, in the narration on the voucher the Respondent has mentioned by declaring an amount drawn as salary for a particular month. (Voucher is enclosed).
7. The Committee noted that the salary drawn by the Respondent was not reflected in his Income tax Return which was placed on record by the complainant (additional document paper book page 169 to page 174) for 3 consecutive Assessment Years namely 2012-13, 2013-14 and 2014-15 with acknowledgement number 555874280010213, 864059340160114 and 518536420230315 respectively.
8. Further the Committee also noted that the Respondent had conducted audit of same company i.e. Mercantile Private Limited in which he was employee, in the name of M/s D.N. Dokania & Associates while acting as partner of the firm. Further, there is also an allegation that the Respondent has embezzled an amount of Rs.3.75 crores by issuing cheques to various individuals and the firms wherein there were no relations/purchases/procurements of the Company.
9. On the date of hearing, the Complainant submitted that since he used to travel abroad there was a practice followed to sign the cheques in advance and handed over to the Respondent in good faith which was being misused by the Respondent.
10. The Committee also noted there were enough opportunities given to the Respondent to appear before the Committee and give his submission in which the Respondent failed on all occasions, even did not place any request for adjournment.
11. Accordingly, the Committee decided to proceed with the case and noticed a letter/note dated 14th April 2016 (annexed as page no. 46 to page no. 50 of the

paper book) being signed by the Respondent who offered to the Complainant that he agreed to pay all the embezzled money to the extent of Rs.3.75 crores. He has already repaid a sum of around Rs.2 crores and the rest of the amount he will return at the earliest occasion. The following is the above mentioned acceptance letter.

Anand Agarwal S/O Late Prabhoo Nayal
 Agarwal Dhanbad, year wise in Rs. lakhs &
 Detail :-
 01/04/2012 to 31/03/2013 - 12,00,000/-
 01/04/2013 to 31/03/2014 - 4,00,000/-
 01/04/2014 to 31/03/2015 - 42,13,200/-
 01/04/2015 to 14/04/16 - 50,15,000/-
 96,28,000/- + 12,00,000
 = 1,08,28,000/-
 (Rs. Ninety Six Lakhs Twenty Eight
 Thousand only). (Rs. One crore eight
 Lakhs Twenty eight Thousand only.)
 Anand Agarwal
 14/04/2016
 Witness
 14/04/16

12. The Committee also noted that there is a charge sheet being filed on the Respondent. As while looking into the gravity of the case, the Respondent while working as an employee in the Company also conducted the audit of the same Company and the Convection available on record, the Committee decided the Respondent is held guilty under various clauses of the Chartered Accountants Act 1949.

Conclusion

12. In view of the above the Committee is of the opinion that that there is serious allegation on the Respondent to which he agreed upon with the Complainant in writing which is on record. The Committee noted that the Respondent was on salary with the Company and also acting as an auditor and thus was not following the guidelines and also not even showing his salary drawn in his Income Tax Returns according to withdrawal voucher placed on record. These all above findings substantiate corroborative evidence against the Respondent as alleged by the Complainant and held by the Director Discipline. Accordingly, in the considered opinion of the Committee, the Respondent is held **GUILTY** in terms of Clause (7) of Part I of Second Schedule to the Chartered Accountant Act, 1949 and is also held **GUILTY** in terms of Clause (1) of the Part II of the Second Schedule to the Chartered Accountant Act 1949.



Sd/-
(CA. ATUL KUMAR GUPTA)
PRESIDING OFFICER


Sd/-
(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

Sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

Sd/-
(CA. CHANDRASEKHAR VASANT CHITALE)
MEMBER

DATE : 16-12-2019
PLACE : New Delhi

Certified True Copy


Mukesh Kumar Mittal
Assistant Secretary
Disciplinary Directorate
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ICAI Bhawan, I.P. Marg, New Delhi-110 002