



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

[PR/314/15/DD/17/2016/BOD/416/2017]

ORDER UNDER SECTION 21A(3) OF THE CHARTERED ACCOUNTANTS ACT, 1949 READ WITH RULE 15(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATIONS OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007.

In the matter of:-

Ms. Kavya Mittal Goyal

.... Complainant

-Vs-

CA. Gaurav Agarwal (M.No. 505241) of

M/s. Gaurav Agarwal & Co., Chartered Accountants,

Delhi

.... Respondent

[PR/314/15/DD/17/2016/BOD/416/2017]

MEMBERS PRESENT:

CA. Prasanna Kumar D, Presiding Officer

Mrs. Rani Nair, (IRS, Retd.), Govt. Nominee

CA. Durgesh Kumar Kabra, Member

Date of Hearing: 27th October, 2020

1. The Board of Discipline vide Report dated 6th January, 2020 was of the opinion that **CA. Gaurav Agarwal (M.No. 505241)** is guilty of "Other Misconduct" falling within the meaning of Clause (2) of Part-IV of the First Schedule of the Chartered Accountants Act, 1949 read with section 22 of the said Act.

2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against **CA. Gaurav Agarwal** and communication dated 9th October, 2020 was addressed to him thereby granting him an opportunity of being heard in person and/or to make written representation before the Board on 27th October, 2020.

3. **CA. Gaurav Agarwal** made his written representation vide letter dated 24th October, 2020 and also appeared through video conferencing before the Board on 27th October, 2020 and made his oral submissions thereat.

4. **CA. Gaurav Agarwal**, in his written representation reiterated the submissions made at the time of hearing and further submitted that the extant complaint is not maintainable. The subject matter of the FIR No. 1146/2015 lodged by the Complainant is exactly the same as the extant complaint and said FIR is pending adjudication before the Hon'ble Court of Ms. Jasjeet Kaur, Ld. CMM, Rohini Courts, New Delhi. The Respondent further referred to the matter of Paul Anthony wherein the Hon'ble Apex Court while dealing with the issue in hand observed that where the

as per



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charges in disciplinary case and the Criminal Court are same which involves complex question of law and fact, the enquiry proceedings in disciplinary case would require to be kept in abeyance which otherwise would cause serious prejudice to the employee. The Respondent also referred matter of Subramany Gopala Krishnan Vs ICAI, 2012 AD (Delhi) 313 wherein the Hon'ble High Court of Delhi also observed similar view to stay the disciplinary proceedings and thus, requested the Board to review/recall its Order dated 6th January 2020.

5. The Board has carefully gone through the facts of the case and also the oral and written representation of **CA. Gaurav Agarwal**. Keeping in view the representation of the Respondent, the Board opined that proceedings before the Board of Discipline are quasi-judicial in nature where the misconduct can be proved by preponderance of probabilities having regard to the conduct of the Respondent. While coming to the said view the Board took into consideration the decision of the Hon'ble Supreme Court in the matter of "Ajit Kumar Nag –vs- General Manager (PJ) Indian Oil Corporation Limited-AIR 2005 SC 4217 wherein the Hon'ble Apex Court held as under :-

"The degree of proof which is necessary in order to conviction is different from the degree of proof necessary to record the commission of delinquency. The rules relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused beyond reasonable doubt he cannot be convicted by a Court of law. In a departmental enquiry penalty can be imposed on the delinquent officer on a finding recorded on the basis of preponderance of probability."

Similarly in the matter of Capt. M Paul Anthony –vs- Bharat Gold Mines Limited - AIR....1999 SC 1416 the Hon'ble Supreme Court held as under:-

"In departmental proceedings, factors prevailing in the mind of the disciplinary authority may be many, such as enforcement of discipline or to investigate level of integrity of delinquent or other staff. The standard of proof required in those proceedings is also different from that required in a criminal case. While in departmental proceedings, the standard of proof is one of preponderance of probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt."

Further, it is not an inflexible rule of Law that disciplinary proceedings must be stayed in each and every case where a trial is pending before the Criminal Court on the very same facts/charges. The stay Orders referred to by the Respondent have been passed in specific cases keeping in view the facts of the case and cannot be applied in general to stay/keep in abeyance all the disciplinary proceedings before it. 00



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6. Thus, as per the findings of the Board as contained in its report, specifically keeping in view that the Respondent was charge-sheeted wherein it was held that he in criminal conspiracy with other accused persons misappropriated the money of the Complainant, her family members, Trust, Society, Schools, Firm HUF and causing them wrongful loss of more than Rs. 10 crores, as per the FSL report there was no divergence observed between the questioned and specimen writings / figures of the Respondent, which points out that the Respondent used to not only write cheques but also sign them since the writing and/or signatures found in the documents including cheques was almost similar to that in specimen of the Respondent and the Respondent was not able to justify the purpose of transfer of Rs. 80 lakhs from the Trust account to the Respondent's personal account, it has already been conclusively proved that **CA. Gaurav Agarwal** is Guilty of Other Misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule of the Chartered Accountants Act, 1949 read with Section 22 of the said Act.

7. Upon consideration of the facts of the case, the consequent misconduct of **CA. Gaurav Agarwal** and keeping in view his oral and written representation before it, the Board decided to remove the name of **CA. Gaurav Agarwal (M.No. 505241)** from the Register of Members for a period of 1 (One) month and also imposed a fine of Rs.60,000/- (Rs. Sixty thousand only) upon him payable within a period of 60 days from the date of receipt of the Order.

(Signature)

Sd/-
CA. PRASANNA KUMAR D.
(PRESIDING OFFICER)

Certified to be true copy

(Signature)

R.S. Srivastava
Assistant Secretary,
Disciplinary Directorate

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

BOARD OF DISCIPLINE (BENCH- I)

Constituted under Section 21A of the Chartered Accountants Act 1949

Findings under Rule 14(9) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007

File No. : PR/314/15/DD/17/2016/BOD/416/2017

QUORUM:

**CA. Sushil Kumar Goyal, Presiding Officer
Mrs. Rani Nair (IRS, Retd.), Government Nominee
CA. Durgesh Kumar Kabra, Member**

In the matter of:

**Ms. Kavya Mittal Goyal,
ND – 64, 2nd Floor, Pitampura,
Delhi – 110088**

..... Complainant

Versus

**CA. Gaurav Agarwal (M.No.505241)
M/s. Gaurav Agarwal & Co.(FRN 020628N)
BU-211 Second Floor,
Pitampura, (Near Income Tax Colony)
Delhi – 110088**

.....Respondent

DATE OF HEARING : 12th October, 2019

PLACE OF HEARING : New Delhi

PARTIES PRESENT:

Complainant : Ms. Kavya Mittal Goyal

Counsel for the Complainant : Advocate Shekhar Gehlot

Respondent : CA. Gaurav Agarwal

Counsel of the Respondent : Advocate Saurabh Munjal

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FINDINGS:

1. The Board noted the charge alleged against the Respondent that he had done forged signature in many cheques of the Complainant and his family members, made various alterations on her and firm's cheques and also involved in criminal activities of cheating, misappropriation of money etc.
2. The Board noted that at the time of hearing held on 12th October, 2019, the Complainant and the Respondent were present before it along with their respective Counsels. On being asked to make his defence in the matter particularly with reference to the documents submitted by the Complainant at the time of last hearing held on 24th July 2019, the Counsel for the Respondent placed an application for keeping the matter in abeyance till the conclusion of the criminal proceedings pending before the Court in similar matter. He was asked to make his submissions on the merits of the case and the Respondent was examined by the Board. On consideration of the submissions and the documents, thus, on record, the Board had directed the Respondent to make his further written submissions in the matter, if any, within 15 days with a copy marked to the Complainant and also asked the Complainant to reply on the same in next 7 days. Accordingly, it was decided that the decision on the conclusion of the hearing in the case will be taken subject to receipt of aforesaid submissions, if any from the parties to the case.
3. Subsequent thereto, the Respondent vide his email dated 18th October, 2019 stated that he had submitted an application to stay / keep in abeyance the proceedings pending before this Board of Discipline as the Hon'ble Criminal Court is already ceased off the matter related to the same charges / allegations leveled in FIR No. 1146/2015, which is adjudicating upon the dispute involved therein and is now fixed for hearing on 08/11/2019. He submitted that in the event the Hon'ble Board of Discipline proceeds with the enquiry on the same charges, grave prejudice would be caused and his defense would be exposed, thus, he requested the Board of Discipline to inform him, if any Order has been passed on his said application so that necessary steps in compliance thereto be taken as required or otherwise as available in law. He was informed via email dated 31st October 2019 that as informed at the time of hearing, he was required to make his further written submissions, if any in the matter within 15 days from the date of hearing i.e. 12th

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October 2019 with a copy marked to the Complainant. However, no further response was received from the Respondent. Accordingly, the case was placed before the Board at its meeting held on 16th December 2019 to take a decision as regards the conclusion of the hearing in the matter. The Board, on consideration of the documents on record concluded the hearing in the matter.

4. As regards the application of the Respondent regarding keeping the current disciplinary proceeding in abeyance, The Board was of the view that since disciplinary and criminal proceedings are distinct and separate, and has nothing to do with the culpability of the offence under IPC. Further, each case requires to be considered in the backdrop of its own facts and circumstances and there is no bar to proceed simultaneously with departmental enquiry and trial of a criminal case. Thus, there is no ground for keeping the current disciplinary proceeding in abeyance.

5. The Board also noted the following submissions of the Respondent as stated hereunder:

- (i) The present complaint has been filed against him only to cover the fraudulent activities and transactions of Mr. Ved Mittal.
- (ii) He was only managing and supervising the accounts work being carried out by the accountants hired by Mr. Ved Mittal. Also, all payments were being made and received through proper cheques and other electronic mode and proper acknowledgement, hence the question of fraud and misappropriation of funds does not arise. Moreover, all financial statements were duly audited from time to time by the independent auditors appointed by Mr. Ved Mittal.
- (iii) Most of the cheques were drawn allegedly by making signatures of Ms. Sunita Mittal who is a treasurer of the Complainant's Society and it is not clear that how she was not aware of such frauds happening in the Society since 2013 and continued till 2016.
- (iv) The Respondent used to get the signed cheques from Mr. Ved Mittal and thereafter he used to fill in the remaining content in those cheques. There is no documentary evidence except a casual complaint made by the Complainant which is yet to withstand the scrutiny of law.

(v) Since the entire evidence relied upon is related to the criminal trial thus the proceedings in the instant case may be kept in abeyance.

6. The Board also noted the submission of the Complainant that in FSL report filed by the Police, which is based on voluminous samples, it is coming that 80 cheques were forged wherein handwriting of the Respondent is matching. In the civil suit, the Respondent has given a written statement in High Court wherein he was not taking any ground but now he is coming out with new statement before the Hon'ble Board of Discipline.

7. The Board further noted that the Hon'ble Chief Metropolitan Magistrate considering the gravity of offences involved had dismissed the bail application of the Respondent.

8. The Board also noted that in the charge sheet no. 1146/2015 following points are observed regarding the Respondent:

"He did articleship under Mr. Ved Mittal and qualified in 2005 as CA. He became partner in 2006 in M/s Ved Mittal & Associates having 30% shares. He used to look after the works of the CA firm and dealt with the accounts and balance sheets of the clients of the firm. He was not being paid for the CA firm and as per mutual understanding the payment was made in the name of my wife Mrs. Sweta Aggarwal Rs.20,000/-pm, later reduce to Rs.15,000/-. He siphoned off the money through transferring & receiving entries in different other accounts and receiving cash from them directly on the pretext of false billing and supply.

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Accused Gaurav Agrawal was confronted with all the bank account statements maintained in the name of the complainant, his firm, trust, school, society, family members personal accounts as well as his personal, family and firm accounts. He was unable to explain the credit of Rs 83 Lac approx. in his personal account from the accounts of the complainant. He was unable to explain the credit of Rs. 2,17,50,000 & Rs. 44,79,102 in his personal account from the accounts of the different accounts and family members in which huge cash amount were deposited.

His replies were evasive and remained uncooperative during investigation.

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From the scrutiny of the bank accounts it has been observed that accused Gaurav Agrawal directly benefited in his account Rs. 83,94,124.00, indirect receipt of Rs.2,17,50,000 in his account from other accounts in which either cheated amount credited or routed, cash deposits in the account of the family members of accused Gaurav Agrawal, trading in commodities.

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Accused Gaurav Agrawal was partner in the CA firm M/s Ved Mittal & Associates. He had gained good faith of the complainant and had been access to all the records, documents, cheque books, FDRs etc of the complainant, his family members, trust, society, schools, firm, HUF kept in the office complainant at 1st Floor, A-13, Prashant Vihar, Delhi. He had misappropriated the cheques which were entrusted for creating FDs, through forging the signatures on the RTGS forms or obtaining fraudulently, forging the signatures on the cheques & RTGS forms, by adding the denomination of the amount by adding digits & figures, by altering the denomination of the amount by infringements in digits & figures. He used the said cheques & RTGS forms for transferring cheated amount either directly to his own accounts or routed through different accounts of others including his family members and siphoned off. Accused Gaurav Agrawal in criminal conspiracy with other accused persons misappropriated the money of the complainant, his family members, trust, society, schools, firm HUF putting them in wrongful loss of more than Rs. 10 Crs approx. Accordingly, charge sheet u/s 409/467/468/471/477A/120B IPC has been prepared against accused Gaurav Agrawal mentioned in column number 11 of the charge sheet."

8.1 From the above, it is coming out that the Respondent was charge-sheeted wherein it was held that he in criminal conspiracy with other accused persons misappropriated the money of the Complainant, her family members, Trust, Society, Schools, Firm HUF and causing them wrongful loss of more than Rs. 10 crores.

9. Further, the Board noted the certain points from the FSL report, provided by the Complainant, as under:-

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"Report No. F.S.L.2017/D-0529 dated 31.03.2017

QUESTIONED:- Red enclosed writing & signatures marked Q1 to Q596, Q39/1, Q122A to Q122E, Q243/1 & Q292/1, Q331A to Q331E, Q396A, Q522A, Q596A to Q596H on Six deposit Receipts (FD), Ninety Three RTGS Remittance Challans, Letter to IOB & Minutes of Meetings on Letter head of Mittal Educated Society Existence (REGD), Application for Financial Assistance Against Security of Term Deposit, form No. 10B alongwith balance sheet March 2013, letter to Manager IOB, Pitampura, Delhi, dated 09.09.2015 etc. and One Hundred Eleven Cheques of Indian Overseas Bank bearing details.

STANDARDS:- Red enclosed specimen writings/signatures marked S11 to S16 of Sh. Rajesh Kumar Khanna and S17 to S69 of Sh. Gaurav Aggarwal.

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I. On comparison of questioned writings/signatures in the red enclosed portions marked Q124, Q129, Q131, Q134 to Q143, Q147, Q149 to Q154, Q156 to Q236, Q244, Q248, Q250, Q252, Q256, Q258 to Q274, Q276, Q278, Q280, Q282 to Q292, Q292/1, Q293 to Q305, Q307 to Q326, Q328 to Q331 & Q331A to Q331E with the specimen writings/signatures in the red enclosed portions marked S28 to S37 & S61, similarities are observed in formation of characters and their minute and inconspicuous details.

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These similarities in the writings habit are significant and sufficient to indicate that the person who wrote the red enclosed writings/signatures stamped and marked S28 to S37 & S61 also wrote the red enclosed writings/signatures similarly stamped and marked Q124, Q129, Q131, Q134 to Q143, Q147, Q149 to Q154, Q156 to Q236, Q244, Q246, Q248, Q250, Q252, Q254, Q256, Q258 to Q274, Q276, Q278, Q280, Q282 to Q292, Q292/1, Q293 to Q305, Q307 to Q326, Q328 to Q331, Q331A, Q331E.

II. The person who wrote the red enclosed writings/figures stamped and marked S38 to S49, S52 to S60 & S62 to S69 also wrote the red enclosed writings/figures similar stamped and marked Q332, Q334 to Q336, Q338 to Q340, Q342, Q343,

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Q345 to Q389, Q391 to Q396, Q396A, Q397 to Q412, Q416, Q419 to Q434, Q437 to Q476, Q478, Q480 to Q483, Q488, Q503 to Q515, Q523 to Q544 and Q546 to Q586.

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Similarities are observed in the general features such as writing movement skill, speed, spacing, alignment, relative, size and proportion of characters and nature of commencing & terminating strokes.

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There is no divergences observed between the questioned and specimen writings/figures and the aforesaid similarities in the writings habit are significant and sufficient and cannot be attributed to accidental coincidence.”

9.1 Considering the above, it is inferred that as per the FSL report there was no divergence observed between the questioned and specimen writings / figures of the Respondent, which points out that the Respondent used to not only write cheques but also sign them since the writing and/or signatures found in the documents including cheques was almost similar to that in specimen of the Respondent.

10. The Board deliberated on the facts of the case along with the submissions made by the Respondent. The Board was of the opinion that there are sufficient circumstantial evidences such as Charge Sheet, FIR, FSL Reports, etc. to suggest that the conduct of the Respondent is under question and the Respondent also has neither produced any tangible evidences nor any further written submissions so as to substantiate his defence. Moreover, the Board observed that the Respondent was not able to justify the purpose of transfer of Rs. 80 lakhs from the Trust account to the Respondent's personal account. The Board was of the view that the Respondent was allegedly involved in the misappropriation of the funds of the Society and the said alleged act on the part of the Respondent in trying to take benefit of the cheques through forgery and thereby cheating the Complainant and others is not befitting of the highest ethical standards expected of him.

11. Hence, keeping in view of the above-mentioned points, the Board decided to hold the Respondent Guilty of the charges alleged against him.

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CONCLUSION:

12. Thus, in conclusion, in the considered opinion of the Board, the Respondent is held **GUILTY** of Other Misconduct falling within the meaning of Clause (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949.

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Sd/-
CA. SUSHIL KUMAR GOYAL
(PRESIDING OFFICER)

Sd/-
MRS. RANI NAIR (IRS, Retd.)
(GOVERNMENT NOMINEE)

Sd/-
CA. DURGESH KUMAR KABRA
(Member)

DATE: 6th JANUARY, 2020

PLACE: NEW DELHI

Certified Copy
[Signature]
Assistant Secretary
Disciplinary Directorate
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