



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

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:

Smt. Pradnya Sunil Tanksale, (M/s SICOM Ltd), Mumbai

-vs.-

CA. Vijay Kumar Bansal (M.No.088744) of M/s.VBR & Associates, Chartered Accountants, Delhi

[PR-286/2014/DD/334/14/DC/670/2017]

Date of Order : 12th October, 2020

MEMBERS PRESENT:

- 1. CA. Nihar N Jambusaria, Presiding Officer**
- 2. Shri Arun Kumar, IAS (Retd.), Government Nominee**
- 3. Ms. Nita Chowdhury, IAS (Retd.), Government Nominee**
- 4. CA. (Dr.) Debashis Mitra, Member**
- 5. CA. Jay Chhaira, Member**

1. That vide report dated 03rd February, 2020, the Disciplinary Committee held **CA. Vijay Kumar Bansal (M.No.088744), Delhi** (hereinafter referred to as the “**Respondent**”) **GUILTY** of professional and other Misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 as amended from time to time.

2. That an action under Section 21B (3) of the Chartered Accountants (Amendment) Act, 2006 was contemplated against the Respondent and communication was addressed to him thereby granting an opportunity of being heard in person and/or to make a written representation before the Committee on 12th October, 2020.



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

3. The Respondent appeared before the Committee on 12th October, 2020 through video conferencing and submitted his written representations dated 09/03/2020 on the findings of Disciplinary Committee.

4. On perusal of findings of earlier Committee dated 03/02/2020, the Committee noted that *“the amount of retention money receivable was Rs.169.54 Cr. The relevant extract of the certificate of the Respondent dated 29th March, 2012 was as under:-*

“To Whomsoever it may concern

We hereby certify that we have examined the books of accounts of A2Z Maintenance & Engineering Services Ltd. (“Company”) having its registered office at O-116, First Floor, Shopping Mall, Arjun Marg, DLF City Phase -1, Gurgaon – 122 002 and as per information provided to us and records before us, we certify that the Retention Money receivables of the Company are un-encumbered and are free from any charges.

.....”

The said certificate was submitted to the Complainant entity (SICOM) and based on the said certificate the first charge was created in favour of the Complainant entity by the Company on the Retention Money receivables. As per the Complainant entity (SICOM), the certificate issued by the Respondent was incorrect as other financial institutions in Corporate Debt Restructuring proceedings claimed prior charge on all books debts and receivables of the Company including those which were hypothecated / charged to SICOM.

4.1 The Committee observed that it was the main defence of the Respondent that the nature of retention money receivable was long term as it was not recoverable within 1 year (365 days). Further, as per submission of the Respondent, he was asked to issue certificate for the use of the banker to review the credit limits granted to the Company. The Committee perused the sanction letter dated 22.11.2010 and letter dated 23rd August, 2013 of State Bank of Patiala addressed to the Company and



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

West Bengal State Electricity Company Limited respectively and noted that the State Bank of Patiala has created first pari-passu charge with other consortium members on the entire current (including retention money) as well as fixed assets of the Company both present and future. Further, as per Form 8 (Particulars for creation or modification of charge), first pari-passu charge was created on the entire current assets as well as fixed assets of the Company. Thus, at the time of issuing the certificate by the Respondent, it was very well on record that the State Bank of Patiala and other consortium banks were having first pari-passu charge on the entire current assets and that were not free from the charge.

4.2 Apart from above, it is noted that as per requirement of Guidance Notes on “Audit Reports and Certificates for Special Purposes”, a certificate be addressed to the client or the person requiring it. However, in appropriate circumstances, a certificate may be issued without reference to any particular person or authority by using the words, ‘To Whomsoever It May Concern’. But in the instant case, in spite of being aware of the fact that the certificate is to be issued for the purpose of review of credit facility by the existing banker, the Respondent by adopting causal approach did not address the certificate to the banker and consequently, the said negligence provided the Company an opportunity to misuse the same for other purpose”.

5. The Committee considered the written as well as oral submissions made by the Respondent and findings of the earlier Committee holding the Respondent guilty of professional misconduct. The Committee noted that the Respondent has admitted the said mistake at his end and has requested the Committee to take a lenient view in this matter.

5.1 Thus, after considering all the facts and submissions before it, the Committee was of the view that ends of justice can be met if punishment is given to him in commensurate with his above misconduct.



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

7. Thus, keeping in view the facts and circumstances of the case as aforesaid, the material on record, submissions of the Respondent before it, this Committee orders that the Respondent i.e. CA. Vijay Kumar Bansal (M.No.088744) be reprimanded and a fine of Rs. 1,00,000/- (Rupees One Lakh only) be also imposed upon him to be paid within 30 days of receipt of this order.

Sd/-
(CA. NIHAR N JAMBUSARIA)
PRESIDING OFFICER

Sd/-
(SHRI ARUN KUMAR, IAS (RETD.))
GOVERNMENT NOMINEE

Sd/-
(MS. NITA CHOWDHURY, IAS (RETD.))
GOVERNMENT NOMINEE

Sd/-
(CA. (DR.) DEBASHIS MITRA)
MEMBER

Sd/-
(CA. JAY CHHAIRA)
MEMBER



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

CONFIDENTIAL

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

[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- 286/14-DD/334/2014/DC/670/17]

In the matter of:

Smt. Pradnya Sunil Tanksale

M/s SICOM Ltd.

Bldg 4,6 Floor, Solitaire, Corporate Park

Guru Hargovindji Road

Andheri Ghatkopar Link Road

Chakala Andheri (East)

Mumbai – 400093.

.....Complainant

Versus

CA. Vijay Kumar Bansal (M.No.088744)

405, Roots Tower

Plot No.7, District Centre

Laxmi Nagar

Delhi - 110 092

.....Respondent

MEMBERS PRESENT:

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

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

CA. Babu Abraham Kallivayalil, Member

CA. Dayaniwas Sharma, Member

DATE OF FINAL HEARING : 17.10.2019

PLACE OF FINAL HEARING : ICAI, New Delhi



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

PARTIES PRESENT:

Complainant : **Not Present**
Respondent : **CA. Vijay Kumar Bansal**
Counsel for Respondent : **CA. C.V. Sajan**

BRIEF OF THE DISCIPLINARY PROCEEDINGS:-

1. The Committee noted that first hearing in the matter was fixed on 29.08.2019. The notice of the said hearing was duly sent to the Complainant and the Respondent. However, the said hearing was adjourned in order to provide one more opportunity to the Complainant.

1.1 On the day of hearing held on 17th October, 2019, the Committee noted that the Complainant was not present. The Respondent along with his Counsel was present. Since there was no prior intimation from the Complainant about his absence from the hearing and the last hearing fixed on 29.08.2019 was adjourned at the request of the Complainant, the Committee decided to continue with the proceedings ex-parte the Complainant. The Respondent was put on oath. On being enquired from the Respondent as to whether he is aware of the charges leveled against him, the Respondent replied in affirmative and pleaded not guilty to the same. The Counsel for the Respondent decided to make his submissions. Thereafter, the Counsel for the Respondent made his submissions. The Committee also posed certain questions to the Respondent. After hearing the final submissions, the Committee decided to conclude the hearing.

CHARGES IN BRIEF AND FINDINGS OF THE DISCIPLINARY COMMITTEE:-

2. A2Z Maintenance & Engineering services Ltd (hereinafter referred to as the “**Company**”) borrowed loan from the Complainant. The Company has obtained a CA Certificate from the Respondent firm dated 29th, March, 2012 and submitted the same to the Complainant entity certifying that the Retention Money receivables as mentioned in the said CA Certificate are unencumbered and free from any charges. The Complainant relied on the above referred CA



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

Certificate and on the basis and strength of the said certificate, first charge on Retention Money receivables was created in favour of the Complainant entity.

2.1 Subsequently as the Company defaulted with the Complainant entity and other lenders, the Company was referred to Corporate Debt Restructuring Cell (CDR). Though the Complainant entity did not participate in CDR proceedings but from the flash report and CDR minutes, the Complainant entity came to understand that all other banks (including state bank of Patiala) and financial institutions were also claiming prior charge on all book debts and receivables of the Company including those which are hypothecated/ charged to the Complainant entity.

3. On perusal of the documents on record, the Committee noted that the Complainant did not submit his further submissions on the prima facie opinion. On the other hand, the Respondent made the following written as well as verbal submissions before the Disciplinary Committee:-

3.1 That he accepted his mistake of non-mention of the purpose for which the certificate in question was issued by him. He also stated that this omission does not fall under Gross negligence or lack of exercising due diligence.

3.2 That the Complainant Company has already entered into settlement with the borrower Company and therefore, the Complainant has no reasons to be aggrieved in the matter.

3.3 The Respondent stated that he had examined the books of accounts of the Company and as per information produced before him, he certified that the Retention Money receivable of the Company are un-encumbered and are free from any charges. The Respondent stated that the retention money is a part of the contract proceeds that is withheld by the Contractor Company for the warranty period. So, it was for very long term and it was for beyond one year time. The first thing he remembered that he did not issue the certificate with an impression that this would be used for the purpose of finance by the Complainant entity. In case of certificate which is not clarificatory or with no mention of purpose on it, it was the first



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

responsibility of the lender to ask the Respondent before granting any advance to the Company. However, they did not do so.

3.4 The Respondent stated that he was appointed vide letter dated 28th March 2012 to issue a certificate. In response to the query of the Respondent, the director of the Company vide letter dated 29th March, 2012 gave clarification regarding necessity of a CA Certificate for retention money. It was mentioned by the director that they are in the process of getting credit limit reviewed by their banker. The Company has not mentioned the name of the Complainant entity (SICOM). From the same, it is clear that he was given indication by the Company that the certificate would be used by the banker for reviewing the credit limits granted to the Company. The Respondent stated that since the retention money is an item which is not recoverable within one year, it cannot fall in the category of current assets in technical terms.

3.5 To a question related to sanction letter of State Bank of Patiala, the Respondent stated that he had already provided the same and as per sanction letter of State Bank of Patiala, the receivables which are older than stipulated terms and conditions as mentioned in Annexure-I to the said sanction letter will not be financed. So, State Bank of Patiala has mentioned that the items which are recoverable beyond the period 365 days would not be charged and accordingly, the retention money have been certified as free from any charges as the same was not recoverable within 365 days.

3.6 To further question posed to the Respondent that the sanction letter of State Bank of Patiala does not indicate that retention money receivable was free from encumbrances, the Respondent referred to the terms & condition of primary charge and reiterated that the State Bank of Patiala created first pari-passu charge with other consortium on the entire current assets as well as fixed assets of the Company but the retention money receivable was non-current asset.



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

3.7 To a further question related to the classification given to retention money in the balance sheet, the Respondent stated that ideally the same should have been classified under long-term receivables as non-current trade receivables but the same was not done by the Company so it was a classification mistake in the balance sheet.

4. The Committee perused the documents and submissions on record and noted that the amount of retention money receivable was Rs.169.54 Cr. The relevant extract of the certificate of the Respondent dated 29th March, 2012 was as under:-

“To Whomsoever it may concern

*We hereby certify that we have examined the books of accounts of A2Z Maintenance & Engineering Services Ltd. (“Company”) having its registered office at O-116, First Floor, Shopping Mall, Arjun Marg, DLF City Phase -1, Gurgaon – 122 002 and as per information provided to us and records before us, we certify **that the Retention Money receivables of the Company are un-encumbered and are free from any charges.***

.....”

4.1 The said certificate was submitted to the Complainant entity (SICOM) and based on the said certificate the first charge was created in favour of the Complainant entity by the Company on the Retention Money receivables. As per the Complainant entity (SICOM), the certificate issued by the Respondent was incorrect as other financial institutions in Corporate Debt Restructuring proceedings claimed prior charge on all books debts and receivables of the Company including those which were hypothecated / charged to SICOM.

4.2 The Committee observed that it was the main defence of the Respondent that the nature of retention money receivable was long term as it was not recoverable within 1 year (365 days). Further, as per submission of the Respondent, he was asked to issue certificate for the use of the banker to review the credit limits granted to the Company. The Committee perused the sanction letter dated 22.11.2010 and letter dated 23rd August, 2013 of State Bank of



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

Patiala addressed to the Company and West Bengal State Electricity Company Limited respectively and noted that the State Bank of Patiala has created first pari-passu charge with other consortium members on the entire current (including retention money) as well as fixed assets of the Company both present and future. Further, as per Form 8 (Particulars for creation or modification of charge), first pari-passu charge was created on the entire current assets as well as fixed assets of the Company. Thus, at the time of issuing the certificate by the Respondent, it was very well on record that the State Bank of Patiala and other consortium banks were having first pari-passu charge on the entire current assets and that were not free from the charge.

4.3 It is also noted from the submissions of the Respondent that the retention money receivable was not shown as long term assets or non-current assets in the financial statement of the Company. In view of above, the Company is of the view that nature of retention money was current assets and the same as per sanction letter of State Bank of Patiala and Form 8 was duly hypothecated / charged with the State Bank of Patiala and other banks on first pari-passu basis.

4.4 Apart from above, it is noted that as per requirement of Guidance Notes on “*Audit Reports and Certificates for Special Purposes*”, a certificate be addressed to the client or the person requiring it. However, in appropriate circumstances, a certificate may be issued without reference to any particular person or authority by using the words, ‘To Whomsoever It May Concern’. But in the instant case, in spite of being aware of the fact that the certificate is to be issued for the purpose of review of credit facility by the existing banker, the Respondent by adopting causal approach did not address the certificate to the banker and consequently, the said negligence provided the Company an opportunity to misuse the same for other purpose.

4.5 Taking into consideration the above submissions & facts, the Committee is of the view that the Respondent failed to verify the relevant details while issuing the certificate dated 29th March, 2012 and wrongly certified that the Retention Money receivable of the Company was



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

un-encumbered and was free from any charges. Accordingly, the Committee decided to hold the Respondent Guilty with respect to the charge leveled against him.

Conclusion:-

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

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

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

Sd/-
(CA. BABU ABRAHAM KALLIVAYALIL)
MEMBER

Sd/-
(CA. DAYANIWAS SHARMA)
MEMBER

DATE : 03rd February, 2020
PLACE : NEW DELHI