

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – IV (2021-2022)]

**[Constituted under Section 21B of the Chartered Accountants
(Amendment) Act, 1949]**

**Findings under Rule 18(17) read with Rule 19(2) of the Chartered
Accountants (Procedure of Investigations of Professional and
Other Misconduct and Conduct of Cases) Rules, 2007.**

File No. : [PR-113/2014-DD/123/14-DC/561/2017]

In the matter of:

**Smt. Melanie Maria Fernandes
H. No. 69/12, Khorlim, Mapusa
Goa-403 507**

....Complainant

Versus

**CA. Radhey Krishna Agrawal..... (M. No.76984)
M/s M. D. Gujarati &Co.,
Chartered Accountants,
J-8, Green Park Extension,
New Delhi-110 016**

....Respondent

MEMBERS PRESENT:

**CA. Nihar N Jambusaria, Presiding Officer
Ms. Nita Chowdhury, Member (Govt. Nominee)
Shri Arun Kumar, Member (Govt. Nominee)
CA. Manu Agrawal, Member**

**DATE OF FINAL HEARING: 24.08.2021 through Video Conferencing
PLACE OF FINAL HEARING: New Delhi**

PARTIES PRESENT:

- i. Ms. Melanie Maria Fernandes : Complainant**
- ii. Ms. Zinette Fernandes : Counsel for Complainant**

- iii. CA. Radhey Krishna Agrawal : Respondent
- iv. CA. C. V. Sajan : Counsel for Respondent
(all appeared from respective personal location through video
-conferencing)

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 was held prima facie guilty of Professional Misconduct falling within the meaning of Clauses (7) & (8) of Part I of Second Schedule to the Chartered Accountants Act 1949. The said Clauses to the Schedule state as under: -

Second schedule

Part I

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

"(8) fails to obtain sufficient information to warrant the expression of an opinion or his exceptions are sufficiently material to negate the expression of an opinion;"

Brief Background and Allegations against the Respondent:

2. The matter pertains to M/s. Akyleja Interiors Pvt. Ltd. (hereinafter referred to as '**Company**') incorporated under the Companies Act, 1956 and its shares were stated to be held by two shareholders - the Complainant holding 51% shares and Mr. Massimiliano Pilutti (hereinafter referred to as '**Mr. MP**') holding 49% of the shares. It is stated that both of them together constituted Board of Directors being Directors of the Company.

By

[Signature]

3. The charges alleged against the Respondent was that he had filed Form 23AC, Form 32, Form 18, and Form 20B of the Company on the portal of the Ministry of Corporate Affairs / ROC without the knowledge and consent / approval of the Complainant, as required under Articles of Association. It was stated that alleged Forms were filed along with all other fraudulent documents viz resolutions passed at Board Meetings held without her knowledge/ presence. It was thus alleged that documents so filed were created which amounted to wrongful, fraudulent and unlawful certification by the Respondent as discussed below:

3.1 In context of Form 23AC, it was stated that Annual General Meeting dated 30th September, 2013 as mentioned in the said Form was reported to be conducted at the registered address of the Company which was the residential address of the Complainant (C-27) herself, however, the Complainant was not aware of the same.

3.2 In respect of Form 32, one Mr. Harpreet Singh was appointed as Additional Director of the said Company on the basis of alleged resolution No. 3 dated 01st September, 2013 of the Board of Directors (C-13 to C-15). As per the Complainant, neither there was any meeting nor was any resolution dated 1st September, 2013 passed in any such meeting as the Complainant was neither informed of any such meeting nor she was signatory to such resolution dated 1st September, 2013.

3.3. In context of Form 18 filed by the Respondent on the MCA portal on the 26th of March, 2014 which purported to change the registered office of the Company, it was stated that the same was done without



her consent (C-7 to C-12). The Complainant also stated that she was not a signatory to the Board Resolution bearing No.3 dated 26th March, 2014 as referred to in the said Form 18.

It was noted that the core basis of allegation made by the Complainant were

- Clause 24 (e) of the Articles of Association, as per which, the Directors of the Company shall not be liable to retire by rotation and shall not be removed until such time they voluntarily retire or resign or disqualified in terms of clause (g) of sub-section (1) of Section 274 of the Companies Act, 1956, and
- Clause 24 (g) of the Articles of Association, as per which, the Board of Directors shall have the power to appoint an Additional Director, and both the said Directors have to pass a resolution to appoint an additional Director if any

Brief facts of the Proceedings

4. During hearing held on 24th August 2021, the Committee noted that the Complainant and the Respondent along-with their respective Counsel were present before it for hearing. Thereafter, they all gave a declaration that there was nobody except them in their respective room from where they were appearing and that they would neither record nor store the proceedings of the Committee in any form.

The Committee noted that since last hearing there was substantial change in constitution of the Committee hence, it was decided to hold *de-novo hearing*. Accordingly, the Complainant and the Respondent were, again, put on oath. Thereafter, the Committee asked the Complainant/Counsel to present the charges made against the Respondent. The Counsel for the Complainant explained the charges.

On being asked, as to whether the Respondent pleaded guilty, the Respondent pleaded not guilty and opted to defend the matter against him. Thereafter, the Committee asked the Counsel for the Respondent to make submissions in the matter. The Committee examined both the Complainant and the Respondent based on submissions made by them.

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

Findings of the Committee

5. The Committee noted that the entire case pertains to Forms filed by the Respondent on MCA portal during 2013 namely Form 23AC, Form 32, and Form 18 that are alleged to be fraudulently filed by the Respondent on the basis of created documents when the Complainant being majority shareholder was neither aware of the meeting nor approved the related documents wherein resolutions related to said forms were stated to have been passed by the Company.

6. It was noted that to strengthen her case against the Respondent, the Complainant also brought on record Form 20B of FY 2013 and submitted that from Para VI of the said Form (**D-15 of the prima facie opinion**), relating to transfer of shares since date of last AGM, it could be observed that on 15.07.2013 510 shares as held by her were reported to be transferred in the name of Mr. Harpreet Singh, the additional director, while referring to ledger folio 1 to folio no. 3. She stated that the said form was certified and filed as genuine before the Ministry of Corporate Affairs by the Respondent, whereas she was produced only the one- side of the form which she signed in good faith,





in other words, she had signed the blank form in good faith. She further stated that she had signed the form but there was no share transfer executed and that there was no stamping done. In other words, there was no legal compliance of share transfer executed at that time. The blank form, so signed, was in the custody of the second Director Mr. MP. The Complainant, thus, argued there was no registration of shares transferred. As per her, such registration was to be done before a prescribed authority which was never done before any authority.

7. The Counsel of the Respondent argued that all the matters were arising, on account of transfer of shares hence he submitted that the Complainant was under wrong impression that for shares to be transferred, they were required to be registered with some authority whereas the annual return reports about shares transferred during the year. For that purpose, as per the Counsel for the Respondent, the person filing/certifying Form 20B would examine the share transfer record, which is a Company's statutory record. As per the records, the shares were transferred from the transferor's name to transferee's name on 15th July 2013 which was duly reported in the said form. The Counsel for the Respondent also brought on record the Share Transfer Form signed by both the parties and duly attested by ROC as well as communication dated July 13, 2012 from the Complainant to the other Director "MP" stating that she had signed the share transfer form and couriered it, further explaining the details to be filled in for transfer of the alleged shares. Accordingly, it was viewed that the Complainant had transferred the alleged shares with complete understanding of the transactions and accordingly, the argument of the Complainant that the shares were never transferred is not acceptable.

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8. The Committee, further perused, the other documents/information brought on record by the Respondent and noted that there were various correspondences held through mails dated 28/06/2013, 29/06/2013, 13/07/2013, 14/07/2013, 26/07/2013, 22/01/2014, 12/01/2014, 04/02/2014, 20/02/2014, 21/02/2014 that relate to dispute between the Complainant and the Director for not settling dues although she had wilfully entered into an agreement to sell/transfer her shares and signed the Share Transfer Form which she herself informed to Mr. MP vide e-mail dated 13/07/2013 as having sent through courier. Hence, the argument of the Respondent to have verified the particulars of shares from Share record of the Company was acceptable since in view of the Committee, the Respondent was supposed to only check through relevant records of the Company about the alleged transfer of shares to check the genuineness of transactions held at various board meetings rather than verifying the correctness of understanding between the parties for transfer of alleged shares.

9. Further, with regard to the charge relating to filing of Form 23 AC, the Committee noted that the Counsel of the Respondent admitted that in the said Form name of the Complainant had crept in as a clerical mistake which was an error. The Counsel added that the fact mentioned by the Complainant and the minutes on record in which she was not a participant in the meeting was true. The balance sheet was signed by the other two Directors who attended the said meeting. It was viewed that the said Form primarily provided the information about the financials of the Company which was duly attached and signed by the authorized directors. The only error that occurred was that instead of providing information of only two directors being present in the Board meeting held to adopt/approve the said financials the name of the Complainant was

also included therein. It was viewed that such error did not cause any loss to any stakeholder; hence the Respondent was exonerated of this charge.

10. The Committee noted that next charge was related to filing of Form 32 relating to appointment of Mr. Harpreet Singh as Additional Director of the Company in the name of whom the shares held by the Complainant were transferred. The Committee observed from various email communications as brought on record by the Respondent that the Complainant herself wanted to be relived from the Company and that she was well aware of the appointment of new director in the Company. Further, it was noted that through a resolution dated 01/09/2013, the Board had appointed Mr. Harpreet Singh as additional Director stating that said decision was taken after discussion between Complainant and Mr. MP, Chairman and that Mr. MP was authorised to undertake all actions for the said appointment. It was noted that so far as role of the Respondent was concerned, his duty was limited to observe the facts as available on record which prima facie did not provide any information which is contradictory. In extant case, there is no doubt that the consent of the Complainant was available for the said appointment and thus if the Respondent had filed the necessary form with RoC, his intention could not be held as malafide. It was viewed that the Respondent was not supposed to check indoor management of the Company. As per the minutes produced on record as well as email communications, Mr. MP, Chairman of the Company was duly authorised to appoint Mr. Harpreet Singh as additional director, thus, the negligence on the part of the Respondent was not evident.

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11. With regard to the next charge relating to Form 18 filed by the Respondent on the MCA portal on the 26th of March, 2014 which purported to change the registered office of the Company, it was noted that the Respondent had alleged that the the same was done without her consent (C-7 to C-12). It was noted that Mr. Harpreet Singh was appointed as director of the Company since Sept 2013, hence subsequently if two directors and also shareholders, Mr. Harpreet Singh and Mr MP, Chairman, passed a resolution at a meeting dated 26th March, 2014 as referred to in the said Form 18 for change in the address of the Registered Office, it was in line of prevailing provisions of the Companies Act.

12. In respect to allegation that alleged Forms were filed along with other fraudulent documents viz resolutions passed at Board Meetings held without her knowledge/ presence and thus amounted to wrongful, fraudulent and unlawful certification by the Respondent, it was viewed that that there was neither any document on record nor any finding by any authority that the alleged documents relating to various resolutions passed were forged or fabricated. Moreover, the communications brought on record clearly indicated that the Complainant was well aware of the facts that were certified by the Respondent. As there is no substantial evidence which prove the negligence of the Respondent, the Committee exonerated the Respondent from this charge.

Conclusion

13. In view of the above observation, considering the arguments, counter-arguments & submissions of the parties, and documents on record, the Committee held that the Respondent is NOT GUILTY of

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professional misconduct falling within the meaning of Items (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949

14. Accordingly, in terms of Rule 19 (2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee passed the order for closure of this case against the Respondent.

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

Sd/-
(MS. NITA CHOWDHURY)
GOVERNMENT NOMINEE

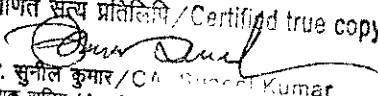
Sd/-
(SHRI ARUN KUMAR)
GOVERNMENT NOMINEE

Sd/-
(CA. MANU AGRAWAL)
MEMBER

Date: 28/01/2022

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प्रमाणित सत्य प्रतिलिपि / Certified true copy


सी.ए. सुनील कुमार / CA. Sunit Kumar
सहायक सचिव / Assistant Secretary
अनुशासनात्मक विदेशालय / Discipline Directorate
इंस्टीट्यूट ऑफ चार्टर्ड अकाउंटेंट्स ऑफ इंडिया
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