

CONFIDENTIAL

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

[Constituted under Section 21B of the Chartered Accountants Act, 1949]

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

File No. : [PR/282/18-DD/282/18-DC/1264/2020]

In the matter of:

CA AJAY BHARGAVA (M. No. 075456)

Flat no. 1-B,
Harbans Apartment,
113/25A, Swaroop Nagar,
KANPUR - 208002.

..Complainant

Versus

CA. VIKAS SHARMA (M. No. 077469)

Chamber no. 11, 1st floor,
Greater Kailash Complex,
80 Feet Road
Near Gumti Gurudwara
KANPUR- 208012.

.....Respondent

MEMBERS PRESENT:

CA. (Dr.) Debashis Mitra, Presiding Officer (Through VC)

Shri Rajeev Kher, Government Nominee (Through VC)

CA. Babu Abraham Kallivayalil, Member (Through VC)

CA. Rajendra Kumar P, Member (Present in person)

DATE OF FINAL HEARING : 31.01.2022 (Through Video Conferencing)

PARTIES PRESENT :

Complainant : CA Ajay Bhargava (Through VC)

Respondent : CA. Vikas Sharma (Through VC)

Witness : CA. Vivek Beriwal (Through VC)

CHARGES IN BRIEF:-

1. The Committee noted that in the present case the Respondent was held prima-facie Guilty by the Director (Discipline) of Professional Misconduct falling within the meaning of Item (8) of Part I of the First Schedule and Item (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949 on the charge that the Respondent accepted audit of M/s Absolute Enterprises (hereinafter referred to as the "Firm") and M/s Absolute Computronics Private Limited (hereinafter referred to as the "Company") for F.Y. 2015-16 without communicating with the Complainant who was the auditor for the previous F.Y 2014-15 and even undisputed audit fees of the Complainant was not paid by the Firm and the Company.

BRIEF FACTS OF THE PROCEEDINGS:

2. On the day of the final hearing on 31/01/2022, the Committee noted that both the parties i.e. the Complainant and Respondent were present before it through Video Conferencing mode. The Committee also noted that the Committee Witness CA. Vivek Beriwal was also present before it through Video Conferencing mode. The witness was put on oath. The Committee posed question to him. The Committee noted that certain details were called from the Respondent in the previous hearing held on 19th January 2022 and the same were submitted by the Respondent. After hearing the parties, the Committee decided to conclude the hearing in the instant matter.

FINDINGS OF THE COMMITTEE

3. The Committee noted that the Respondent placed on record two separate No Objection Certificate (NOC) letters both dated 12th July 2016 with regard to firm and the Company respectively issued by CA. Vivek Beriwal, erstwhile partner in the Complainant Firm (M/s Bhargava Ajay & Associates). The Complainant

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however challenged the authenticity of the said NOC and stated that CA. Vivek Beriwal is no more his partner and said NOC letters are back dated.

- 3.1 However, the Committee verified the veracity of NOC letters from the witness present before it, who confirmed that he was erstwhile partner in the Complainant Firm and the NOC letter brought on record by the Respondent was issued by him on behalf of the Complainant Firm.
- 3.2 The Committee noted that the Complainant admitted before it that CA. Vivek Beriwal was the partner in the Complainant's firm and resigned during the year 2019.
- 3.3 The Committee also noted that balance sheet of the Firm and Company for the F.Y. 2014-15 (i.e. previous year) were audited by CA. Vivek Beriwal on behalf of the Complainant Firm.
- 3.4 The Committee was convinced with the submission of the Respondent that he duly ensured compliance of communication with the Complainant Firm and accordingly hold him NOT GUILTY of charge relating to non-communication.
4. With regard to charge related to non-payment of undisputed fee the Committee noted that as per financial statements for the F.Y. 2014-15 following amounts are shown as pending audit fee.

M/s Absolute Enterprises (C-18 of prima facie opinion)	Rs. (34382.00)
M/s Absolute Computronics Private Limited (C-40)	Rs. 59764.00

- 4.1 The Committee hence noted that the amount payable was only in respect of the Company. The Committee noted that the Respondent submitted that fee to the Complainant Firm was paid in cash. The Respondent also submitted the details of dates and various amount paid to the Complainant in cash in bank account. The Committee noted that the Complainant denied the receipt of amount as audit fees on dates specified by the Respondent. He further submitted that on these dates he himself had deposited the cash as self-transfer in bank account.

4.2 The Committee noted that the Respondent had relied on two facts, first that the fees to the Complainant was paid in cash and second that NOC letters dated 12th July, 2016 from the CA. Vivek Beriwal who was the partner of the Complainant's Firm does not mention about pending fees of the Complainant Firm. The Committee in view of the above noted that the Respondent was under bonfide impression that fee of the previous auditor was duly paid by client and the Respondent had no reason to suspect that the fees of the Complainant firm was not paid by the client. Accordingly, the Committee decided to extend the benefit in favour of the Respondent.

CONCLUSION

5. In view of the above findings stated in above paras vis a vis material on record, the Committee in its considered opinion holds the Respondent is **NOT GUILTY** of Professional Misconduct falling within the meaning of Item (8) of Part I of the First Schedule and Item (1) of part II of the Second Schedule to the Chartered Accountants Act, 1949.
6. 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 order for closure of this case against the Respondent.

sd/-

(CA. (DR.) DEBASHIS MITRA)
PRESIDING OFFICER

sd/-

(SH. RAJEEV KHER, I.A.S. (Retd.))
GOVERNMENT NOMINEE

sd/-

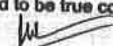
(CA. BABU ABRAHAM KALLIVAYALIL)
MEMBER

sd/-

(CA. RAJENDRA KUMAR P)
MEMBER

DATE: 11TH FEBRUARY, 2022
PLACE: NEW DELHI

सही प्रतिलिपि होने के लिए प्रमाणित/
Certified to be true copy


नीलम पुंडीर / Neelam Pundir
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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