

CONFIDENTIAL

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

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

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

File No. : [PR- 96/2013-DD/95/2013/DC/470/2016]

In the matter of:

Shri T Kannan,
A-2/4, Aishwaryam, Phase-I,
DABC Avenue,
4th Main Road,
Nolabur,
Chennai – 600 095

....Complainant

Versus

CA. Chetan Desai,(M. No. 017000)
M/s. Haribhakti & Co.,
Chartered Accountants,
701, Leela Business Park,
Andheri Kurla Road,
Andheri East,
Mumbai – 400 059.

.....Respondent

MEMBERS PRESENT:

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

Shri Rajeev Kher, Govt. Nominee (Through VC)

CA. Amarjit Chopra, Govt. Nominee (Through VC)

CA. Babu Abraham Kallivayalil, Member (Through VC)

CA. Rajendra Kumar P, Member (Through VC)

DATE OF FINAL HEARING

: 15th September 2021 (Through Video

Conferencing)

PARTIES PRESENT :

Respondent : CA. Chetan Desai

CHARGES IN BRIEF:-

1. The Committee noted that in the present case, the Complainant on 1st June 2007 entered into an agreement (**Page C-6 to C-35 of prima-facie opinion**) with M/s NPIL Laboratories and Diagnostics Private Limited (then known as Piramal Diagnostics Services Private Limited (**PDSPL**)) for sale of his Diagnostics Centre named Isotope Diagnostics for a sale consideration of Rs. 4,20,00,000/- and a consultancy agreement (**Page C-36 to C-46 of prima-facie opinion**) was also entered on the same day. As per terms of the agreement the Complainant received an advance payment of 2,52,00,000/- on the date of the agreement. Further a business transfer agreement dated 6th Jan 2010 had also been entered between M/s DDRC Piramal Diagnostic Private and PDSPL to transfer its business in the name and style of Piramal Isotope to DDRC. (**C-47 to C-66**)

2. Following allegations were made by the Complainant :-
 - 2.1 That the Respondent as auditor of M/s PDSPL did not disclose the effect of the MOU entered into by M/s PDSPL with the Complainant's company M/s Isotope Diagnostic in the financial Statement of M/s PDSPL from the F.Y. 2007-08 onwards.

 - 2.2 In the subsequent years, although the Complainant had not executed any documents transferring the business title to PDSR, how the title of the business has been transferred without his consent to DDRC in terms of above business agreement.

3. The Committee noted that the Respondent was held Not Guilty by Director (Discipline) in his prima-facie opinion, however the Board of Discipline while considering the Prima-facie Opinion was of the view that the Respondent solely

relied upon the agreement between the Complainant and the Company i.e. PDSPL but did not take any substantive tests like third party conformation etc. to satisfy himself as to how the claim of the Complainant had been effected in the financial statements of the Company and accordingly, did not agree with the prima facie opinion of the Director that the Respondent is NOT GUILTY of Professional Misconduct falling within the meaning of Item (5) and Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 and referred the matter to the Disciplinary Committee.

BRIEF FACTS OF THE PROCEEDINGS:

4. On the day of final hearing on 27/09/2021, the Committee noted that the Respondent was present from his place. However the Complainant was not present and vide his email dated 12th September, 2021 had submitted that his advocate Mr. S. S. Kumar, who earlier argued his case is suffering from severe throat pain and is not even in position to speak.
- 4.1 At the outset, the Committee enquired from the Respondent that since the composition of the Committee had changed further to the previous hearing, as to whether he wished to have a de-novo hearing. On the same the Respondent submitted that the Committee may continue its proceedings in this matter from the stage it was left in the last hearing. The Committee acceded to his request and continued the hearing.
- 4.2 Thereafter, the Respondent presented his line of defense by presenting the arguments and the Committee posed certain questions to him to understand the issue involved and the role of the Respondent in the case.
- 4.3 Thereafter, the Committee gave the direction to the Respondent to submit Court order as referred by him during hearing and concluded the hearing by reserving its judgment in the instant matter.

4.4 Thereafter this matter was placed in meeting dated 30th September 2021 for consideration of the facts and arriving at a decision by the Committee wherein following members were present.

MEMBERS PRESENT ON 30.09.2021:

- CA. (Dr.) Debashis Mitra, Presiding Officer (Through VC)**
CA. Amarjit Chopra, Government Nominee (Through VC)
CA. Babu Abraham Kallivayalil, Member (Through VC)

Findings of the Committee

5. The Committee noted that the Respondent was the statutory auditor of PDSPL for the F.Y. 2007-08 to F.Y. 2010-11. The Committee observed that the crux of the complaint is that although the Complainant had not executed any document transferring the business title to PDSPL and without his consent the title of the business has been transferred.
6. The Committee noted that as per Para 2.2 and Para 3.1 of the agreement dated 1st June 2007 entered into between the Complainant (seller) and NLDL (PDSPL), whereby out of sale consideration of Rs. 4.2 crores cheques for Rs. 2.52 crores were given to the Complainant on same day. As regards remaining balance of Rs. 1.68 crores [Deferred Consideration], the same was payable to the Complainant only if, the business of Chennai Pathology Division achieves a minimum Operating Profit of Rs 84,00,000/- (Rupees Eighty Four Lakhs only) during the First Commercial Year. **(C-14 to C-15)**.
7. The Committee noted that in the financial statement of PDSPL for the F.Y. 2007-08, in Note III to the Notes to Accounts details of the acquisition of Chennai laboratory by the Company from the Complainant was given.
8. The Committee further noted from submission of the Respondent that balance consideration of Rs. 1,68,00,000/- was adjusted by a further amount of Rs. 50,00,000/- paid by PDSPL to the Complainant on 18th January, 2008 and an amount of Rs. 3,180/- being charges for some medical test on 31st October, 2007. The net amount of Rs. 1,17,96,820/- was accounted for and disclosed in the Financial Statements as a part of the 'Current Liabilities'. The Committee

noted that in the audited Financial Statements of the Company PDSPL for Financial Year 2008-2009, amount of Rs. 1,17,96,820/- (D-6 & D-59) payable to the Complainant has been included as a part of the 'Current Liabilities'.

9. The Committee noted from copy of the Report on factual findings dated 14th May 2012 from Mr. Sridhar Iyer, an Independent Chartered Accountant bringing out that the operating profit of the Chennai Laboratory for the period 01st June 2007 to 31st May 2008 was Rs 41.37 lacs. (D60-D61).
10. The Committee noted that since the Complainant failed to achieved the required target hence clause 3.1.3 of the Agreement was invoked whereby if the actual profit was less than Rs 84 lacs, then a multiple of five times of the short fall i.e. (84 Lacs - 41.37 Lacs) X5= Rs. 2.13 crores was to be reduced from the total purchase consideration of Rs 4.20 crores. In other words, instead of Rs 1.68 crores payable by the Company to the Complainant, the Company was entitled to recover a net amount of Rs 45 lacs from the Complainant, in addition to getting back further amount of Rs 50 lacs paid to him. (D-3)
11. Accordingly, in the Financial Year 2009-2010, as such net balance amount of Rs. 1,17,96,820/- was not payable by PDSPL to the Complainant as per the conditions mentioned in the agreement between him and the Company i.e. PDSPL. Hence, the liability was written back by an adjustment against the value of Goodwill (earlier capitalised in 2008 on acquisition of Chennai laboratory). This was also disclosed in an appropriate manner in the audited Financial Statement of PDSPL for the Financial Year 2009-2010 (schedule 4 to the Balance Sheet, D-26). The Committee accordingly found that proper disclosures were made by the Respondent in the financial statements.
12. The Committee also noted that PDSPL had filed court case under section 138 of Negotiable Instrument Act against the Complainant with the Court of Metropolitan Magistrate, Dadar Mumbai. The Committee noted that the Hon'ble Court of Metropolitan Magistrate, Dadar Mumbai in its Judgement dated 26th April, 2017 found that the Complainant (Sh. T. Kannan) convicted under Section 255(2) of Criminal Procedure Code for the offence punishable under section

138 of Negotiable Instrument Act and sentenced him rigorous imprisonment for 2 months along with fine of Rs. 85 Lakhs to be payable by him from date of order. As per the said Judgement out of fine of Rs. 85 Lakhs an amount of Rs. 84.87 lakhs was to be paid to the Company towards compensation.

13. The Committee as regards to the charge that as to how the title of the business has been transferred without his consent, noted that the Respondent submitted that need for any such further document was the business call which only the Company PDSPL had to take and as such, no disclosure was required for this in the Financial Statements of the Company PDSPL or in the Audit Report thereon. The Committee was convinced with the submissions of the Respondent and found that the Respondent has rightly pointed out his responsibility in this regard. Accordingly, the Committee found that charges made by the Complainant are not tenable.

CONCLUSION

14. In view of the above findings stated in above paras vis a vis material on record, the Committee in its considered opinion hold the Respondent **NOT GUILTY** Professional Misconduct falling within the meaning of Item (5) and Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.
15. 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

approved & confirmed through email
(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

DATE: 11TH FEBRUARY, 2022
PLACE: NEW DELHI

approved & confirmed through email
(CA. BABU ABRAHAM KALLIVAYALIL)
MEMBER

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

श्री काय मिश्री / Shri. Kaay Mishri
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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