

CONFIDENTIAL

BOARD OF DISCIPLINE

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-292/18-DD/303/2018/BOD/544/2020]

CORAM:

CA. Prasanna Kumar D., Presiding Officer (in person at ICAI Bhawan, I P Marg, New Delhi)
Ms. Dolly Chakrabarty (IAAS, Retd.), Government (through video conferencing)
CA. (Dr.) Raj Chawla, Member (through video conferencing)

In the matter of:

CA. Ashwani Kumar Agarwal (M.No. 93550)
House No 7, LGF,
Shrestha Vihar, Delhi
NEW DELHI- 110 092

.....Complainant

Versus

CA. Sudhir Kumar Agarwal ... (M.No. 088583)
508, Arunachal Building,
Barakhamba Road, Delhi
NEW DELHI - 110 001

.....Respondent

DATE OF FINAL HEARING

: 28th July, 2022

PLACE OF FINAL HEARING

:New Delhi / through video conferencing

PARTIES PRESENT:

Respondent:

CA. Sudhir Aggarwal

BRIEF FACTS OF THE CASE:

1.1 M/s Abhinav Leasing and Finance Limited (hereinafter referred to as the 'the Company') was engaged in the business of leasing and finance. Being the Directors of the Company, it was controlled by the Respondent's elder brother, Shri Atul Agarwal along with his elder brother's wife Mrs. Mamta Agarwal. As per the Complainant, the Respondent was the party to the takeover deal and had approached the Complainant for the transfer of control of the company to raise funds for themselves. Accordingly, the Respondent asked the Complainant for the takeover of the Company and assured that the Company was not involved in any kind of litigation or illegal activities. Being induced by their representations, takeover of the Company was agreed for total consideration of Rs 5.50 Crores against 99% of shareholding in the Company. Out of the said consideration, a sum of Rs

30 lakhs was transferred into account of the Respondent as advance and in lieu of which he assured that the required permission for takeover of Company would be obtained from concerned authorities shortly.

1.2 The appointment of the Complainant was intimated at BSE on 27th February, 2017 and just after uploading his appointment as Director in the company, resignation of Mrs. Mamta Agarwal from Directorship of the Company was immediately uploaded. After few days, it was discovered vide letter dated 3rd March, 2017 that company was under Graded Surveillance Measure (GSM) of Bombay Stock Exchange because of its dubious activities and a Notice dated 23rd February, 2017 was already issued to the Company in this regard and thus, the Respondent was already aware about initiation of Surveillance by BSE beforehand and for this reason they had induced the Complainant to get the control of the Company taken over by someone. It was also discovered that the Company and its Directors were involved in Money Laundering Activities. He immediately confronted the facts with the Respondent and Shri Atul Agarwal and submitted his resignation letter from Directorship personally to them on 30th March, 2017. However, no acknowledgement of same was given to him and the information of his resignation was not uploaded on the website of ROC despite persistent follow up. On 24th August, 2017 he again went to their office where he met the Respondent and requested him to upload his resignation and to return his money but the Respondent refused to do the same and also threatened him to forget his money.

1.3 Further, after perusal of the resignation uploaded on portal, it was revealed that the resignation letter uploaded on the portal was not signed by him and was of a different date. He submitted his resignation on 30th March, 2017 with immediate effect but his fake resignation with forged signature was uploaded on the portal of BSE on 19th March, 2018 showing his resignation with effect from 19th June, 2017. The Respondent, Shri Atul Agarwal and Mrs Mamta Agarwal in conspiracy with each other had dishonest intention to cheat him from very beginning and had induced him to part with huge amounts of hard earned money to them. Further, belated submitting of resignation reflects malafide intention to involve him in legal implications.

CHARGE ALLEGED:

2.1 The Complainant alleged that the takeover of the company was agreed at a consideration of INR 5.50 Crores against transfer of 99% of shareholding of the company. Out of the said consideration, amount of INR 30 Lakhs was transferred in the account of the Respondent as an advance. The payment details as given by the Complainant is mentioned hereunder-

Date	Amount	Mode
18.02.2017	INR 20,00,000	RTGS from Bank of Baroda to HDFC Bank Account
22.02.2017	INR 10,00,000	RTGS from Bank of Baroda to HDFC Bank Account

The Complainant thus alleged that the Respondent caused a wrongful loss of INR 30 Lakhs to him by cheating and forgery.

2.2 The Resignation letter of the Complainant was not taken on record and was also neither uploaded on the ROC website nor on the BSE portal immediately despite constant reminders given by the Complainant. It was only on 19th March, 2018 that the Resignation letter of the Complainant was uploaded which displayed his resignation w.e.f. 19th June, 2017. Also, the resignation letter which was uploaded on the BSE portal was a fake resignation letter wherein the signature of the Complainant was forged.

BRIEF OF PROCEEDINGS HELD:

3.1 The Board at its meeting held on 05th July, 2022 noted that the Respondent was present before it through video conferencing. However, neither the Complainant was present before the Board nor was there any written communication as regard his non-appearance. Thus, the Board decided to proceed ahead with the hearing in the case. Since there was a change in the composition of the Board since the last hearing, the Board gave an option to the Respondent as to whether he would like to have a De -Novo enquiry or continue from the last proceedings to which the Respondent stated that he would like to continue from the last proceedings. Thereafter, the Respondent made his detailed submissions before the Board and was examined by the Board. The Board adjourned the hearing in the case with the direction to the Respondent to submit following documents/ information by 10th July, 2022 with a copy marked to the Complainant to provide his comments thereon, if any and also to provide a final opportunity to the Complainant to substantiate his case before the Board:

- a. A notarised Affidavit to the effect that the professional income of Rs. 30 Lakh received by him from the Complainant during the F.Y. 2016-17 had been included in his income as per his Income and Expenditure account, the profit thereon had been included in his Income Tax return which had been filed with the Income Tax Department.

3.2 Thereafter, at the subsequent meeting held on 18th July, 2022, the Respondent was present before the Board through video conferencing. However, neither the Complainant was present before the Board nor was there any written communication as regard his non-appearance. The Board noted that an email dated 16th July 2022 had been received from the Complainant stating that he does not want to pursue the complaint further and wants to withdraw it. He was asked to submit a signed withdrawal letter. However, nothing was received from him. Thus, the Board decided to proceed ahead with the hearing in the case. The Board noted that the Respondent vide letter dated 7th July 2022 submitted the aforementioned Affidavit. However, the same was not shared with the Complainant. Thus, the Board adjourned the hearing in the case with the direction to the Respondent to submit following documents/ information with a copy marked to the Complainant to provide his comments thereon, if any:

- a. Copy of invoice raised on the Complainant to the tune of Rs. 30 lacs for rendering the professional services together with its breakup.

The Board further directed the office to share a copy of the Affidavit filed by the Respondent with the Complainant for his comments thereon, if any.

3.3 Thereafter, at the meeting held on 28th July, 2022, the Respondent was present before the Board through video conferencing. Neither the Complainant was present before the Board nor was there any written communication as regard his non-appearance. The Board noted that the Respondent submitted the copy of the invoice vide letter dated 25th July 2022 which was also shared with the Complainant. The copy of the Affidavit earlier filed by the Respondent was also shared with the

Complainant. However, no response was received from him. Thus, on consideration of the documents and submissions on record, the Board decided to conclude the proceedings in the case.

BRIEF SUBMISSIONS OF THE RESPONDENT:

4. The Respondent in his written submissions, inter-alia, stated as under:
 - 4.1 Shri Atul Agarwal, the Director of M/s Abhinav Leasing and Finance Limited is Respondent's brother to whom the Respondent has given a part of his office on rent. As the Respondent is a CA, he used to provide professional services to the company of his brother.
 - 4.2 The Complainant has worked with the Respondent and his brother for almost a decade and were known to each other. In February 2017, the Complainant had meeting with Respondent's brother, where he expressed desire for acquiring the control of the company for the purpose of raising funds for his clients. When both the parties agreed after further discussions, the Complainant agreed to bear Respondent's professional fee of Rs. 30 lakh in lieu of services provided by him in the arrangement of meetings, documentation to be carried out for and on behalf of the company. It was agreed between the Complainant, Respondent and his brother that out of Rs. 30 Lakh, 20 Lakh shall be paid to the Respondent on the date of signing of MOU and the balance to be paid when Board of Directors will take decision for the appointment of the Complainant as Additional Director of the Company.
 - 4.3. The Complainant on being satisfied by the financials and other documents prepared by the Respondent and the documents available on the website of ROC's etc. asked to proceed with signing of MoU. On 18.02.2017, the MoU was signed between the Complainant and the brother of the Respondent. Since the Respondent was present at that point of time, he became the witness to the said execution. The Respondent received first part of his professional fee of Rs. 20,00,000/- on 18.02.2017.
 - 4.4. On 22.02.2017, the brother of Respondent informed that the Company has decided to make Complainant as Additional Director of the Company. Thereafter an amount of Rs. 10 Lakh was transferred to Respondent's account vide RTGS as professional fees. On 23.02.2017, the Complainant gave his consent for becoming the Director and the same was intimated to BSE on 27.02.2017. On 19.06.2017 the Complainant resigned from his post and the same was accepted.
 - 4.5. The Complainant also filed a complaint before the SHO, Barakhamabha Road Police Station against the Respondent, his sister in law and their company.
 - 4.6. Merely by allowing the Company to run his office at his office address does not prima facie imply that the Respondent is involved in the affairs of the Company and is representing the company at each and every stage and meeting and has been used as an instrument to cheat the Complainant.
 - 4.7. The Complainant has not produced any evidence to show that the amount of Rs. 30 Lakhs were paid to the Respondent as an advance to agreed transactions between Complainant and his brother. Although the Complainant has alleged that the Respondent has received advance money of Rs. 30

Lakh for his deal in his HDFC bank but he has failed to show the role of Respondent in the alleged deal.

- 4.8. The address of the Company as 508, Arunachal Building, Plot No-19, Barakhamba Road, New Delhi was since its incorporation. The Company also had its office at the office of Respondent. The said office of the company was on rent and was later on, on 03rd October, 2017 was shifted to S-524, 1st floor, Vikas Marg, Shakarpur, Delhi-110092.
- 4.9 Entire conflict arose when the Complainant received a letter dated 03.03.2017 from BSE and on confronting this only he gave the resignation as the Director of the Company. This fact which is the actual root of complaint has not been taken into consideration by the Director (Discipline). From the bare perusal of Letter dated 03.03.2017 issued by the BSE itself it resembles that the first notice regarding Graded Surveillance Measure (GSM) was issued by the BSE only on 23.02.2017 and not prior to that.

OBSERVATIONS OF THE BOARD:

On perusal of the submissions and documents on record, the Board observed as under:

- 5.1. A Memorandum of Understanding (MoU) dated 18th February 2017 had been executed between the Complainant and Mr. Atul Agarwal for the transfer of 99 % equity shares of the Company to the Complainant for a total consideration of Rs. 5.50 cr to be paid within a period of three month from the date of understanding. The Respondent was only one of the witnesses to the said MOU. His name had not been even referred to in any of the terms of the said MOU. Also, there was no reference of payment of any amount to him in the said MOU.
- 5.2 As regard the first charge, the Board noted that the point of contention between the Respondent and the Complainant is the payment of Rs. 30 Lakhs by the Complainant to the Respondent through his bank account. As per the Complainant, the said amount of Rs. 30 lacs was an advance in respect of the takeover deal which had been done by the Respondent in conspiracy with the brother and sis-in-law with dishonest intention to cheat him. Whereas, as per the Respondent, the same was paid to him as his professional fees in his personal capacity for due diligence work that was rendered by him to the Complainant in respect of the said company. Although Respondent's appointment for the said due-diligence appointment by the complainant was oral and he also gave a verbal report, he brought on record the copy of the invoice raised by him on the Complainant to the tune of Rs. 30 lacs for rendering the professional services together with its breakup. He also filed a notarised Affidavit stating therein as under :

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- 2) I have received amount of Rs. 30 lakhs from Mr. Ashwani Kumar Agarwal as a professional fees during the Financial Year 2016-2017.
- 3) The detail of payment received is mentioned in the table given below:

Date	Amount	Mode
18/02/2017	RS. 20,00,000/-	RTGS to HDFC bank account
22/02/2017	Rs. 10,00,000/-	RTGS to HDFC bank account

4) *The above captioned amount includes my professional fees and reimbursement of expenses incurred by me on various things such as due diligence report and other consultancy fees.*

5) *And that the above captioned amount is very much part of my Income and Expenditure account as declared by me in my Income Tax return for financial year 2016-2017 i.e. assessment year 2017-18. "*

The Board also noted that the copy of the aforesaid invoice together with the copy of the aforesaid Affidavit filed by the Respondent was also shared with the Complainant. However, no response was received from him. Also, no documentary evidence was brought on record by the Complainant to substantiate that the said payment of Rs. 30 Lacs was an advance to the Respondent in respect of the said takeover deal. The Board also observed that the Complainant did not appear it in the instant disciplinary proceedings despite due delivery of the notices for hearing to him.

- 5.3 The Board also noted that earlier the registered office of the company was at the office address of the Respondent on rent which was shifted to another office with effect from 3rd October 2017. The BSE was also duly intimated about the said change.
- 5.4 Thus, the Board observed that the Complainant has not been able to establish how the Respondent has cheated him or caused wrongful loss to him. Accordingly, the Board held the Respondent not guilty in respect of the said charge.
- 5.5 As regard the second charge, the Board observed that the Complainant contended that he had resigned from the position of the additional director of the company on 30th March 2017 and sent a communication in this regard to the company on the same day. However, the company intimated the BSE Ltd. vide letter dated 19th March 2018 that the Complainant has resigned from the position of the director of the company with effect from 19th June 2017 and also enclosed a copy of his resignation letter. The Complainant has alleged that his signatures on the said resignation letter were forged. However, he has not brought on record any documentary evidence to establish the role of the Respondent in uploading his resignation letter containing his forged signatures on the BSE portal or forging his signatures. Accordingly, the Board held the Respondent not guilty in respect of the said charge.

CONCLUSION:

6. Thus, in conclusion, in the considered opinion of the Board, the Respondent is **NOT GUILTY** of Other Misconduct falling within the meaning of Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with section 22 of the said Act. Accordingly, the Board passed Order for closure of the case in terms of the provisions of Rule 15(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

Sd/-
CA. Prasanna Kumar D.
(Presiding Officer)

Sd/-
Ms. Dolly Chakrabarty (IAAS, ret'd.)
(Government Nominee)

Sd/-
CA. (Dr.) Raj Chawla
(Member)

DATE: 2nd November, 2022

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

नीलम पुंडीर / Neelam Pundir
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
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