

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/183/16/DD-208/16/BOD/526/2019

CORAM:

CA. Prasanna Kumar D., Presiding Officer (present in person)
Ms. Dolly Chakrabarty (IAAS, Retd.), Government Nominee (present in person)
CA. (Dr.) Raj Chawla, Member (through video conferencing)

In the matter of:

Ms. Sonia Bawa
1, Palace Road
Kapurthala
Punjab-144601

..... Complainant

Versus

CA. Rajeev Singhi (M.No.081892)
SCO 363-364,
Sector 35 B,
Chandigarh-160022

..... Respondent

DATE OF FINAL HEARING : 18th July, 2022
PLACE OF FINAL HEARING : New Delhi/ through video conferencing

PARTIES PRESENT(through video conferencing):

Respondent : CA. Rajeev Singhvi along with his daughter (for technical support)

Counsel of the Respondent : CA. C. V. Sajan

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FINDINGS:**BACKGROUND OF THE CASE:**

1. The Complainant alleged that the Respondent prepared the provisional audited Balance Sheet for the partnership firm M/s Ikaum Impex (**hereinafter referred to as the 'Firm'**) for the year ending 31st March 2013 whereby it was shown that the share of the Complainant was 80% and the share of Mr. Sukhwinder Singh was 20%. The said Balance Sheet was to be provided to the State Bank of India. However, when the Complainant was out of country Mr. Sukhwinder Singh took advantage of the situation and he got prepared from the Respondent the audited Balance Sheet dated 25th June 2013 showing the reverse scenario i.e. the share of the Complainant was shown as 20% and the share of Mr. Sukhwinder Singh was shown as 80% .The said Balance Sheet was submitted to State Bank of India instead of the provisional Balance Sheet approved by the Complainant.

CHARGE ALLEGED:

- 2.1 The Respondent conspired with Mr. Sukhwinder Singh and prepared the audited Balance Sheet for the F.Y. 2012-13 with changed share ratios without the consent/agreement/permission of the Complainant who was the major partner in the firm to cause wrongful loss to the Complainant.
- 2.2 Even though the net worth of Mr. Sukhwinder Singh as per Canara Bank sanction letter dated 27th March 2012 was Rs. 11.80 Lacs, however the Respondent prepared the net worth statement of Mr. Sukhwinder Singh as on 31st January 2014 and erroneously reported that his net worth was Rs. 8.49 Cr which was without any basis and surprisingly without inclusion of any share/Income of the Firm.

The Board considered the Prima Facie Opinion dated 29th April, 2019 of the Director (Discipline) along with the Complaint, Written Statement, Rejoinder and Additional Documents on record. On consideration of the same, the Board noted that the Respondent himself has admitted that he never met the Complainant who was one of the partners of the partnership firm M/s Ikaum Impex audited by the Respondent which reflects that KYC(know Your Client) had not been done and reflects poorly on the manner in which audit had been carried out by him and thus, did not agree with the Prima Facie Opinion of the Director(Discipline) that the Respondent is **NOT GUILTY** of Other Misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule read with section 22 of the Chartered Accountants Act, 1949 and decided to proceed under Chapter IV of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.



BRIEF OF PROCEEDINGS HELD:

- 3.1 At the time of hearing held in the case on 18th July 2022, the Respondent alongwith his Counsel were present before the Board through video conferencing. The Board noted that neither the Complainant/authorized representative was present before it nor was there any intimation as regards their non-appearance. Thereafter, the Respondent and his Counsel confirmed that they have read and understood the contents of the modalities and protocols of e-hearing and follow them. The Respondent was put on oath. On being asked by the Board as to whether the Respondent pleaded guilty in respect of the charges alleged against him, he replied in negative and his Counsel made detailed oral submissions to defend on the charges alleged against him. The Respondent was examined by the Board. On consideration of the documents and submissions on record, the Board decided to conclude the proceedings in the case.

BRIEF OF THE SUBMISSIONS :

4. The Respondent in his defence, inter-alia, stated as hereunder:
- (a) In the written statement dated 11.01.2017, the Respondent submitted that the Complainant has been trying to falsely implicate him in a matter of dispute between herself and Shri Sukhwinder Singh who are partners of M/s. Ikaum Impex, a partnership firm. Respondent's role was limited to doing the tax audit of the said firm for FY 2012-13 and he has done no wrong in his professional duties.
 - (b) The Director- Discipline has examined the documents placed on record and found that there were no merits in the complaint against Respondent, they were unsubstantiated, and hence all charges were dropped against him.
 - (c) However, the Board of Discipline had noted in the notice referred above that the *"Respondent himself has admitted that he never met the Complainant who was one of the partners of the partnership firm M/s Ikaum Impex audited by the Respondent which reflects that KYC (know Your Client) had not been done and reflects poorly on the manner in which audit had been carried out by him and, did not agree with the prima facie opinion of the Director(Discipline) that the Respondent is NOT GUILTY of Other Misconduct"*.
 - (d) Since there are no adverse views against the Respondent in the PFO, the only issue with respect to the written statement to be filed is the above mentioned observation of the Board of Discipline mentioned in the Notice.
 - (e) The Respondent was approached by the partner Shri Sukhwinder Singh and presented all the relevant documents to satisfy the profile and identity of the firm and its management. A Chartered Accountant was employed in the firm as

A2

in charge of their accounts. The Complainant was not actively involved in the running of the firm's daily activities.

- (f) The Respondent held the Complainant in high esteem and is aware that her immovable property was mortgaged for securing firm's loan, and hence her integrity or profile was never questionable. The complaint seems to have been filed in self defence as she was feeling insecure on account of the business downfall and loan default.
- (g) Provisions in the Code of Ethics regarding Client Acceptance in case of professional appointment are extracted from Code of Ethics (pre Revised) as stated hereunder:

"Section 210

Professional Appointment

Client Acceptance

210.1 Before accepting a new client relationship, a professional accountant in public practice should consider whether acceptance would create any threats to compliance with the fundamental principles. Potential threats to integrity or professional behaviour may be created from, for example, questionable issues associated with the client (its owners, management and activities).

210.2 Client issues that, if known, could threaten compliance with the fundamental principles include, for example, client involvement in illegal activities (such as money laundering), dishonesty or questionable financial reporting practices.

210.3 The significance of any threats should be evaluated. If identified threats are other than clearly insignificant, safeguards should be considered and applied as necessary to eliminate them or reduce them to an acceptable level.

210.4 Appropriate safeguards may include obtaining knowledge and understanding of the client, its owners, managers and those responsible for its governance and business activities, or securing the client's commitment to improve corporate governance practices or internal controls.

210.5 Where it is not possible to reduce the threats to an acceptable level, a professional accountant in public practice should decline to enter into the client relationship.

210.6 Acceptance decisions should be periodically reviewed for recurring client engagements."

- (h) There is no stipulation in the Code of Ethics that it is mandatory for a Chartered Accountant to personally meet all the partners before accepting an audit assignment.
- (i) While accepting the audit assignment for the FY 2012-13 Respondent had scrutinized documents related to the firm's operations in FY 2012-13 and partly of FY 2011-12 including that of bank limits sanctioned by Canara Bank on 27th March 2012 and subsequently by State Bank of India, SME Branch, Sector 17, Chandigarh. To the best of his knowledge, the officials of State Bank of India



conducted a thorough inquiry of the Firm, its partners, its suppliers etc., met all the partners of the borrower firm, completed and verified KYC norms, visited partners of borrowers and held discussions and meetings with them. Their independent Advocates and 'Valuer' conduct legal search of documents and valuation respectively of property to be mortgaged. In this case, Sh. Kiran Bawa, husband of the Complainant had mortgaged his property as collateral security for the loan raised by the firm M/s. Ikaum Impex in which the Complainant was the partner. After knowing all these facts there was no reasons for the Respondent to suspect that the documents pertaining to the firm and partners including that of collateral security provided by the partners of the firm to the two different banks for securing the bank limits, were fake in any manner. While granting loan or credit facility, banks obtain signatures of all the partners of borrower firm on all loan applications, loan documents and guarantee documents in the presence of Bank Officials only. Strict Norms followed in banking sector to ascertain the genuineness of borrowers and their profile was a reassuring aspect to form a positive view about the background of the partners of the firm M/s. Ikaum Impex.

- (j) Therefore, it was asserted by the Respondent that he had ensured compliance of the requirements in the Code Of Ethics regarding client acceptance, in letter and spirit , and that there were no reasons for the Board of Discipline to suspect the Respondent in this regard. Since personally meeting with every partner was never a mandatory requirement, the Respondent cannot be held guilty for professional misconduct on this count.
- (k) It is a matter of record that the complaint did not contain any allegation regarding the subject matter of KYC (Know your client). There was no enquiry, either, in the pre PFO stage on the issue of alleged failure in complying with the norms on Know Your Client. Because of this reason the Respondent, had no occasion or opportunity to submit any explanation on this issue before the Director(Discipline).The Director(Discipline) did not express any opinion on the alleged issue of failure on complying with KYC norms in the PFO.
- (l) According to Rule 9(2) and Rule 9 (3) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Board of Discipline/Disciplinary Committee is required to consider the Prima Facie Opinion formed by the Director(Discipline), to decide whether they agree or disagree with the Prima Facie Opinion. The Board of Discipline/ Disciplinary Committee is not expected to consider any other matter that is not considered by the Director(Discipline) in this process. If the BoD wanted to form an opinion on a matter that was not dealt by the Director(Discipline), then further enquiry at the PFO stage should have been conducted by the Director(Discipline) at the instructions of the BOD, as per Rule 9(3)(b). In these circumstances, the decision of the BOD to disagree with the Prima Facie Opinion of the Director(Discipline) on a subject matter which was

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never subjected to the consideration of Director(Discipline) for Prima Facie Opinion, is procedurally flawed on one hand and premeditated on the other because it was without considering the response of the Respondent or of the Director(Discipline). Therefore, on this technical ground itself, the notice served on the Respondent is not valid.

- (m) Invocation of charge in Clause (2) of Part (IV) of the First Schedule means that the Hon'ble BOD is alleging that the Respondent has lowered the dignity of the profession. The case here is that the firm in question faced business crisis resulting in bank loan default. The Complainant and the other partner got in to dispute consequently because recovery of loan from partner was imminent and each one was perhaps trying to protect their own interest. This is the background of the baseless allegations against the Respondent before the Disciplinary Directorate.
- (n) The Complainant started her export business with her husband and mortgaged her properties for raising loans, but during the FY 2011-2012 there was loss of profits to global business slump. When banks started initiating recovery due to non payment of loans, she made supplementary agreement in March 2013 and reversed the share of profit so that she could become a minority partner of 20%.
- (o) The Complainant filed her Income Tax return in which she has taken her profit share as 20% and not 80% as per the audited Balance Sheet on record. Further, the addendum has two clauses – profit sharing and remuneration clause. Thus, as per the Addendum the remuneration has changed from 50/50 to 20/80 and she has filed her income tax return on the basis of that remuneration clause which is part of Addendum.

Observations of the Board:

5. On consideration of the documents and submissions on record, the Board noted that the Respondent raised a technical plea as referred to at para 4(l) above as regards the procedural flaw in referring the case for enquiry and considered the same prior to considering the case on its merits. In this regard, the Board held that as per Rule 9(2) and Rule 9 (3) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, while considering the Prima Facie Opinion of the Director(Discipline), the Board of Discipline has three options:
 - (a) to agree with the opinion of the Director(Discipline)
 - (b) to disagree with opinion of the Director(Discipline)or
 - (c) to refer back the case to the Director(Discipline) for further investigation.
 In the instant case, while considering the opinion of the Director(Discipline) in respect of the allegations made in the complaint in Form 'I', the Board had its observations pertinent to the same and in the light of which the Board disagreed

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with the opinion of the Director(Discipline).Thus, in exercise of the powers inhibit in the Rules, the instant case was referred for enquiry by the Board.

6. Thereafter, as regard the first charge, the Board observed that the Complainant brought on record a provisional Balance Sheet for the F.Y. 2012-13 stated to have been compiled from the Financial Statements of the company by the Respondent showing the Complainant's share as 80 % in the profits of the firm. However, the same did neither bear the signature of the Respondent nor that of Sh. Sukhwinder Singh, the other partner of the firm whose name was specified therein.
7. The Board further noted that the Respondent was the Tax Auditor of the firm for the F.Y. 2012-13 and in the Statement of Particulars furnished in Form 3CD, he had specified the Complainant's share as 20 % in the profits of the firm.It also specified 80 % as the Complainant's share in the profits of the firm in the previous financial year. The audited Financial Statement of the firm for the F.Y. 2012-13 had been duly authenticated by Sh. Sukhwinder Singh, the other partner of the firm showing the Complainant's share as 20 % in the profits of the firm.

8. The Board also perused the copy of the Partnership Deed dated 7th October 2011 executed between the Complainant and Sh. Sukhwinder Singh on stamp paper duly signed and witnessed and noted that the same provided as hereunder:
"6. Share: The net profit and/or loss of the partnership business after the payment of all expenses or other outgoings including the capital profit and/or loss if any of the partnership firm shall be divided as under:

1. Smt. Sonia Bawa	80%
2. S. Sukhvinder Singh	20%

9. Remuneration to Partners:

Both the parties to this partnership deed shall be working partners...

*i. Provided that the amount of remuneration so arrived at shall be paid/credited to the aforesaid working partners **equally** (emphasis provided).*

..... "

9. The Board further noted that the Complainant also brought on record a copy of an Addendum to the Partnership Deed dated 7th October 2011 executed on 6th March 2013 between the Complainant and Sh. Sukhwinder Singh on stamp paper duly signed and witnessed to alter the remuneration and profit-sharing clauses of the earlier partnership deed.

The Addendum to the Partnership Deed, inter-alia, provided as under:

"2. Share: The net profit and/or loss of the partnership business shall be shared by the partners as under:

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|------------------------|-----|
| 1. Smt. Sonia Bawa | 20% |
| 2. S. Sukhvinder Singh | 80% |

That in clause 9 of the Partnership Deed dated 07th October, 2011 a new sub clause no. 'iv' shall be added below clause 'iii' and the new Sub clause no. 'iv' read as under:

iv) That both the working partners are entitled to remuneration as under:

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|-------------------------|-----|
| A) Sh. Sukhwinder Singh | 80% |
| b) Smt. Sonia Bawa | 20% |

The said Addendum to the Partnership Deed was also witnessed by a Chartered Accountant CA. Nikhil Jain who as per the Respondent was also responsible for maintaining the books of accounts of the firm.

10. The Board also noted that the Complainant brought on record the audited Financial Statement of the firm for the F.Y. 2011-12 which were audited by a Chartered Accountant other than the Respondent and the same were also authenticated by only Sh. Sukhwinder Singh, the other partner of the firm showing the Complainant's share as 80 % in the profits of the firm.
11. The Board also noted that the Complainant brought on record copy of her Income Tax Return for the A.Y. 2013-14 filed on 26th September 2013 wherein she had reflected remuneration received from the said firm, share of profit in the firm and interest received from the firm on her capital as per the amount shown in the Financial Statement of the firm audited by the Respondent based on the Addendum to the Partnership Deed. The Addendum to the Partnership Deed was also emailed by CA. Nikhil Jain on 19th August 2013 to the Chartered Accountant of the Complainant prior to the filing of her Income Tax Return.
12. In view of the above, the Board observed that broadly the Addendum to the partnership deed had two clauses, one relating to the profit sharing and another relating to remuneration. As per the addendum the following changes were there:

	Complainant	Sukhvinder Singh
Profit sharing	80 % to 20 %	20 % to 80 %
Remuneration	50 % to 20 %	50 % to 80 %

The Board noted that the Complainant never contested the remuneration clause. She herself filed her ITR returns for the AY 2013-14 on the basis of the Addendum to the Partnership Deed. Surprisingly, she challenged only one aspect of Addendum to the Partnership Deed and accepted the other. The Board was of the view that it is a well settled proposition that documents such as agreements, deeds, addendums etc. have to read and interpreted in toto, one cannot chose parts and parcels as per their own personal whims. Thus, the Board held that it is clearly evident that the change in the profit-sharing ratio was

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with the due consent of the Complainant and there is no merit in the allegation that the Respondent conspired with the other partner of the firm. The Board also observed that the financial statement of the firm for the F.Y. 2011-12 had also been authenticated only by Sh. Sukhvinder Singh. Thus, since in the usual course of business, only one partner of the firm had been involved and the Complainant has not been able to bring on record any convincing evidence to substantiate that the Respondent performed his duties with a malafide intent to cause wrongful loss to the Complainant, the Board held the Respondent not guilty in respect of the charge alleged.

13. As regard the second charge, the Board noted that as per Sanction Memorandum, Canara bank had sanctioned credit facilities to the partnership firm on 27th March 2012. The said Memorandum also specified the net worth of Sh. Sukhvinder Singh as Rs. 11.80 Lakhs as on 29th November 2011. Whereas, the Respondent certified the net worth of Sh. Sukhvinder Singh as Rs. 8.49 crores as on 31st January 2014 with the clear disclaimer that the same has been issued on the basis of documents produced before him and as per valuation of property confirmed by property dealers at the specific request of Sh. Sukhvinder Singh for his personal use. The Respondent clarified before the Board during the hearing that he had asked for Sh. Sukhvinder Singh's capital account in the firm but, the same was not produced and accordingly, no mention of the same was there in the Net Worth Certificate issued by him. The Board observed that since the aforesaid two Net Worth Certificates had been issued at different points of time for different purposes and the Complainant has failed to bring on record any convincing evidence to show that there was any erroneous reporting by the Respondent to defraud any individual/organization, the Respondent is held not guilty in respect of the charge alleged.

CONCLUSION:

14. Thus, in conclusion, in the considered opinion of the Board, the Respondent is **NOT GUILTY** of Other Misconduct falling within the meaning Item (2) Part IV of First Schedule of 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, retd.)
(GOVERNMENT NOMINEE)

Sd/-

CA. (Dr.) RAJ CHAWLA
(MEMBER)

DATE: 02nd November, 2022

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



अरुण कुमार / Arun Kumar
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
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