

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- 48/18-DD/58/2018/BOD/575/2020**

**CORAM (present in person):**

**CA. Prasanna Kumar D., Presiding Officer**

**Ms. Dolly Chakrabarty (IAAS, Retd.), Government Nominee**

**CA. (Dr.) Raj Chawla, Member**

**In the matter of:**

**CA. P. P. Gambhir**

**M/s S.P. Gambhir & Co.**

**E-295 (LGF)**

**Greater Kailash – II**

**New Delhi – 110 048.**

**.....Complainant**

**Versus**

**CA. Sandeep Chaudhary (M.No.520294)**

**Partner, M/s. Sandeep Chaudhary & Associates**

**Chartered Accountants**

**B-14, Jhilmil Colony**

**Delhi – 110 095.**

**.....Respondent**

**Date of Final Hearing : 29<sup>th</sup> December, 2022**

**Place of Final Hearing : New Delhi / through videoconferencing**

**PARTIES PRESENT (through videoconferencing):**

**The authorized representative : CA. Sanjiv Kumar Gambhir  
of the Complainant firm**

**Respondent : CA. Sandeep Chaudhary**

Counsel for the Respondent : CS. Ravi Bhooshan

**FINDINGS:**

**CHARGE ALLEGED:**

- 1.1 The Respondent fraudulently misrepresented the fact to M/s. S.P. Gambhir & Co., Chartered Accountants (hereinafter referred to as the "**Complainant firm**"), the existing auditors of Craftpac Containers Private Limited (hereinafter referred to as the "**Company**") vide letter dated NIL (dispatched on 29<sup>th</sup> November, 2017) that M/s. Sandeep Chaudhary & Associates (hereinafter referred to as the "**Respondent Firm**") have been appointed as auditor of the Company for the financial year 2017-18 as per Resolution passed by the shareholders at the Annual General Meeting held on 30<sup>th</sup> September, 2017 whereas the Respondent firm was not appointed as auditor and no resolution to this effect was passed by the Shareholders in this regard at the Annual General Meeting held on 30<sup>th</sup> September, 2017. It was communicated by the Respondent to existing auditor (the Complainant firm) that they have been appointed as auditor of the Company at AGM held on 30<sup>th</sup> September, 2017 and requested the Complainant firm to give a "No objection Letter" for their accepting the assignment. Since the Complainant firm had already been appointed auditors of the Company for the financial year 2014-15 to 2018-19 vide Resolution passed at Annual General Meeting held on 30<sup>th</sup> September, 2014 and the Resolution for ratification for their appointment as Auditors for the financial year 2017-18 was passed at the Annual General Meeting held on 30.09.2017, which was communicated to the Complainant firm by the Managing Director of the Company vide letter dated 04<sup>th</sup> October, 2017, hence, the action on the part of the Respondent was fraudulent.
- 1.2 The Respondent informed the Complainant firm vide letter dated Nil (dispatched on 29<sup>th</sup> November, 2017) that the Respondent firm, have been appointed as Auditor of the Company by the shareholders at the Annual General Meeting held on 30<sup>th</sup> September, 2017 and sought 'No Objection Letter' from the Complainant firm for accepting the offer of appointment without first ascertaining it whether the requirement of Section 225 of the Companies Act, 1956 (Section 140 of the Companies Act, 2013) in respect of their appointment as auditor had been duly complied with.

The Board noted that the Director (Discipline) held the Respondent Prima Facie Guilty in respect of the charge specified at 1.1 above and not guilty in respect of the charge specified at 1.2 above. The said view of the Director (Discipline) had been accepted by the Board. Accordingly, the conduct of the Respondent had been examined in respect of the charge specified at 1.1 above.

**BRIEF OF PROCEEDINGS HELD:**

- 2.1 At the time of its meeting held on 31<sup>st</sup> March 2022, the Board noted that a letter dated 28<sup>th</sup> December, 2021 was received from CA. Sanjiv Kumar Gambhir and CA. Suresh Gambhir current partners of M/s. S. P. Gambhir & Co. that the Complainant (CA. P. P. Gambhir) has expired on 25<sup>th</sup> May, 2021. Therefore, they want to withdraw the complaint against CA. Sandeep Chaudhary. Since the case was before the Board of Discipline for enquiry and meanwhile withdrawal letter from the Complainant had been received, the provisions of Rule 6 were taken into view by the Board. Accordingly, the Board considered the withdrawal letter of the Complainant along with the other documents on record.
- 2.2 The Board noted the following observations in the Prima Facie Opinion which had been accepted by the Board:
- (a) The Complainant firm was appointed as statutory auditor of the Company in the AGM held on 30<sup>th</sup> September, 2014 till the conclusion of the 35<sup>th</sup> Annual General Meeting to be held in the year 2019 subject to ratification of their appointment at every AGM. The appointment of the Complainant firm was ratified in the AGM held on 30<sup>th</sup> September, 2017 for conducting the audit under Section 139 of the Companies Act, 2013 for the financial year 2017-18. Thereafter, the Company vide e-mail dated 27<sup>th</sup> November 2017 requested the Complainant firm to reduce their audit fees due to slowdown in the business of the Company. Thereafter, the Complainant received a letter dated NIL requesting the Complainant firm to issue NOC for their appointment as statutory auditor of the Company in the AGM held on 30<sup>th</sup> September, 2017. The Respondent, in order to support his appointment in the AGM held on 30<sup>th</sup> September, 2017, brought on record copy of letters dated 30<sup>th</sup> September, 2017 of the Company wherein it was mentioned as under:

*"in pursuance to approval by shareholders of the Company in the Annual General Meeting (AGM) held on 30th September, 2017, our Company confirms your appointment as the statutory auditors of the Company".*

- (b) It is not a case where the Respondent signed the Balance Sheet of the Company without first communicating with the previous auditor but it is a case where the Respondent communicated with the previous auditor without ensuring that he had actually been appointed as statutory auditor of the Company. Both the Complainant and the Respondent brought on record documentary evidence to establish that they were appointed in the AGM. The Complainant brought on record copy of extract of minutes of AGM held on 30<sup>th</sup> September, 2017 whereas the

Respondent brought on record copy of letters written by the director of the Company regarding his appointment as statutory auditor.

- (c) In response to Institute's letter dated 15th May 2018, the Company vide letter dated 25<sup>th</sup> May, 2018 confirmed that the Complainant firm was appointed as statutory auditor of the Company for the Financial Year 2017-18. The Company also provided copy of notice of AGM held on 30<sup>th</sup> September, 2017 containing details of resolution for consideration and approval in the AGM as under:-

*"Resolved that pursuant to the provisions of Section 139 and other applicable provisions, if any, of the Companies Act, 2013 and the Rules framed thereunder, as amended from time to time, appointment of M/s. S.P. Gambhir & Co.(Chartered Accountants), be and are hereby ratified as Auditor and been reappointed as auditors of the Company to hold office from the conclusion of this Annual General Meeting (AGM) until conclusion of the next Annual General Meeting of the Company to be held in the year 2018, at such remuneration as may be mutually agreed between the Board of Directors of the Company and the Auditors"*

(d) The aforesaid fact indicates that it was the Complainant firm whose appointment was considered in the AGM for ratification and the proposal of the appointment of the Respondent firm was not considered in the AGM and hence, submissions made by the Respondent that the proposal of appointment of his firm as statutory auditor was discussed in the AGM appears to be false. There was no document from the Respondent to show that after verification of the documents relating to his appointment such as notice of AGM and Copy of Resolution passed in the AGM, he had made communication with the Complainant firm. It appears that the Respondent just blindly relied upon letters written by the director of the Company without seeing the documents relating to the AGM. Had the Respondent verified the documents, he would have never written letter to the Complainant for NOC.

- 2.3 Thus, keeping in view the facts of the case, the Board was of the view that the conduct of the Respondent needs to be examined further. Accordingly, the Board did not accept the withdrawal in the case.
- 2.4 Thereafter the case was heard by the Board on 29<sup>th</sup> December 2022, the authorised representative of the Complainant firm and the Respondent along with his Counsel were present before the Board through video conferencing. The Respondent and the authorised representative

of the Complainant firm were put on Oath and they confirmed they have read and understood the contents of the modalities and protocols of e-hearing and follow them. Thereafter, the charges alleged against the Respondent were taken as read with consent of the parties present. On being asked by the Board as to whether the Respondent pleaded guilty in respect of the charges alleged against him, the Respondent answered in negative and his Counsel made his submissions before the Board. The authorised representative of the Complainant firm also made his submissions before the Board. Upon consideration of the submissions and documents on record, the Board concluded the hearing in the case.

**BRIEF OF SUBMISSIONS OF THE PARTIES TO THE CASE:**

**(A) The Respondent, in his defence, inter-alia, submitted as under:**

- 3.1 At the outset, save and except what is a matter of record, the Respondent deny each and every allegation(s), submission(s) and averment(s) as stated in the Rejoinder filed by CA. P.P. Gambhir, unless specifically adopted and reiterated after. Any non-traversal shall be treated as denied unless specifically adopted and reiterated after. The Company and existing auditor CA. P.P. Gambhir have been collectively involved in immensely harassing the Respondent, which can also be evidenced by the fact that the Company issued a letter dated 19<sup>th</sup> August, 2017 asking for consent as auditors from CA. P.P. Gambhir of which no consent has been given by CA. P.P. Gambhir, followed by another letter dated 27<sup>th</sup> November, 2017 again asking for consent from the existing auditors of the Company for appointment as Auditors. The Company issued a letter dated 2<sup>nd</sup> January, 2018 asking for consent of the existing Auditors CA. P.P. Gambhir to settle at an amount of Rs. 70,000/-. This shows that the Company and existing auditors have wilfully cooked up the allegations against the Respondent with malafide intentions of causing disrepute to him and to abridge their own deceitful and deceptive motives. Also, the Company has been managing the affairs and the management as per their own whims and fancies and has been taking undue advantage of Respondent's trust and faith.
- 3.2 Each and every step taken by the Respondent was with bonafide intentions as the intention behind taking a no objection from the existing auditor was not a mere formality or professional courtesy, but the real objective was that the member may have an opportunity to know the reasons for change in order to be able to safeguard his interest of the existing auditor as well. This clearly shows that the intention was sound and bonafide.
- 3.3 The letter dated 30<sup>th</sup> September 2017 from Harish Kanwar, Director of the company was handed over to him. Thereafter, the Respondent said that he can't accept the appointment until he gets no objection from the existing auditor.

- 3.4 The company issued him second letter but in each case the Respondent made very clear at every step that his appointment as auditor is not accepted and hence not effective and also he never represented himself as the auditors of the Company.
- 3.5 The non-invitation to the Complainant to Annual General Meeting by the company is the fault on the part of the Company not the Respondent. Since no one from the Complainant was present at AGM, the proposal was kept in abeyance and no question of filing ADT-1 arises.

**(B) The Complainant, In support of the allegation, Inter-alla, submitted as under:**

- 4.1 The Respondent has made an allegation that the Company and Existing Auditor CA. P.P. Gambhir have been collectively involved and immensely harassing him which can be evidenced by the fact that the Company issued a letter dated 19. 08.2017 asking for consent from the Auditors of which no consent had been given by CA. P.P. Gambhir followed by another email dated 27<sup>th</sup> November, 2017 again asking for the consent for Appointment of Auditors and again issued an email dated 02<sup>nd</sup> January, 2018 asking for consent from existing Auditors CA. P.P. Gambhir to settle an amount of Rs.70,000/- as fee, have willfully cooked up the allegation against the Respondent with the malafide intention causing disrespect to him and abridge their own deceitful and deceptive motives. In fact the allegation made by the Respondent is absolutely infructuous, wrong, incorrect and ill motivated with view to a cover up his own wrong and unlawful acts, deeds, manipulation and undesirable things done by him for getting himself appointed as Auditor of the Company for F.Y. 2017-2018 in place of existing Auditors M/s S. P. Gambhir & Co. by making false statement and misguiding the Management of the Company and not making them aware about the Rules and Regulations. Moreover, the Respondent prepared letters of Appointment and initialed them and got them signed from Mr. Harish Kanwar as Director instead of a Managing Director with malafide, ill motivated and vested interests for their appointment as Auditors of the Company knowingly well that their acts were unlawful.
- 4.2 It has also been stated by the Respondent that M/S S.P. Gambhir & Co. Chartered Accountants did not give their consent for the appointment as Auditors of the Company for F.Y. 2017-2018 in reply to the letter dated 19<sup>th</sup> August, 2017. As a result the Company wrote another letter/Email dated 27.11.2017, asking for consent and since no consent was given the Company issued another letter/ e-mail dated 02<sup>nd</sup> January, 2018 asking for consent of Existing Auditors CA P.P Gambhir but no consent was furnished by them to the Company. In this connection it is stated that the Respondent has made a false, incorrect concocted statement and has hid the correct facts with a view to misguide the Disciplinary Committee to save the Guilt committed by him.

- 4.3 The Respondent knowingly well manipulated to obtain a letter from the Company about their appointment as auditor and wrote a letter dated nil to Complainant the existing auditors for issue of No objection certificate.

**OBSERVATIONS OF THE BOARD:**

- 5 In respect of the allegation that the Respondent without being appointed as Statutory Auditor of the Company for the financial year 2017-18, with fraudulent intention sent a communication dated Nil to the Complainant seeking no objection on his (Respondent firm) appointment as statutory auditor of the Company, the Board on perusal of documents on record observed the following sequence of events:
- a. The Complainant firm was appointed as statutory auditor of the Company in the AGM held on 30<sup>th</sup> September, 2014 till the conclusion of the 35<sup>th</sup> Annual General Meeting to be held in the year 2019 subject to ratification of their appointment at every AGM.
  - b. The company vide letter dated 19<sup>th</sup> August 2017 addressed to the Respondent as well as the Complainant expressed their wish to appoint them as the auditor of the company for the financial year 2017-18 seeking his consent to act and the required Certificate.
  - c. The Respondent vide letter dated 21<sup>st</sup> August 2017 addressed to the company gave their consent to act as the auditor of the company for the financial year 2017-18.
  - d. The appointment of the Complainant firm was ratified in the AGM held on 30<sup>th</sup> September, 2017 for conducting the audit under Section 139 of the Companies Act, 2013 for the financial year 2017-18.
  - e. The company vide letter dated 30<sup>th</sup> September, 2017 informed the Respondent of his appointment in the AGM held on 30<sup>th</sup> September, 2017 stating therein as under:  
***"in pursuance to approval by shareholders of the Company in the Annual General Meeting (AGM) held on 30<sup>th</sup> September, 2017, our Company confirms your appointment as the statutory auditors of the Company.  
request you to take necessary actions for making effective your appointment "***
  - f. Another letter of the Company dated 30<sup>th</sup> September, 2017 addressed to the Respondent was brought on record wherein it was mentioned as under:  
***"in pursuance to approval by shareholders of the Company in the Annual General Meeting (AGM) held on 30<sup>th</sup> September, 2017, our Company confirms your appointment as the statutory auditors of the Company, who shall hold office from the date of this meeting until the conclusion of the 38<sup>th</sup> Annual General Meeting of the company on such remuneration as***

*may be fixed by the Board of Directors. It's also be noted that your appointment shall be effective only subject to receipt of NOC from existing Auditors and complying other regulatory requirements.*

*Please also confirm that the appointment so made will be in accordance with the limits laid down by or under the authority of the Companies Act, 2013.*

*You are requested to kindly convey your acceptance to the appointment and oblige."*

- g. The company vide communication dated 4<sup>th</sup> October 2017 informed the Complainant firm about ratification of their appointment as auditor of the company for the F.Y. 2017-18.
  - h. Thereafter, the Company vide e-mail dated 27<sup>th</sup> November, 2017 requested the Complainant firm to reduce their audit fees due to slowdown in the business of the Company.
  - i. Thereafter, the Complainant received a letter dated NIL (letter being sent on 29<sup>th</sup> November 2017 as per date stamp of the postal Department) from the Respondent requesting the Complainant firm to issue NOC for their appointment as statutory auditor of the Company in the AGM held on 30<sup>th</sup> September, 2017.
  - j. The Complainant vide letter dated 2<sup>nd</sup> December 2017 addressed to the Respondent strongly objected to the acceptance of the offer for appointment as the auditor of the company.
  - k. The Complainant vide letter dated 2<sup>nd</sup> December 2017 sought clarification from the company as to who had been appointed as the auditor of the company for the F.Y. 2017-18.
  - l. The Complainant vide letter dated 13<sup>th</sup> December 2017 addressed to the Respondent sought certified copies of his appointment letter and shareholders' resolution for his appointment as the auditor of the company.
  - m. The company vide letter dated 2<sup>nd</sup> Jan 2018 requested the Complainant to convey their consent for acceptance of the audit at the specified amount.
  - n. The Complainant vide communication dated 3<sup>rd</sup> Jan 2018 asked the company to provide their Trial Balance for the period 30<sup>th</sup> September 2017 to 31<sup>st</sup> Dec 2017.
  - o. The Complainant vide communication dated 18<sup>th</sup> April 2018 asked the company to provide their comments as to the compliance of the provisions of Sec 140 of the Companies Act 2013.
  - p. The Complainant vide communication dated 21<sup>st</sup> April 2018 followed by reminder dated 2<sup>nd</sup> May 2018 asked the company to provide the copy of the Minutes of the AGM held on 30<sup>th</sup> September 2017.
- 6 On perusal of the aforesaid trail of events, the Board observed that the company vide communication dated 19<sup>th</sup> August 2017 expressed their willingness to both the Complainant and the Respondent to appoint them as auditors of the company for the F.Y. 2017-18. On the one hand, the company vide communication dated 30<sup>th</sup> September, 2017 informed the Respondent



that their appointment shall be effective subject to receipt of NOC and on the other, vide communication dated 4<sup>th</sup> October 2017 informed the Complainant firm about ratification of their appointment as auditor of the company for the F.Y. 2017-18. Thus, the action of the Respondent in seeking no objection from the Complainant prior to acceptance of the appointment appears to be in good faith.

- 7 The Board also considered the submission of the Respondent that his firm had never been appointed as the Statutory Auditor of the company. His firm was invited by the Company to discuss the appointment and place the proposal before the AGM held on 30th September, 2017 but during such AGM, it was expressed explicitly by him that such proposed appointment shall be accepted only after obtaining NOC from the existing auditors and complying with other regulatory requirements. Accordingly, he sent a letter to the Complainant seeking his reservations or observations, in respect of the proposed appointment. After considering the reply received from him, the Respondent never acceded to the proposal and hence, denied to accept the appointment as statutory auditors of the Company. The Board was of the view that although the Respondent should have been more careful in the use of the language in the letter seeking the no-objection of the Complainant to convey its proper meaning, however, there is no evidence to indicate that the same had been done with a malafide intent. Accordingly, the Board was inclined to hold the Respondent not guilty in respect of the charge alleged.

**CONCLUSION:**

8. The Board of Discipline, in view of the above, is of the considered view that the Respondent is **NOT GUILTY** of Other Misconduct falling within the meaning of Item (2) of Part IV of the First Schedule read with section 22 of 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: 10<sup>th</sup> February 2023

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

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