

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – IV (2023-2024)]

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

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

File No.: [PPR/P/340/17/DD/326/INF/17/DC/1642/2022]

In the matter of:

CA. Kapil Garg (M.No.505760), New Delhi in Re:

307,8, CAMAC Street, 3rd Floor,

Shantiniketan Building,

Kolkata- 700017

...Respondent

MEMBERS PRESENT:

CA. Ranjeet Kumar Agarwal, Presiding Officer (in person)

Shri Jiwesh Nandan, I.A.S. (Retd.), Government Nominee (in person)

CA. Mangesh P Kinare, Member (through video-conferencing mode)

CA. Cotha S Srinivas, Member (through video-conferencing mode)

DATE OF FINAL HEARING: 09.05.2023

PARTIES PRESENT:

i) CA. Kapil Garg : Respondent (through VC)

ii) Ms. Swasti Agarwal, AD (Law) SFIO : Witness (through VC)

iii) Mr. Lalit Mohan Rana. Sr. Assistant Director, SFIO : Witness (through VC)

iv) Mr. Manu Kapila : Witness (through VC)

CHARGES IN BRIEF: -

1.The Committee noted that in the Prima-Facie Opinion formed by Director (Discipline) in terms of Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Respondent was held prima facie **GUILTY** of Professional and/or Other Misconduct falling within the meaning of Clause (2) of Part-IV of First Schedule and Clause (7) of Part-I of Second Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act.

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The said Clause to the Schedule to the Act, states as under:

Clause (2) Part IV of First Schedule:

"(2) in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work."

Clause (7) of Part I of Second schedule:

"(7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties;"

2. SPECIFIC CHARGES IN BRIEF AGAINST THE RESPONDENT ARE AS UNDER: -

2.1 As per reference received from SFIO, the Respondent was:

- (a) Acting as a mediator in providing accommodation entries in connivance with Jain Brothers (S.K. Jain & V.K. Jain).
- (b) Engaged in money laundering operations with the above Jain Brothers and other professionals.
- (c) Inflation of balance sheet by rotational transfer of funds among the entities controlled by the above Jain Brothers,
- (d) Abetting in defrauding the National Exchequer.
- (e) Placing, layering and integration of unaccounted funds, and
- (f) Abetting in arrangement of false Valuation Report.

BRIEF FACTS OF THE PROCEEDINGS:

3. On the day of hearing dated 09.05.2023, the Committee noted that the Respondent and witness(es) from SFIO department were present through Video Conferencing Mode for the hearing. Thereafter, they gave declaration that there was nobody present except them in the respective room from where they were appearing and that they would neither record nor store the proceedings of the Committee in any form.

3.1 Thereafter, the Respondent and witness were put on oath and the Committee enquired from the Respondent as to whether he was aware of the charges; and the same was also read out. On the same the Respondent replied in the affirmative and pleaded Not Guilty to the charges levelled against him.

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3.2 The Committee asked the Respondent to make his submissions in the matter. The Respondent made his submissions in the matter stating that he was not connected with allegations and/or Jain brothers and there was no single evidence against him, which proved his involvement in this case, and it was a case of mistaken identity. The Respondent stated that he was never involved in the matter of providing accommodation entries and that he was not the person being referred to in SFIO investigation report on the affairs of M/s NKS Holdings and its group companies. The Respondent further submitted that SFIO has filed charge-sheet against accused persons in jurisdictional court and no such case has been filed against the Respondent herein; and he has not been summoned for inquiry in the same matter by other investigating agencies. The Respondent made his final submissions in the matter. The Committee examined the Respondent based on submissions made by him.

3.3 The witness(es) (officials from SFIO department i.e. Ms. Swasti Agarwal; AD (Law), Mr. Lalit Mohan Rana, Sr. AD (SFIO) and Shri Manu Kapila) who appeared in this case had affirmed that the impugned name of the Respondent appeared in the diary of Jain brothers, which was recovered by the Income Tax Department during search and seizure, could not be identified and correlated with the Respondent present in the meeting, as SFIO department has not investigated the role of Respondent and they have no particular evidence against the Respondent. The witness(es) submitted that the Informant Department never recorded statement of the Respondent nor investigated the role of the Respondent. Thereafter, when ICAI had sought further information regarding the membership details of the Respondent, SFIO vide its letter dated 27.02.2017 had submitted the membership and other details of the Respondent; and that SFIO had not per se done any separate investigation against the Respondent in the present matter. It was further stated by witness of SFIO that merely correlating a person with fraud was not sufficient to punish the person alleged and because of which SFIO had only shared the references as "Information" instead of filing complaint cases against the member involved. SFIO do not have any evidence, apart from the documents/piece of paper seized from the residents of Jain Brothers. It was further stated had the SFIO done any investigation or recorded any statement or collected any evidence against the Respondent, in such a situation SFIO would have arrived at conclusions in the main investigation report and framed charges against the Respondent. It was also stated that the investigation report of SFIO was submitted to

ICAI in March 2016 which was based on the documents obtained from the Income Tax Department.

3.4 It was submitted by the witness of SFIO that Jain Brothers, during the recording of their statement, had only shared the details of persons involved as Chartered Accountant, Company Secretary or Advocate. A Task Force was constituted comprising of Officers from the Departments of Enforcement Directorate, Income Tax, SFIO etc. and meeting(s) was convened by them to find out the identity of the persons named in the diary/piece of paper of Jain Brothers. He further submitted that the name of other Chartered Accountant who was involved in Jagat Projects was identified only with the help of phone number. He stated they have not investigated any of the persons except who have been involved in the investigation report of SFIO whose names have been specifically mentioned therein and whose statements have been recorded as part of the investigation. The Enforcement Directorate has also initiated the investigation, but the details of their investigation have not been shared with anyone else. It was stated that no investigation was undertaken by SFIO against the Respondent. As it was not possible to charge a person by merely identifying his credentials, the matter was forwarded to ICAI to treat the same as information case. He further submitted that apart from the diary/piece of papers seized from the place of Jain Brothers, they did not have any evidence against the Chartered Accountants and because of which no formal complaint was filed against these Chartered Accountants. The witness of SFIO further submitted that the investigation in the matter was completed in the year 2016 and therefore SFIO had shared the investigation report and all relevant details with the ICAI and thereafter communications were exchanged with ICAI and in particular, in the communication dated 27.02.2017 the membership details of some Chartered Accountants were shared with the ICAI. He also submitted neither the statement of many of the Chartered Accountants were taken nor evidences collected, against them and in case these were undertaken, the same would have formed part of the main investigation report itself and charges would have been framed against such Chartered Accountants. Since these were not available, the investigation was based on the documents made available by the Income Tax Department and in case further documents were collected by ICAI during its investigation, the same could have been made part of the disciplinary proceedings. The complete information

available with SFIO had already been shared with ICAI and it was for ICAI to complete the investigation and arrive at a conclusion. The correspondences exchanged were post investigation and because of which there was no mention of such communications in the main investigation report.

3.5 Accordingly, the Committee concluded hearing in the matter.

FINDINGS OF THE COMMITTEE

4. At the outset, the Committee noted the submissions of the Respondent that it was a case of mistaken identity of the Respondent and that the Respondent was never involved in the alleged matters. Hence, the Respondent contended that there was no evidence to prove the involvement of the Respondent in the alleged matter.

4.1 The Committee noted the submissions of the Respondent that SFIO and/or any other investigation agency, never called the Respondent nor even produced any adverse documents or filed any charge sheet for alleged involvement of the Respondent in providing fictitious transactions/accommodation entries in connivance with Jain Brothers. From the aforesaid, it is quite evident that there has been no proper identification of the Respondent in this matter and his identity has not been established with any corroborative evidence for his role against the allegations as contained in the prima facie opinion.

4.2 In this regard, the Committee noted that two judgments had been passed by earlier Disciplinary Committee on similar matters, viz. against CA. Manmohan Gupta and CA. Arun Kumar Jain bearing case no. PPR/P/29/17/DD/18/INF/17/DC/591/2017 and PPR/P/24/2017/DD/13/INF/2017/DC/689/17 respectively, wherein then Committee has dismissed the cases against those Respondents due to mistaken identity.

4.3 The Committee further noted that when the Witness from SFIO, the Informant Department, was asked to establish if the Respondent was the person being referred to in its Investigation report in case of M/s. NKS holdings and its group Companies, the Witness submitted that the Informant Department never recorded statement of the Respondent nor investigated into the role of the Respondent. In fact, the said name of Chartered Accountant was contained in the books/dairies maintained by Jain brothers
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as seized by the Income Tax Department during search and seizure at the premise of Jain brothers. The Presiding Officer repeatedly asked the witness(es) from SFIO, whether they have any evidence or document to substantiate the charges levelled against the Respondent or to prove his involvement in the matter, and in response to which the witness(es) replied in negative as they had no evidence or document to correlate and substantiate the charges against the Respondent or to prove his involvement in the matter; and because of which they had referred the matter as 'information' case to ICAI. Further, the witness(es) from SFIO categorically placed on record that they do not have any evidence or document against the Respondent and therefore, did not provide or bring the same on record. The witness representing SFIO further stated that SFIO had obtained the list of mediators who were involved in the fraud perpetrated in the matter of NKS Holdings Private Limited from the Income Tax Department; and SFIO had not recorded the statement of the Respondent. Thereafter, when ICAI had sought further information regarding the membership details of the Respondent, SFIO vide its letter dated 27.02.2017 had submitted the membership and other details of the Respondent; and that SFIO had not per se done any separate investigation against the Respondent in the present matter. It was further stated by witness of SFIO that merely correlating a person with fraud was not sufficient to punish the person alleged and because of which SFIO had only shared the references as "Information" instead of filing complaint cases against the member involved. SFIO do not have any evidence, apart from the documents/piece of paper seized from the residents of Jain Brothers. It was further stated had the SFIO done any investigation or recorded any statement or collected any evidence against the Respondent, in such a situation SFIO would have arrived at conclusions in the main investigation report and framed charges against the Respondent. It was also stated that the investigation report of SFIO was submitted to ICAI in March 2016 which was based on the documents obtained from the Income Tax Department.

5.The Committee also noted the statement of officials of SFIO, who appeared as Witness before it in the captioned matter. The Committee on perusal of documents on record as well as oral submissions including the statement of the Witness(es) made before it, observed that in the extant case, the Informant Department i.e., SFIO had not recorded any statement of the Respondent and not even able to provide any documentary evidence to substantiate the role of the Respondent in the alleged

matter. Further, the Committee noted that the allegations contained in present case are similar to cases which had been earlier decided by the then Committee and the reasoning given therein, which are as under:

"In the light of the fact that the SFIO, the Informant Department, was not able to establish the identity of the Respondent being the same person being referred in their investigation Report, the Committee had no option but to drop the case against the Respondent".

6. In view of the above, the Committee observed that mere production of piece of paper/handwritten notes is not suffice to prove the contents thereof. The truth of the contents thereof is required to be proved by adducing independent evidence. In the absence of any such evidence, no liability can be foisted on any person. The Committee further observed that it was the duty of the informant Department to produce evidence in support of the allegations levelled against the Respondent herein. It is evident that even assuming there are correct entries in the books of account, then also the same cannot, without independent evidence of their trustworthiness, fix liability upon a person. There is not an iota of independent evidence to charge the Respondent herein with the accusations levelled, as has been admitted by the witness(es) of informant Department at the time of hearing.

7. The Committee further observed that its role, being a quasi-judicial authority, is to regulate the conduct of its members by inquiry into the alleged professional and/or other misconduct within the framework of the Chartered Accountants Act 1949 based on arguments/evidences produced before it. In the instant case, the informant Department has merely named out certain professionals from the inputs of Income-Tax Department; and it had neither identified the Respondent with evidence for his alleged involvement in fictitious transactions nor investigated the role of the Respondent in such matters. The Committee was of the view that for proper appreciation of the matter, sufficient documentary evidence is required to be provided by the informant Department to corroborate the role of Respondent against the allegations levelled, and without which the instant matter could not be proceeded with further.

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8. In view of the fact that the witness(es) from SFIO (Informant Department) was not able to establish the identity of the Respondent being the same person being referred in their letter / Investigation Report of SFIO and also did not produce any evidence or document to substantiate the charges levelled against the Respondent and in the absence of above, the Committee could not proceed further in the matter. The Committee concluded that the present case is a matter of mistaken identity. Accordingly, the Committee concluded hearing in the matter and decided that the Respondent viz. CA. Kapil Garg (M.No.505760), New Delhi was **NOT GUILTY** of Professional and Other Misconduct falling within the meanings of Clause (2) of Part-IV of First Schedule and Clause (7) of Part-I of Second Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act, 1949 and the matter be **CLOSED**.

ORDER

9. Thus, present Information case be **CLOSED**.

Sd/-
(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

Sd/-
(SHRI JIWESH NANDAN, I.A.S. RETD.)
GOVERNMENT NOMINEE

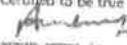
Sd/-
(CA. MANGESH P KINARE)
MEMBER

Sd/-
(CA. COTHA S SRINIVAS)
MEMBER

DATE: 30/10/2023

PLACE: New Delhi

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सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

अरुण कुमार / Arun Kumar
प्रमुख कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक विदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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