

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/81/2021/DD/262/2021/BOD/658/2022]

CORAM (Present in Person):

CA. Rajendra Kumar P, Presiding Officer
Ms. Dolly Chakrabarty (IAAS, Retd.), Government Nominee
CA. Priti Savla, Member

In the matter of:

Shri C S Parhadkar,
LIG 81, VHB Colony,
Near N I T Garden,
Shantinagar Colony,
Nagpur- 440002.

.....Complainant

Versus

CA. Abhishek Jaiswal (M. No. 302372)
84 Hill Road, Rama Niwas,
Suite No. 204
Nagpur - 440010.

.....Respondent

DATE OF FINAL HEARING : 23rd May 2023

PARTIES PRESENT (in person):

Counsel for the Respondent : CA. Sashikant Barve

FINDINGS:

CHARGE ALLEGED:

The Complainant alleged against the Respondent as under:

1. The Complainant stated that as per the website (www.sblenergy.com) of M/s SBL Energy Limited, it is a company in manufacturing of Explosive (hereinafter referred to as "Company") and the Respondent was Procurement and Finance head of the Company. The Complainant has alleged that as per his knowledge the Respondent is looking after

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marketing and other business of the Company and signing most of the statutory documents related to the day-to-day business of the Company. The Complainant has raised some queries in this regard which are as follows:

- a. Is the Respondent a Practitioner CA?
- b. Had he declared to the Institution that he is serving for the Company?
- c. Although officially he is not drawing salary in his own name but came to know that he is getting by some other mean, he is involved in day-to-day work and is signing Company's documents on behalf of Company in an official capacity.
- d. As per his knowledge the Respondent was also one of the signatories of the company in the bank (Punjab National Bank) and also signing and representing company to most of the Government office on behalf of the Company. Whether this is right as per the Institute of Chartered Accountants of India.

Thus, the Complainant alleged that the Respondent was Procurement and Finance head of the Company as well as a practicing Chartered Accountant.

BRIEF OF PROCEEDINGS HELD:

2.

S.no.	Date of Hearing(s)	Status of Hearing(s)
1.	29 th March 2023	Part heard and adjourned with the direction to summon Shri Alok Chaudhary, director of the company M/s SBL Energy Ltd., Nagpur as a witness to depose before it.
2.	23rd May, 2023	The Counsel for the Respondent was present in person. The Complainant was not present and had sent an email dated 22nd May 2023 informing of his inability to attend the hearing due to some urgent work. He also informed that he had already submitted all relevant documents. Shri Alok Chaudhary, director of the company M/s SBL

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		Energy Ltd., Nagpur vide his email dated 19th May 2023 informed that it will not be possible for him to appear before the Board in Mumbai and thus, submitted a duly notarized Affidavit dated 18th May 2023 containing his submissions in respect of the matter under question. The said duly notarized Affidavit dated 18 th May 2023 was taken on record by the Board. Thus, the Board heard and concluded the case on the basis of the submissions and documents on record.
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BRIEF SUBMISSIONS OF THE PARTIES TO THE CASE:

A. COMPLAINANT:

3. To substantiate his case, the Complainant, inter-alia, submitted as under:-
- 3.1 The Respondent himself had agreed in various points in the rejoinder /responses that he was associated (engaged) in business of the company by signing administrative documents, company's cheques and also the company had provided him cabin in its premises to do his CA Practice and use address for his professional work, using companies email id, companies car etc. Moreover, no approval was taken from the Council for such engagement. Engagement and conflicts of interest (working as an partner with a company engaged by the company for auditing and preparation of Balance sheet) with the company itself violates the clause.
- 3.2 It is very much evident from the action/response of the Respondent that he has given resignation from the CA partnership firm and from ICAI membership because of the complaint filed by him to avoid any disciplinary action. Despite knowing that his resignation was not accepted, he overlooked ICAI's decision and had officially joined the company.

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- 3.3 No Employment can be given to any individual in any of the company unless he gets "no objection certificate" from either his previous employer or valid documentation (proving that he has no other occupation or legal case/litigation pending against him)". Despite knowing the status of the case and non-acceptance of the resignation, getting employment in the company is disrespect and unlawful.
- 3.4 It is surprising to note, how a letter written by SBL Energy, Director to ICAI is in possession of Respondent and he had replied / response given is based on that. The Complainant had replied to that letter to Directors and no resistance or reply had been given till writing on this letter by them. The Complainant individually spoke to all the Directors of the company and no resistance was shown by any of the Director including Mr. Alok Chaudhari whose letter the Respondent is referring too.
- 3.5 Respondent was the Authorised Signatory in the Punjab National Bank even signing employee's salary cheques etc. Engaging full time for companies work, signing most of the companies' financial documents, looking after Procurement of raw material and other documents of the company including negotiation/making payment etc.
- 3.6 In the past, the Company had initiated enquiry against the Respondent on 20th October 2020 on the basis of complaint filed by employee Mr. Manoj Gajbiye. The Company had decided to set up a single member Inquiry Committee which shall be headed by CS. Satish Kumar Batra, Practising Company Secretaries. If Respondent was not an employee of the company, then, how an inquiry committee was set up against him?
- 3.7 The Respondent was involved in company's administrative service nature activities also for signing letter documents etc. Under what conditions, non-employee can sign letter or documents on companies' behalf (without declaring that he is not an employee) if he is not an employee or is a Partner of the company who had been auditing company's account and preparing Balance sheet.

B. RESPONDENT:

4. The Respondent in his defence, inter-alia, submitted as under: -

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- 4.1 The Respondent was not in the employment of the company as alleged and also the Respondent did not receive any remuneration from the said Company. The factual position in the matter has not been ascertained/appreciated. The complaint has not been in the proper format and does not even include the allegations as per the requirements of the Rules-Evidence produced cannot be used because the relevant Company has not authorised the use thereof by the Complainant who is their employee. The correspondence submitted by the Respondent in this matter has been largely misinterpreted.
- 4.2 The Respondent was not the employee of the Company at the relevant time and has not been paid any remuneration by the Company as an employee/consultant. The Respondent had surrendered his Membership of ICAI and CoP in August 2021 and thereafter has joined the employment. The PFO is formed by a process which is against the provisions of the above said Rules, 2007 and the Chartered Accountants Act, 1949 because the annexure to the complaint includes only a few questions raised by the Complainant with ICAI and is not a proper complaint as required in Form I of the relevant Rules, 2007. It does not include the relevant clause of the first Schedule to the CA Act claimed along with the specific allegations against the Respondent, in terms of Item no. 5 of the Form-I.
- 4.3 The Respondent has undertaken only those activities permitted for the chartered accountants in practice under the CA Act, regulations, Code of Ethics. A few activities undertaken, free of cost and in personal capacities as a part of personal relationships cannot be a ground for any complaint from the Complainant. The Respondent has explained how he himself and the Company have refrained from commenting about accuracy of certain specific documents/ evidence relating to the Company operations and have clarified only some factual aspects and pointed out that these are not permitted to be used by the Company against the Respondent in these proceedings and also not permitted in terms of right of the Respondent under Article 20(3) of the Constitution.
- 4.4 The Respondent had not explained the relevant matters earlier because the Company did not expect the matters relating to the Company operations being taken up on any Forum outside the Company. The enclosed Letter from the Company and also as explained by



the Respondent earlier above that he has not been paid any salary or consultancy fees by the Company. The Respondent has not produced the Income Tax returns so as to avoid his personal information coming in the hands of the Complainant.

- 4.5 There is no proper basis for and there is also no documentary evidence for the Respondent being considered as guilty of any Professional Misconduct under Clause (11) of Part 1 of the First Schedule to The Chartered Accountants Act, 1949.
- 4.6 The Director of the company confirmed that he had issued letter dated 16/01/2023 addressed to the Assistant Secretary ICAI and that the Company had issued appointment letter dated 21/08/2021 to the Respondent in respect of his appointment as General Manager (Marketing and Administration). He also confirmed the correctness of the contents in these letters. The Company did not authorize the Complainant to make use of any Information/documents relating to the Company for the purpose of this Complaint and has also not authorized him to file this Complaint.
- 4.7 The letter dated 16/01/2023 confirms that Respondent was neither a salaried employee of the Company nor a paid Consultant till August 2021. The Respondent was appointed by the Company vide their letter dated 21/08/2021 and therefore Employer-Employee relationship cannot be inferred for any earlier period only because some space has been made available to Respondent for his own use, or only because certain help is given in personal capacity on account of the personal relationships, free of cost. The Respondent had surrendered both the Membership of ICAI and Certificate of Practice effective 20 August 2021 itself and thereafter joined the employment. The Respondent was not in the employment of the Company during the period when he held the COP. The Clause (11) of the Part 1 of The First Schedule does not get attracted because the ingredients thereof are not met on account of the factual situation in the matter.
- 4.8 Presently, he is an employee of the Company, and the Company has stated in their letter that the Company would not like that the matters relating to the operations of the Company are taken up by the Employee Complainant on any forum outside the Company.

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OBSERVATIONS OF THE BOARD:

5. On perusal of the documents and submissions on record, the Board observed that the Respondent raised certain technical objections with regard to the admissibility of the case and decided to deal with them before arriving at its Findings.

5.1 As regard the objection of the Respondent that specific clause of the misconduct/charges had not been defined by the Complainant, the Board was of the view that it is trite that a Complainant is required as per law to state the allegations which are to form a factual foundation for an Adjudicating Authority to exercise jurisdiction and even if an incorrect provision of law/no clauses is mentioned by the Complainant in FORM I, that alone cannot be a ground to dismiss a complaint if otherwise the Authority has the jurisdiction to entertain the complaint. Further, though the provision of Rule 3 is couched in a "mandatory form" by use of words such as "shall" and appear to be mandating a procedure that must be necessarily followed. However, mere use of language which suggest or purports to suggest a "mandate" may not alone be sufficient to regard a procedural rule to be mandatory to the extent that its non-compliance could vitiate the entire proceeding.

While coming to the said view the Board took into view the following observations of the Hon'ble Supreme Court in the matter of Uday Shankar Triyar v. Ram Kalewar Prasad Singh and Anr. (Reported in AIR 2006 SC 269) as under:

"Non-compliance with any procedural requirement relating to a pleading, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates. Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use."

Thus, non-mentioning of clauses can at the highest be treated as "technical defect." Infact, the procedure to be adopted in case of defective complaint is that the defect, if pointed out, and not cured by the complainant, it is incumbent upon the Director (Discipline) to form a prima facie opinion of no case and recommend its closure. However,

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the Board of Discipline is vested with discretion to ignore the recommendation, if it deems fit, and proceed further with the matter. The onus to formulate a prima facie opinion as to the misconduct rests with the Director (Discipline) and therefore, premised on the pleadings filed which contains the allegations and documents placed on record, it is the Director (Discipline) which has to first formulate a prima facie opinion on the alleged misconduct. Therefore, notwithstanding the assertions as to the particular clause of misconduct by a Complainant, the Director (Discipline) shall, after perusing the material available, conclude as to existence or otherwise of the misconduct alleged. This is also apparent from the provisions of various sub clauses of Rule 9(2)(a) of the Misconduct Rules, 2007 , which require the Director(Discipline) to place the matter before the Board of Discipline , if the misconduct alleged falls within the First Schedule and before the Disciplinary Committee , if the alleged misconduct falls within the Second Schedule or both under the First and Second Schedule. This also supports the view that the sifting of the allegations to identify the clauses of misconduct is to be performed by the Disciplinary Directorate. This issue can also be addressed from the perspective of the status of the complainant. The requisite provision in the statute or under the Rules does not prescribe as to who can file a complaint under the provisions of the Act alleging misconduct by a member. Therefore, the Complainant can be a statutory authority, a member of the Institute who is well versed with the provisions of the Act or even a member of public who may not be familiar with the provisions of the Act. In such a scenario, to give a pedantic interpretation to the provisions of the Act and the Rules making it incumbent on a Complainant to specify clauses of misconduct would be denying the remedy otherwise available under the statute. If the allegations stated in the complaint do not fall within any specified clauses of professional misconduct, the same may however be a case of "other misconduct" and the ICAI would be within jurisdiction to proceed further on the allegations. Therefore, non-mentioning of clauses pertaining to "misconduct" does not in any manner vitiate the proceedings.

- 5.2 As regard the charge alleged that the Respondent was Procurement and Finance head of the Company as well as a practicing Chartered Accountant, the Board took into view the following provisions of Item (11) of Part I of the First Schedule:

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"A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he-

"engages in any business or occupation other than the profession of chartered accountants unless permitted by the Council so to engage".

Further, as per Code of Ethics:

" This is a provision introduced to restrain a member in practice from engaging himself in any business or occupation other than that of Chartered Accountant except when permitted by the Council to be so engaged. The objective is to restrain members from carrying on any other business in conjunction with the profession of accountancy and combining such work with any business which is not in keeping with the dignity of the profession. Another reason for the introduction of such prohibition is that a Chartered Accountant, if permitted to enter into all kinds of business, would be able to advertise for his other business and thereby secure an unfair advantage in his professional practice."

5.3 In view of the aforesaid provision of Item (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949 read with Code of Ethics issued by ICAI, the Board was of the view that it is evident that a member in practice is not permitted to engage himself in any business or occupation other than that of Chartered Accountant except permitted by the Council to be so engaged.

5.4 In the extant case, the Board noted that the Complainant brought on record a document which is downloaded from Company's website on 21.01.2021 in which it was mentioned as under:

'Mr. Abhishek Jaiswal (Procurement & Financial Head)- A highly qualified certified Chartered Accountant and Company Secretary with exceptional financial planning skills. He is the head of raw material procurement and financial planning of the Company.

The Complainant also brought on record a letter dated 26.04.2016 addressed to the Manager, PNB, Nagpur which is signed by the Respondent in the capacity of Company's Authorised signatory. He also brought on record certain email communication sent by the Respondent with the name of the company specified therein.

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5.5 The Board noted that the Respondent as a part of his written submissions brought on record a letter dated 16th January 2023 addressed by Mr. Alok Chaudhari, Director of the Company to the Disciplinary Directorate. However, the same was not received at their end. Thus, during the course of hearing the Board summoned Mr. Alok Chaudhari, Director of the Company to appear as a witness before it. However, the witness chose not to appear before the Board and instead sent a notarised Affidavit dated 18th May 2023, inter-alia, deposing as under: -

"4. that I have signed and issued the letter dated 16/01/2023 addressed to the Assistant Secretary, Disciplinary Directorate of ICAI from M/S SBL Energy Ltd. and copy of the same is enclosed herewith.

5. That the Company has issued appointment letter dated 21/08/2021 to Mr. Abhishek Jaiswal in respect of his appointment as General Manager (Marketing and Administration)."

5.6 The Board further noted that Mr. Alok Chaudhari, Director of the Company vide his letter dated 16th January 2023, inter-alia, submitted as under:-

- i. The Respondent joined the employment of the Company as General Manager in August 2021 only and the Complainant has been working with the Company since 2009. The Respondent was neither a salaried employee of the Company nor a paid Consultant till August 2021.
- ii Both the Complainant and the Respondent are presently working with the Company, and we expect that the Complainant needs to avoid taking up outside the Company, any disputes/ misunderstandings/issues which he may have with the Respondent. The Company has neither authorized the Complainant to file this Complaint nor has allowed him to use any of the information/ documents relating to the operations of the Company, before the ICAI Disciplinary Mechanism for that purpose.
- iii Being a professional and a well-wisher acquaintance for many years, the Company /Family-owned Companies have been benefitted through many of his interactions from time to time with the Management, Staff Members and other Officers. The interactions in his personal capacity, have been free of cost.
- iv The Management had allowed the Respondent the use of a small cabin in one of their offices at Nagpur, free of cost, when he had decided to shift to Nagpur for carrying out professional practice from there as a good gesture of course after taking into consideration the benefits to the family business both in the past and that likely in future and the Company in certain abnormal situations (like the Director not being available due

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to either on tour or on leave etc.) may have asked for certain help on some very important business matter from the Respondent (as a form of certain Administrative Service nature activities) where the work was to be done exactly as instructed by the Director like signing any Letter/document etc. and it did not involve making any professional judgment or taking any business decision.

- v. Even an E-mail ID was created for the Respondent only in order to convey to the person concerned any important message/instruction which the Director wanted to convey in abnormal situations. The cheques are always to be signed by 2 Authorized Signatories. Only a provision was kept in one Bank account by way of Respondent's name being included as Authorized Signatory in order to take care of a situation like the Director is not available to visit the Office and some urgent Letter is to be sent to bank or a cheque is to be issued urgently for some important business exigency. These activities, if any, were as per the specific instruction from the Director and in abnormal situations.
- vi. About the mention of the name of the Respondent on the Website in January 2021, it may be noted that the Respondent was not made aware of such an inclusion. The Complainant himself was involved in deciding the website contents as he was looking after the marketing function. The contents of the website were in the draft stage for being discussed with other functionaries in the Company. The concerned work area of Finance was handled by another employee who was not a qualified chartered Accountant, while the marketing needs at that particular time, for a specified purpose, was to mention the fact of a qualified C.A. and the thought process was on at that time to explore a possibility of the Respondent getting associated with the Company.

5.7 Thus, the Board noted that as per the appointment letter dated 21st August 2021 issued by the company to the Respondent and accepted by him, he was appointed as General Manager (Marketing and Administration) at Nagpur office of the company with effect from 22nd August 2021. Prior to that, he did not had a formal employee employer relation with the company. He did not had any role to play regarding his name inclusion in the company's website, it was only a draft version and the Complainant himself was involved in deciding the website contents as he was looking after the marketing function.

5.8 The Board further noted that the Respondent was inducted in M/s Sunil Johri & Associates w.e.f., 24th October 2015 and resigned on 26th May 2021. The Respondent brought on record an email dated 20th September 2021 according to which his COP was cancelled w.e.f 20.09.2021. The Board also noted that the Complainant did not bring on record any evidence to substantiate that subsequent to his resignation from the firm M/s Sunil Johri & Associates on 26th May, 2021 till 20th September 2021, he was in active practice alongwith some other engagement so as to seek the prior specific approval of the

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Council in this regard. Hence, considering the above facts and circumstances, the Board held the Respondent NOT GUILTY in respect of the charge alleged.

CONCLUSION:

6. Thus, in conclusion, in the considered opinion of the Board, the Respondent is **NOT GUILTY** of Professional Misconduct falling within the meaning of Item (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949. Accordingly, the Board passed an 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. Rajendra Kumar P
(Presiding Officer)

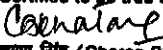
Sd/-

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

Sd/-

CA. Priti Savla
(Member)

DATE: 02-02-2024

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

चरण सिंह / Charan Singh
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
भारतीय सचिवी सेवाकार संस्थान
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