

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-36/2015-DD/45/2015/BOD/430/2018]

CORAM (Present in Person):

CA. Rajendra Kumar P, Presiding Officer

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

In the matter of:

Shri Naresh Kumar Aggarwal,

A-110, Jeewan Park,

Uttam Nagar,

New Delhi-110059.

.....Complainant

Versus

CA. Chander Mani (M. No. 077761)

Flat no. B-904,

Himachali Apartment,

Plot No-8, Sector-3,

Dwarka,

New Delhi-110078.

.....Respondent

DATE OF FINAL HEARING : 22nd August 2023

PARTIES PRESENT (in person):

Respondent

: CA. Chander Mani

Counsel for the Respondent

: Sh. A K Sinha, Advocate

FINDINGS:

BRIEF BACKGROUND OF THE CASE:

1. The Complainant was running a proprietorship concern namely M/s Heights Overseas since 2000 at RZ-A-110, Jeewan Park, Uttam Nagar, New Delhi-110059 and in the year

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2004 converted his proprietorship concern into a private limited company namely Heights Exports Pvt Ltd. The Respondent was also the Director in the Company.

CHARGE(s) ALLEGED:

2. The Complainant alleged against the Respondent as under:-
 - 2.1 The Respondent did not take prior permission from the Council of ICAI before holding the position of Whole Time Director in M/s Heights Exports Private Limited.
 - 2.2 The Respondent, by availing services from Mr. Kaushal Kishore Gupta (real brother of the Respondent) who did not hold any professional degree, has siphoned off funds by issuing cheques to him.
 - 2.3 The Respondent solicited clients in professional work from New Line Trends & New Line Trends Private Limited and others.
 - 2.4 The Respondent accepted the position of auditor of New Line Trends Private Limited and New Line Trends without communicating with previous auditor in writing and without ascertaining as to whether the requirement of Section 225 of the Companies Act, 1956, in respect of such appointment, have been completed or not as no Board Resolution has been passed to appoint him as an auditor.
 - 2.5 The Respondent brought disrepute to the profession by introducing/allowing Mr. Kaushal Kishore Gupta, a non-professional person, to conduct audit work on behalf of M/s. R.K. Varshney & Co. and on his behalf.
 - 2.6 The Respondent converted Heights overseas, a proprietary concern, into a private limited company without disclosing the facts to the proprietor i.e. the Complainant and acquired 25% of shares without transferring the funds.
 - 2.7 The Respondent had over invoiced the price of goods which were held by the Custom Authorities at Mumbai.
 - 2.8 The Respondent retained the books of accounts and did not produce the same on demand by the Complainant.

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- 2.9 The Respondent disclosed information regarding financial statements to his client engaged in a similar type of international trade and entered into arrangement of funds without the consent of another director.
- 2.10 The Respondent has expressed opinion on the Financial Statement of the Company and misrepresented the Company by misleading figures and facts. Further, the Respondent submitted the Balance Sheet to the auditor without the signature of the other director i.e. the Complainant, and all the figures in such balance sheet have been fabricated.
- 2.11 The Respondent signed cheques for payment over Rs.20000 without authorization whereas the Board Resolution approved by the Board requires cheques to be signed jointly in case of payment over Rs.20000/-. Further, it has also alleged that the Respondent defalcated, embezzled money by transferring the funds to the parties who had no business relation with M/s. Heights Exports Private Limited. In addition to this, the Complainant alleged that the Respondent had issued *unauthorized* cheques for non bonafide Company expenses and to the Companies in which he was having interest.
- 2.12 The Respondent did not exercise due diligence and was grossly negligent in conducting his duties professionally by not filing returns with ROC and other Government authorities.
- 2.13 The Respondent disclosed confidential information of the Company to third party.
- 2.14 The Respondent has made contempt of the Court by concealment of facts and by not appearing in the Court. Further, it is also alleged that the Respondent is an accused and the complaint with the Police is pending and he is not co-operating the summon of the Court and the Complainant has apprehension that the Court would charge him under contempt and forgery, fabrication and misrepresentation for a period of more than six months.
- 2.15 The Respondent submitted false and fabricated data and inflated stock statement to the bankers.
- 2.16 The Removal of Mr. Rajesh Gulia from the Board of Directors was made without bringing in the share capital and Respondent increased his proportionate share in the Company without compliance with the Companies Act and other Government authorities.

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2.17 The Respondent's act of discounting export bills without compliance with the terms & conditions of sanction has caused wrongful loss to the Complainant. Also, the Respondent did not protect the interest of the Company by filing claims with the sanctioning authorities. The Respondent also siphoned with the plant & machinery and stock of the Company.

The Board noted that the Director (Discipline) in his prima facie opinion held that in respect of allegation stated in paras 9.2.1 and 9.5.1 of the prima facie opinion, the Respondent is GUILTY of 'Professional Misconduct' falling within the meaning of Clause (11) and (9) of Part I of the First Schedule and in respect of allegation stated in paras 9.3 and 9.12.2 prima facie opinion, the Respondent is GUILTY of 'Other Misconduct' falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act.

The Board on consideration of the same, concurred with the reasons given against the allegation(s) and thus, agreed with the prima facie opinion of the Director that the Respondent is GUILTY of Professional/ Other Misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act and Clause (9) of Part I of First Schedule to the Chartered Accountants Act, 1949 in respect of findings mentioned in para 9.3 and 9.5 of the prima facie opinion only.

With respect to charge mentioned in para 9.2 of the prima facie opinion, the Board was of the view that the documents brought on record do not provide concrete evidence that the Respondent was involved in day to day activities of the Company while holding COP and accordingly held the Respondent NOT GUILTY of Professional Misconduct falling within the meaning of Clause (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949. Further, with respect to charge mentioned in para 9.12 of the prima facie opinion the Board was of the view that the cheque although is signed by the Respondent but the same does not provide positive evidence that the same was siphoning of funds and accordingly held the Respondent NOT GUILTY on this count.

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Accordingly the Board decided to proceed under Chapter IV of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 in respect of para 9.3 and 9.5 of the prima facie opinion thereby holding the Respondent prima facie guilty of Professional and/or Other Misconduct falling within the meaning of clause (9) of Part I and clause (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act. Accordingly, the conduct of the Respondent was examined only in respect of the said 2 charges only.

BRIEF OF PROCEEDINGS HELD:

3.

S. No.	Date of Hearing(s)	Status/Direction/View
1	17 th December, 2020	Adjourned at the request of the Complainant.
2	7 th April, 2021	Adjourned at the request of the Complainant.
3	17 th December, 2021	Adjourned at the request of the Complainant and Respondent.
4.	26 th April, 2022	Adjourned at the request of the Respondent.
5	22 nd June, 2022	Adjourned at the request of the Complainant.
6	18 th July, 2022	Adjourned at the request of the Complainant and the Respondent.
7	22 nd November, 2022	Adjourned due to paucity of time.
8	19 th December, 2022	Adjourned at the request of the Complainant.
9	17 th may, 2023	Adjourned to provide final opportunity to the Complainant.

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10	29 th June, 2023	Adjourned at the request of the Respondent to provide him a final opportunity to defend himself.
11	22 nd August, 2023	The Complainant was not present during the hearing. Since the case had been scheduled for hearing on several occasions earlier also and adjourned either at the request of the Complainant or the Respondent, the Board decided to proceed ahead with the hearing in the case. Accordingly, the case was heard and concluded on the basis of the documents and submissions on record.

BRIEF SUBMISSIONS OF THE PARTIES TO THE CASE: -

A. RESPONDENT

4. The Respondent in his defense while pleading not guilty, inter-alia, submitted as under: -
- 4.1. Mr. Kaushal Kishore Gupta was an employee of Heights Exports Private Limited and he was having PF Act No. DL/30736/00023 of the said Company. The documents of the Company are in the possession of the Complainant himself at the Registered Office which is the residence of the Complainant, and it is the Complainant only who can produce the relevant documents regarding appointment of Mr. Kaushal Kishore Gupta. The Respondent has applied to the PF Department through Mr. Kaushal Kishore Gupta.
- 4.2. The amount withdrawn by Mr. Kaushal Kishore Gupta was for distribution of salary to the labourers of the company. The said withdrawal was made on 2nd November 2010, as there was Deepawali on 5th of November of the said year and the labourers had to be paid before the said festival and for this said reason, the aforesaid amount had been withdrawn by Mr. Kaushal Kishore Gupta. It is pertinent to mention here that though the said withdrawal was incash, however, there was name of Mr. Kaushal Kishore in the said cheque, as the bank officials used to request to issue cheque by not mentioning "Self" rather in the name of the borrower/presenter so that they can verify the person who

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presents the cheque. The Board can verify the aforesaid facts by summoning Mr. Kaushal Kishore Gupta and for the record for payment of the said amount to the labourers Complainant may be called, as it is the Complainant in whose possession all the records are.

- 4.3 By no means, the Respondent brought disrepute to the profession or to the Institute by any of his acts. The Respondent is a law abiding professional and has always act according to the law and regulation provided for a Chartered Accountant and till date no complaint has been filed against the Respondent apart from the present false and frivolous complaint only with ill motive to shed his liability and to cause pressure upon the Respondent to pay the amount as ordered on 7th August, 2014 by the Hon'ble Debt Recovery Tribunal-I in OA No. 87 of 2012 titled as State Bank of Bikaner & Jaipur (presently known as SBI) versus Height Exports Pvt. Ltd. & Ors.
- 4.4 The Respondent accepted the position as an Auditor of the Company, Nu Line Trends Exports Pvt. Ltd and after ascertaining that the company had duly followed and complied with the requirement of Section 225 of the Companies Act, 1956 and it was confirmed by the earlier Auditor of the company as well by issuing his NOC. A copy of the said NOC issued by the earlier Auditor has already been submitted to the Board. Though the Respondent had duly verified that Nu Line Trends Exports Pvt. Ltd. had followed all the norms provided under the Company Act, 1956 before accepting position of an Auditor in Nu Line Trends Exports Pvt. Ltd., however, Respondent could not place the resolution passed by the company before, but the Respondent is filing the copy of resolution passed by Nu Line Trends Exports Pvt. Ltd. for appointment of the Respondent as an Auditor.

B. COMPLAINANT

5. The Complainant, inter-alia, made the following submissions to substantiate his case: -
- 5.1 With respect to withdrawals from the account of the Company, the withdrawals were regular, and the Respondent tried to convince by one transaction. The copy of cheque in favor of Kartik Kaistha of Rs. 2,00,000/- i.e. cash payment through bearer cheque and Dr. Kartik Kaistha is still looking for Respondent who has withdrawn himself or through

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Kaushal Kishor Gupta as the bank has not issued any "Token" for withdrawal and cash with the Respondent.

- 5.2 The Company never held any Board of Directors meeting. The email claimed to be NOC generated through S.K. Diwan and sender S K Pansi even though the NOC does not favor the Respondent Firm. Further, the year and period of Respondent's appointment as auditor was not mentioned. The Complainant further raised a query that whether the Respondent was appointed in AGM or EGM meeting and sought minutes and agenda of the Company.
- 5.3 The Complainant who is a Floor Level production manager not having knowledge about management, employed the Respondent to look after the works & office of his proprietary concern "HEIGHTS OVERSEAS". The Respondent used to manage day to day work as the Complainant was employed with exporter on full time. The Respondent nowhere admitted and put on records of the (Board of Discipline) the investment in shares or otherwise in Heights Exports Pvt. Ltd., The MOA/AOA of Company states that the firm Heights Overseas is partnership, also the status & professional shown by the Respondent as Businessman, the investment Paid up capital Rs. 1,00,000 and Authorised Capital Rs 10 Lakh.
- 5.4 The Heights Overseas was a proprietor concern of Complainant. The Respondent with mala fide intention and with intention to cheat the proprietor and played a fraud not only with the bank but with the Nation beside the proprietor.
- 5.5 The Respondent solicited the clients of Heights Export Pvt. Ltd. for professional work, the accounts book maintained & in custody of Respondent speak itself about the professional fee credited to his accounts, the income tax return by the Respondent reveal the real facts, Respondent shall be asked to submit his Income tax returns along with Computation & books of accounts and records.
- 5.6 The Respondent has not put on record the appointment letter, the settlement letter nor the certificate from Heights Exports Pvt. Ltd. It's pertinent to mention here that

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K.K. Gupta is the real brother of the Respondent, reports only to the Respondent and enrolment with the P.F. Department without his name on Payroll of the company to facilitate his brother K K Gupta. Cheques have been issued on his Accounts signed by the Respondent only. The funds of the company were misused and diverted for the personal benefit of the Respondent.

5.7 Heights Overseas is a proprietary concern. The Respondent with malafide intention, who was maintaining the Accounts & bookkeeping of Heights Overseas, deliberately and knowingly with intention to cheat the Proprietor/Complainant manipulated them. The Complainant had no knowledge that the Respondent to have prior permission from ICAI to have COP and to act as a Whole Time Director. The Respondent apparently misled the Complainant and distorted the firm status, from proprietor to partnership and subsequently Private Limited Company. The Respondent formed Private limited company by non-disclosing himself as "Chartered Accountant in practice" and has failed to obtain prior permission from ICAI. In AOA of the company, he declared himself as a businessman.

5.8 The Respondent concocted the appointment of Mr. Rajiv Kaistha. The documentary evidence in respect of Respondent's claim is not put on record and the Complainant is not aware about the facts. Further, all facts figures are lying with the Bombay Custom Authorities or agent of Respondent. The Respondent filed application and affidavit at the Mumbai Custom and deposited penalty. The Respondent signed all the documents in respect of the sale deal beside mandatory custom declaration.

5.9 The Respondent acted on the advice of private financier who arranged the letter of credit from Kenya. The past record of the company shows the annual turnover below Rs 2 Crores, where the records for 3 months of sale in year 2010 crossed Rs 3-4 Crores, when the Complainant was placed away to Nigeria, where the import of garment from India is totally banned/prohibited, the entire sales to one party i.e. MINT FORTUNZ Textile Trade Ltd., a non-existing entity, the turnover rose to Rs 3 to 4 Crores when, the production & shipping capacity of the company was Rs. 40 Lakhs per



month. The Respondent's submission of Export Bills for Rs. 3.50 Crores is alarming. The Respondent innovated the technology to increase the sales figure by over invoicing to get benefit under duty drawback claim and funding. The production quantum (quantity) factors are not within control of the Respondent.

5.10 The books of accounts & other records were in control and custody of the Respondent is evident by the stock inspection of the Bank. The Respondent is liable to pay the entire Debt of the Bank in accordance with the law. The Respondent twisted by stating that the records have been kept at the office of the company, the Respondent frequently and without consent of the bank shifted the office/works of the company from one place to other (three times) and inspection report by M/S. Heights Export Pvt. Ltd. issued by SBBJ, Naraina Industrial area, New Delhi. The officer visited the factory/office situated at A1/A-36B Gali No. 9 Pankha road, Chanakya place, New Delhi on 07.06.2012, it was found that factory was shifted earlier address also given.

5.11 The Respondent is solely responsible for maintenance of the books of accounts conducting Inspection and Audit, filing stock statement with Bank, have not kept the books of Account and other records with the due diligence and filed a vague reply that all the records kept in the office of the company and put on the record of the Board that the same was confirmed by him verbally on phone also. The Board relied on the verbal, oral and written submission without looking into the statutory direction of keeping the books of account in the registered office of the company without the consent and prior approval of the Bank & lenders shifted frequently the office/works along with Assets & Documents. The email & verbal/Oral version does not give any address of the place where books of account are kept. The custodian thereof is liable to produce on demand.

OBSERVATIONS OF THE BOARD:

6.1 As regards the first charge, the Board noted that the bone of contention is the cheque dated 2nd November 2010 amounting to Rs. 2,00,000/- issued by the Respondent to Mr. Kaushal Kishore Gupta who is his real brother of the Respondent. It is the contention of

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the Respondent that Mr. Kaushal Kishore Gupta was one of the employees of the company and the cheque had been issued for the disbursement of diwali bonus to the labourers which happened to be on 3rd November 2010. The Board noted that in terms of the resolution passed in the Board of Directors meeting held on 24th September 2004, the Respondent was one of the authorized signatory for issuing the cheques from the State Bank of Bikaner and Jaipur, Naraina Branch, N.Delhi alongwith one other director in case the value of cheques exceeds Rs.20,000/- Since the Complainant was not in India at that time, the cheque had been signed by the Respondent only and the same had been cleared by the bank. The Board also noted that it was not the sole cheque of the specified value which had been cleared by the bank on the single Authorisation of the Respondent. The Board noted that the Complainant raised question as to the employability of Mr. Kaushal Kishore Gupta with the company. In this regard, the Board noted that there is on record an email dated from the Complainant to the Respondent with the words : Attn: Kaushal Kishore Gupta. Moreover, the Respondent brought on record a letter dated 7th July, 2018 written by Shri Kaushal Kishor Gupta to the Provident Fund Officer, Dwarka, New Delhi requiring his account details viz. Name of the account, father name, provident fund amount, name of the company depositing Provident fund in his name and date of joining having account number DL-30736/00023 which was duly sent. In view of the explained circumstances and the documents on record, the Board was of the view that despite ample opportunities given, the Complainant has not been able to substantiate his charge that the Respondent siphoned off the money by issuing the said cheque. Thus, the Board held the Respondent NOT GUILTY in respect of the charge alleged.

6.2 As regard the second charge, the Board that the Respondent brought on record a copy of extract of the Extra Annual General Meeting of M/s NU Line Trends Exporters Private Limited dated 25th August, 2009 which inter-alia stated as under:

"The Chairman took the matter for appointment of Mr. Chander Mani Gupta, Chartered Accountants, New Delhi in place of Mr. SK Diwan, Surendra & Associates, Chartered accountant, the retiring Auditons who have expressed their unwillingness for re-appointment and who has to vacate their office at the conclusion of this Meeting.

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In terms of the provision of section 225 of the Companies Act, the appointment of Auditors in place of existing Auditors of the Company requires the approval of General Meeting by way of Ordinary resolution. Therefore, the Board recommend to pass necessary resolution by way of ordinary resolution to appoint Mr. Chander Mani Gupta, Chartered Accountants, as the casual Auditors of the Company in place of Mr. SK Diwan, Surendra & Associates, Chartered Accountants to hold office of the Auditors of the Company till the conclusion of the next Annual General Meeting on the remuneration as may be fixed by the Board."

6.3 The Board further noted that the Respondent brought on record copy of an email dated 30th September 2009 wherein the Respondent sought no-objection from the retiring auditor who in turn vide email dated 30th September 2009 gave his no-objection for his acceptance of the audit.

6.4 The Board further took into view the following intent behind ensuring that the requirement of Section 225 of the Companies Act, 1956 have been duly met as provided under Item (9) of Part I of the First Schedule in the Code of Ethics 2009 :

"In order that the validity of the appointment of an auditor is not challenged or objected to by shareholders or the retiring auditors at a later date, it has been made obligatory on the incoming auditor to ascertain from the Company that the appropriate procedure in the matter of appointment has been faithfully followed."

6.5 Thus, on a conjoint perusal of the above, the Board was of the view that the Respondent accepted the position of auditor after ascertaining that the requirement of Section 225 of the Companies Act, 1956 have been duly met. Thus, the Board held the Respondent Not Guilty in respect of the charge alleged.

CONCLUSION:

7. 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 and of Professional Misconduct falling within the meaning of Item (9) of Part I of the First

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Schedule to the Chartered Accountants Act, 1949. 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.

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CA. Rajendra Kumar P
(Presiding Officer)

Sd/-

Ms. Dolly Chakrabarty (IAAS, retd.)
(Government Nominee)

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

बिषा नाथ तिवारी / Bishwa Nath Tiwari
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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DATE: 09-02-2024