

CONFIDENTIAL

DISCIPLINARY COMMITTEE BENCH – I (2023-2024)

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

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

File No.: [PR/391/2019/DD/12/2020/DC/1723/2023]

In the matter of:

M/s P C Solutions Pvt Ltd

Through Sh. Devendra Taneja, Managing Director
A 72-73, FIFE Complex,
Okhla Industrial Area, Phase-II,
New Delhi – 110020

Versus

.....Complainant

CA. Anand Kumar Jhunjhunwala (M. No. 056613)

M/s Maheshwari & Associates, Chartered Accountants
6A, Geetanjali,
8B, Middleton Street, Kolkata – 700020

.....Respondent

MEMBERS PRESENT: -

- i) CA. Aniket Sunil Talati, Presiding Officer
- ii) Shri Prabhash Shankar, IRS (Retd.), (Government Nominee)
- iii) CA (Dr). Rajkumar Satyanarayan Adukia, Member
- iv) CA. Gyan Chandra Misra, Member

DATE OF FINAL HEARING : 06-12-2023

PLACE OF FINAL HEARING : New Delhi / Through Video Conferencing

Parties Present:

Counsel for the Complainant : Mr. Arun Saxena

Respondent : CA Anand Kumar Jhunjhunwala

Counsel for the Respondent : CA. A P Singh and CA. Utsav Hirani

1- BACKGROUND OF THE CASE-

M/s P.C Solutions Pvt Ltd -Vs- CA. Anand Kumar Jhunjhunwala (M. No. 056613), M/s Maheshwari & Associates, Kolkata

The Complainant Company i.e., 'M/s P C Solutions Private Limited' had done one business transaction with 'M/s Ortel Communications Limited' (hereinafter referred to as "OCL"), wherein against the work done by OCL under the said business transaction, OCL had raised an invoice dated 16.01.2018 amounting to Rs. 7,08,29,500/- including GST of Rs. 1,08,04,500/- and the same was paid by the Complainant Company in two instalments of Rs. 6,89,84,320/- on 01.02.2018 and Rs. 18,45,180/- on 02.02.2018. The said total amount of Rs. 7,08,29,500/- included the amount of Rs. 1,08,04,500/- towards GST, but it is alleged that the OCL has not complied with GST provisions causing the loss to the Complainant Company as they could not avail the GST input credit against the payment of GST amount included in the total invoiced amount. It is stated that the Respondent had signed the Balance Sheet of OCL for FY 2017-18. It is also stated that the Complainant Company had written a letter dated 23.10.2018 to OCL and also to the Respondent informing them about the said fraud of GST and requested them to bring in light the details of the transaction and simultaneously validate the transaction done through proper banking channel, however, no reply was received from the Respondent.

It is stated that in the absence of any response received from the Respondent firm to the Complainant's letter dated 23.10.2018, the Complainant thereafter sent a reminder dated 30.11.2018 against which the Respondent, vide his letter dated 12.12.2018 replied that OCL was in 'Corporate Insolvency Resolution Process' (CIRP process) and that they will meet the IRP and will accordingly comment. It is stated that against the said reply of the Respondent, the Complainant Company again sent a letter dated 26.04.2019 and 03.10.2019 to the Respondent requesting him to comment on the aforementioned transaction, however, the Respondent kept silent.

2- CHARGES IN BRIEF:

The Complainant has alleged that the Respondent was the Statutory Auditor of OCL and has signed its Balance Sheet for Financial Year 2017-18 could not explain / report the legal banking transaction of Rs. 7,08,29,500/- which included the GST amount of Rs. 1,08,04,500/- pertaining to Financial Year 2017-18. The Complainant has stated that the Respondent could not confirm that how the transactions entered into between the Complainant Company and OCL had been recorded and how the bank transactions had been considered in the books of accounts of OCL which clearly transpires that the approach of the Respondent was unprofessional, unethical and illegal and thus, the Respondent had not discharged his professional duties diligently and also had not done the proper due diligence before signing the balance sheet of OCL for FY 2017-18.

3- BRIEF OF THE PROCEEDINGS: -**Brief of hearing held on 06th December 2023**

At the outset, the Committee noted that the Counsel for the Complainant was present. The Respondent along with his counsels were also present through VC. The Committee continued the hearing in the above matter from the stage it was left in last hearing. Thereafter, the counsel of the Complainant & counsel of the Respondent made their detailed submissions on the allegations. The Committee also posed questions to both counsels. After hearing the submissions, the Committee, after due deliberations & based on documents available on record, decided to conclude the matter.

Brief of hearing held on 31st October 2023

At the outset, the Committee noted that the Respondent along with his Counsels were present. The Counsel of the Complainant was also present through VC. Thereafter, the Counsels for the Respondent made their brief submissions on the allegations. The Counsel of the Complainant stated that the written submission of the Respondent on PFO has not been provided to him to which the Counsel of the Respondent stated that they will provide the proof of sending the said submission to the Complainant. Thereafter, the Committee directed Counsels of the Respondent to forward the soft copy of the said written submission to the Complainant. With the said directions, the Committee decided to adjourn the hearing and the matter was **part heard & adjourned.**

4- SUBMISSION OF THE RESPONDENT & FINDINGS OF THE COMMITTEE:

Before giving findings in the matter, the Committee noted the following background about the facts which are given here-in-below:

4.1 The Committee noted that the Complainant has claimed that it had purchased goods from 'OCL' amounting to Rs. 7,08,29,500/- including the amount of Rs. 10,804,500/- towards GST. Further, the said total amount was duly paid to OCL in two instalments i.e., Rs. 6,89,84,320/- on 1st February 2018 and Rs. 18,45,180/- on 2nd February 2018 and the same is evident from the copy of 'ledger account of OCL' created in the books of Complainant and bank statement of the Complainant. It is alleged that OCL has collected the GST amount from the Complainant, however, the said amount was not deposited with the GST department and due to this reason, the Complainant Company was unable to take relevant input tax credit towards GST payment. In support of the said allegation, the Complainant has also provided the copy of invoice dated 16.01.2018, which has allegedly been raised by OCL on the Complainant Company. On perusal, the seal of OCL along with the initials / signatures of the authorized signatory is evident on the said invoice. From the said

invoice, it is also evident that certain goods have been purchased by the Complainant Company from OCL and against that purchase, the payment of Rs. 7,08,29,500/- has been made to OCL. It is also noted that the Complainant has received the communication / letter dated 12.02.2020 from the Resolution Professional namely, Shri Srigopal Choudhary mentioning that the claim of the Complainant Company for the alleged amount of Rs. 1,08,04,500/- was considered and admitted as an operational creditor and the said claim was also reflected on the website of Corporate Debtor. Thus, there was confirmation from Resolution Professional about the admission of claim of disputed amount of GST in line with the contentions of the Complainant.

4.2 The Respondent in his written statement and/ or verbal submission stated that there was an internal arrangement of financing by the Company through entering into a teaming agreement with the Hewlett Packard India Private Limited (HPE), Hewlett Packard Financial Services (India) Pvt Limited (HPFS) and the Complainant Company i.e. PC Solutions Private Ltd. (PCS) and that the copy of such teaming agreement was though shown to the Respondent at the time of audit however, the copy of the same has not been provided to him on the pretext that the same is confidential in nature. The Committee also noted that the said teaming agreement is also mentioned in para 5.3 of the MRL as provided under SA 580 (revised) issued by the OCL to the Respondent. The Respondent further submitted that he has never witnessed the alleged invoice, as it has never been produced before him, during course of his audit. The Respondent further stated that note no. 18.1(e) of the notes to accounts clearly specifies this transaction as a term loan of Rs. 8.02 crores in respect of which a disbursement of Rs 7.08 crores was done. Thus, the Committee noted that the fact of such transaction being term loan is appropriately disclosed in the very Notes of Accounts of the Financial Statements prepared by the Company.

4.3 The Respondent also submitted that he did not witness this alleged transaction of Rs. 7,08,29,500 /- in the GST returns and GST Audit report for the F.Y 2017-18 of OCL and he has verified this transaction only by way of teaming agreement duly supported by board resolution of the OCL.

4.4 The Committee noted that the Respondent being an auditor has no clue about the said transaction and the Complainant has also written to the Respondent after conclusion of the audit for the F.Y 2017-18 and thus there was no apprehension at the end of the Respondent that would have prompted him about any such sale transaction with the Complainant Company. The Committee further observed that at the time of his audit the Respondent has also sought third party confirmation on this term loan amount and there was no reason/suspicion for not believing such loan transaction as loan transaction instead of sale transaction of Rs. 7,08,29,500/-.

4.5 The Committee also perused emails of the Respondent seeking clarification on the said transaction from OCL. Thus, the Committee viewed that the Respondent

has taken all due measures to ascertain about the said transaction and on perusal of teaming agreement he has satisfied himself about the said transaction being a loan transaction and it is coming out that the matter solely pertains to the dispute between the two entities and the Respondent cannot be made a scapegoat in this context.

4.6 The Committee also perused the Audit Report for the F.Y 2018-19 issued by the Respondent and noted that the Respondent has given disclaimer of his opinion with reasoned facts, and it is coming out that he has observed due diligence while carrying out his professional duties.

4.7 The Committee deliberated on the verbal and written arguments of the Respondent and the Complainant's counsel and on the basis of material on record, the Committee observed that Respondent has kept reasonable professional scepticism in the matter and has performed his professional assignment in a judicious manner and hence the Respondent cannot be said to be grossly negligent while performing his professional duties. Accordingly, the Respondent was held not guilty of professional misconduct.

CONCLUSION:

8. In view of above noted facts and discussion, in the considered opinion of the Committee, the Respondent is **NOT GUILTY** of Professional Misconduct falling within the meaning of Item (7) of Part-I of Second Schedule to the Chartered Accountants Act, 1949.

Sd/-
(CA. Aniket Sunil Talati)
PRESIDING OFFICER

Sd/-
(Shri Prabhaskh Shankar, I.R.S (Retd.))
Government Nominee

Sd/-
CA (Dr). Rajkumar Satyanarayan Adukia
MEMBER

Sd/-
(CA Gyan Chandra Misra)
MEMBER

DATE: 08.02.2024

PLACE: NEW DELHI

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

निशा शर्मा / Nisha Sharma
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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