

CONFIDENTIAL

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

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

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

File No.: [PR-165/2015-DD/153/2015/DC/805/2018]

In the matter of:

Mr. Vinod Kumar Gupta,
104, Nilgiri Apartment,
9, Barakhamba Road,
New Delhi-110001

.... Complainant

Versus

CA. Sushil Kohli (M. No. 092515)
T-370, Hansa Puri,
Main Road, Tri Nagar,
New Delhi-110 035

.....Respondent

MEMBERS PRESENT: (In person)

CA. Ranjeet Kumar Agarwal, Presiding Officer
Shri Jiwesh Nandan, I.A.S. (Retd.), Government Nominee
Ms. Dakshita Das, I.R.A.S. (Retd.), Government Nominee
CA. Mangesh P Kinare, Member
CA. Cotha S Srinivas, Member

DATE OF FINAL HEARING : 19th April, 2023

PARTIES PRESENT

Respondent : CA. Sushil Kohli (In person)

1. Background of the case:

1.1 The Complainant being director of the Company alleged that the Respondent being auditor of the Company is not returning books of Accounts of the said Company. He further alleged that the balances of Debtors and creditors as per Balance Sheet

are not matching with respective balances as per books of Accounts. It is seen from the reply of the Respondent that he was the statutory auditor of the Company since 2010. He further mentioned that he received a call from Investigation cell of Economic Offence Wing (EOW) in 2014 regarding conduct and working of the Company and he was asked to join the investigation.

2. Charges in brief:-

2.1 The Respondent was auditor of the Company for the Financial Years 2010-11, 2011-12, 2012-13 and 2013-14. The balances of Debtors and Creditors as per the Balance Sheet do not match with respective balances as per books of accounts of the Company.

3. The relevant issues discussed in the prima facie opinion dated 18th November, 2017 formulated by Director (Discipline) in the matter in brief is given below:-

3.1 As regards the charge of wrong balance of debtors and creditors is concerned, it is observed that although, the Complainant had not provided the details as to which balances of debtors and creditors are not matching, however from the reply of the Respondent it is observed on perusal of Loan agreement between M/s Assotech Limited and the Company on 15.12.2011 that the former had advanced Rs. 5.00 crores to the latter as under:

Cheque No. 940518 on 15.12.2011 for Rs.	0.25 crores
Cheque No. 940519 on 21.12.2011 for Rs.	4.75 crores
Total	5.00 Crores

3.2. It is seen from the Bank statement of Kotak Mahindra Bank that entry of Rs. 0.25 crores was cleared on 17.12.2011 and Rs. 4.75 crores was cleared on 21.12.2011. The entry of Rs. 4.75 crores was reversed due to insufficient funds on 21.12.2011. The said amount was paid by M/s Assotech Limited as Rs. 2.00 crores on 22.12.2011, Rs. 0.50 crores on 26.12.2011, Rs. 1.25 crores on 27.12.2011, Rs. 0.50 crores on 28.12.2011, and Rs. 0.50 crores on 30.12.2011. Hence, M/s Assotech Limited had duly paid the said amount to the Company.

3.3 The closing balance in bank account with Kotak Mahindra Bank of Rs. 1,015.63 was duly reflected in the balance Sheet. However, as regards balance of M/s Assotech Limited is concerned, the said liability was not reflected in the Balance sheet as on 31.03.2012. It is further observed that the said liability of Rs. 5.00 crores was more than the size of the Balance sheet and even turnover of the Company. The materiality of amount required the Respondent to look into details regarding disclosure of this material entry. Further, other than the Bank statements, the Respondent was not having any other documentary evidence in his possession to substantiate his defence in respect of this huge transaction.

3.4 There are certain points in favour of the Respondent like detail of mismatching in balances of debtors and creditors was not provided by the Complainant and the Balance sheet was signed by the Complainant himself. But at the same time the Respondent appears to have conducted audit based on documents produced before him by his client i.e. the Complainant in extant case. The third party confirmations in-depth audit of material transaction have not been considered by the Respondent to reduce the audit risk involved which is also evident from the copy of working papers produced by him viz. Bank statements. Thus, the manner in which the audit was conducted is doubtful. Accordingly, the matter needs to be enquired into further.

3.5 The Director (Discipline) in Prima Facie Opinion dated 18th November 2017 has held that the Respondent is prima facie GUILTY of Professional Misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 on the ground that amount of Rs.5 crore as liability was not reflected in the Balance sheet as on 31.03.2012 and as observed by the Director (Discipline) that the said liability of Rs. 5.00 crores were more than the size of the Balance sheet and even turnover of the Company. The said clause to the Schedule to the Act, states as under:

Clause (7) of Part I of Second Schedule:

"A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he—

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

3.6 The Prima Facie Opinion formed by Director (Discipline) was considered by the Disciplinary Committee at its meeting held in April, 2018, New Delhi. The Committee on consideration of the same, concurred with the reasons given against the charges and thus, agreed with the prima facie opinion of the Director (Discipline) that the Respondent is prima facie **GUILTY** of Professional Misconduct falling within the meaning of Item (7) of Part-I of the Second Schedule to the Chartered Accountants Act, 1949 and accordingly, decided to proceed further under Chapter V of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. The Committee, also directed the Directorate that in terms of the provisions of sub-rule (2) of Rule 18, the prima facie opinion formed by the Director (Discipline) be sent to the Complainant and the Respondent including particulars or documents relied upon by the Director (Discipline), if any, during the course of formation of prima facie opinion and the Respondent be asked to submit his Written Statement in terms of the provisions of the aforesaid Rules, 2007.

4. Date(s) of written submissions/pleadings by parties:

The relevant details of filing of documents in the instant case by the parties are given below:

S.No.	Particulars	Dated
1.	Complaint in Form 'I' filed by the Complainant	15th July, 2015
2.	Written Statement filed by the Respondent	12th August, 2015
3.	Rejoinder if any	Not Filed
4.	Prima facie Opinion by Director(Discipline)	18 th November 2017
5.	Written Submissions by the Respondent after PFO	08 th August 2018
6.	Further Written Submissions by the Respondent before the Committee	19 th April 2023

5. Brief facts of the Proceedings:

5.1 The details of the hearing fixed and held/adjourned in said mater is given as under:

Particulars	Date of Meeting(s)	Status
1 st time	11 th April, 2023	Adjourned due to paucity of time
2 nd time	19 th April, 2023	Hearing concluded & decision taken

5.2 On the day of final hearing dated 19.04.2023, the Committee noted that the Respondent in person was present and appeared before it. The Secretariat apprised the Committee that notice given to the Complainant at available address, intimating date and venue of meeting had been received back undelivered with postal remark "Left".

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

5.4 The Committee asked the Respondent to make his submissions on the merits of the matter. The Respondent made written submissions dated 19th April 2023 before the Committee.

5.5 The Respondent submitted that it was his first assignment in subject Company, and he received a call from Economic Offences Wing (EOW) to participate in the investigation and then he came to know that fraud has been perpetrated by the Complainant. Further, the Respondent submitted that the Complainant died in the year 2016. The said complaint has been made only to divert the investigation running in Economic Offences Wing against the Complainant and to transfer the onus on the Respondent to provide books of accounts related to Company which were maintained and kept at Company registered office. The Respondent submitted that the books of accounts were produced during the audit by the accountant of the Company, and the Respondent had kept a photocopy of relevant documents pertaining to the audit. The Respondent added that no original documents were in his custody and a copy of

documents which were taken during the audit, has already been provided to the EOW (Economic Offences Wing) during investigation.

5.6 After detailed deliberations, and on consideration of facts of the case, various documents on record as well as oral submissions of Respondent before it, the Committee decided to conclude hearing in the instant case.

6. Findings of the Committee

The Committee noted the background of the case and gave its findings as under: -

6.1 The Committee noted that the Respondent had brought on record additional papers consisting of trial balance, ledger accounts statement of financial accounts of Assotech Ltd. (the Company concerned).

6.2 While discussing the matter, the Respondent submitted before the Committee that he was appointed as an auditor in year 2010-11, and it was his first assignment for company from 2011-12 to 2013-14, and 2013-14 was the last balance sheet signed by him for the company. The present case started when Mr. Vinod Kumar (Complainant) had done fraud with M/s Assotech Ltd., and in October 2014 he received a call from the Economic Offences Wing, Mandir Marg, New Delhi to join the investigation but matter was not disclosed to him. Later in November 2014, he had gone to Economic Offences Wing for joining the investigation and as an auditor of the Company he assisted the investigation. The Respondent then came to know that the Complainant Mr. Vinod Kumar had done something wrong with M/s. Assotech Ltd and was found guilty of repayment of the loan amount of Rs.5 crores he had taken from the Company. In December 2014 the Respondent tried to contact the Complainant, but he was untraceable, and his phone was switched off. The Respondent added that he had resigned as auditor of the Company on 20th December 2014 and thereafter he came to know that on 11th March, 2015 the Investigation agency had caught the Complainant at Indira Gandhi Airport when he tried to flew away from India.

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6.3 The Respondent in his submissions before the Committee, as regard to the charge is concerned submitted that the Director (Discipline) had found that the liability of Rs.5 crores was not reflected in the audited balance sheet. The Respondent submitted that the alleged amount had been duly reflected in the short-term borrowings which was already stated in his reply dated 8th August, 2018 which was on record. The Respondent drew attention of the Committee to the agreement between M/s Assotech Ltd. and the Complainant i.e. Mr. Vinod Kumar Gupta, signed on 15th December, 2011 which provided the details of loan taken. The Company had given Rs. 5 crore loan which was realized in its bank account of Kotak Mahindra Bank in between 15/12/2011 to 30/12/2011.

6.4 The Respondent added that he had duly reflected the said loan amount in short-term borrowing as unsecured loan in the audited balance sheet by netting off the amount which is on record.

7. The Committee noted that the only charge against the Respondent was that the balances of Debtors and Creditors as per the Balance Sheet(s) do not match with respective balances as per books of accounts of the Company. The Complainant has not pointed out single instance of said mismatch of balances of debtors and creditors. But the Director (Discipline) has held the Respondent guilty on count that Loan agreement dated 15.12.2011 between M/s Assotech Limited and the Company existed, and the former had advanced loan of Rs. 5.00 crores to the latter, but the said liability was not reflected in the Balance sheet as on 31.03.2012. It was further observed that the said liability of Rs. 5.00 crores was more than the size of the Balance sheet and turnover of the Company, and the materiality of amount required the Respondent to look into details regarding disclosure of this material entry. Further, the case is also pending in Delhi High Court against the Complainant which was filed by M/s Assotech Limited under Section 420/467/471 of IPC.

8. The Respondent in his written statement had further mentioned that he was not having the books of the Company in his possession and he issued the audit report on the basis of books of account and records produced before him by Company staff and on the basis of trial balance and bank statement produced before him and information given by the Complainant on the nature of transaction, loans and advances and

current assets and current liabilities. He further mentioned that he was presently not having any records or vouchers except photocopy of Bank statement and copies of Audit report balance sheet and Profit and loss Accounts audited by him.

9. The Respondent further submitted that he is well versed and aware of his professional duties and responsibilities and never compromised with his professional responsibilities to overrule the audit procedures and standards. As a prudent professional, he had taken the accounts and finalised his audit report under the impression that a huge loan was taken to start the Company which was required for initial funds for upcoming business of the Company.

10. The Committee noted the defence of the Respondent wherein he submitted that the present complaint is not tenable and be treated as null and void as he had already resigned from the Company as Auditor on 20.12.2014 and also filed requisite form ADT-03 dated 20.12.2014 with ROC alongwith resignation letter and instant complaint was made on 17.05.2015 after his resignation as an Auditor of the company.

11. In respect of the charge relating to wrong balance of debtors and creditors, the Committee observed that said liability of Rs. 5 crores was duly reflected in short term borrowings for financial year ending on 31st March, 2012. Further, it is not correct to state that said liability was more than the size of balance sheet of the Company as a total turnover of Balance Sheet of the Company as on 31/03/2012 was Rs. 6.13 crores and thus, said charge was not maintainable against the Respondent.

12. The Committee observed that, as submitted by the Respondent, the loan amount was duly shown and reflected in Schedule to the audited balance sheet for the year 2011-12 under the head 'Short term borrowings' amounting to Rs.4.83 crores after netting off of short-term borrowings taken during the year and advances given during the year in audited balance sheet of the company for the year 2012. The Committee noted that the additional documents produced by the Respondent in the hearing on 19.04.2023 among others contained trial balance, ledger accounts, schedule related to short-term borrowing for the FY 2011-12, which reflected the loan amount of Rs.5 crores in the credit of M/s. Assotech Ltd. and an amount of Rs.4.83

crores after netting off. Viewed in this background, it is reasonable to infer that the Respondent had no intent to wilfully conceal any material information or to avoid disclosure of any item in the financial statement of the company.

13. The Committee further observed that although the liability of Rs.5 crores in the name of M/s. Assotech Limited in particular was not reflected in the Balance Sheet as on 31.03.2012; however, the amount was covered in the Notes to Financial Statement under the head "Short Term Borrowing" as 'Others' after netting off. On an overall consideration, the Committee opined that the issue could be termed as technical lapse, and the Respondent having provided the supporting documents/details at the time of hearing and clarified the matter, the act does not amount to gross negligence falling within the ambit of professional misconduct. In view of the same, the Committee decided that the Respondent, viz. CA. Sushil Kohli, be given benefit of doubt and absolved of the charge levelled against him.

14. Conclusion

In view of the above findings stated in above paras, vis-a-vis material on record, the Committee gives its charge-wise findings as under:

Charge(s) (as per PFO)	Findings	Decision of the Committee
Para 2.1 as given above	Paras 11 to 13 as given above	NOT GUILTY - Clause (7) Part – I of Second Schedule

15. In view of the above observations, considering the submissions of the Respondent and documents on record, the Committee held the Respondent **NOT GUILTY** of Professional Misconduct falling within the meaning of Clause (7) Part – I of Second Schedule to the Chartered Accountants Act, 1949.

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16. Order

Accordingly, in terms of Rule 19 (2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee passes an Order for closure of this case against the Respondent.

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

Sd/- Sd/-
(SHRI JIWESH NANDAN, I.A.S. {RETD.}) (MS. DAKSHITA DAS, I.R.A.S.{RETD.})
GOVERNMENT NOMINEE GOVERNMENT NOMINEE

Sd/-
(CA. MANGESH P KINARE)
MEMBER

Sd/-
(CA. COTHA S SRINIVAS)
MEMBER

DATE : 10/01/2024

PLACE: New Delhi

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

मीनू गुप्ता / Meenu Gupta
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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