

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.: [PPR/118/2015/DD/96/INF/2015/DC/823/2018]

In the matter of:

CA. Mukesh Kumar Jain (M.No.080687)

M/s Jain & Anand (FRN 005491N),

Chartered Accountants

22/16, Old Rajinder Nagar,

New Delhi-110060

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 (In Person)

DATE OF FINAL HEARING: 14<sup>th</sup> September 2023

DATE OF DECISION TAKEN: 9<sup>th</sup> January 2024

PARTY PRESENT:

Respondent : CA. Mukesh Kumar Jain (In person)

Counsel of the Respondent : Mr. S.S. Sharma (In person)

*S. S. Sharma*

1. **Background of the Case:**

State Bank of Bikaner & Jaipur, the informant Bank vide its letter dated 6<sup>th</sup> January 2014 submitted that the Respondent Firm had audited the Financial Statements of Orient Clothing Co. Pvt. Ltd. (hereinafter referred to as "Company") for the F.Y. 2009-10 and 2010-11. The Company had been granted credit facilities under a consortium banking arrangement with the Informant Bank (State Bank of Jaipur & Bikaner Bank) and the State Bank of India amounting to Rs.119.60 crores and as on 28<sup>th</sup> February, 2011 the amount outstanding was Rs.106.10 crores. The Company was subjected to stock audit for the period 29.03.2011 to 07.05.2011 and Techno Economic Viability study ((hereinafter referred to as "TEV Study") by the informant bank. Based on the findings of above said Stock Audit and TEV Study, the Informant bank observed that the Respondent being the statutory auditor of the Company for the F.Y.2009-10 and 2010-11 had not brought on record the correct affairs of the Company and viewed that had the auditor pointed out the true position of the Company, he could have alerted bank and might have impacted the bank's credit decisions and hence, the Informant bank submitted the details of the matter to the Directorate.

2. **Charges in brief:**

2.1 It was alleged that the Respondent failed to disclose the fact that the debit note of Rs. 16.79 crores raised by the Company during F.Y.2009-10 on its suppliers was not disclosed in its Financial Statements for the year ended as at 31-03-2010. It was further stated that out of such debit note Rs. 2.14 crore could be settled in the F.Y. 2010-11 and the remaining unsettled amount of Rs.14.65 crores was reversed and resulted into losses in the Financials Statement of the Company as on 31-03-2011.

3. **The relevant issues discussed in the Prima facie opinion dated 23<sup>rd</sup> November 2017 formulated by the Director (Discipline) in the matter in brief, are given below:**

3.1 From the records submitted, it was noted that as per schedule annexed to and forming part of Balance Sheet as at 31.03.2011, the Financial Statements which were audited by the Respondent, inter-alia disclosed as under:



"12 The subject Company, during the year ended 31<sup>st</sup> March 2010 raised debit notes of Rs.1,678.65 lakhs on its various suppliers on account of quality, rejection and other issues. The subject Company despite its best efforts could settle only Rs.213.79 lakhs of these debit notes during the year ended 31<sup>st</sup> March 2011 and had to issue credit notes for the balance unsettled amount of Rs.1,464.86 lakhs which have been booked under the head "Cost of Raw Materials & Stores Consumed" in the Profit and Loss Account". Thus, it was viewed that the Respondent had failed to exercise the required due diligence under the circumstances.

- 3.2** When the debit notes were reversed in subsequent financial year, it indicated that there were circumstances as on the Balance Sheet date that the counter party would not accept those debit notes. Moreover, it was noted that during the Financial Year 2009-10, raw material consumed was reported at Rs. 13.19 crores, whereas debit notes raised were Rs. 16.79 Crore hence, debit notes constituted a significant amount of purchases and not mentioning such situation by way of notes to accounts led to non-disclosing the material information.
- 3.3** The Director (Discipline) in his Prima Facie Opinion dated 23<sup>rd</sup> November 2017 has held that the Respondent was prima facie Guilty of Professional Misconduct falling within the meaning of Clauses (6) and (7) of Part – I of the Second Schedule to the Chartered Accountants Act, 1949. The said Clauses of the Schedule to the Act, state as under:

Clause (6) of Part I of the Second Schedule:

*"A chartered accountant in practice shall be deemed to be guilty of professional misconduct if he—  
Fails to report a material misstatement known to him  
to appear in a financial statement with which he is  
concerned in a professional capacity".*

Clause (7) of Part I of the Second Schedule:

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

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

3.4 The Prima facie opinion formed by the Director (Discipline) was considered by the Disciplinary Committee at its meeting held on 20<sup>th</sup> April 2018. 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 was GUILTY of Professional Misconduct falling within the meaning of Clause (6) and (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 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 the filing of documents in the instant case by the parties are given below:

| S. No. | Particulars   | Dated   |
|--------|---|---|
| 1.     | Date of 'Information Letter'                                  | 23 <sup>rd</sup> September , 2015                               |
| 2.     | Date of Written Statement filed by the Respondent             | 14 <sup>th</sup> January, 2016                                  |
| 3.     | Date of Prima facie Opinion formed by Director (Discipline)   | 23 <sup>rd</sup> November, 2017                                 |
| 4.     | Date of Written Submissions filed by the Respondent after PFO | 30 <sup>th</sup> August 2018<br>26 <sup>th</sup> September 2023 |

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**5. Written Submissions filed by the Respondent after PFO**

The Respondent vide his written submissions dated 30<sup>th</sup> August, 2018 and 26<sup>th</sup> September, 2023 interalia submitted as under:

- 5.1** That, the Bank had issued no dues certificate and had also released all the securities of the Company.
- 5.2** That, the duty of the auditor was to verify whether the debit notes were issued as per the quality control procedures prescribed in the Company and properly accounted in the respective accounts and the Respondent had duly discharged his duty by making such enquires as required by the auditing procedures.
- 5.3** That, he had no indication of unsettlement of Rs.14.64 crores at the time of signing of Balance Sheet for the year ending on 31.03.2010 for which company had to issue credit notes in the month of December 2010.
- 5.4** That, raising debit and credit notes was a regular practice in every year in the ordinary course of business and during the year ending 31.03.2010, debit notes were issued but these were reversed in the next year because material supplied by the parties had changed the shape/character from fabric (raw material) to WIP. The orders worth Rs.36.00 Crores were cancelled in addition to rejection of material of Rs.4.76 crores which was on account of quality issue brought to the notice of company by the clients/customers. The Company having local turnover of Rs.1.16 crores being negligible as the total turnover mostly includes exports to various countries. The material manufactured for exports was not saleable in domestic market.
- 5.5** That, while preparing the provisional Balance Sheet on 14-02-2011 for the period 9 months ending on 31.12.2010, it was decided to reverse the debit notes issued in the year 2010-11. Thus, the matter of debit notes never existed either at the year ended on 31.3.2010 or till the date of signing of such Balance Sheet on 20.09.2010 in terms of the requirement of AS-4, Events Occurring after the Balance Sheet date.

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5.6 That, the Bank issued a letter dated 12.10.2015 stating that the company had paid the entire settled amount and the case was withdrawn and 'No dues' letter to the Company was issued by the Bank.

5.7 That, the Stock auditor did not find any difference in the qualitative details of the stock as supplied by the company to the Bank.

5.8 That, as stated in the Tecno-Economic Viability Report {para 4.1 (d),(e), (f), (g), (h)} the following factors were accumulated and showed as loss in the provisional balance sheet of the Company for the 9 months period ended on 31-12-2010 and the same factors were discussed by the Stock Auditor too in his Report under Chapter 4: Reasons for Present Status:-

- Orders worth Rs. 4.76 crores was rejected due to late delivery.
- The Company paid Rs. 3.29 crores as airfreight for late delivery.
- Rs1.82 crore was discounted by buyers against various types of claims against sales.
- Orders amounting to Rs. 36 crores (FOB) taken from new buyers were cancelled. This has resulted to accumulation of huge WIP stocks which has almost negligible value. The loss on this account is reported about 26 crores.
- As per Company's admission raw material (Rs 4.28 crores) and WIP (Rs 58 crores) stock are slow/non- moving and obsolete.

5.9 The Respondent has also obtained detailed management representation which was duly signed by the Managing Director of the Company dated 20.09.2010 having details of the Financial Statements as on 31.03.2010.

**6. Brief facts of the Proceedings:**

6.1 The details of the hearing(s) fixed and held/adjourned in said matter is given as under:

| Particulars          | Date of meeting(s)               | Status                                  |
|----------------------|----------------------------------|---|
| 1 <sup>st</sup> time | 22 <sup>nd</sup> May, 2023       | Part heard and adjourned.               |
| 2 <sup>nd</sup> time | 14 <sup>th</sup> September, 2023 | Hearing Concluded and Judgment Reserved |
| 3 <sup>rd</sup> time | 09 <sup>th</sup> January 2024    | Decision taken                          |

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6.2 On the day of first hearing on 22<sup>nd</sup> May 2023, the Committee noted that the Respondent was present for the hearing through Video Conferencing mode and his Counsel was present physically. 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 as contained in Para 2 above, were also read out and on the same the Respondent replied that he is aware about the charges but pleaded 'Not Guilty' on the charges levelled against him. Thereafter, in view of Rule 18(9) of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee adjourned the case to a later date and accordingly, the matter was part heard and adjourned.

6.3 On the day of final hearing on 14<sup>th</sup> September 2023, the Committee noted that the Respondent along with the Counsel were present physically. Thereafter, the Committee asked the Respondent's Counsel to present his final submissions. The Counsel for the Respondent submitted that vide e-mail/letter dated 18.05.2023 and 13.09.2023, he had requested to examine Mr. Ravi Dhingra, ex-Managing Director of M/s Orient Clothing Co. Pvt. Ltd. as witness. The Committee noted that the Counsel did not provide the complete address of this person to be examined as a witness and his relevance in respect of the subject case. The Committee, on consideration, was of the view that the said request of summoning the witness was clearly made for the purpose of delay and vexation therefore, be refused in view the provisions of Rule 18(14) of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. The Counsel for the Respondent inter alia submitted the following:

- (i) That, in the Prima Facie Opinion dated 23<sup>rd</sup> November 2017, the amount of raw material consumed was wrongly mentioned as Rs. 13 crores instead of Rs.131 crores as stated in the Balance Sheet of the Company.
- (ii) That, some orders were rejected due to late delivery and there was nothing suspicious at Balance Sheet date that debit notes would not be realized.

After detailed deliberations, and on consideration of the facts of the case, various documents / material on record as well as the oral and written

submissions, the Committee concluded the hearing in the instant case and judgement was reserved. Further, the Committee directed the Counsel for the Respondent to submit his further written submissions in the matter, if any within 15 days to decide the matter accordingly.

6.4 Finally, on 9th January 2024, the Committee noted that hearing in the above case was concluded on 14th September 2023 and the judgement was reserved. The Committee also noted the further written submissions dated 26.09.2023 of the Respondent which he submitted in compliance with the directions of the Committee given in its last hearing on 14.09.2023 to submit the same in the matter. The Committee after considering the documents/material and information available on record and considering the oral and written submissions made by the Respondent and the Complainant at the time of hearing(s) in instant case, passed its judgement.

7. **Findings of the Committee:**

7.1 The Committee noted the charge against the Respondent that he had not reported the fact that the Company had failed to disclose in its financials about the raising of debit note of Rs.16.79 crores on its suppliers. The Committee observed that as pointed out by the Respondent, the amount of raw material accounted for in Company's Profit & Loss Account for the year ended 31-03-2010 was Rs.131.92 Crores as against Rs.13.19 crores mentioned inadvertently in the PFO. Therefore the debit note amount was not that significant as compared to the material consumed, as envisaged in PFO.

7.2 The Committee further observed that the Stock auditor, appointed by the Informant bank in para 2(a) of Chapter-VIII of its Stock Audit Report, had reported that the debit notes raised on suppliers during the year 2009-10 were mainly due to quality issues as assessed by the quality control department/purchase department of the Company. Thus, the Committee noted that the debit notes are raised by the Company as its normal business practice.

7.3 The Committee further on perusal of Credit Note Register for the period 01-04-2010 to 31-03-2011 brought on record by the Respondent observed that the credit notes of Rs.14.64 crores were reversed in the month of December, 2010 which was subsequent to the signing of audited Financial

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Statements for the year ended 31-03-2010, on 20-09-2010. Further, the Committee also observed that there was nothing on record to show that the Respondent on the date of signing of the Audit Report on 20-09-2010, had idea that the reversal of such debit notes would take place subsequently. In view of the above, the Committee opined that no circumstances were existing on the date of signing of Audit Report for the year ended on 31-03-2010 which warranted the Respondent to report the Debit Notes to the tune of Rs.16.79 crores raised during the year 2009-10.

- 7.4 The Committee further examined the audited Financial Statements of the Company for the year ended 31-03-2010. On perusal, it was observed that in Note-6 to the Notes to Accounts of such Financials, the balances of some of the Creditors were stated as subject to confirmation. The said note is reproduced below:

**Note-6**

*"6. Balances of some of the sundry debtors, sundry creditors, Loans and Advances and other personal accounts are subject to reconciliation/confirmation from the respective parties. The management does not expect to have any material differences affecting the financial statement for the year."*

- 7.5 The Committee in respect of above 'Note' observed that the Respondent had duly qualified his Audit Report as below:

*"In our opinion and to the best of our information and according to the explanations given to us the Balance Sheet, Profit & Loss Account and Cash Flow Statement, read with notes as per Schedule '3' **subject to note 06 (as per schedule 3.00) regarding unconfirmed balances give the information required by the Companies Act, 1956, in the manner so required and give a true and fair view in conformity with the accounting principles generally accepted in India.**"*

- 7.6 From the above disclosures given in the Notes to Accounts along with the qualification thereon of the Respondent in his Audit Report, the Committee viewed that upon raising the debit notes on its creditors during 2009-10, the Company was required to obtain the confirmation from its creditor so as to show the correct state of affairs of the Company in its Balance sheet in the

form of Creditors balances as well as in its Profit and Loss account in the form of accounting of cost of raw material. The Company however, failed to obtain such confirmation and disclosed the fact in its *Notes to Accounts* and hence, the Respondent while giving his opinion on the true and fair view of the Financials Statements had duly given his qualification in respect of such 'Note'.

7.7 The Committee noted the Informant bank's letter dated 12-10-2015 wherein it was informed to the Respondent that in pursuance of compromise process, the entire loan amount was settled by the Company to the lending banks including Informant bank and all securities were subsequently released by the bank. The Committee observed that 'No dues Certificate' was issued by the Bank against full and final settlement made by the Company, including the case filed by the Bank to Debt Recovery Tribunal was also withdrawn; which indicated that the cause of action based on which the Informant bank referred the matter to ICAI for action against the Respondent stood resolved between the parties.

7.8 In the light of foregoing discussion, the question for determination by the Committee is whether it was appropriate on the part of the Respondent not to disclose information in the nature of debit notes in the financial statements for the F.Y. 2009-10 which constituted a substantial amount of purchases. The contention of the Respondent is that such disclosure of debit notes in the financial statements for FY 2009-10 was impossible as on the date of signing of financial statements, as no such situation existed necessitating him to make the disclosure; and in support of the argument, he has explained various factors and circumstances that led to such a conclusion.

7.9 On an overall consideration of the matter, the Committee was of the view that it cannot be said that the Respondent was not right in non reporting debit notes in the financial statements for the year ended 31-03-2010 for the reason that obvious explanation given for the circumstances then prevailing or conditions that existed till the date of signing of such financial statements, which had been considered as unwarranted by the Respondent, appeared to be plausible; and the same be accepted.

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7.10 Thus, the Committee held the Respondent **NOT GUILTY** of Professional Misconduct falling within the meaning of Clause (6) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

8. **Conclusion:**

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

| Charges<br>(as per<br>PFO) | Findings                           | Decision of the Committee  |
|----------------------------|------------------------------------|--|
| Para 2.1 as<br>given above | Para 7.1 to 7.10 as<br>given above | <b>NOT GUILTY</b> – Clause (6) and (7) of Part I<br>of Second Schedule |

8.1 In view of the above observations, considering the oral and written submissions of the Respondent and material on record, the Committee held the Respondent **NOT GUILTY** of Professional Misconduct falling within the meaning of Clause (6) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

9. **Order**

Accordingly, in terms of Rule 19(2) of the Chartered Accountants (Procedure of Investigations of Professional 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/-

[SHRI JIWESH NANDAN, IAS, (Retd)]  
GOVERNMENT NOMINEE

Sd/-

(CA. MANGESH P KINARE)  
MEMBER

DATE: 05/02/2024  
PLACE: New Delhi

सही प्रतिलिपि होने के लिए प्रमाणित  
Certified to be true copy  
*Charan Singh*  
वरुण सिंह / Charan Singh  
कार्यकारी अधिकारी / Executive Officer  
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