

CONFIDENTIAL

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

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

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

File No.: [PPR/P/24/2018/DD/176/INF/2018/DC/1379/2020]

In the matter of:

CA. Devender Saini (M. No. 503442), in Re:

1815/57, 3rd Floor,
Bhagirath Palace,
Chandni Chowk,
DELHI – 110006.

...Respondent

MEMBERS PRESENT:

CA. Ranjeet Kumar Agarwal, Presiding Officer (In person)

Shri Jiresh Nandan, I.A.S (Retd.), Govt. Nominee (In person)

Ms. Dakshita Das, I.R.A.S (Retd.), Govt. Nominee (In person)

CA. Mangesh P Kinare, Member (In person)

CA. Cotha S Srinivas, Member (Through VC)

DATE OF FINAL HEARING : 16th October 2023

PARTIES PRESENT:

Respondent : CA. Devender Saini (Through VC)

Counsel for Respondent : CA. C. V. Sajan (Through VC)

1. Background of the Case:

CBI, BS & FC, New Delhi had registered case no. RCBD12016E0001 on 19th March 2018 on the basis of Complaint made by Shri A. K. Das, DGM, Canara Bank, New Delhi on the allegations that M/s. Occasion Silver Private Limited, (hereinafter

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referred as "OSPL") dealing in wholesale and retail trading of Silver Jewellery/ Articles, Diamond, Gold / Imitation Jewellery etc., has cheated Canara Bank to the tune of INR 68.38 Crores plus interest with effect from 29th September 2014 through its accounts at 3-F, Kamla Nagar Branch, New Delhi. The Respondent has given a certificate to the DCB Bank as required for opening of current account to M/s. Ryan International (hereinafter referred as "the Firm") certifying that Mr. Vikas Jain is the proprietor of the Firm and the said Firm is in the business of trading of Timber, Timber Products & Plant since 3rd August 2012. However, the Informant has alleged that the said firm was not in existence and hence the Respondent has issued a false certificate to the DCB Bank.

1. Charges in brief: -

The Respondent had issued false certificate to the firm for opening of the current account with DCB Bank as required in the KYC form, however, the Firm did not exist during the relevant period, when the Respondent had issued the said certificate and he had also not visited the address of the Firm before or after the issuance of said certificate.

2. The relevant issues discussed in the prima facie opinion dated 22nd July 2020 by Director (Discipline) in the matter, in brief, are given below: -

3.1 The subject certificate was issued to DCB Bank and said bank had also carried out the address verification of the Firm i.e. M/s. Ryan International from outside agency named Veeraraghavan & Co on 16th August 2012. The said agency in its report had confirmed the address of the Firm and had given positive report in this context.

3.2 The Respondent had issued certificates based on the evidence produced before him and he has duly applied his professional judgement in certifying the facts of the Firm, while Informant on the other side has failed to provide any concrete evidence which could have corroborated the allegation of Firm's non-existence and

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also failed to substantiate the fact as how the certificate issued by the Respondent in case of M/s. Ryan International for opening a Bank account with DCB Bank was in any manner linked to the alleged fraud committed on Canara Bank by the promoters of OSPL.

3.3 In view of above, the Director (Discipline) in Prima-Facie Opinion dated 22nd July, 2020 in terms of Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 after considering the information letter, written statement of the Respondent and additional documents on record, had held the Respondent prima facie **NOT GUILTY** of Professional and Other misconduct falling within the meaning of Item (6) and (7) of Part I of the Second Schedule and other misconduct falling within the meaning of Item (2) of Part IV of the First Schedule to Chartered Accountants Act, 1949. The said items of the Schedules to the Act, states as under:

Item (2) Part IV of First Schedule:

A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he —

(2) in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work.

Item (6) of Part I of Second schedule:

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

(6) fails to report a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity;

Item (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;

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3.4 The Prima Facie Opinion formed by Director (Discipline) was considered by the Board of Discipline at its meeting held on 1st September 2020. The Board of Discipline on consideration of the same noted that the Respondent had issued the alleged certificate dated 7th August 2012 primarily on the basis of the Registration Certificate of Establishment dated 3rd August 2012 issued by the Department of labour, Government of NCT of Delhi. In the certificate it had been clearly disclaimed that the certificate is based on the information provided by the occupier/employer and has not been verified. In the certificate issued by the Respondent, he had clearly stated that *"the aforesaid facts have been verified by me"*. However, the basis on which the certificate had been issued by him had not been specified in the certificate. Also, the cheque issued by the alleged proprietor of the firm in the name of the proprietorship firm and referred to by the Respondent is dated 6th August 2012 which is subsequent to the issue of the certificate by the Respondent as regard existence of the firm. Further, the report on verification of Correspondence Address had been issued on 16th August 2012 i.e. subsequent to the issue of the certificate by the Respondent as regard existence of the firm. Thus, the Board was of the view that due diligence was not exercised by the Respondent while issuing the certificate and his conduct needs to be examined through further enquiry. Accordingly, the Board did not concur with the reasons given against the charge(s) and did not agree with the prima facie opinion of the Director (Discipline) that the Respondent is NOT GUILTY of Professional and Other Misconduct falling within the meaning of Items (6) and (7) of Part I of Second Schedule and Item (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act and referred the case to the Disciplinary Committee to proceed under Chapter V of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) 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:

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| S.No. | Particulars | Dated |
|-------|---|------------------------------|
| 1. | Date of Information Letter | 09 th July, 2018 |
| 2. | Written Statement filed by the Respondent | 30 th July 2018 |
| 3. | Prima facie Opinion by Director (Discipline) | 22 nd July, 2020 |
| 4. | Written Submissions by the Respondent after PFO | 01 st August 2023 |

5. Further written submissions filed by the Respondent:

The Respondent vide letter dated 01st August, 2023 made submissions, which are summarized as under:

5.1 The Respondent has submitted that he never had any connection or association with the Company, M/s. Occasion Silver Private Ltd. nor had any knowledge about this Company. The opening of a current account by a firm in a bank cannot constitute any kind of wrongdoing, abuse of the law, or violation of the law. In case of a partnership business or Company, the business entity has a separate document of identity. However, in case of a proprietorship/firm, no such documents are possible except a declaration by the proprietor himself and his PAN number. There is no legal requirement for a registered office of a proprietorship, as in the case of a partnership firm, LLP, or a Company. Therefore, the address used by a proprietorship for opening of its bank account has very limited relevance or significance.

5.2 He had issued certificate to the Firm for opening of current account only to Branch Manager, DCB Bank, CP, New Delhi and said certificate was issued after due verification of documents produced before him. There is no clarity in the Information letter about the fact as to how a certificate issued by him in the case of Firm for opening a bank account with DCB Bank was in any manner, linked to the alleged fraud committed on Canara Bank by the promoters of OSPL. He was in no way connected with OSPL nor had done any assignment for its promoters. Further,



regarding non-visiting at the address of the Firm by the Respondent, he stated that it was the duty of the Bank to ensure correctness of address of the Firm.

6. Brief facts of the proceedings

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

| Particulars | Date of Meeting | Status |
|----------------------|-------------------------------|---|
| 1 st time | 22 nd May 2023 | Fixed and adjourned at the request of the Respondent. |
| 2 nd time | 17 th July 2023 | Part heard and adjourned. |
| 3 rd time | 16 th October 2023 | Hearing Concluded and Decision taken |

6.1 On the day of first hearing of the case on 22nd May 2023, the Committee noted that the Respondent vide email dated 17th May 2023 had sought adjournment on the ground of personal reasons. The Committee acceded to the request of the Respondent and adjourned the case to a later date.

6.2 On the day of hearing on 17th July 2023, the Committee noted that the Respondent along with Counsel were present through video conferencing. The Respondent was put on oath. Thereafter, the Committee enquired from the Respondent as to whether he was aware of the charges and charges against the Respondent were read out. On the same the Respondent replied that he is aware about the charges but pleaded Not Guilty on the charges levelled against him. The Counsel for the Respondent sought 15 days' time to make written submissions in the matter. The Committee acceded to his request and adjourned the case.

6.3 On the day of final hearing of the matter on 16th October 2023, the Respondent along with the Counsel were present through Video conferencing mode. Thereafter, they gave a declaration that there was nobody present except them from where they were appearing and that they would neither record nor store the proceedings of the Committee in any form.

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6.4 The Committee noted that the case was part heard and asked the Counsel for the Respondent to make his final submissions. The Counsel for the Respondent submitted that the Respondent had been held prima facie Not Guilty by Director (Discipline), however, Board of Discipline disagreeing with opinion of Director (Discipline) was of the view that due diligence was not exercised by the Respondent while issuing the certificate and his conduct needs to be examined through further enquiry.

6.5 The Respondent in his submissions has submitted that he had issued certificate to the firm for opening of current account only to Branch Manager, DCB Bank, CP, New Delhi and said certificate was issued after due verification of documents produced before him. There is no clarity in the Information letter about the fact that how a certificate issued by him in case of firm for opening a bank account with DCB Bank was in any manner linked to the alleged fraud committed on Canara Bank by the promoters of OSPL. He was in no way connected with OSPL nor done any job for its promoters.

6.6 The Counsel submitted that the Respondent was nowhere involved in the fraud committed by M/s. Occasion Silver Private Limited in Canara Bank. The Investigation of CBI nowhere proved the role of the Respondent and involvement of firm to whom said certificate was issued. He submitted that the fraud had happened in Canara bank at the behest of Directors of M/s. Occasion Silver Private Limited and impugned certificate was issued by Respondent solely for opening of bank account in DCB Bank. He further submitted that said entity already had a bank account with Axis Bank and a cheque of Rs. 25,000/- was issued for opening of account in the DCB Bank. The Respondent stated that it was not part of his assignment to visit at the address of the firm but it was the duty of the Bank to ensure correctness of address of the firm. DCB Bank had also applied due diligence in relation to KYC by conducting address verification of the firm and had given positive report.

6.7 After detailed deliberations, and on consideration of the facts of the case, various documents on record as well as oral and written submissions made by the

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Counsel for the Respondent before it, the Committee concluded the hearing in the matter.

7 Findings of the Committee:

The Committee noted the background of the case as well as oral and written submissions made by the Respondent, documents/material on record and gives its findings as under:

7.1 The Committee noted that an allegation against the Respondent was that he had issued a certificate to the firm for the opening of a current account with DCB Bank, which was not in existence. In this regard, the Committee noted that it is an admitted fact that the Respondent had issued certificate to Firm for opening of Current Account with the DCB Bank on the basis of documents produced before him i.e. Copy of PAN Card of the Proprietor (Mr Vikas Jain), Copy of Registration Certificate of Establishment along with a copy of cheque dated 06th August 2012 of INR 25,000/- issued by the Proprietor of Firm to DCB Bank from his Axis Bank Account.

7.2 It is further observed by the Committee that the DCB Bank had also conducted the address verification of the Firm, i.e., M/s. Ryan International from outside agency named Veeraraghavan & Co on 16th August 2012 and agency mentioned in its report gave the verdict of address confirmation of the Firm as positive.

7.3 In view of these facts, the Committee observed that the Respondent had issued certificates based on the evidence produced before him and he has duly applied his professional judgement in certifying the facts of the Firm. The Informant on the other side has failed to provide any concrete evidence which could have corroborated the said allegation of Firm's non-existence. He failed to substantiate the fact as to how the certificate issued by the Respondent in case of firm for opening a

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Bank account with DCB Bank was in any manner linked to the alleged fraud committed on Canara Bank by the promoters of OSPL.

7.4 The Committee noted the RBI Master Circular No. RBI/2015-16/42 dated 1st July 2015, which provided for KYC Norms for proprietary concerns read as under: -

“For proprietary concerns, any two of the following documents in the name of the proprietary concern are required to be submitted:

(a) Registration certificate

(b) Certificate/licence issued by the municipal authorities under Shop and Establishment Act.

(c) Sales and income tax returns.

(d) CST/VAT certificate.

(e) Certificate/registration document issued by Sales Tax/Service Tax/Professional Tax authorities.

(f) Licence/certificate of practice issued in the name of the proprietary concern by any professional body incorporated under a statute.

(g) Complete Income Tax Return (not just the acknowledgement) in the name of the sole proprietor where the firm's income is reflected, duly authenticated/acknowledged by the Income Tax authorities.

(h) Utility bills such as electricity, water, and landline telephone bills.”

7.5 In view of the above circular of RBI, the Committee was of the view that the certificate/License issued by Municipal authorities under the Shop and Establishment Act, 1954 is to be considered as a valid document for opening of account of firm. It was one of the documents based on which the Respondent had given his certification and also the said certificate was issued by the Respondent only for the limited purpose of opening of current account of the Firm with DCB Bank.

7.6 In view of above, the Committee was of the opinion that the Certificate/License issued by Municipal Authorities under the Shop and Establishment Act is a valid and acceptable document for opening of bank account

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as per norms of the RBI. The Committee was further of the opinion that the Informant could not corroborate with documentary evidences that the Firm to whom certificate was issued by the Respondent for opening bank account was involved in the fraud committed on Canara Bank. Moreover, the DCB Bank has also carried out address verification apart from the certificate of the Respondent and received positive confirmation on address of the firm. These are crucial evidences on record to prove the credentials of the Firm. In view of above facts, it cannot be construed that the Respondent has not exercised due diligence while issuing the alleged certificate to the firm. .

7.7 On the basis of above, the Committee was of the opinion that charge pointed out at para no. 02 above, is not maintainable against the Respondent. Accordingly, the Respondent was held **NOT GUILTY** of Professional and Other Misconduct falling within the meaning of Item (2) of Part IV of First Schedule and Items (6) & (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

8. Conclusion:

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

| Charges (as per PFO) | Findings | Decision of the Committee |
|-------------------------|---------------------------|--|
| Para 2 as above | Paras 7.1 to 7.7 as above | NOT GUILTY - Item (2) of Part IV of First Schedule and Items (6) & (7) of Part I of Second Schedule |

9. 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 and Other Misconduct falling within the meaning of Item (2) of Part IV of First Schedule and Items (6) & (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

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10. 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.

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

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

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

Sd/-
(CA. MANGESH P KINARE)
MEMBER

Sd/-
(CA. COTHA S SRINIVAS)
MEMBER

DATE: 05.02.2024
PLACE: NEW DELHI

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy
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भारतीय सनयी लेखाकार संस्थान
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