

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/175/INF/2018/DC/1380/2020

In the matter of:

CA. Anju Gupta (M. No. 507300), Delhi in Re:

Office No. 101,
F-6, Lotus Tower,
Vijay Block, Laxmi Nagar,
Delhi- 110 092

...Respondent

MEMBERS PRESENT:

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

Shri Jiwesh 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 (In person)

DATE OF FINAL HEARING: 25th October 2023

PARTIES PRESENT:

Respondent : CA. Anju Gupta (In person)

Counsel for Respondent : Advocate S. S. Sharma (In person)

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 referred to as "OSPL") dealing in wholesale and retail trading of Silver Jewellery/ Articles, Diamond, Gold / Imitation Jewellery etc., had cheated Canara Bank to the

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tune of INR 68.38 Crores plus interest with effect from dated 29th September, 2014 through its accounts at 3-F, Kamla Nagar Branch, New Delhi and on investigation, it was found that OSPL had rotated the funds through Non-existed parties.

2. Charges in brief: -

The Respondent had issued certificates in respect of following proprietorship/ concerns for opening of current account with DCB bank, Chandni Chowk, New Delhi, which were found to be non-existent during investigation by the Informant Department for the relevant period.

Sr No	Name of the Concern	Proprietor	Nature of Business	Date of Certificate
1.	K.P. Enterprises	Mr. Sourabh Jain	Builder & Construction hardware	25.03.2014
2.	Shree Krishna Enterprises	Mr. Kailash Ram	Metal & Alloys	02.04.2014
3.	Komal Enterprises	Mr. Arun Kumar Jain	Grain Merchant	02.04.2014
4.	Shri Shyam Enterprises	Mr. Sanjay Kumar	Grain Merchant	07.10.2013
5.	Palak Enterprises	Mr. Ramesh Chand	Hardware Store	02.04.2017
6.	Ganesh Enterprises	Mr. Surya Kant Jain	Rice Trading	11.04.2014
7.	Laxmi Fabricator	Mr. Avinash Gupta	Fabric Trading	11.04.2014

3. The relevant issues discussed in the Prima facie opinion dated 6th July 2020 by Director (Discipline) in the matter in brief are given below: -

3.1 While opening of current accounts of said Firms, the DCB Bank has also applied due diligence in relation to KYC norms by conducting the verification of profile of the proprietors of all the Firms, i.e., M/s. K.P. Enterprises, M/s. Shree Krishna Enterprises, M/s. Komal Enterprises, M/s. Shri Shyam Enterprises, M/s. Palak Enterprises, M/s. Ganesh Enterprises and M/s. Laxmi Fabricator (hereinafter referred as "**the Firms**") and the reports for all the Firms in Format of 'Customer Information and Due Diligence (CIDD) form' is available on record, wherein it has

been affirmed by the Bank Officials of DCB Bank that proper due diligence has been carried out as regard the profile of the prospective customers to their satisfaction.

3.2 The Respondent had issued certificates based on the evidence produced before her and she has duly applied her professional judgement in certifying the facts of the Firms while Informant on the other hand has failed to provide any concrete evidence which could have corroborated the said allegation of Firm's non-existence and also failed to substantiate the fact as how the certificates issued by the Respondent in case of various firms in any manner linked to alleged fraud committed on Canara Bank by the promoters of OSPL.

3.3 In view of above, Director (Discipline) in his prima facie opinion dated 6th 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 information on record, had held the Respondent prima facie **NOT GUILTY** of Professional and Other misconduct falling within the meaning of Item (7) of Part I of the Second Schedule and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949. The said items to 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 (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;”

3.4 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 seven alleged certificates primarily on the basis of the Registration Certificate of Establishment issued by the Department of labour, Government of NCT of Delhi in which 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 certificates issued by the Respondent, he had clearly stated "*the aforesaid facts have been verified by me*". Thus, the Board was of the view that due diligence was not exercised by the Respondent while issuing the said certificates 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 accordingly, 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 Item (7) of Part I of the Second Schedule and Item (2) of Part IV of the 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:

S.No.	Particulars	Dated
1.	Date of Information	9 th July 2018
2.	Written Statement filed by the Respondent	16 th August 2018
3.	Prima facie Opinion by Director (Discipline)	6 th July 2020
4.	Written Submissions by the Respondent after PFO	30 th April 2021

5. Written submissions filed by the Respondent:

The Respondent vide letter dated 30th April, 2021 made submissions, which are summarized as under:

5.1 The Respondent, in her additional submissions dated 30th April 2021 has submitted that the certificates issued were based on the evidence produced before her and she had duly applied her professional judgement in certifying the credentials of the Firms. The certificate issued by her in case of Firms were only for opening of Bank accounts with DCB Bank.

5.2 The Respondent in her submissions has submitted that she had issued certificates to the Firms for opening of current account only to Branch Manager, DCB Bank, Chandni Chowk, New Delhi and these certificates were issued after being verified to her satisfaction regarding place of business and original documents produced before her. The Respondent had produced Copies of PAN Cards of the proprietors of the Firms and certificate/License issued by Municipal authorities under the Shop and Establishment Act to the Firms to substantiate her claim. Moreover, she has brought on record copies of cheques issued by the Proprietors of Firms to DCB Bank from their Bank accounts to establish that said Firms already had their banks accounts with other banks.

5.3 The Respondent further submitted that while opening of current accounts of Firms, the DCB Bank has also applied due diligence in relation to KYC norms by conducting the verification of profiles of the proprietors of all the Firms, wherein it has been affirmed by the Bank Officials of DCB bank that proper due diligence has been carried out as regard the profiles of the prospective customers to their satisfaction. The certificates issued by her were based on documents produced before her which were cogent, genuine and were acceptable as per the RBI norms.

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

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

Particulars	Date of Meeting	Status
1 st time	22 nd May 2023	Part heard and adjourned.
2 nd time	25 th October 2023	Hearing concluded and decision taken.

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6.2 On the day of first hearing of the case on 22nd May 2023, the Committee noted that the Respondent along-with Counsel were present physically and appeared before it. The Respondent was put on oath. Thereafter, the Committee enquired from the Respondent as to whether she 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 her. Thereafter, the Committee adjourned the case to a later date. With this, the case was part heard and adjourned.

6.3 On the day of final hearing of the matter on 25th October 2023, the Respondent along with the Counsel were present in person(s) and appeared before it. 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 certificates and her conduct needs to be examined through further enquiry.

6.4 The Counsel submitted that the Respondent was nowhere concern regarding fraud committed by M/s. Occasion Silver Private Limited in Canara Bank. Investigation of CBI, nowhere prove the role of the Respondent and involvement of Firms to whom said certificates were issued. He submitted that it was strange that fraud took place in Canara bank and certificates were issued to DCB Bank for opening of bank account only. He further submitted that said Firms had already have bank account with axis bank and other banks and cheques of Rs. 25,000/- had also been issued for the opening of the bank accounts. Moreover, DCB bank had also applied due diligence in relation to KYC by conducting address verification of the Firms.

6.5 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 Counsel for the Respondent before it, the Committee concluded the hearing in the instant 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 observed that the Respondent had issued certificates based on the evidences produced before her and she has duly applied her professional judgement in certifying the facts of the Firm while Informant on the other hand has failed to provide any concrete evidence which could have corroborated the said allegation of Firm's non-existence and also failed to substantiate the fact as to how the certificates issued by the Respondent in case of Firms for opening Bank accounts with DCB Bank were in any manner linked to the alleged fraud committed on Canara Bank by the promoters of OSPL.

7.2 On the perusal of RBI Master Circular No. RBI/2015-16/42 dated 1st July, 2015, that provides for KYC Norms for proprietary concerns 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."

7.3 In view of the above circular of the RBI, the Committee was of the view that the certificate/License issued by Municipal authorities under the Shop and Establishment Act is to be considered as a valid document for opening of account of Firms which was one of the document based on which the Respondent had given her certification and also the said certificates were issued by the Respondent only for the purpose of opening of current account of the Firms with DCB Bank.

7.4 Moreover, the Committee observed that while opening the current account of Firms, the officials of DCB Bank had carried out independent address verification of the Firms and they had given their reports stating, *"I confirm that I have carried out proper due diligence and I am satisfied with the profile of the prospective customer"* which cannot be ignored.

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

7.6 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 held **NOT GUILTY** of Professional and Other Misconduct falling within the meaning of Item (2) Part IV of First Schedule and Item (7) Part I of the Second Schedule to the Chartered Accountants Act, 1949.

8 Conclusion:

In view of the above findings arrived at in above paras, vis-a-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 7.6 as above	NOT GUILTY – Item (2) of Part IV of the First Schedule and Item (7) of Part I of the 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 Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

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.

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

मीनू गुप्ता / Meenu Gupta
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
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