

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/177/INF/2018/DC/1381/2020

In the matter of:

CA. Harsh Kumar Agarwal (M. No. 519533), Delhi in Re:

Office No. 1110, New Delhi House,
Barakhamba Road, Connaught Place,

NEW DELHI – 110 001

.... 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. Harsh Kumar Agarwal (In person)

Counsel for Respondent :Advocate Sukhmeet Lamba (In person)

1. Background of the Case:

CBI, BS & FC, New Delhi had registered case no. RCB12016E0001 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" or "Company") dealing in wholesale and retail trading of Silver

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Jewellery/ Articles, Diamond, Gold / Imitation Jewellery etc. has cheated Canara Bank to the 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. The Respondent had issued certificates to M/s. Ashwani Traders and M/s. Meesway International (herein referred to as "Firms") for opening of Current account with DCB Bank.

2. Charges in brief: -

The Respondent had issued false certificates to the Firms for opening of Current account with DCB Bank which were found non-existent during the relevant period and the Respondent had not visited the address of both the firms before or after issue of the said certificates.

3. The relevant issues discussed in the prima facie opinion dated 06th July 2020 by Director (Discipline) in the matter, in brief, are given below: -

3.1. The Respondent had issued certificates to the Firms for the purpose of opening Current Account with the DCB Bank based on documents produced before him by one of the Official of DCB Bank. The DCB bank had also conducted verification of address of both the firms through their official staff and their signature had been duly affixed with bank stamp on all documents whereby it is evident that DCB Bank had also applied due diligence in relation to KYC norms by conducting the verification of profile of the proprietors of both the Firms.

3.2. The Respondent had issued certificates based on the evidence produced before him and he had duly applied his professional judgement in certifying the facts of the Firms, while Informant on the other hand had failed to provide any concrete evidence which could have corroborated the said allegation of Firms' non-existence and also failed to substantiate the fact as how the certificates issued by the Respondent in case of both firms 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.

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3.3. In view of above, the Director (Discipline) in 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 Schedule 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 alleged two undated 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 that *"the aforesaid facts have been verified by us"*. However, the basis on which the certificates had been issued by him had not been specified in the certificate. 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 charges) and did not agree

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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 Letter	9 th July 2018
2.	Written Statement filed by the Respondent	22 nd November 2018
3.	Prima facie Opinion by Director (Discipline)	6 th July 2020
4.	Written Submissions by the Respondent after PFO	12 th April 2021 23 rd October 2023

5. Further written submissions filed by the Respondent:

The Respondent vide letters dated 12th April, 2021 and 23rd October, 2023 made submissions, which are summarized as under:

5.1. Further submissions of the Respondent made vide letters dated 12th April, 2021 and 23rd October, 2023:

i The Respondent, in additional submissions dated 12th April 2021 had submitted that the certificates issued were only for the purpose of KYC verification for opening of current account with DCB Bank and the same facts were mentioned on certificates issued by him. The documents were verified based on the originals. Nowhere it was mentioned that he had visited the premises or had been assigned duty to someone from his office to visit the premises of these Firms. The certificate to Meesway International was issued on 27th January 2014 and to Ashwani Traders was issued on 9th November 2012. The documents he relied upon were registration certificates issued by Department of labour, NCT of Delhi and signed cheques issued by the

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proprietor of the Firms from different banks accounts for opening, which were valid documents as per RBI norms for opening of current account with any bank. At the times., when these accounts were opened, the details were verified from documents and the existence of the Firms at their address were verified by the bank officials. The Respondent was unaware of facts that took place afterwards, viz. what transactions took place in account or what kind of activities were carried out by the proprietor or the account holders. He had no relation with them, nor it was his duty or responsibility. The certificates were issued only for the purpose of KYC verification and for opening of current account with DCB Bank and he had exercised due diligence in his duties.

ii The Respondent in additional submissions dated 23rd October 2023 has submitted that the RBI as per its master circular NO. RBI/2015-16/42 on KYC states that the certificate/license issued by the Municipal Authority is to be considered as a valid document for opening a bank account.

iii The Respondent has submitted that he had issued certificates to the Firms for opening of current account only to Branch Manager, DCB Bank, Preet Vihar, New Delhi and these certificates were issued after verification of photocopies of documents produced before him with their originals. The addresses of both Firms had been visited by the Bank Branch officials whose signatures were there on the documents along with bank stamp who confirmed the same to him. The certificates were issued for KYC purpose and the primary duty to verify address lies with the Bank for account opening and he had not verified any document relating to loan application or document relating to the party whose account has become NPA.

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	Status
1 st time	22 nd May 2023	Part heard and adjourned.
2 nd time	25 th October 2023	Hearing Concluded and Decision taken

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 he was aware of the charges and charges against the Respondent were read out. On the same the Respondent replied in the affirmative and pleaded Not Guilty to the charges levelled against him. 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 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.

6.4. The Counsel for the Respondent submitted that the Respondent was nowhere involved in the fraud committed by M/s. Occasion Silver Private Limited in Canara Bank. The Respondent has issued a certificate of address verification of the firms based upon documents produced before him. It was argued by the Counsel for the Respondent that the Investigation of CBI nowhere proved the role of the Respondent and involvement of Firms to whom said certificates were issued. He submitted that the fraud had happened in Canara bank at the behest of Director of M/s. Occasion Silver Private Limited and the impugned certificates were issued by Respondent solely for opening of bank account with DCB Bank. He further submitted that said Firms already had bank accounts and proprietors of the Firms had issued cheques for opening of account with the DCB Bank. Moreover, DCB Bank had also applied due diligence in relation to KYC by conducting address verification of these Firms and had given positive report to this effect.

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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 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 said allegation of Firm's non-existence and also failed to substantiate the fact as to how the certificate issued by the Respondent in case of Firms for opening a Bank accounts with DCB Bank was in any manner linked to the alleged fraud committed on Canara Bank by the promoters of OSPL.

7.2 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.

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(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 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 firm which was one of the document based on which the Respondent had given his certification and also these 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 said firms, the officials of DCB Bank namely Shri Kavinder Bhardwaj and Dilip Singh had carried out independent address verification of the Firms and they had given their report 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 Furthermore, on perusal of copy of cheque of INR 25,000/- issued by the Proprietor of Firm M/s. Ashwani Traders dated 9th November 2012 to DCB Bank from his Andhra Bank Account and copy of cheque of INR 25,000/- dated 25th January 2014 issued by the Proprietor of M/s. Meesway International from his HDFC Bank Account, it is evident that said Firms already had their banks accounts with other banks which substantiate the fact that the Firms were already existing before the issue of said certificates by the Respondent. Further, the Respondent had given certificates based on documents produced before him which were found genuine and acceptable as per the RBI norms (mentioned above).

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 as per norms of the RBI. Moreover, there are copies of cheques of INR 25,000/- on record issued by the Proprietors of Firms to DCB Bank from their Andhra Bank and HDFC Bank Account

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respectively, which establish the fact that said Firms already had their bank accounts with other banks which substantiate the fact on reasonable assumption that the Firms were already existing before the issue of such certificates by the Respondent.

7.7 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 address verification apart from the certificates of the Respondent, which are crucial evidences on record to prove the credentials of the Firms. In view of this, it is construed that the Respondent has exercised due diligence while issuing the alleged certificates to the Firms.

7.8 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 findings arrived at in above paras, vis-a-vis material on record, the Committee gives its findings as under:

Charges (as per PFO)	Findings	Decision of the Committee
Para 2 as	Paras 7.1 to 7.8	NOT GUILTY - Item (2) of Part IV of First Schedule and Item (7) of Part I of the Second Schedule

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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.

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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


अरुण कुमार / Arun Kumar
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
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