

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – III (2023-24)]
[Constituted under Section 21B of the Chartered Accountants Act, 1949]

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

Ref. No.: [PR-217/2018/DD/01/2019/DC/1738/2023]

Shri Shankar S. Bhat,
10, Prestige Lake Vista,
Ramagondanahalli,
Varthur Main Road,
Bangalore – 560 066

.....Complainant No.01

Shri M.B. Arvind Kumar,
B-1001, 10th Floor,
Sterling Terraces Apartment,
100 Ft Ring Road, Banashankari, 3rd Stage,
Bangalore – 560 085

.....Complainant No.02

Versus

CA. Deepesh Wagle,
51/7/1, Chitrakoot Ratna Avenue,
Richmond Road,
Bengaluru 560 025

.....Respondent

MEMBERS PRESENT

CA. Aniket Sunil Talati, Presiding Officer
Smt. Anita Kapur, Member (Govt. Nominee)
Dr. K Rajeswara Rao, Member (Govt. Nominee)
CA. Piyush S Chhajed, Member

Date of Final Hearing: 4th November 2023 through Video Conferencing

The following Parties were present:

- (i) Shri Shankar S. Bhat – the Complainant No. 1
 - (ii) Adv. Sachin S Nayak – the Counsel for the Complainant(s)
 - (iii) CA. Deepesh Wagle – the Respondent
 - (iv) Shri. B K Panduranga –the Authorised Representative of the Respondent
- [all appeared from their respective personal location]**

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Charges in Brief

1. The Committee noted that in the *Prima Facie* Opinion formed by Director (Discipline) in terms of Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Respondent was held *prima facie* guilty of Professional Misconduct falling within the meaning of Item (7) of Part-I of Second Schedule to the Chartered Accountants Act, 1949. The said Item to the Schedule states as under: -

Part I of Second Schedule: Professional misconduct in relation to chartered accountants in practice

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"

Brief background and allegations against the Respondent

2. In the extant complaint, it was noted that Shri Shankar S. Bhat and Shri M.B. Arvind Kumar (hereinafter referred to as the "**Complainants**") filed the extant complaint against the Respondent. It was stated that the Complainants were the Directors of M/s Canara Star Communication Private Limited (hereinafter referred to as the "**Company**") and raised following allegations against the Respondent:

(i) That the Respondent had issued a certificate (**C-7/43**) addressed to no person specifically, rather addressed to "Whomsoever it may concern", stating therein that the shareholders of the Complainant Company as on 20th January 2018 were one Shri Sachin Narayana and one Ms. Priyanka Sachin, who held 75% and 25% shares respectively. The factual position according to the complainants was that Shri Sachin Narayana only held 50% of the shares of the Company amounting to 2,62,000 shares, and the remaining 50% shares were held equally by both the Complainants. It was also stated that there was no transfer of shares from them in favour of Shri Sachin Narayana or Ms Priyanka Sachin. In fact, there was no record of any consideration being paid against the alleged transfer of shares; neither was there any board approval granted for the transfer of the same.

(ii) The second charge was in relation to removal of the Complainants from directorship of the Company, the Complainants stated that on the same day, i.e., 4th June 2018, the Respondent issued another certificate (**C-8/C-44**) stating that the Complainants were removed under Section 169 of the Companies Act, 2013 by holding Extraordinary General Meeting (EGM) on 30th April, 2018 (**D-11 to D-13**). As per Complainants, neither there existed any record of convening the

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aforesaid EGM of the directors of the Complainant Company on 30th April 2018, nor there was a requisition from any shareholder seeking an EGM on 30th April 2018. The Complainant(s), accordingly, alleged that in the absence of any record of a Board Meeting approving the proposed EGM on 30th April 2018, the Respondent could not certify that the alleged EGM was held on 30th April 2018. The Complainants further stated that the Respondent was complicit in the fraud being played by Shri Sachin Narayana. As per Complainants, the entire control of the Company was being usurped through illegal means, which was given authenticity by the Respondent. The Complainants stated that the Respondent had not conducted any sort of due diligence while issuing the alleged certificates.

Proceedings:

3. On 4th November 2023, the Committee noted that the Counsel for the Complainant as well as the Authorized Representative of the Respondent were present before it for hearing. Thereafter, they made a declaration that there was nobody else in their respective room from where they were appearing and that they would neither record nor store the proceedings of the Committee in any form. Thereafter, the Committee asked the Authorized Representative of the Respondent whether he wished the charges to be read out or it can be taken as read. The Authorized Representative of the Respondent stated that he was aware of the allegations raised against him and the same might be taken as read. On being asked as to whether the Respondent pleaded guilty, the Authorized Representative of the Respondent stated that he did not plead guilty and opted to defend his case.

Thereafter, the Counsel for the Complainant explained the charges alleged against the Respondent. Thereafter the Authorized Representative of the Respondent made his submissions on the allegations. Meantime, one of the Complainant(s) as well as the Respondent appeared before the Committee. They were allowed to appear. Being the first hearing, the Complainant as well as the Respondent were put on oath. Both the Complainant and the Authorized Representative of the Respondent were examined by the Committee on the submissions made by the parties.

Based on the documents available on record and after considering the oral as well as written submissions made by both parties before it, the Committee concluded the hearing in the matter.

Findings of the Committee:

4. At the outset, the Committee noted that the extant matter pertained to two certificates issued by the Respondent both dated 4th June 2018 in respect of List of Shareholders and their holdings in share capital of M/s Canara Star Communication Private Limited (Company) in one certificate and in other certificate he certified regarding removal of the Complainant(s) as directors and appointment of new directors under Sec 169 of Companies Act, 2013 during extraordinary general meeting held on 30th April, 2018.

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5. It was noted that the Authorized Representative of the Respondent pleaded before the Committee to keep the extant proceedings in abeyance till disposal of the proceedings initiated before Hon'ble NCLT. The Committee noted that the disciplinary proceedings before it and that before Hon'ble NCLT were independent proceedings and that the matter before the Disciplinary Committee was limited to evaluating the performance of the Respondent only in context of aforesaid certificates issued by him regarding the Company. Thus, the Committee viewed that the plea raised by the Authorised Representative for the Respondent that the extant case was sub judice before Hon'ble NCLT and hence be kept in abeyance could not sustain. Accordingly, the Committee decided to deal with merits of the matter.

5.1 Regarding the first charge, the Committee noted that the allegation pertained to certificate regarding List of Shareholders dated 04th June 2018 (C-7/ C-43) issued by the Respondent that reads as under:

"The paid up capital of M/s CANARA STAR COMMUNICATIONS PRIVATE LIMITED is Rs. 52,40,000/-, held as equity and the face value of each equity share is Rs. 10/- as on 20th January, 2018 as per the records of the company. The details of shareholders as on 20th January 2018 and as on date are as given below.

Share holding Pattern

S No.	Name of the Share holder	No. of shares held	Share holding in %	Total amount paid up (Rs.)
1.	Sachin Narayana	393,000	75%	39,30,000
2.	Priyanka Sachin	131,000	25%	13,10,000
Grand Total		524,000	100%	52,40,000

5.2 It was noted that the Respondent in his submissions, interalia, submitted to have issued the said certificate after examining the following documents: -

- a. The members' register produced before him, showing the shareholding position of the Company as on 20th January 2018.
- b. Register of transfers as on 20th January 2018.
- c. A duly registered Share Transfer Deed in form SH-4 dated 18th January 2018 for one lakh thirty-one thousand shares of Rupees 10/- of the Company reflecting transfer of said shares from Shri Shankar S. Bhat (Complainant no.01) to Ms. Priyanka Sachin, with consideration amount specified therein. This represented 25% of the shareholding of the Company (W-28 to W-29).

- d. Another duly registered Share Transfer Deed in form SH-4 dated 18th January 2018 (**W-30 to W-31**) for one lakh Thirty one Thousand shares of Rupees 10/- each from Shri Mysore Bhaskar Arvind Kumar to Mr. Sachin Narayan, with consideration amount specified therein. This represents another 25% of the shareholding. After the said transfer of shares, the Respondent contended that Shri Sachin Narayan became owner of 75% shares of the Company.
- e. He also stated that the said Forms SH-4 were accompanied with Share certificates bearing distinctive numbers 1-21000 (**W-32**) and 42001 to 152000 (**W-33**) and Share Certificates bearing distinctive number 21001 TO 42000 (**W-35**) and 152001 TO 262000 (**W-38**) and that the said transfers were duly authenticated by the Complainants who were the only directors of the Company. Post the registrations of transfers as aforesaid, the shareholding pattern of the Company as on January 20, 2018 was exactly same as certified by him.
- f. The Respondent emphasised that the Company had duly followed the procedures as laid down under the provisions of the Companies Act, 2013 and rules made thereunder regarding transfer of shares. He submitted that as per Section 56 of the Companies Act, 1956 a company should not register a transfer of shares unless a proper transfer deed in Form SH-4 as given in Rule 11 of Companies (Share Capital & Debentures) Rules 2014 duly stamped and executed by/on behalf of the transferor and transferee, specifying the name, address and occupation, if any, of the transferee, been delivered to the company, along with the certificate relating to the shares, or if no such certificate existed, then along with the letter of allotment of the shares. The Respondent stated that the alleged certificates were issued based on proper transfer deed in Form SH-4 duly stamped and executed by the Complainants in favour of Ms, Priyanka Sachin and Shri Sachin Narayan. Subsequently their names were entered in the Register of Members of the Company to be maintained under Section 88 of Companies Act, 2013.

5.3 The Committee further noted that the Respondent also brought on record copy of relevant pages of Register of Directors and Key Managerial Personnel and their Shareholding alongwith his further submissions dated 18th July 2023 to support his claim that he verified the relevant records before issuing the said certificate. The Respondent further referred to Hon'ble NCLT, Bangalore Order dated 16th January 2020 in the matter of Mr. Shankar Subramanya Bhat Vs. M/s. Star Cable Infonet Pvt. Ltd. (C.P. No. 464/BB/2018) wherein the latter company was a sister concern of the Company. It was noted that while dismissing the said petition, Hon'ble NCLT observed as under:

"..... Therefore, by virtue of execution of Transfer deeds in question, transfer of shares of both the petitioners stand completed, as per law Even comparing the signatures of the both the petitioners, as available on the petition and other connected documents, with naked eye, with their signatures available on Share Transfer Forms in question, are tallying, Therefore, there is no doubt in our mind that the petitioners have executed those

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material documents. And the share in question was subsequently transfer to the Respondents by the Company, as per Law." [Para 9]

Further, during the hearing, the Committee while examining the Complainant no. 1 on the facts of the matter asked him to inform if the Form No. SH-4 (Securities Transfer Form) (**W-28 to W-29**), as produced on record, were signed by him to which the Complainant no. 1 submitted that the said forms were signed by him, in front of the Authorized Representative of the Respondent in extant matter, and similarly Form No. SH-4 (Securities Transfer Form) (**W-30 to W-31**) was signed by Shri M.B. Arvind Kumar (Complainant no. 2). The Complainants signed the said forms as they needed funds, and the said funds were supposed to be infused in the Company itself. The Complainant no. 1 further tried to clarify the issues between the management of the Company and the institution of complaints before other forums/ authorities. Accordingly, the Committee observed that the Complainant had submitted to have duly signed the alleged transfer deeds and had failed to bring on record any material which might depict any overt act done by the Respondent to get their signatures on the said transfer forms. Accordingly, the Committee was of the considered view that the Respondent was **Not Guilty** of professional misconduct falling within the meaning Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

6. With respect to the second charge, the Committee noted that it was related to the Certificate dated 04th June 2018 (**C-8/C-44**) issued by the Respondent regarding removal of the Complainant(s) as directors and appointment of new directors that reads as under:

"TO WHOMSOEVER IT MAY CONCERN

This is to state that Mr. Mysore Bhaskar Arvind Kumar and Mr. Shankar Subramanya Bhat have been removed as Directors and Mr. Basavaraj Neelangi, Mr. Basavaraj Veerabhadrapa Jaggal have been appointed as new directors for CANARA STAR COMMUNICATIONS PRIVATE LIMITED under section 169 and other applicable provisions of the companies act, 2013 during the Extraordinary General Meeting held on April 30, 2018.

Based on the information and documents produced by the company."

6.1 The Committee noted that Section 169 of the Companies Act, 2013 deals with Removal of directors and the same provides as under:

"Section 169. Removal of directors

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(1) A company may, by ordinary resolution, remove a director, not being a director appointed by the Tribunal under section 242, before the expiry of the period of his office after giving him a reasonable opportunity of being heard:

Provided that nothing contained in this sub-section shall apply where the company has availed itself of the option given to it under section 163 to appoint not less than two thirds of the total number of directors according to the principle of proportional representation.

(2) A special notice shall be required of any resolution, to remove a director under this section, or to appoint somebody in place of a director so removed, at the meeting at which he is removed.

(3) On receipt of notice of a resolution to remove a director under this section, the company shall forthwith send a copy thereof to the director concerned, and the director, whether or not he is a member of the company, shall be entitled to be heard on the resolution at the meeting.

(4) Where notice has been given of a resolution to remove a director under this section and the director concerned makes with respect thereto representation in writing to the company and requests its notification to members of the company, the company shall, if the time permits it to do so,-

(a) In any notice of the resolution given to members of the company, state the fact of the representation having been made; and

(b) Send a copy of the representation to every member of the company to whom notice of the meeting is sent whether before or after receipt of the representation by the company, and if a copy of the representation is not sent as aforesaid due to insufficient time or for the company's default, the director may without prejudice to his right to be heard orally require that the representation shall be read out at the meeting:

Provided that copy of the representation need not be sent out and the representation need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Tribunal is satisfied that the rights conferred by this sub-section are being abused to secure needless publicity for defamatory matter, and the Tribunal may order the company's costs on the application to be paid in whole or in part by the director notwithstanding that he is not a party to it.

(5) A vacancy created by the removal of a director under this section may, if he has been appointed by the company in general meeting or by the Board, be filled by the appointment of another director in his place at the meeting, at which he is removed provided special notice of the intended appointment has been given under sub-section (2).

(6) A director so appointed shall hold office till the date up to which his predecessor would have held office if he had not been removed.

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(7) If the vacancy is not filled under sub-section (5), it may be filled as a casual vacancy in accordance with the provisions of this Act:

Provided that the director who was removed from office shall not be re-appointed as a director by the Board of Directors.

(8) Nothing in this section shall be taken-

(a) as depriving a person removed under this section of any compensation or damages payable to him in respect of the termination of his appointment as director as per the terms of contract or terms of his appointment as director, or of any other appointment terminating with that as director; or

(b) As derogating from any power to remove a director under other provisions of this Act."

6.2 It was noted that the Respondent in his submissions stated that he had verified notice dated 9th February 2018 as well as that of 26th March 2018 issued by Shri Sachin Narayan under Section 169(1) & (2) of the Companies Act, 2013 seeking removal of the specific directors (**W-39 to W-45**) and produced on record proof of delivery of the said notices (**W-46**). The Respondent also stated that since the Board of Directors failed to convene the requisitioned EGM, the Requisitionist proceeded to call the meeting of the shareholders after servicing notices as per the provisions of Section 169 of the Companies Act, 2013 (**D-11 to D-13**).

6.3 The Complainant in his submissions inter-alia stated that the Respondent had issued the alleged certificate without verification. It was bearing the phrase "Whomsoever It May Concern," which was not only misleading but had severe repercussions on directors' professional standing and integrity. The Complainant further stated that the Respondent had certified that directors were removed when neither there existed any record of convening the alleged EGM on 30 April 2018 by the directors of the Company, nor there was a requisition from any shareholder seeking for convening the said meeting. As per him, the Respondent had not verified the register of shareholders or share transfer deeds and had certified non-members as members of the Company. He argued that SH-4 was stamped on Jan 18, 2018 at around 4PM in Bangalore. This was the same day as the execution of the transfer. As per him, the share certificates could not be transferred unless accompanied by duly stamped instrument of transfer. No Board meeting was held for it too. Only two directors of the Company were removed as directors in terms of Section 169 of the Companies Act, 2013. None of the requirements under Section 169 was met. Further, they submitted that the two directors never received any notice as required under Section 169 and consequently, the directors were not even given an opportunity to make their representation which was mandatory under Section 169 of the Companies Act, 2013. The Respondent failed to check courier receipts for dispatch of notices regarding requisitioned meeting for removal of directors. The addresses are incorrect, and signatures were missing. Courier receipts show that these were airway bills. The Respondent did not check and verify how airway bills can be used for local delivery, and in blatant disregard of professionalism, given

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false certification. The directors got to know of their removal only on 7th June, 2018 when an email from Shri Sachin Narayana was sent to the Complainants informing them of their removal. In the mail, Shri Sachin Narayana heavily relied on the certificates issued by the Respondent to basically usurp the management of the Company. Shri Sachin also relied on the certificates to file a police complaint against the Respondents. It was submitted that the entire control of the Company was being usurped through illegal means, which gave authenticity to by the Respondent. EGM without proper notice was void-ab-initio.

6.4 The Committee considered the submissions of the parties and documents placed on record and observed that the Respondent has brought on record copy of notice of shareholder seeking removal of directors and appointment of new directors, the courier receipts for sending the same as well as copy of Minutes of Extra General Meeting held on 30th April, 2018 whereat Ms. Priyanka Sachin and Shri Sachin Narayan were present as shareholders of the Company. Hence, the Respondent, in his professional capacity, had relied upon sufficient evidence to issue the alleged certificate. As regards other issues viz, non-receipt of notice by the directors, or opportunity to give representation under Sec 169 of the Companies Act, 2013 were not relevant issues to be raised against the Respondent because neither he was liable to oversee the process of appointment of new directors nor he has certified that the new directors were appointed in compliance with Sec 169 of the Companies Act, 2013. The Committee further viewed that it appears that the Respondent was made scapegoat to settle scores amongst the erstwhile management and the present management of the Company. With respect to the case laws referred to by the Complainant, it was viewed that the same could not be taken as strict principles of law as the facts of each case are separate and distinct.

6.5 In any case, it was noted that certificates bearing the phrase "Whomsoever It May Concern" is not in line with the requirements of Guidance Note on Reports or Certificates for Special Purposes (Revised 2016) which requires explicit disclosure of address as stated below:

*"80. In order to assert compliance with this Guidance Note, among other things, the assurance report **should include at a minimum** the following basic elements:*

*(b) **An addressee.** An addressee **identifies the party or parties to whom the assurance report is directed.** The assurance report is ordinarily addressed to the engaging party, but in some cases there may be other intended users..."*

On overall examination of the facts and documents produced on record, the Committee was of the view that the Respondent is **Not Guilty** of Professional Misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949. However, the Respondent was cautioned against using the phrase '**TO WHOMSOEVER IT MAY CONCERN**' in Certificates issued in future. He was advised to explicitly state the title and the name of the

addressee in Certificates in compliance with Guidance Note on Reports or Certificates for Special Purposes as stated hereinabove.

Conclusion

6. Thus, in conclusion, in the considered opinion of the Committee, the Respondent is **Not Guilty** of professional misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

7. 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 Order for closure of this case.

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[CA. Aniket Sunil Talati]
Presiding Officer

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[Smt. Anita Kapur]
Member (Govt. Nominee)

Sd/-

[Dr. K. Rajeswara Rao]
Member (Govt. Nominee)

Sd/-

[CA.Piyush S Chhajed]
Member

Date: 22nd January, 2024

Place: New Delhi

सही प्रतिस्तिपि 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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