

CONFIDENTIAL

BOARD OF DISCIPLINE

Constituted under Section 21A of the Chartered Accountants Act 1949

Findings under Rule 14(9) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007

File No. : [PPR/P/27/N/13/DD/1/INF/14/BOD/205/2016]

CORAM (present in person):

CA. Rajendra Kumar P, Presiding Officer

Ms. Dolly Chakrabarty (IAAS, retd.), Government Nominee

In the matter of CA. Adesh Kumar Jain (M. No. 089016) in Re:

DATE OF FINAL HEARING : 17th May, 2023

PLACE OF FINAL HEARING : New Delhi

PARTIES PRESENT:

Counsel for the Respondent : CA. Akshat Jain

FINDINGS:

BRIEF BACKGROUND OF THE CASE:

- 1.1 Case No.RC2172012A0005, CBI, AC-II, New Delhi was registered under Section 120-B IPC and Section 7, 12, 13 (2) r/w 13 (1) (d) of P. C. Act, 1988 on 3rd June, 2012 against Shri Kunal Singh, Director (Investigation), Income Tax, Kanpur, Shri Ratan Singh, Additional Director (Investigation), Income Tax, Noida, Shri Uma Kant, Assistant Director (Investigation), Income Tax, Noida, Shri Harish Dhondiyal, Inspector, Income Tax, Noida, Shri S. K. Garg, Chairman, M/s. Eldeco Group, Shri Pankaj Bajaj, Managing Director of M/s Eldeco Group, Shri Anil Kumar Dhanda, CFO, M/s Eldeco Infrastructure & Properties and Shri Anil Kumar Jaiswal, Advocate & Tax Consultant for the Eldeco Group and other unknown persons.
- 1.2 Investigation Wing of Income Tax Department, Kanpur conducted a survey on the allegations of Income Tax evasion by M/s. Eldeco Group of Companies (hereinafter referred to as the 'Company') in March, 2012 and seized documents for scrutiny from the offices of the Company and also sealed various bank lockers at Patna, Agra and

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Delhi, for the purpose of investigation and ascertaining the magnitude of Income Tax evasion.

- 1.3 It was also alleged that the Managing Director of the Company Shri Pankaj Bajaj, the Chairman of the Company Shri S. K. Garg and the CFO of the Company Shri Anil Kumar Dhanda, contacted one CA. Anil Kumar Jaiswal based in Kanpur, to settle the matter of their company with the Income Tax Department.
- 1.4 During the bank locker operation of the locker of Mrs. Bandana Kohli, wife of Shri Pankaj Bajaj in HDFC Bank on 21st May, 2012, Shri Uma Kant and Shri Harish Dhoundiyal by abusing their official position allowed Shri Pankaj Bajaj and his family members to illegally take away a major portion of cash and gold stacked in the said locker in a clandestine manner against huge illegal gratification with a view to cause undue pecuniary benefit to Shri Pankaj Bajaj and his family.
- 1.5 Investigation also disclosed that Shri Kunal Singh had called Shri Pankaj Bajaj at his residence. As per his direction, Shri Pankaj Bajaj came to his residence on 3rd June 2012 and handed over Rs. 30 Lakhs as bribe to him. The said amount was recovered by the CBI team from the residence of Shri Kunal Singh in the presence of independent witnesses.
- 1.6 After completion of investigation, a Chargesheet was filed against Shri Kunal Singh, Shri Ratan Singh, Shri Uma Kant, Shri Harish Dhondiyal, Shri S. K. Garg, Shri Anil Kumar Dhanda and Shri Anil Jaiswal on 29th December 2012.
- 1.7 The investigation also disclosed that after the search of Income Tax, the accused Shri Ratan Singh, then Additional Director of Income Tax, Noida was advocating the name of the Respondent as consultant to Shri Pankaj Bajaj, on the pretext that he was a "specialist" in such cases. Shri Pankaj Bajaj called the Respondent at his office.
- 1.8 The statement of Shri Pankaj Bajaj reveals that the Respondent during his meeting with Shri Pankaj Bajaj, brazenly asked him whether he wanted 'Dalali' from him or wanted to deal the matter otherwise. The Respondent allegedly quoted the figure of Rs. 3 crores to settle the issue and reluctant to take up the matter for genuine follow up saying that he had no time for the same. The Respondent also told that the amount would be paid "transparently across the table" and he would charge Rs. 25 Lakhs for his services.

CHARGE ALLEGED:

2. The Respondent purportedly acted in collusion with the accused public servant Shri Ratan Singh, the then Additional DIT, to receive bribe on behalf of Shri Ratan Singh and other IT officials.

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BRIEF OF PROCEEDINGS HELD:

Date of Hearing(s)	Status
20 th April, 2017	Fixed and cancelled due to unavoidable circumstances.
18 th September, 2017	Adjourned at the request of the Respondent.
13 th December 2018	Heard and concluded with certain directions.
2 nd February 2019	Board decided to rehear the parties to the case as certain documents considered essential to reach a logical conclusion in the case which were called from CBI had not been received and thus, the direction to seek the same from the CBI was again given.
16 th May, 2019	Part Heard and Adjourned with directions.
6 th November 2020	Fixed and adjourned.
17 th May, 2023	Heard and concluded.

BRIEF SUBMISSIONS OF THE RESPONDENT:

4. The Respondent in his defence, inter-alia, submitted as under:-

4.1 As per information available in the Prima Facie Opinion in the present matter, a search took place in the year 2012 under the provisions of Income Tax Act, 1961 at the offices of Eldeco Group of Companies. The Respondent met Mr. Pankaj Bajaj, Managing Director of Eldeco Group of Companies, on the request of one of his professional colleagues, sometime in April/May 2012 for discussion, in his professional capacity, with respect to their Income tax matters. The Respondent had never met Mr. Pankaj Bajaj on any earlier occasion and did not meet him even subsequently. He has had no professional or personal contact with any Director / officer of Eldeco Group of Companies, either before the above said meeting with Mr. Pankaj Bajaj or thereafter till date.

4.2 Mr. Pankaj Bajaj in his Statements recorded before Central Bureau of Investigation (CBI) and before Hon'ble judge MM (Traffic)-01, New Delhi mentioned that Respondent had offered to have his Company's Income Tax matters settled by bribing the Officers of Income Tax Department. As per information available in the Prima Facie Opinion, CBI has

filed legal cases against various Officers / advisors of Eldeco Group of Companies and also against certain Officers of Income Tax Department for indulging in taking and giving of bribes. In this matter of taking / giving of bribes, the Respondent was called by CBI sometime in the year 2012 for ascertaining his role therein. Thereafter, he received no other communication from CBI.

- 4.3 The Respondent had then informed CBI that he had not offered to have the Income Tax matters of Eldeco Group of Companies settled by bribing Income Tax Department's Officers. The Respondent is not involved in the legal cases filed by CBI, in any capacity including as an accused or as witness in this matter and he has not received notice / summon / any other communication from any Court at any time till date. He is not aware of the progress of the above said legal cases. The allegations of Shri Pankaj Bajaj made against the Respondent, in his confessional statement, are mala fide, baseless, completely false and without any iota of truth or evidence.

BRIEF SUBMISSIONS OF THE INFORMANT DEPARTMENT:

5. In response to the communication(s) from the Disciplinary Directorate, the Informant Department provided the following information:

S.No.	Details of communication from the Disciplinary Directorate	Reply from the Informant Department
1.	Vide letter dated 17/03/2016 the Informant Department was informed regarding the decision of the Board that the Respondent was held prima facie Guilty of Other Misconduct under Clause 2 of Part IV of the First Schedule to the Chartered Accountants Act 1949. The Informant Department was further asked to share any document/information/latest update in respect of the said matter.	The Informant Department vide letter dated 04/04/2016 informed that CBI has filed Chargesheet in the case RC20172012A0005 CBI ACU-V New Delhi against Shri Kunal Singh, DIT (Inv); Shri Ratan Singh, Addl. DIT (Inv)Noida and Shri Uma Kant, ADIT (Inv)Noida and others on 29/12/2012. The Hon'ble Trial Court has ordered individual charge u/s 120(B) of IPC r/w Sec.7 and Sec. 12 & 13(2) r/w 13(1) d) of IPC Act, 1988 against Sh. Kunal Singh, Sh. Ratan Singh and Sh. Uma Kant and others and charges were framed on 07/10/2013. Now the next date of hearing is fixed on 07/04/2016 for examination of prosecution witness.
2.	Vide letter dated 21/09/2017 the Informant Department was asked to	The Informant Department vide letter dated 17/10/2017 informed that the

	<p>apprise regarding the current status of case no. RC20172012A0005 CBI ACU-V New Delhi.</p>	<p>case is presently under trial in the court of Shri Arun Bhardwaj. Hon'ble Special Judge, Patiala House Court, New Delhi. The next date of hearing in the matter is 23/10/2017.</p> <p>Further vide Order dated 22/09/2017 the Hon'ble Supreme Court has ordered that no final Order is to be passed by the Trial Court.</p>
3.	<p>Vide letter dated 29/11/2018 the Informant Department was asked to apprise regarding the current status of case no. RC20172012A0005 CBI ACU-V New Delhi.</p>	<p>The Informant Department vide letter dated 10/12/2018 informed that the case is presently under trial in the Court of Shri Sunil Rana, Hon'ble Special Judge, Patiala House Court, New Delhi. The next date of hearing in the matter is 17/12/2018.</p> <p>Further vide Order dated 22/09/2017 the Hon'ble Supreme Court has ordered that no final Order is to be passed by the Trial court.</p>
4.	<p>Vide letter dated 17/12/2018 the Informant Department was requested to provide the following information:</p> <p>a) Role of CA. Adesh Kumar Jain in the alleged case.</p> <p>b) confirmation as to whether CA. Adesh Kumar Jain has been named as an accused or as witness in the Chargesheet of the above case.</p> <p>c) Copy of Charge sheet.</p> <p>d) Copy of Orders of Hon'ble Supreme Court restraining the trial Court from passing any Order.</p> <p>e) Any further development in the matter.</p>	<p>The Informant Department vide letter dated 07/02/2019 informed that:</p> <p>a) Role of CA. Adesh Kumar Jain: In this regard, a Self-Contained Note has been sent.</p> <p>b) CA. Adesh Kumar Jain has not been named as an accused or as a witness in the Chargesheet sent to the Ld. Court for trial.</p> <p>c) The copy of the Chargesheet was provided.</p> <p>d) The copy of the Order of Hon'ble Supreme Court dated 23/09/2017 staying the trial of the case was provided.</p> <p>e) It is informed that till date there is stay on the trial proceedings of this case.</p>
5.	<p>Vide letter dated 15/11/2019 the Informant Department was asked whether the stay ordered by the Hon'ble Supreme Court of India vide Order dated 22/09/2017 was still in force.</p>	<p>The Informant Department vide letter dated 26/11/2019 informed that the stay was still in force.</p>

6.	Vide email dated 20/12/2019 the Complainant was asked to apprise regarding the current status of case no. RC20172012A0005 CBI ACU-V New Delhi and to share the copy of final order passed, if any.	The Informant Department vide letter dated 03/01/2020 informed that vide Order dated 22/09/2017 the Hon'ble Supreme Court has ordered stay on trial which is still in force. Further, the present case is at the stage of Prosecution Evidence and no final Order has been passed.
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OBSERVATIONS OF THE BOARD:

6.1 At the outset, the Board noted that the primary evidence brought on record by the Informant Department to substantiate the charge alleged against the Respondent is the copy of the Charge Sheet dated 29/12/2012 filed in the case no. RC20172012A0005 CBI ACU-V New Delhi after investigation. However, CBI has not named the Respondent either as an accused or as a witness in the said Chargesheet.

6.2 The Board further noted that the Respondent filed a notarised Affidavit dated 13th December 2018 before it, inter-alia, stating therein as under:

- (a) He had never met Mr. Pankaj Bajaj on any earlier occasion and did not meet him even subsequently.
- (b) He has had no professional or personal contact with any Director / officer of Eldeco Group of Companies, either before the above said meeting with Mr. Pankaj Bajaj or thereafter till date.
- (c) He informed CBI that he had not offered to have the Income Tax matters of Eldeco Group of Companies settled by bribing Income Tax Department's officers.
- (d) He is not involved in the legal cases filed by CBI.
- (e) The allegations of Shri Pankaj Bajaj made against him, in his confessional statement, are mala fide, baseless, completely false and without any iota of truth or evidence.

6.3 On a detailed perusal of the documents and submissions on record, the Board noted that the Informant Department has not been able to substantiate its claim with conclusive evidence that the Respondent acted in collusion with the accused Public Servant Shri Ratan Singh, the then Additional DIT, to receive bribe on behalf of various IT officials. Thus, the Board was constrained to hold the Respondent Not Guilty in respect of the charge alleged.



CONCLUSION:

7. Thus, in conclusion, in the considered opinion of the Board, the Respondent is **NOT GUILTY** of Other Misconduct falling within the meaning of Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with section 22 of the said Act. Accordingly, the Board passed Order for closure of the case in terms of the provisions of Rule 15 (2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

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Sd/-

CA. Rajendra Kumar P
(Presiding Officer)

Sd/-

Ms. Dolly Chakrabarty (IAAS, retd.)
(Government Nominee)

DATE: 21-11-2023

सही प्रतिलिपि होने के लिए प्रमाणित /
Certified to be true copy

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