

CONFIDENTIAL

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

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

Findings under Rule 18(17) and Order under 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/51/2017-DD/40/INF/2017/DC/1459/2021]

In the matter of:

**CA. Pankaj Gupta (M. No. 074585)**  
165, B.C. Lines,  
Sardhana Road  
Meerut Cantt - 250001

.....Respondent

MEMBERS PRESENT:

**CA. Ranjeet Kumar Agarwal, Presiding Officer (In person)**  
**Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee (In person)**  
**Shri Arun Kumar, I.A.S. (Retd.), Government Nominee (In person)**  
**CA. Sanjay Kumar Agarwal, Member (In person)**  
**CA. Sridhar Muppala, Member (In person)**

**DATE OF FINAL HEARING:** 20.06.2023 (through physical/video conferencing mode)

PARTIES PRESENT

**Respondent :** CA. Pankaj Gupta (Through Video Conferencing Mode)  
**Witness :** Mr. Lalit Mohan Rana, Senior Assistant Director, SFIO and  
Ms. Swasti Agarwal, Assistant Director, SFIO  
(Both Through Video Conferencing Mode)

**BACKGROUND OF THE CASE:**

1. The brief background of the case is that a letter dated 27<sup>th</sup> April, 2016 alongwith the investigation report dated 31<sup>st</sup> March 2016 was received from the Serious Fraud Investigation office (SFIO). The SFIO has conducted an investigation into the affairs of NKS Holding (P) Ltd and its group companies. During the investigation, a case of money laundering was established which was conducted by the promoters of the Company called 'Jain Brothers' (Shri S. K Jain and Virendra Jain) with the help of 56 professionals who worked as mediators. The Report has identified 34 Chartered Accountants to be involved in it. The modus operandi has been to return the unaccounted cash after laundering as apparently legitimate share subscription in their (original owners of unaccounted money) respective companies by the companies controlled by Jain Brothers. The Committee noted that the present matter relates to M/s SMC Foods Ltd.

**CHARGES IN BRIEF: -**

2. The Committee noted that following charges were levelled against the Respondent which were as under:-
  - (a) Acting as a mediator in providing accommodation entries in connivance with Jain Brothers (S.K. Jain & V.K. Jain);
  - (b) Engaged in money laundering operations with Sh. S.K. Jain, V.K. Jain & other professionals.
  - (c) Inflated the balance sheet data(s) by rotational transfer of funds among the entities controlled by S.K. Jain/ V.K. Jain.
  - (d) Abetting in defrauding the National Exchequer.
  - (e) Placing, layering and integration of unaccounted funds.
  - (f) Abetting in arrangement of false Valuation Report.
3. The Committee noted that the Respondent in his reply at the stage of PFO had, inter-alia, mentioned as under:
  - (i) That M/s SMC Foods Ltd., Sh. S.K. Jain and Sh. V.K. Jain had never been his clients. He does not know any promoter/ director of M/s SMC Foods Ltd.

- (ii) He is not involved in any activity as mentioned in the Information Letter with M/s SMC Foods Ltd., Sh. S.K. Jain and Sh. V.K. Jain. He never met with any Promoter/Director of M/s SMC Foods Ltd. or Sh. S.K. Jain or Sh. V.K. Jain.
- (iii) He had not taken professional assignment of M/s SMC Foods Ltd. or Sh. S.K. Jain or Sh. V.K. Jain.
- (iv) That all the information mentioned in information letter is wrong and baseless. After receipt of the Information Letter, he searched on MCA website and again confirms the aforesaid facts.
- (v) That M/s SMC Foods Ltd. or Sh. S.K. Jain or Sh. V.K. Jain were never his clients, he had neither taken any professional fee from them nor given any written or verbal advise to them.

4. The Director (Discipline) had, in his Prima Facie Opinion dated 18<sup>th</sup> January 2018, noticed that details of member provided by SFIO and Respondent's name appearing at various places in the Investigation Report prima facie points towards his role of allegedly acting as a mediator for money laundering activities in connivance with the Jain Brothers. The Director (Discipline), in his prima-facie opinion, viewed as under:

4.1 A perusal of the Investigation report reveals that all the charges are totally inter-linked and through a combined reading of the same, it indicates the Respondent for alleged involvement in money laundering activities as per the evidences on record as stated earlier in the Report of the SFIO and the related annexures.

4.2 On all these charges, it is seen that the Respondent has not given a proper defense. In this regard, it is observed that at this stage mere questioning the wisdom of the Directorate in treating the instant matter as "Information" against him cannot be enough to wipe out the serious charges being invoked

based on the report of investigation and submissions of Jain Brothers who seem to be the kingpins in the whole affairs.

- 4.3 That in the Report, the name of the Respondent is appearing as 'Pankaj Gupta'. In this regard, it needs to be mentioned here that the address and contact details provided by SFIO vide letter dated 27<sup>th</sup> February 2017 wherein the name of the Respondent has been mentioned as Pankaj Gupta matches with the details of the Respondent as per ICAI records whereby the identity of the said member has been based on information provided by the office of SFIO.
- 4.4 Even there is similarity of other detail like membership number and address and even phone number which proves that the correct person is the Respondent only. The details of member provided by SFIO and his name appearing at various places in the Investigation Report prima facie points towards his role of allegedly acting as a mediator for money laundering activities in connivance with the Jain Brothers.
- 4.5 Further, it is observed that Mr. S. K. Jain in his submissions stated that the group usually takes advices/ consultancy from these persons. In view of the aforesaid, the alleged act of the Respondent renders him prima facie guilty of Professional and/or other Misconduct.
- 4.6 Thus, taking a considered view of the allegations as contained in the investigation Report of SFIO and other linked documents forming part of annexure to the said report, it would be difficult to exonerate the Respondent at this prima facie stage and the matter needs to be enquired into further to establish the extent of involvement of the Respondent in the whole affairs in terms of the serious allegations pointed out by SFIO in its Investigation Report.
5. Accordingly, the 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, held the Respondent Prima-

facie Guilty of Professional and other Misconduct falling within the meaning of Items Item (2) of Part IV of the First Schedule and Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949. The said items in the Schedule to the Act states as under:-

**Item (7) of Part I of the 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"*

**Item (2) of 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."*

**BRIEF FACTS OF THE PROCEEDINGS:-**

6. The Committee noted that the instant case was fixed for hearing on following dates:

S.No.	Date	Status of Hearing
1.	31.05.2023	Part Heard and Adjourned
2.	20.06.2023	Hearing Concluded and Judgement Reserved
3.	10.07.2023	Decision taken on the Judgement Reserved

7. On the day of the first hearing, held on 31<sup>st</sup> May, 2023, the Committee noted that the Respondent was present through Video Conferencing Mode. The Respondent was administered on Oath. Thereafter, the Committee enquired

from the Respondent as to whether he was aware of the charges. On the same, the Respondent replied in the affirmative and pleaded Not Guilty to the charges levelled against him by mentioning that his case had been taken as mistaken identity.

7.1 The Committee looking into the same directed the office to call the SFIO as a witness in the next hearing. Thereafter, looking into the fact that this was the first hearing, the Committee decided to adjourn the hearing to a future date. With this, the hearing in the matter was partly heard and adjourned.

8. On the day of the final hearing held on 20<sup>th</sup> June, 2023, the Committee noted that the Respondent was present through Video Conferencing Mode. Ms. Swasti Agarwal, Assistant Director, SFIO, and Mr. Lalit Mohan Rana, Senior Assistant Director, SFIO, were present as witnesses on behalf of the SFIO, i.e. the Informant Department.

8.1 Thereafter, the Respondent reiterated his earlier submissions that he was not associated with the Jain brothers in any manner and that he was not the intermediary in the matter of the Jain Brothers of M/s NKS Holding.

8.2 The Committee noted that Mr. Lalit Mohan Rana, Sr. Asst. Director, SFIO, Witness, submitted that the Respondent has not been charge sheeted by SFIO in present matter and no statement was recorded from the Respondent.

8.3 He further submitted that the details of the Respondent were taken by them from the Income Tax Department and the same were forwarded to the Disciplinary Directorate for further investigation. On being specifically asked as to which details were given by them to the Disciplinary Directorate, the witness mentioned that only the phone number and address of the Respondent was sent to the Director (Discipline) for further investigation.

8.4 It was also submitted by the witness that Jain Brothers, during the recording of their statement had not only shared the details of the person involved as Chartered Accountant, Company Secretary or Advocate. He further submitted

that their department have not investigated any of the persons except who have been involved in the investigation report of the SFIO whose names have been specifically mentioned therein and whose statement have been recorded as part of the investigation report.

8.5 Thereafter, the Committee posed certain questions to the Respondent to understand the issue involved and the role of the Respondent in the case. The Committee, on consideration of the same, decided to have response of the Director (Discipline) regarding initiation of proceedings against the present Respondent in the matter, when only a phone number and address was provided by the Informant and no membership details were provided by the Informant. With the above, the Committee decided to conclude the hearing by reserving it's judgement on the said case.

9. Thereafter, this matter was placed for its final decision held on 10<sup>th</sup> July, 2023 wherein the same members, for consideration of the facts and arriving at a decision by the Committee. The Committee noted that no proceedings had been initiated by the Informant Department against the Respondent. The Committee considered the response of the Director (Discipline) regarding initiation of proceedings against the present Respondent in the matter who submitted that the mobile number provided by SFIO match with the ICAI database with same name and address and hence the information case was decided to initiate against current Respondent.

9.1 Accordingly, keeping in view the facts, records and circumstances of the case, and the submissions of both parties, the Committee passed its judgement.

**FINDINGS OF THE COMMITTEE:-**

10. The Committee noted the submissions of the Respondent that it was a case of mistaken identity of the Respondent and that the Respondent was never involved in the alleged matters. Hence, the Respondent contended that there

was no supporting evidence substantiating the Respondent's alleged involvement in the matter.

11. The Committee noted that during the proceeding before the Committee the Respondent stated that he was not related to the instant matter in any manner neither any investigation was conducted by SFIO, nor any statement was recorded by them. Further, he had not received any summons from the SFIO and/or any other investigation agency. The Respondent relied upon his written submissions dated 23<sup>rd</sup> May 2023 wherein he inter-alia mentioned as follows:
- a) That nowhere in the statement recorded by SFIO uses the word Pankaj Gupta of Meerut wherein they fail to establish his identity, Mobile Number, or his Address.
  - b) That there are many Chartered Accountants, with the name Pankaj Gupta in Delhi Region but how the Investigation of SFIO zeroed on him as Pankaj Gupta, it is a case of mistaken Identity.
  - c) That no search, or any kind of investigation has ever taken place against him.
  - d) That no summon/explanation has been called from him by SFIO
  - e) That SFIO has never called him for recording any statement nor did they ask for any document from him.
  - f) That nothing has been recovered from his possession relating to Mr. S. K. Jain or any of the alleged entities/entries.
  - e) That he was not provided with any opportunity to confront with the main accused Mr. S.K. Jain by the SFIO.
12. The Committee noted that when it categorically asked the witness (Informant Department) the source of obtaining the details such as membership and contact details of the Respondent. The witness (SFIO representative) inter-alia stated that:
- a. The Informant Department had obtained the list of mediators who were involved in the fraud in the matter of NKS Holdings Private Limited and its group companies from the Income Tax Department.

- b. SFIO had received data from Income Tax department and SFIO had not charged against the Respondent.
  - c. He added that the Income tax department shared only the name, address and phone number of the Respondent but not shared any membership.
  - d. That the Informant department had neither recorded a statement from the Respondent nor conducted an investigation into the role of the Respondent in the matter.
  - e. As regards the role of the Respondent in the alleged matter, he stated that the name of Respondent was contained in the books/dairies maintained by Jain brothers as seized by the Income Tax Department during search and seizure at the premise of Jain brothers.
13. The Committee further noted that it is an admitted fact that the Respondent was never called by SFIO to produce any documentary evidence for alleged involvement of the Respondent in providing fictitious transactions/ accommodation entries in connivance with Jain Brothers.
14. The Committee noted the Informant Department i.e., SFIO had not recorded any statement of the Respondent and was not even able to provide any documentary evidence to substantiate the role of the Respondent in the alleged matter.
15. The Committee further noted that mere production of diaries obtained from the Income Tax Department wherein the name matching with the name of the Respondent cannot be considered as corroborative evidence to prove the contention of SFIO.
16. The Committee repeatedly asked the witness(es) from SFIO, whether they have any evidence or document to substantiate the charges levelled against the Respondent or to prove his involvement in the matter, and in response to

which the witness(es) replied in the negative as they had no evidence or document to correlate and substantiate the charges against the Respondent.

17. From the aforesaid, it is amply clear that there has been no proper identification of the Respondent in the alleged matter and his identity has not been established with any corroborative evidence for his role against the allegations as contained in the prima facie opinion.
18. Accordingly, in the absence of any corroborative evidence, the allegation against the Respondent does not stand on its legs and no liability can be attributed to the Respondent. It is also noted that it is a settled proposition of law that onus of proving the allegations always lies on the person who raised the allegation (in the extant case, the Informant Department), but they failed to provide any concrete evidence against the Respondent in the instant matter.
19. In view of the above, the Committee observed that mere production of a piece of paper/handwritten notes is not suffice to prove the contents thereof. The truth of the contents thereof is required to be proved by adducing independent evidence.
20. In the absence of any such evidence, no liability can be foisted on any person. The Committee further observed that it was the duty of the Informant Department to produce evidence in support of the allegations levelled against the Respondent herein. It is evident that even assuming there are correct entries in the books of account, then also the same cannot, without independent evidence of their trustworthiness, fix liability upon a person. There is not an iota of independent evidence to charge the Respondent herein with the accusations levelled, as has been admitted by the witness(es) of Informant Department at the time of hearing.
21. The Committee further observed that its role, being a quasi-judicial authority, is to regulate the conduct of its members through inquiry into the alleged professional and/or other misconduct within the framework of the Chartered

Accountants Act 1949 based on arguments/evidences produced before it. In the instant case, the informant Department merely named out certain professionals from the inputs of Income-Tax Department; and it had neither identified the Respondent with evidence for his alleged involvement in fictitious transactions nor investigated the role of the Respondent in such matters. The Committee was of the view that for proper appreciation of the matter, sufficient documentary evidence is required to be provided by the informant Department to corroborate the role of Respondent against the allegations levelled, and without which the instant matter could not be proceeded with further.

22. Thus, in view of the fact that the witness(es) from SFIO (Informant Department) was not able to establish the identity of the Respondent being the same person being referred in their letter / Investigation Report of SFIO and also did not produce any evidence or document to substantiate the charges levelled against the Respondent and in the absence of above, the Committee could not proceed further in the matter.
23. The Committee further noted this case is more of a mistaken identity, which was not negated by the Informant Department. The Committee, after consideration of the facts of the case, was satisfied that there are no documents to establish the misconduct of the instant Respondent. Accordingly, the Committee finds no merits in the charge and held the Respondent Not Guilty.

### CONCLUSION

24. In view of the above observation, considering the arguments, submissions of the parties and documents on record, the Committee held that the Respondent is **Not Guilty** of Professional and Other Misconduct falling within the meaning of Item (2) of Part IV of the First Schedule and Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

**ORDER**

25. 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 passed order for closure of this case.

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

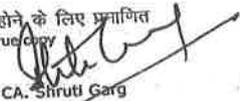
SD/-  
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GOVERNMENT NOMINEE

SD/-  
(SHRI ARUN KUMAR, I.A.S, RETD.)  
GOVERNMENT NOMINEE

SD/-  
(CA. SANJAY KUMAR AGARWAL)  
MEMBER

SD/-  
(CA. SRIDHAR MUPALLA)  
MEMBER

DATE: 07<sup>TH</sup> FEBRUARY, 2024  
PLACE: NEW DELHI

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The Institute of Chartered Accountants of India  
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032  
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032