

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/444/17/DD/07/INF/18/DC/1461/2021

In the matter of :-

CA. Sanjay Kumar Jain (M. No. 076180)

377/6, Patel Nagar,

New Mandi,

Muzaffarnagar - 251001

.....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 : 04.10.2023
(through Physical/Video Conferencing Mode)

PARTIES PRESENT

Respondent : CA. Sanjay Kumar Jain (Through Video Conferencing Mode)

BACKGROUND OF THE CASE:

1. The brief background of the case is as under:-
 - i) A letter dated 30th October 2017 was received from Dr. Hardesh Kumar, Director of the Evan multispecialty Hospital and Research Centre Pvt. Ltd. [hereinafter referred to as "Informant"] against **CA. Sanjay Kumar Jain (M.No. 076180)**, [hereinafter referred to as

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“Respondent”]. Since the Informant has not filed the complaint in the prescribed complaint form i.e., Form ‘I’ inspite of a request made to him by the Disciplinary Directorate, the aforesaid matter was treated as Information.

- ii) That Respondent was statutory auditor of “Evan Multispecialty Hospital and Research Centre Pvt. Ltd., (**hereinafter referred to as the ‘Company’**) and he conducted audit of the Company for the financial year 2016-17.
- iii) The audit report for the financial year 2016-17 submitted by the Respondent shows an increase of Rs. 80,00,000/- in the unsecured loan given by *Dr. R.B. Singh (One of the Directors of the Company)*.

CHARGES IN BRIEF: -

- 2. It is alleged that the Respondent being the statutory auditor failed to secure a declaration from Dr. R.B. Singh that the loan given by him was out of his own fund as required by Section 73 and 76 of the Companies Act, 2013 read with Companies (Acceptance of Deposit) Rules, 2014.
- 3. The Committee noted that the Respondent in his reply at the stage of PFO had, inter-alia, submitted the following in his defence:-
 - a. That he had not done any violation under Section 73 of the Companies Act, 2013.
 - b. The audit report for the financial year 2016-17 shows an increase of Rs. 266.89 lakhs in unsecured loan received from directors, including an increase of Rs. 80 lakh due to an unsecured loan from Dr. R.B Singh (Director).

B. B. Singh

- c. That it was purely an unsecured loan from a director to his own company through account payee cheque/NEFT/RTGS only to the Company OD limit account maintained with Punjab National Bank to overcome financial crises.
- d. So far Section 73 of the Companies Act, 2013 is concerned, it does not prohibit any director to give a loan to his own company. Moreover, the entire loan received by the Company in its bank account was in the knowledge of all the directors including the Informant.
- e. It is clearly mentioned in the complaint that several litigations were pending in different courts. It was also pertinent to mention here that all the directors were not in good terms with each other.
- f. The Informant, in order to settle the score with Dr. R.B Singh and others had made false and frivolous complaint against him.
4. The Director (Discipline) had, in his Prima Facie Opinion dated 31st March, 2021, noticed that though the Respondent stated that the director had given an unsecured loan from his own fund yet he did not provide any documentary evidence in support of his defence. Since the Respondent failed to provide a copy of a declaration from the director, which was a pre-condition to ensure that such a loan given by the director does not fall in deposit, therefore, the amount received from Dr R.B. Singh (Director) appears to be deposit as per provision of Companies (Acceptance of Deposits) Rules, 2014 which the Respondent was required to point out in his audit report under CARO reporting. The contention of the Respondent is not maintainable because it was the responsibility of the Respondent being the auditor of the Company to verify the whole amount of unsecured loan increased during the year whether it was in compliance with Section 73 and 76 read with Companies (Acceptance of Deposits) Rules, 2014.

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- 4.1 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 Misconduct falling within the meaning of 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 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."

BRIEF FACTS OF THE PROCEEDINGS:-

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

Sl. No.	Date	Status of Hearing
1.	12.05.2023	Adjourned on request of the Respondent
2.	23.06.2023	Part- Heard and Adjourned.
3.	10.07.2023	Part- Heard and Adjourned.
4.	18.09.2023	Adjourned on request of the Respondent
5.	04.10.2023	Concluded. Judgement Reserved
6.	31.10.2023	Consideration of Judgement

6. On the day of the first hearing held on 12th May 2023, the Committee noted that the Respondent vide e-mail dated 11th May 2023, had sought adjournment due to poor health and personal reasons and the said request was acceded to by the Committee. *Bigg*

7. On the day of second hearing held on 23rd June 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 positively and pleaded not guilty to the charges levelled against him. Since the Respondent was present before the Committee for the first time for making submissions in the case, 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 third hearing held on 10th July 2023, the Committee noted that the Respondent was present through Video Conferencing mode. The hearing in the matter, thereafter, commenced from the stage as it was left in last hearing. The Respondent made his submission on the charges levelled against him. The Committee noted that the Respondent presented on record the certificate from the director (Mr. R.B. Singh) confirming that the loan was provided from his own source and not from borrowed funds.
- 8.1 The Committee on the same, questioned him that why he had submitted the said certificate after the Prima Facie Opinion and various other questions. To which, the Respondent has inter-alia submitted as under:
- a. That all the documents at his place were seized during a survey regarding TDS.
 - b. That he had been unwell for the last three years and had undergone an open brain surgery.
 - c. That he got the certified copy of the said certificate from the doctor which was given by him earlier and submitted the same to the Institute.
 - d. That the Company went to NCLT and is under some other management.
 - e. That he is not connected with the Company at present.
 - f. That no complaint has been filed against him in ROC or NCLT.

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- 8.2 After hearing the submissions of the Respondent, the Committee directed the office to get confirmation from the concerned Director (Dr. R.B. Singh) that he had given loan to the Company out of his own funds. With this, the matter was partly heard and adjourned.
9. On the day of the fourth hearing held on 18th September 2023, the Committee noted that the Respondent vide his e-mail dated 14th September 2023 sought adjournment due to his professional commitments and personal reasons. The Committee looking into the grounds of natural justice acceded to the adjournment request made by the Respondent, and accordingly, the case was adjourned at the request of the Respondent to a future date.
10. On the day of the final hearing held on 4th October 2023, the Committee noted that the Respondent was present through video conferencing mode. The hearing in the above matter commenced from the stage as it was left in last hearing. The Respondent made his submissions, inter-alia, submitting as under:
- a. That whatever information he needed he got from the director, hence, he did not ask for the personal documents of the director.
 - b. That the concerned director was at the post of managing director of the Company.
 - c. That the management had given him the Management Representation letter across the table during the audit that the said loan was from own funds and not from borrowed funds.
 - d. That he did the audit for 2017 and in next year the Company gone into NCLT.
 - e. That the directors of the Company will not provide any support to him at the present time to get the related papers, however he will try to get the same.

- 10.1 After hearing the submissions, the Committee gave directions to the Respondent to provide, to the extent possible, any documentary evidence

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such as bank statements or any other documents/evidence of a similar nature, to establish that Dr. R.B. Singh, the then director of the Company has provided the loan from his own funds within next 10 days. Thereafter, looking into the Respondent's submissions vis-à-vis charges against the Respondent, the Committee decided to conclude the hearing in the matter by reserving its judgement.

11. Thereafter, this matter was considered by the Disciplinary Committee on 31st October 2023 to arrive at a decision in the case by all the members, who had heard the case earlier. The Committee noted that pursuant to its direction given in the meeting held on 4th October 2023, the Respondent by citing the change in Company's management that occurred subsequent to the audit conducted by him, had expressed his inability in obtaining the desired information from the Company. Therefore, the Committee observed that in view of the change in the management of the Company, it would be difficult for the Respondent to obtain the requisite document from the Company.
- 11.1 The Committee further noted that Dr. R.B. Singh, the then director of the Company in his e-mail to the Disciplinary Committee confirmed that he had provided funds to the Company from his own source of funds. Accordingly, keeping in view the facts and circumstances of the case, the material on record, and the submissions of the Respondent, the Committee passed its judgment in the above matter.

FINDINGS OF THE COMMITTEE:-

12. The Committee noted that the crux of the charge levelled against the Respondent is that he failed to secure a declaration from one of the Directors of the Company that loan given by him was out of his own fund as required by Section 73 and 74 of the Companies Act, 1956 read with Companies (Acceptance of Deposits) Rules. In respect of this charge, from the submissions of the Respondent on record including verbal submissions, the

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Committee observed that the Respondent denied that he had done any professional misconduct.

13. In light of above submissions on record, the Committee decided to go through the provisions of the Companies Act, 2013. Accordingly, as regard the requirements of Section 73 read with Companies (Acceptance of Deposits) Rules, 2014, the Committee observed that the relevant provisions related to receipt of loan from the directors of the Company states as under:-

"Deposit" includes any receipt of money by way of deposit or loan or in any other form, by a company, but does not include-

.....

viii) Any amount received from a person who, at the time of the receipt of the amount, was a director of the company. The director from whom money is received, furnishes to the company at the time of giving the money, a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others;"

14. Hence, from the above, it is clear that in the case of receipt of money from a director, a declaration is required to be given by that director to the effect that the amount is not being given out of the borrowed funds. Hence, as per the requirement of the above provision, the Respondent was required to verify the declaration given by the concerned director to ensure that the money given by that director does not fall within the scope of deposit.
15. It is further observed by the Committee that during the hearing held on 31st October 2013, the Respondent was directed to submit a copy of the bank statement or any other evidence of a similar nature to establish that Dr. R.B. Singh, the then director of the Company, provided funds from his personal funds and not from borrowed funds. In response to the said directions, the Respondent stated that he had resigned from the Company after the audit of the financial year 2017-18 and thereafter, the Company was acquired by another management through the NCLT. As per his knowledge, no previous directors / shareholders of the Company are directors and shareholders in

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present. The Respondent further stated that when he contacted Dr. R.B. Singh (director of the Company at the time of audit), he refused to provide his personal documents to him. However, Dr. R.B. Singh informed to him that he has already confirmed the declaration on e-mail to ICAI.

16. The Committee noted that the Respondent vide his e-mail dated 9th May 2023 submitted a copy of declaration dated 21st September 2017 given by Dr. R.B. Singh to his firm before signing the audit report. The Committee also noted that an e-mail dated 6th September 2023 was sent to Dr. R.B. Singh, directing him to submit a confirmation to the effect that he had given funds to the Company in form of unsecured loan out of his own resources. In response to the said email, Dr. R.B. Singh vide his email dated 7th September 2023 confirmed that he had given funds to the Company out of his own resources.
17. The Committee noted that since the Respondent had brought on record a copy of the declaration of Dr. R.B. Singh dated 21st September 2017 wherein it was duly mentioned that the money was given to the Company out of his own fund, and Dr. R.B. Singh also himself confirmed the said fact to the Institute vide his e-mail dated 7th September 2023, it cannot be stated that the Respondent failed to verify the relevant documents to ensure that money received from the director does not fall within the scope of deposits as mentioned in Section 73 read with Companies (Acceptance of Deposits) Rules, 2014.
18. Therefore, in light of the above provisions of the Companies Act, 2013 and the copy of a declaration as brought on record by the Respondent and the confirmation from the concerned director of giving money from his own funds, the Committee decided to hold the Respondent Not Guilty of Professional Misconduct.

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CONCLUSION

19. 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 Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

ORDER:

20. 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 against the Respondent.

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

**SD/-
(MRS. RANI NAIR, I.R.S. RETD.)
GOVERNMENT NOMINEE**

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

**SD/-
(CA. SANJAY KUMAR AGARWAL)
MEMBER**

**SD/-
(CA. SRIDHAR MUPPALA)
MEMBER**

DATE: 07TH FEBRUARY, 2024

PLACE: NEW DELHI

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

Bishwa
बिष्व नाथ तिवारी / Bishwa Nath Tiwari
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
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