

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.: [PR/319/2017/DD/351/2017/DC/1497/2021]

In the matter of:

Shri Pushkar Kulkarni,
Authorised Signatory
Bajaj Allianz Life Insurance Co. Ltd.
G.E. Plaza, Legal Dept. Ground Floor,
Airport Road, Yerwada
Pune-411006

.....Complainant

Versus

CA. Chetan Savjibhai Gajera (Membership. No. 127370)
Samruddhi Bhawan,
4th Floor, Office No. 9,
Goandal Road,
Rajkot -360002

.....Respondent

MEMBERS PRESENT:

- 1. CA. Ranjeet Kumar Agarwal, Presiding Officer (In Person)**
- 2. Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee (In Person)**
- 3. Shri Arun Kumar, I.A.S. (Retd.), Government Nominee (In Person)**
- 4. CA. Sridhar Muppala, Member (In Person)**

DATE OF FINAL HEARING: 13.09.2023 (through physical/video conferencing mode)

PARTIES PRESENT

Complainant : Not Present

Respondent : CA. Chetan Savjibhai Gajera (Through Video Conferencing Mode)

BACKGROUND OF THE CASE:

1. The brief background of the case is that:
 - a. The Respondent had issued a net worth certificate dated 4th September 2014 to Mr. Alpeshbhai Lakhmanbhai Ranpariya.
 - b. Based on the above net worth certificate Mr. Alpeshbhai Lakhmanbhai Ranpariya (now deceased) bought two high value premium policies from the Complainant Company.
 - c. The Complainant Company is a Life Insurance Company which suffered a huge financial loss on account of placing reliance on said net worth certificate of Late Mr. Alpeshbhai Lakhmanbhai Ranpariya [hereinafter to be referred to as “client” (in context of client of the Respondent) or “customer” (in context of customer of the Complainant Company) being issued by the Respondent.

 **CHARGES IN BRIEF: -**

2. The Complainant in his complaint filed in Form I dated 2nd December 2017 alleged that the Respondent had issued such false and incorrect net worth certificate to his client on the basis of verbal information given to him by his client and without validating/ verifying the actual figures/ client data.
3. The Committee noted that the Respondent in his reply at the stage of PFO had inter-alia, submitted as under:-
 - a) That he denied all the allegations levelled against him, stating that he had verified the income tax return filed, and income tax paid by his client.

He further stated that he had also verified the figures appearing in the Balance Sheet except for fixed assets.

- b) All other figures appearing in the Balance Sheet, like Cash in Hand, Investments in Insurance, Bank Balances, Loan against property and unsecured loans were taken as per the value appearing in Balance Sheet of the client. Moreover, he submitted that all the figures appearing in the Balance Sheet were matched by him with the corresponding figures filed in the Income Tax Return.
- c) That he had matched all the figures of Profit & Loss A/c and Balance Sheet with the corresponding figures appearing in the Income Tax Return filed with the Income Tax Department. Hence, he could not be said to be negligent as far as his limited scope of work of issuing only a net worth certificate is concerned, as he was nowhere appointed either for certifying client's income or to conduct an audit of his books etc.
4. The Director (Discipline) at the time of forming his Prima-facie opinion dated 14th June 2021, noticed as under:
- a. That the Respondent in a separate clarification letter dated 09th August 2017, issued by him to the investigating agency of the Complainant Company, has given various disclaimers on the figures contained in his net worth certificate, whereas no such disclaimers were mentioned on the face of the impugned net worth certificate dated 04th September 2014 issued by him. It was therefore opined that such disclaimers were nothing more than an afterthought on the part of Respondent.
- b. That since the Respondent has issued a 'certificate', he was responsible for ensuring the factual accuracy of its contents as certificate is a written confirmation of the accuracy of the facts stated therein which does not involve any estimate or opinion on his part.
- c. The Director (Discipline) further opined that in line with the erstwhile Guidance Note on Audit Reports & Certificates for Special Purposes, had

- there been any limitation in his scope, the Respondent was supposed to mention all such limitations in his scope on the certificate itself, which he failed to do.
- d. The Director (Discipline) opined that the Respondent was supposed to mention clearly in the certificate issued by him that whether the impugned certificate was issued in general, to whomsoever it could have concern or otherwise. However, referring to the Net worth Certificate issued by him, it was noted that he did not specify anything in his certificate as to/ for whom it was issued for. Therefore, in the absence of any such clear indication, it was presumed that the said certificate was issued in general for use by any authority to whomsoever it may concern.
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 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 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”

SUBMISSIONS OF THE RESPONDENT ON PRIMA FACIE OPINION:

6. The Committee noted that the Respondent in his submissions dated 12th October, 2021 had ,inter-alia, submitted as under:-
- a) That the Complainant has not proved any of the figures mentioned in his alleged net worth certificate to be false or wrong.

- b) That the certificate issued by the Respondent was neither binding nor conclusive for the Insurance Company.
- c) That it was equally the duty of the Complainant Company to use their discretion in interpreting the contents of the certificate.
- d) That the Complainant Company has rejected the death claim of late Mr. Alpeshbhai Ranpariya and this fact was concealed by the Complainant at the time of filing the complaint. Thus, the contention of Complainant Company that they had suffered loss is incorrect.
- e) The Respondent has accepted that he has not specified the purpose of issuing the impugned certificate nor stated the source of figures in certificate. However, there was a supporting of each and every figure contained in the certificate.
- f) That the major asset was cash in hand which was adopted from his IT Return. Thus, the explanation cannot be said to an afterthought.

BRIEF FACTS OF THE PROCEEDINGS:-

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



S.No.	Date	Status of Hearing
1.	12.05.2023	Adjourned at the request of the Respondent
2.	22.06.2023	Part Heard & Adjourned
3.	18.08.2023	Part Heard & Adjourned
4.	13.09.2023	Heard and Concluded

8. On the day of the first hearing held on 12th May 2023, the Committee noted that the Respondent vide his letter dated 8th May 2023 submitted that he would not be able to attend the hearing due to his ill health. The Committee noted that the Complainant was also not present. The Committee acceded to the request of the Respondent and the matter was adjourned to a future date.
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9. On the day of the second hearing, held on 22nd June 2023, the Committee noted that the Respondent was present through Video Conferencing Mode. The Committee noted that neither the Complainant was present nor any intimation was received despite notice/email duly served upon him. 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 leveled against him. The Committee looking into grounds of natural justice decided to give final opportunity to the Complainant to present his representations, if any. With this, the hearing in the matter was partly heard and adjourned.
10. On the day of the third hearing held on 18th August 2023, the Committee noted that the Complainant was not present despite notice duly served upon him. The Committee further noted that the Respondent was present through Video Conferencing Mode.
- 10.1 Thereafter, the Committee asked the Respondent to make his submissions. The Respondent in his submissions had inter-alia mentioned as under:
- a. That before giving the net worth certificate, he had verified the Income Tax Return of the client and also matched the same with the return filed on the Income Tax Portal.
 - b. That the client is no more and the insurance Company had rejected the claim.
 - c. That the Complainant Company had repudiated the claim and filed a complaint against the Respondent with the ICAI that he had not verified the financial statements of the client.
 - d. That he had already replied to the Complainant that he had not certified the financial statements and had just given the Net Worth certificate on the basis of data as per financial records.
 - e. That at the time of issuing the certificate the client had only told him that the insurance company was demanding the said certificate, and he had no knowledge about what category of insurance was being taken by the client.

- f. That in the certificate he had not mentioned or certified anything else other than net worth.
- g. That the said certificate was issued in September 2014 however the Guidance Note on Audit Reports & Certificates for Special Purposes was issued by the ICAI in 2016.

10.2 The Committee posed certain questions to the Respondent to understand the issue involved and the role of the Respondent in the case. With this, the hearing in the matter was partly heard and adjourned to provide one more opportunity to the Complainant.

11. On the fourth and final hearing held on 13th September 2023, the Committee noted that the Complainant was not present. The Committee further noted that the Respondent was present through Video Conferencing Mode.

11.1 Thereafter, the Committee asked the Respondent to make his submissions. The Respondent in his submissions had, inter-alia, submitted as under:

- a. That the Complainant had filed the complaint without quantifying the amount in which he incurred loss.
- b. That there is no loss to the Complainant, and he is taking advantage of the Institute's procedure of Disciplinary Committee.
- c. That the claim of the client was rejected by the Company.
- d. That he asked the client about the huge cash of Rs 58 lakhs as balance in hand and the client informed him that he was doing agriculture business due to which he was having cash.
- e. That before giving the net worth certificate, he had verified the Income Tax Return of the client.
- f. That he had only gone through the balance sheet and had not certified profit or loss or income or any part of it.
- g. That the client had paid tax of Rs 75000/- due to the said agriculture income, otherwise he was not required to pay any tax.

11.2 Accordingly, keeping in view the facts and circumstances of the case, the material on record and the submissions of the parties, the Committee concluded the case.

FINDINGS OF THE COMMITTEE:

12. The Committee noted that the Complainant Company had made mere allegation without specifying the particular item or the amount within the Net worth Certificate that is allegedly false or inaccurate.
13. The Committee noted that though the Complainant had made the allegation that the Net Worth Certificate issued by the Respondent was incorrect/false, yet the Complainant Company did not bring on record any documentary evidence to show that the amount reflected in the ITR as filed with the Income Tax Department was incorrect.
14. Additionally, there is no documentary evidence indicating any modifications made by the Income Tax Department, such as deletions or additions, to the assessee's income.
15. The Committee on perusal of the contents of the net worth certificate issued by the Respondent noted that the net worth certificate comprised of following:

		(Rs. In lacs)	
Assets	Amt. Rs.	Liabilities	Amt. Rs.
Cash Balances	58.39	RNSB Loan against Property	4.80
Investment in Insurance	0.71	Unsecured Loans from Relative	0.99
Bank Balances	0.10		
Plant & Machinery	2.00		
Vehicle	0.25		
Gold & Silver Ornaments	7.00		
TOTAL	68.45	TOTAL	5.79

Networth = Assets - Liabilities = 68.45 - 5.79 = 62.66 Lacs

16. The Committee noted that major item in the net worth certificate is cash worth 58.39 lakhs and the same was duly appearing in the Income Tax return of the client for the Assessment Year 2014-15 as under:

iii	Cash and Bank Balances			
	A	Cash-in-hand	iiiA	5838901
	B	Balance with banks	iiiB	10940
	C	Total (iiiA + iiiB)	iiiC	5849841
iv	Other Current Assets		aiv	0
v	Total current assets (iE + aii + iiiC + aiv)		av	5849841

17. The Committee further noted that the Respondent, regarding reason for the high cash, submitted that the client informed him that he was doing agricultural business due to which he was having cash. The Committee, on perusal of Income Tax return, noted that Client in his Income Tax return had reported agricultural Income 46,42,275/-. Accordingly, the Committee noted that the Respondent had applied the requisite diligence in respect of his professional duties.
18. The Committee also noted that the figure in the Net worth Certificate aligns with the information in the Income Tax Return (ITR), and in the absence of any concrete evidence provided by the Complainant Company regarding the unavailability of cash, it cannot be conclusively asserted that the certificate issued by the Respondent is either incorrect or false.
19. It is also noted that it is a settled proposition of law that the onus of proving the allegations always lies on the Complainant but in the instant matter, the Complainant has failed to provide any documentary evidences to prove his allegation against the Respondent.
20. Further, the Respondent through his written submissions dated 12th October 2021, stated that the death claim of Late Mr. Alpeshbhai Ranpariya was rejected by the Complainant Company and accordingly, the question of suffering huge loss by relying upon certificate issued by the Respondent did not arise. The Committee thus finds no merits in the charge of the Complainant.

CONCLUSION:

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

ORDER:

22. 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.

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. SRIDHAR MUPPALA)
MEMBER

DATE: 07.02.2024

PLACE: New Delhi

सही प्रतिलिपि 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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