

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-369/17-DD/348/INF/2017/DC/1371/2020]

In the matter of:

CA. Pawan Kumar Gupta (M.No.071471)
Partner, M/s Gupta Saharia & Co.
Chartered Accountants
4, Atlanta,
Evershine Nagar,
Malad (West),
MUMBAI – 400064

...RESPONDENT

MEMBERS PRESENT:

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

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

PARTIES PRESENT :

Respondent: CA. Pawan Kumar Gupta (Through Video Conferencing Mode)

Counsel for the Respondent: Shri B. M. Singh, Advocate (Through Video Conferencing Mode)

Counsel for the Respondent: Smt. Nirali Mehta, Advocate (Through Video Conferencing Mode)

BACKGROUND OF THE CASE:

1. The brief background of the case is as under:
 - a. A letter dated 31st May 2017 along with annexures was received from Sh. K. Surendra Kumar, Assistant General Manager (Inv.) Security and Exchange Board of India (hereinafter referred to as the "Informant").
 - b. In the said letter, allegations were made against M/s Gupta Saharia & Co. (FRN: 103446W), Mumbai (hereinafter referred to as the "Respondent firm") who was the Statutory Auditor of parent Company J. Kumar Infra projects Limited (JKIL) and its group Companies namely J. Kumar Software System Pvt Ltd (JKSS), J. Kumar Mineral & Mines Pvt Ltd (JKMM) for the financial year 2009-10.
 - c. Thereafter, in accordance with the provision of clause (b) of sub-rule (1) of Rule (8) read with Rule 11 of the aforesaid Rules, a letter was sent seeking the name of member(s) answerable to the above stated information and seeking Written Statement of the said person(s). In response to the same, a letter dated 6th December, 2017 was received from CA. Pawan Kumar Gupta (M. No. 071471) (hereinafter referred to as the "Respondent") declaring himself as member answerable to above stated information.
 - d. The Informant (SEBI) carried out an investigation in the case of JKIL i.e., parent Company. During the course of the investigation, it was observed that the group Companies JKIL, JKMM & JKSS had three common Directors from the same family who were operating from the same address as their registered office. The group Companies had various transactions among themselves and during the year 2009-10, JKIL issued preferential allotment of warrants to its group entities i.e., to JKMM and JKSS and six individuals relating to promoter group entities.
 - e. As per the investigation report, SEBI derived inferences that the transactions between group Companies were in the nature of promoter Company i.e. JKIL funding the promoter group entities (i.e. JKMM, JKSS and six other promoter group entities) towards payment of its own preferential issue and thus, adjudication proceedings were initiated against JKIL for violating the provisions of Section 12A (a) (b) & (c) of the SEBI Act,

1992 read with Regulation 3 (a) (b) (c) & (d) and Regulation 4(2) (f) & (r) of SEBI (PFUTP) Regulations, 2003.

CHARGES IN BRIEF:-

2. The Committee noted that the charge is that the Respondent firm being statutory auditor of JKIL and its other promoter group companies i.e. JKMM & JKSS had failed to make any qualification with respect to inter-group transactions pertaining to alleged funds transferred that were used by latter companies to make payment towards preferential issue of JKIL which resulted in false and misleading books of accounts of JKIL for the F.Y. 2009-10.
3. The Committee noted that the Respondent in his reply at the stage of PFO had, inter-alia, mentioned as under: -
 - a. That unless it is proved that the transaction between JKIL and JKSS, JKIL and JKMM were in the nature of JKIL funding the promoter group entities, he could not be held liable for failing to exercise due care and diligence.
 - b. That there was no adjudication of the offence against the principal accused i.e. JKIL.
 - c. That all the three companies were treated as related parties and all the transactions in the books of each other were well disclosed under the heads of related party disclosures.
 - d. That on his enquiry about the transaction which was done immediately preceding the date of the receipt of payment for preferential allotment, he was told that JKIL used to take Business Advance from the Companies under the same management.
 - e. The Business Advance agreement was made orally, and such an advance was usually repaid, in part or in full, on the demand of the company which was made as and when the need arose in the lender Company. Accordingly, a demand was made by JKSS to JKIL for the repayment of Rs. 3,60,00,000/- as it wanted to invest in the preferential issue of JKIL.

- f. That he had verified subsequently that the full amount receivable from JKIL as on that day and after perusing the Ledger Account he had reached to the conclusion that there were various other transactions between JKIL and JKSS, JKIL and JKMM earlier to the transaction on August 11, 2009 and August 7, 2009 respectively in the form of business advance and repayment, and the transaction in question was not the only transaction which was executed between them.
- g. The Respondent has provided the details of the earlier transactions between JKIL and JKSS, JKIL and JKMM and to substantiate his claim, he has also provided a copy of the Ledger Account, for JKSS and JKMM in the books of JKIL for the financial year 2009-10 and the Bank Statements. He produced copies of Ledger Account of JKIL in the books of JKSS and JKMM and corresponding bank Statement.
- h. That he had obtained a Written Statement from the management of JKMM and JKSS regarding the recoverability of these advances and their classification for balance sheet purposes.
- i. The Respondent also produced on record copy of the Balance Sheet, Applications made by JKSS and JKMM, Forms filed by JKIL with ROC (GAR – 7) as well as Bank Statements.
- j. He produced on record the copy of the minutes of the meeting of Board and Extra Ordinary General meeting.
- k. He submitted that when he asked the management of JKMM to explain about the funds transferred to six individuals related to promoter group entities of JKIL the explanation given to him was that 'Jagdish Kumar Gupta' and 'Kamal Gupta' were joint owners of a Flat bearing No. 701 in Vile Parle, Mumbai. He informed that JKMM had entered a 'Memorandum of Understanding' dated 2nd February 2009 with Jagdish Kumar Gupta and Kamal Gupta for the purchase of this flat. The management of JKMM gave him the copies of MOU which were also produced on record.
- l. That on his asking about the reason of the transfer of amount of Rs. 90,00,000/- (Rupees ninety lakhs only), Rs. 45,00,000/- (Rupees forty-five lakhs only) and Rs. 45,00,000/- (Rupees forty-five lakhs only) in the bank accounts of Jagdish Kumar Gupta, Kamal Gupta and Sonal Gupta


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immediately prior to the preferential allotment, it was explained to him that a request was made by them to make the payment of these amounts as a part payment/consideration for purchase of flat, as they wanted to invest in the issue of preferential convertible warrants of JKIL and as they were bound to accede the request owing to the terms of MOU, these payments were made by JKMM.

- m. That it was explained to him that as JKMM was unable to pay the entire consideration to Jagdish Kumar Gupta, Kamal Gupta, and Sonal Gupta before September 30, 2009, so, as per the terms of the MOU, the amount paid by JKMM before September 30, 2009, was returned to them within five years by Jagdish Kumar Gupta, Kamal Gupta and Sonal Gupta without any interest. That he had verified subsequently that the full amount receivable from both the party as on that day.
- n. As an auditor it was his duty not to take a narrow approach but to take a holistic or broader view to the transactions in entirety.
- o. That he had not relied merely on the reply of JKIL, but he checked their ledger accounts and bank statements before relying on the same. It even complied with the Guidance Note on Audit of Debtors, Business Advance and Advances and Guidance Note on Audit of Capital and Reserves released by the Institute of Chartered Accountants of India.

4. The Director (Discipline) had, in his Prima-facie opinion dated 22nd July 2020, with respect to audit conducted by the Respondent, noted as under:

- a. that if there was no agreement among the entities for such frequent transfers, then on what basis the Respondent verified the nature of such funds.
- b. It is viewed that when such funds were in the nature of loans, accounting them as 'advances' led to several omissions on the part of the Respondent including reporting about transactions of loan with parties recorded in register maintained under section 301 as per CARO 2003 requirements.
- c. The funds transferred directly or indirectly at the eve of preferential allotment to parties who were also subscribers to the issue should have altered the Respondent.

- d. However, the Respondent seems to be convinced with mere fact that all such transfers were via banking channels and that a portion is supported by agreements.
- e. The incorporation of JKMM a few months before such allotment and subscribing to the shares and entering in agreements with other related individuals which never saw light of the day should have raised suspicion in the mind of the Respondent especially when there is clear provision in Section 372A of the Companies Act, 1956 prescribing various restrictions on loans and investments made by the Company. Further, Section 77 of Companies Act, 1956 also provides that no company has the power to purchase its own share.
- f. The Respondent was responsible to verify compliance of law as per SA 250 both in context of the provisions of the Companies Act and its implications on compliance with SEBI provisions when jugglery of funds transfer was taking place with respect to preferential issue by JKIL. However, on accepting the nature of such funds being called as advances, the Respondent gave a platform to various companies audited by it to flout the provisions of law.
- g. Though the Respondent brought on record wide range of documents, yet he failed to verify the basic nature of such transactions and their impact on compliance of law that too when he was the auditor of all entities involved and was aware of such back-to-back arrangements as well as transactions between entities and individuals.
- h. It is further seen that it's a clear case of violation of provisions of section 12A (a), (b) & (c) of the SEBI Act, 1992 read with Regulation 3(a)(b)(c) & (d) the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003
- i. Hence, he viewed that the Respondent has not exercised due care and diligence with respect to audit of books of accounts and also failed to obtain sufficient evidence to express his opinion on true nature of alleged transactions.



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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(s) (7) & (8) 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:

Clause (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.

Clause (8) of Part I of Second Schedule:

(8): fails to obtain sufficient information which is necessary for expression of an opinion, or its exceptions are sufficiently material to negate the expression of an opinion.”

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. | 25.04.2022 | Adjourned on the request of the Respondent |
| 2. | 11.04.2023 | Part Heard & Adjourned |
| 3. | 20.06.2023 | Heard & Concluded. |

7. On the day of first hearing held on 25th April, 2022, the Committee noted that the Respondent vide email dated 22nd April, 2022 had sought an adjournment on medical grounds. The Committee looking into the same and the fact that this

matter was listed for the first time acceded to his request and granted the adjournment.

8. On the day of second hearing held on 11th April, 2023, the Committee, in the instant matter, noted that the Respondent, alongwith his Counsel, Shri V.M. Singh (instructing counsel on behalf of Mindspirit Legal) was present through Video Conferencing mode.
 - 8.1 The Respondent was administered an 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.
 - 8.2 The Counsel for the Respondent presented his line of arguments in his defence inter-alia, mentioning that SEBI exonerated promoters, Companies, and the Respondent for wrongdoing. He relied on his submission dated 22nd February 2023 whereby he submitted that the SEBI in its order has acquitted him, Company, and the promoters of the Company of PFUTP Regulations and SEBI Act charges and has also found him not guilty for not exercising due care and diligence with respect to the audit of books of account.
 - 8.3 The Committee also posed certain questions to the Counsel. After hearing the Counsel in detail, the Committee directed the Respondent to file his written submission within the next 15 days regarding compliance of various accounting and auditing standards by the Respondent while he was the auditor of group companies having common control.
 - 8.4 With this, the hearing in the matter was partly heard & adjourned.
9. On the day of the final hearing held on 20th June 2023, the Committee noted that the Respondent along with his Counsel Shri. V.M. Singh, Advocate (instructing counsel on behalf of Mindspirit Legal) and Smt. Nirali Mehta, Advocate was present through Video Conferencing.

- 9.1 The Committee asked the Respondent that whether he had submitted the documents sought from him in the previous meeting and the Respondent replied in affirmative and submitted that he had filed his reply in May, 2023 itself.
- 9.2 The Committee noted that the Respondent in written submissions dated 8th May 2023, had, inter-alia, mentioned as under:-
- a. That he had exercise due care and diligence expected from a Statutory Auditor.
 - b. With respect to point (v) of CARO, 2003 he has verified the register containing the particulars of the contract, Companies and firms in which directors were interested parties and the disclosure of the same was made in the Annual Report of the Company for FY 2009-10. Further as per section 301 of the Companies Act, 1956, the transactions need to be entered into the register maintained under the said act have been properly entered.
 - c. With respect to point (iii) of CARO 2003, he submitted that according to the information and explanation given to him, the Company has neither granted any loans from the Companies, firms and other parties mentioned in the register maintained under section 301 and therefore provision of clause (iii) (b), (iii) (c), (iii) (d), (iii) (e), (iii) (f) and (iii) (g) of CARO 2003 are not applicable to the Company.
 - d. With respect to point (xviii) of CARO 2003, he submitted that the preferential allotment of warrants to the 22 entities was approved in the shareholder's meeting on 20th May, 2009. The same was verified by him and he did not find any suspicion regarding the same.
 - e. That there is no requirement under the law for any transaction between the two group entities. Further, in absence of any agreement, he has verified the bank statements, MOU and various other records and had properly disclosed the same under related party transactions in the annual report of the Company.
 - f. That the proceedings against him and six other entities have been quashed by SEBI vide its order dated 17th December, 2019 and 18th February, 2020.

- 9.3 Thereafter, the Respondent Counsel submitted his defence by referring to the relevant paras of the SEBI order dated 18th February, 2020. The Committee noted that the order of the SEBI was neither stamped nor signed. The Respondent counsel submitted that they have downloaded the order from SEBI website.
- 9.4 Thereafter, the Committee, looking into the Respondent's submissions against the charges leveled, recorded his plea, and accordingly decided to conclude the hearing.

FINDINGS OF THE COMMITTEE

10. The Committee noted that the present matter was initiated on the reference received from SEBI. The charge against the Respondent firm is that he failed to make any qualification with respect to inter-group transactions pertaining to alleged funds transferred by group companies i.e. JKMM & JKSS to make payment towards preferential issue of JKIL which resulted in false and misleading books of accounts of JKIL for the F.Y 2009-10.
11. The Committee with respect of the above charge noted that order no. ORDER/VV/HS/2019-20/6860 of Adjudicating officer of SEBI dated 18th February 2020 is brought on record by the Respondent. The Committee noted that the same is also available on the website of SEBI. On perusal of said order, the Committee noted as under:
- a. That SEBI had initiated proceedings under Section 15HA of SEBI Act, 1992 against the Respondent firm for violation of provisions of Section 12A (a) (b) & (c) of the SEBI Act, 1992 read with Regulation 3 (b), (c), (d), and Regulation 4(2) (f) & (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practice Relating to Securities Market) Regulations, 2003 with respect to finalization of books of accounts of JKIL.
 - b. That Adjudication Officer observed that an order bearing No. WTM/SM//IVD/ID9/6143/2019-20 was passed by Hon'ble Whole Time

Member (WTM) on 17th December 2019 on the same sets of facts and issues. In the said Order it was concluded that material available on record are not sufficient to hold that financial transactions between JKIL and its group entities as funded by JKIL. Accordingly, the WTM disposed of proceedings against JKIL and its promoter group Companies without any direction.

- c. Relying upon the said order Adjudication Officer concluded that provisions of Section 12A (a) (b) & (c) of the SEBI Act, 1992 read with Regulation 3 (b), (c), (d), and Regulation 4(2) (f) & (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practice Relating to Securities Market) Regulations, 2003 does not stand established.
- d. Accordingly, he disposed of the Adjudication proceedings against the Respondent Firm i.e., M/s Gupta Saharia & Co.

12. The Committee also noted from the order bearing No. WTM/SM//IVD/ID9/6143/2019-20 passed by Hon'ble Whole Time Member (WTM) on 17th December 2019 that the rationale for the decision noted that the facts of the case filed with ICAI were identical/similar to facts decided in said Order.

13. Accordingly, the Committee, without touching the merits of the case, observed that the present case was initiated on the reference of the SEBI wherein the abovesaid order was on same/ similar facts and was decided in favour of the Respondent. Therefore, the Committee viewed that the present proceedings need to be dropped as the case has been settled by SEBI itself (i.e. Informant Department in the instant case).

14. Accordingly, the Committee concluded that if the principal allegation of fraud of funding of preferential allotment by JKIL through its promoter entities des not sustain, then the charge of not carrying out due diligence cannot survive against the Respondent.

CONCLUSION

15. In view of the above findings stated in above para's vis a vis material on record, the Committee, in its considered opinion, holds the Respondent is **NOT GUILTY** of Professional Misconduct falling within the meaning of Item (7) and Item (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.
16. 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

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