

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. : [PR/244/2021-DD/250/2021-BOD/638/2022]

CORAM (Present in Person):

CA. Rajendra Kumar P, Presiding Officer

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

CA. Priti Savla, Member

In the matter of:

Sh. Ram Mohan Vengala

Flat No. 300, Block B, Jayabheri Orange County,

Road No. 2, Financial District,

Nanakaramguda,

Telangana 500032.

..... Complainant

-Vs-

CA. Praveen Kumar Veluru (M. No. 228461)

V. Praveen & Co., Chartered Accountants,

Plot No. 52, Flat No 101 Saanvi Nilayam,

Jayabheri Enclave, Gachibowli,

Hyderabad- 500032.

..... Respondent

DATE OF FINAL HEARING : 26th October 2023

PARTIES PRESENT:

Complainant : Sh. Ram Mohan Vengala (through video conferencing)

Respondent : CA. Praveen Kumar Veluru (in person)

FINDINGS:

BRIEF BACKGROUND OF THE CASE:

1.1 The Complainant was the designated partner of M/s Saketa Vaksana LLP, wherein the other two LLPs namely M/s Saketa Satvik LLP and M/s Nestila Developers, LLP through their designated partners Mr. Nagaraju V and Mr. Nagaraju Kapa respectively, were also its (M/s Saketa Vaksana, LLP) partners. The Respondent was the auditor of M/s Saketa Vaksana LLP for the years 2018-19 and 2019-20 and also used to file the Income Tax returns of the

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individual partners of (designated partners) of M/s Saketa Vaksana LLP. The Respondent has been stated by the Complainant to be the auditor of M/s Nestilla Developers, LLP also. In November 2019, one of the partners i.e. M/s Saketa Satvik resigned from M/s Saketa Vaksana LLP and it since was not satisfied with the agreed settlement proceeds from the LLP (M/s Saketa Vaksana), it initiated an Arbitration proceeding for claim against M/s Saketa Vaksana LLP. Subsequent to filing of such Arbitration proceeding, all the partners including the retiring partner of the firm came to a consensus and reduced the understanding in writing in the form of a Memorandum of Undertaking (herein referred to as 'MOU') executed on 19th February 2021 between M/s. Saketa Vaksana LLP, M/s. Saketa Satvik LLP and M/s. Nestila Developers LLP represented by their designated partners Viz. the Complainant, Mr. Nagaraju V and Mr. Nagaraju Kapa respectively.

1.2 The said MOU was then deposited in the custody of the Respondent in his Office by all the three parties including the Complainant. The Complainant further stated that the Respondent (upon such resignation of one of the partners of LLP) had overseen the bifurcation process among the partners of LLP wherein, he had not only confirmed the financial basis for the said bifurcation but had also advised on how it was to be done.

CHARGE ALLEGED:

2.1 In the abovementioned background, it has been stated by the Complainant that the context in which such document (i.e. MOU) was placed with the Respondent was that the said document was not supposed to be handed over to anyone till all the three persons (existing partners/resigning partner of the firm including Complainant) would come forward and ask for the said document. However, the Respondent handed over a copy of such MOU to Mr. Kapa Nagaraju of M/s Nestilla Developers, the other partner of LLP. Hence, it is alleged that the Respondent shared the copy of such MOU with other partners of LLP as against the understanding for sharing of such MOU.

2.2 It is also alleged that since the Respondent was the auditor of M/s. Saketa Vaksana LLP since 2018 and he had access to the information of all the related entities and the individuals connected with the LLP, he had disclosed the information acquired from his client i.e. the Complainant without his consent with an intention to protect the interest of his choice.

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2.3 It is further alleged that the Respondent had handed over a copy of MOU to M/s. Saketa Saatvik LLP and M/s. Nestila Develpoers LLP after affixing his stamp/seal and signature with an intention to defraud the Complainant and to give benefit to Mr. Kapa Nagaraju of M/s Nestilla Developers despite knowing the fact that he was not related to the said document in any manner but only a custodian for keeping the document under safe custody. The said document was neither signed nor stamped by the Respondent at the time of its execution. Hence, Respondent has been alleged for committing breach of trust and collusion with Mr. Nagaraju Kapa with an intention to cause loss to the Complainant.

The Board noted that on consideration of the Prima Facie Opinion dated 18th July, 2022 of the Director (Discipline) along with the Complaint, written Statement, Rejoinder and Additional documents on record, the (erstwhile) Board was of the following view:

" on perusal of the copy of the MOU dated 19th Feb 2021 the Board noted that neither the name nor signature of the Respondent was there on the said MOU. It is the case of the Respondent that he did not oversee the bifurcation process. He neither confirmed the financial basis for the bifurcation nor advised on how it was to be done. However, the Complainant brought on record copy of the bill dated 14th December 2020 raised by the Respondent on the entity Saketa Vaksana LLP with the particulars 'Special audit assignment on resignation of partners' to the tune of Rs. 1,06,000/-. Also, it is an admitted fact that the original MOU dated 19th Feb 2021 was in the custody of the Respondent. Further, in response to the request dated 5th April 2021 and 6th April 2021 respectively from the other two parties to the MOU to provide true attested copy of the said MOU, the Respondent provided the copy bearing his signature and stamp. The Board was of the view that since the original MOU had not been signed by the Respondent, he, in no way could issue a copy of the same bearing his signature and stamp as by issuing an attested copy of the said MOU, the Respondent had conveyed a misleading picture that the facts mentioned therein had been certified by him. Thus, while agreeing with the Prima Facie Opinion of the Director (Discipline) that the Respondent is NOT GUILTY of Professional Misconduct falling within the meaning of Item (1) of Part I of the Second Schedule, the Board did not agree with the Prima Facie Opinion of the Director (Discipline) that the Respondent is NOT GUILTY of 'Other

Misconduct' falling within the meaning of Item (2) of Part-IV of First Schedule to the Chartered Accountants Act, 1949 read with section 22 of the said Act and decided to proceed under Chapter IV of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. "

BRIEF OF PROCEEDINGS HELD:

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S.no.	Date of Hearing(s)	Status of Hearing(s)
1.	19 th April 2023	Part-heard and adjourned with the direction to the office to share the copy of the Notes of hearing held in in the case and the documents submitted by the Respondent during the course of hearing in the case with the Complainant to provide his comments thereon.
2.	15 th June 2023	Adjourned at the request of the Respondent.
3.	26 th October, 2023	Heard and concluded.

BRIEF SUBMISSIONS OF THE RESPONDENT:

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

4.1 It is a fact that the MOU dated 19th February 2021 was entered into between the concerned parties and the Respondent was provided the original of the same for safe custody. On a later date when two of the parties requested for a copy of the same duly attested by him, he provided the same to those persons, with the oral consent of the third party to the MoU.

4.2 The BOD has failed to state the basis on which it came to the conclusion that the Respondent cannot attest the MOU as he was not a party to the MOU. Nowhere in the copies of the MOU attested by the Respondent, he stated that he had certified the facts mentioned in the MOU. What he did was a mere mention of "true copy" on the copy issued by the Respondent.

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- 4.3 The BOD has failed to take into consideration the fact that the Respondent's signature and seal was affixed to just indicate that it was a true copy of the original MOU, as per the request letters of the two parties who sought copies. There is no law which prohibits him to provide a certified true copy of any document. This is the precise reason that there is no requirement to generate a UDIN for certifying true copies.
- 4.4 Further, a plain reading of Clause 2 Part IV of First Schedule indicates that action under his clause can be contemplated only when a CA brings disrepute to the profession or the Institute in the "opinion of the Council". The respondent has not been provided with a copy of the opinion of the Council where it has opined that he brought disrepute to the profession or the Institute. The BOD cannot suo moto initiate action against him and proceed in the matter. Further, the Council has not so far notified any specific actions of members which brings disrepute to the profession or Institute.
- 4.5 The phrase, "*brings disrepute to the profession or the Institute*" must be understood in the long-term sense of maintaining the integrity of, and public confidence in the profession and the Institute. This is the precise reason why the consideration of disrepute falls within the purview of entire Council. Even assuming for a moment that the BOD is empowered to act against the Respondent, it is for the BOD to prove that his act dented the integrity and public confidence of the profession or the Institute and brought disrepute to the profession / Institute. For this, the onus of proof lies with the BOD to establish whether, considering all the circumstances and the evidence, he brought disrepute to the profession or the Institute which has not been done.

OBSERVATIONS OF THE BOARD:

5. On perusal of the documents and submissions on record, the Board observed that the Respondent raised certain technical objections with regard to the admissibility of the case and decided to deal with them before arriving at its Findings.
- 5.1 As regards the objection of the Respondent regarding non- fulfilment of the requirement stipulated in Clause (2) of Part IV of the First Schedule, the Board relies on para 17 and 18 of the Order dated 18th October 2018 passed by the Hon'ble Appellate Authority in the instant matter as under:

"17. It is pertinent to note here that this Authority has already dealt with and decided this issue in the Appeals earlier namely Gyan Prakash Agarwal (Appeal No. 08/ICAI/2014),

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Rajiv Maheshwari (Appeal No. 05/ICAI/2014) and Sameer Kumar Singh Vs. ICAI (Appeal No. 07/ICAI/2014) and has held as under:- "15. Based on the above and by taking note of the written submissions made on behalf of the Institute of Company Secretaries of India, the Institute of Cost Accountants of India and the Institute of Chartered Accountants of India containing the detailed Page 9 of 14 analysis of the issue in question, we are of the considered view that the proper and correct interpretation which can be given to Clause (2) of Part-IV of the First Schedule to the respective Acts, in the light of the principles laid down and having regard to the case laws of various courts and further considering the basic objects, reasons and purpose of the amendment brought in the statutes as quoted above is that, 'Prima facie Opinion (PFO)' formed by the Director (Discipline) in all such complaints / information cases serves the purpose for proceeding further for taking disciplinary action against the errant members as in terms of the amended mechanism for conduct of cases, it is the Director (Discipline) who has to form the first Prima Facie Opinion for the disciplinary proceedings to be initiated. Therefore, the opinion of council as is mentioned in the Clause (2) of Part-IV of the First Schedule to the Act has to be given a purposive meaning and has to be read in consonance with the letter and scheme of the enactment".

Hence, the issue had already been decided by the Hon'ble Appellate Authority, and therefore, there is no merit in the argument of the Respondent in this regard.

5.2 As regard the charge alleged, the Board on perusal of the MOU dated 19th February 2021 executed between LLP (M/s Saketa Vaksana) and its partners viz. M/s Saketa Satvik, LLP and M/s Nestilla Developers, LLP which was signed by all the partners including the resigning partner through their designated partners noted that the Respondent was not a party to the said MOU in any capacity. Further, there were no formal terms in the said MOU as regard its sharing or non-sharing with the parties to the said MOU. However, it is an admitted fact that the said MOU was executed in the presence of the Respondent and its signed copy was kept in his custody.

5.3 The Board further noted that the Respondent brought on record a copy of the letter dated 5th April 2021 and 6th April 2021 addressed by M/s Nestilla Developers LLP and M/s Saketa Satvik, LLP respectively to the Respondent firm stating that since M/s Saketa Vaksana LLP has failed and deviated from performing the terms and conditions in the said MOU dated 19th Feb 2021, a true copy of the said MOU is required. Accordingly, a copy of such MOU was shared by the Respondent with them after affixing his Firm's round stamp and his initials over it. Further, on the aforesaid letters, the following was noted by hand and signed

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by the Respondent and duly acknowledged by the designated partners of M/s Nestilla Developers LLP and M/s Saketa Satvik, LLP:

"Based on your request letter I am issuing a photocopy of MOU by acknowledging it, stating that the original MOU is with me, and I have nothing to do with this original MOU. Kindly acknowledge it."

5.4 Further, on perusal of the copy of the MOU which had been shared by the Respondent with the parties to the MOU, the Board noted that it bore only his firm's stamp and his initials and no terminology as 'certified true' had been used.

Thus, the Board held that the said action on the part of the Respondent cannot be held to be misleading or amounting to breach of trust with an intention to cause loss to the Complainant. Accordingly, the Board held the Respondent not guilty in respect of the charge alleged.

CONCLUSION:

6. 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 an 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.

Sd/-

CA. Rajendra Kumar P
(Presiding Officer)

Sd/-

Ms. Dolly Chakrabarty (IAAS, ret'd.)
(Government Nominee)

Sd/-

CA. Priti Savla
(Member)

DATE: 02-02-2024

सही प्रतिलिपि होना के लिए प्रमाणित
Certified to be true copy



अरुण कुमार / Arun Kumar

वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer

अनुशासनात्मक निदेशालय / Disciplinary Directorate

इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया

The Institute of Chartered Accountants of India

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