

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Judgment Reserved on : February 14, 2017*
Judgment Delivered on : February 16, 2017

+ **CHAT.A.REF.2/2010**

COUNCIL OF INSTT. OF CHARTERED
ACCOUNTANTS OF INDIA

.....Petitioner

Represented by: Mr.Rakesh Agarwal, Advocate
with Mr.Pulkit Agarwal, Advocate

versus

SUBODH GUPTA & ANR.

.....Respondents

Represented by: Ms.Manita Verma, Advocate with
Ms.Riha Deb and Mr.Prateek
Gaurav, Advocates

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE YOGESH KHANNA

PRADEEP NANDRAJOG, J.

1. The Institute of Chartered Accountants has made the instant Reference under Section 21(5) of the Chartered Accountants Act, 1949 in respect of the respondent being indicted for a misconduct other than such misconduct which is referred to in sub-Section (4) of Section 21. It needs to be noticed at this stage that with respect to the misconduct for which the respondent has been indicted falling within sub-Section (4) of Section 21 the penalty levied : of removal of the name from the Member of Register for a period of six months was challenged by the respondent in Chat.A.C.No.5/2012 which he withdrew. Thus, we shall be referring to such facts as would be relevant to decide the present Chat.A.Ref.

2. If we affirm the findings returned by the Disciplinary Committee constituted by the Institute of Chartered Accountants which has been

accepted by the Council, the charge proved would be that of a misconduct.

3. A complaint was received from the Punjab National Bank alleging that the respondent : a practicing Chartered Accountant, had incorporated three companies and a trust, with he being the founder director/president and had opened accounts in the name of the companies and the trust with the complainant's branch at Agra. The three companies incorporated were : M/s.Seeroo Foods Pvt. Ltd., M/s.G.K.Consultant Ltd. and M/s.Jagrook Builders Pvt. Ltd. The trust set up was M/s.Nirogi Charitable and Medical Research Trust. It was further alleged that in connivance with the Branch Manager, funds were diverted to companies and firms in which the respondent was associated directly as a director or as a partner. The said entities were : M/s.Radha Raman Plastic Concern Ltd., M/s.Himalayan Production & Estate (P) Ltd., M/s.A.B.Metal Industries (P) Ltd., M/s.SAMD Cast (P) Ltd., M/s.Pratikar Finlease Pvt. Ltd., M/s.Subodh Gupta & Associates, M/s.Utkarsh International and M/s.Formex Forms (P) Ltd.

4. Copy of the complaint was sent to the respondent on June 06, 2007. He submitted a written statement of defence on July 17, 2007. The complainant submitted the rejoinder on August 22, 2012. The respondent submitted his comments on the rejoinder on September 18, 2012.

5. In accordance with the provisions of Regulation 12(11) of the Chartered Accountant Regulations, 1988 the complaint, written statement, rejoinder and respondent's comments on the rejoinder were placed before the Council, which at its meeting held in April, 2004 opined that prima-facie case was made out to proceed ahead for an inquiry to be made by the Disciplinary Committee of the Council.

6. The Disciplinary Committee issued notice to the respondent to appear before the Committee. The record of the Disciplinary Committee

would show that from August 25, 2004 the respondent, on one pretext or the other, took adjournments and successfully managed to drag on the proceedings till July 29, 2006. On a date which is not emerging from the record the Committee heard the complainant and the respondent and submitted a report on October 03, 2006 holding the respondent guilty of professional misconduct within the meaning of Clause 11 of the First Schedule to the Chartered Accountants Act, 1949 and with respect to the charge of other misconduct observed that the same shall be decided after the outcome of the verdict by the CBI Court. The reason being that investigation qua the fraud committed by the Branch Manager was investigated by CBI and a charge sheet was filed in the Court of Competent Jurisdiction in which amongst others, the respondent was named as an accused.

7. The report of the Disciplinary Committee was considered by the Council which referred the matter to the Disciplinary Committee for further inquiry and to submit a complete report.

8. In the remanded proceedings the respondent was heard. The Committee gave its report on February 02, 2009 and the findings are in paragraphs 13 to 23 of the report which read as under:-

“13. The Committee noted that the respondent was signing the Balance Sheet of various companies i.e. M/s.G.K.Consultants Limited, M/s.Seeroo Foods Private Limited, M/s.Radha Raman Plastic Concern Ltd. etc. in the capacity of as a Director of the said Companies. Further, it is an admitted fact that the respondent was also operating the bank account of the Companies.

14. The Committee noted that and it is an admitted fact that the respondent was Director in several companies i.e. M/s.Seeroo Foods (p) Ltd., M/s.Nirogi Charitable & Medical Research Ltd., M/s.G.K.Consultant Ltd. etc. However, the respondent have taken permission from the

Institute to be a Director only in one Company i.e. M/s.G.K.Consultant Ltd.

15. *The respondent submitted that he was honorary Director in all the Companies and for that no specific permission was required from the Institute. But the Committee is not convinced with the contention of the respondent as the respondent was actively involved in the day to day operation of the Companies as he was involved in signing the balance Sheets of the various Companies in the capacity of a Director, operating the Bank account9s) signing the Loan application/documents etc. The Complainant has submitted the copies of resolution of the Companies, authorizing the respondent to operate the Bank accounts, Copies of the Memorandum & Article of Association of various Companies in which the respondent was shown as a promoter of the Companies. Further, the respondent was actively involved in the Company's activities relating to bank's transaction and he signed the documents for over draft facility as well.*

16. *In view of the above, it is evident that the respondent was involved in day to day activities of various Companies namely, M/s.Seeroo Foods (P) Ltd., M/s.Nirogi Charitable & Medical Research Trust, M/s.G.K.Consultant Ltd., M/s.Jagrook Builders (P) Ltd., M/s.Radha Raman Plastic Concern Ltd., M/s.Himalayan Production & Estate (P) Ltd., M/s.A.B.Metal Industries (P) Ltd., M/s.SAMD Cast (P) Ltd., M/s.Pratikar Finlease Pvt. Ltd., M/s.Subodh Gupta & Associates, M/s.Utkarsh International and M/s.Formex Forms (P) Ltd. without obtaining the prior permission of the Institute.*

17. *Thus, in view of above the Committee holds the respondent guilty of professional misconduct falling with the meaning of Clause (11) of Par 1 of First Schedule to the Chartered Accountants Act, 1949.*

18. *The Committee noted that the second charges is that the respondent is connivance with the then Branch Manager had defrauded the Bank. It is an admitted fact that the Bank has been cheated by the Companies in which the Respondent was the Director and the branch manager was actively*

involved in the said fraud. The Committee noted that the bank has been defrauded to the tune of ₹3.50 crores and for the same the Bank has filed recovery suit. The said suit has been withdrawn as the Bank has entered into a compromise with the Companies. The Committee noted that the Branch manager had allowed the clean overdraft to the Companies superseding his statutory powers.

19. The Committee noted that the criminal suit is still pending in the Court and the charges have not been framed despite the fact that more than 9 years have elapsed. The Committee noted that the Respondent's contention was that he was given clean overdraft based on the creditworthiness of the Companies and he has not furnished any wrong document.

20. The Committee observed that the contention raised by the Respondent is not at all tenable as the charge sheet which has been filed by the CBI wherein the Respondent is one of the accused along with others, namely, Deepak Kumar Nayyar, Manager, Punjab National Bank, (under suspension). It has been pointed out in the charge-sheet that Nirogi Charitable & Medical Research Trust was neither availing any credit facility/loan nor there was any OD account in the name of the said Society in the Punjab National Bank, Kamla Nagar Branch, Agra. Further, it was mentioned that Mr. Deepak Kumar Nayyar, Manager, Punjab National Bank had abused his position as Branch Manager by conspiring with the respondent to cause wrongful loss to the Bank and wrongful gain to themselves by fraudulent means and in furtherance of the said conspiracy, the said Branch Manager debited a sum of ₹85,12,750/- to a non-existence OD account of the Society on 27th April, 1998 and got issued 11 demand drafts for a total sum of ₹85 lacs drawn on CDPC, New Delhi favouring various beneficiaries of Delhi on the basis of draft application forms submitted by the respondent.

21. The Committee also observed that it was alleged in the charge-sheet that M/s. Seeroo Foods Pvt. Ltd. represented by the respondent as its Director was having an Anupam Fixed Deposit Account No.489 and corresponding OD account which was operated by the respondent himself.

On 16th December, 1997 while the Anupam Account was showing a credit balance of ₹2,25,98,910/-, Mr.Nayyar fraudulent made an excess credit of ₹7,11,715/- as interest on 19.9.97. The said Manager further two fake credits for ₹5,24,96,50/- on 13.11.97 and ₹80,50,000/- on 18.11.97 showing the same as being the amounts against FDR No.589/97 and FDR No.603/97 respectively. It was further alleged that all the aforesaid three entries were made by Mr.D.K.Nayyar in connivance with the Respondent without receipt of funds from or on behalf of M/s.Seeroo Foods Pvt. Ltd. and the amount was withdrawn from Anupam OD A/c.No.49 on the various dates by the respondent.

22. On perusal of the aforestated charge-sheet and the involvement of the respondent in the entire matter, the Committee felt that the respondent's contention that he was not at all involved in this entire episode is not acceptable. The Committee further noted that the respondent at each stage was aware of the fact as to how the amounts were credited to the Society's account and only at his instance 11 demand drafts were issued to various beneficiaries for which the respondent himself had submitted the draft applications.

23. Though the Committee noted that the Complainant has not submitted any specific document before the Committee yet the Committee on perusal of the charge-sheet along with the various correspondence which has been exchanged by the respondent with the Bank is of the view that the respondent was dealing with the bank on day to day basis and he was well aware about the security available to the Bank and despite knowing that he enjoyed the clean overdraft facility in contravention of the Rules of the Bank. It is apparent that the Respondent was in connivance with the then branch Manager and enjoyed the clean overdraft facility without any security. Therefore, the Committee is of the view that the Respondent is guilty of 'Other Misconduct' under Section 22 read with Section 21 of the Chartered Accountants Act, 1949."

9. Considering the report of the Disciplinary Committee the Council held that the respondent was : (a) guilty of professional misconduct

falling within the meaning of Clause (11) of the Part 1 of the 1st Schedule to the Chartered Accountants Act, 1949; (b) guilty of other misconduct under Section 22 read with Section 21 of the Chartered Accountants Act, 1949. Pertaining to the respondent being held guilty of other misconduct the Council decided to recommend to the High Court that the name of the respondent be removed from the Register of Members for a period of two years.

10. At the hearing held by us on February 14, 2017 learned counsel for the respondent urged that the respondent was an honorary director in the three companies : M/s.Seeroo Foods Pvt. Ltd., M/s.G.K.Consultant Ltd. and M/s.Jagrook Builders Pvt. Ltd. and associated in an honorary capacity with the trust : M/s.Nirogi Charitable and Medical Research Trust. As per learned counsel similar was the respondents association with the companies and firms to which the funds were allegedly transferred.

11. There is evidence on record that the respondent was operating the bank accounts of the three companies. There is evidence on record that the respondent was signing the balance sheet of various companies in the capacity as a director and was also operating the bank accounts and signing various applications submitted to the bank. Memorandum and article of associations of various companies show the respondent to be the promoter of the companies. There is also evidence that the respondent had signed as the introducer when accounts of other companies were opened and significantly the address of these other companies was the same from where the respondent carried on his profession as a Chartered Accountant. We shall be noting, in some detail, one such act of the respondent which is indicative of what he was indulging in.

12. Relevant would it be to highlight that pertaining to the indictment of having committed other misconduct, there is evidence that the

applications to issue eleven demand drafts were submitted by the respondent. The trust was not enjoying any credit or loan or an overdraft facility. There being no money in the account. The manager debited a sum of ₹85,12,750/- in the account treating the same as having an overdraft facility. Eleven demand drafts were issued favouring various facilities.

13. There is evidence that M/s.Seeroo Foods Pvt. Ltd. of which the respondent was acting as a director had an Anupam Fixed Deposit Account No.489 in which account, on December 16, 1997 there was a credit balance of ₹2,25,98,910/-. Excess credit of interest in sum of ₹7,11,715/- was made in the account on September 19, 1997. Two other credits in sum of ₹52,49,650/- and ₹80,50,000/- were made against two fixed deposit receipts. The money was withdrawn from the Anupam Accounts on various dates without actual receipt of funds.

14. It is thus not a case where the respondent has established his involvement with the companies in an honorary capacity.

15. The second contention urged by learned counsel for the respondent was that trial before the CBI Court is not get over. Nothing turns on that because the charge in the criminal proceedings is one of conspiracy and cheating. Instant proceedings relate to the charge of the respondent being a Chartered Accountant and without permission from the Institute of Chartered Accountant acting as a director in various companies. No doubt the professional misconduct encompasses the acts of cheating, but that was the subject matter of a separate indictment against which the appeal filed by the respondent in this Court was withdrawn.

16. To bring home one illustrative point as to how the respondent was involved, overlooking the names of the persons who were responsible, for the reason this would relate to the charge of conspiracy, evidence shows that on advise from Foreign Exchange Office of PNB, two FDRs under

FCNR Account No.12 were issued in sum of ₹99,62,526/- and ₹47,34,921/- in the name of Tajinder Singh Sahni and Mrs.Jasbeer Kaur Sahni. Two parallel sets of FDRs in same amount were also issued but pertaining to FCNR Account No.11. The modus operandi was to tag the name of Mrs.Jasbeer Kaur Sahni, wife of Surinderpal Singh and that of Tajinder Singh Sahni. The actual beneficiaries ought to have been Tajinder Singh and Jasbeer Kaur. A document was then introduced in the record, allegedly pointing out aforesaid anomaly and the result was five FDRs being issued in the correct names. The two sets of FDRs in the joint name of Tajinder Singh and Jasbeer Kaur, which were required to be cancelled outright, were not cancelled. Who did what would not be relevant for the purposes of the present proceedings, but relevant would be the fact that this siphoned-off funds was used for making 11 demand drafts, 9 out of which in sum of ₹81 lacs were deposited in Current Account No.130 maintained by Indian Overseas Bank, Preet Vihar in the name of M/s S.A.Casting Industries Pvt.Ltd. The respondent was the person who introduced the account holder. The address of M/s S.A.Casting Industries Pvt.Ltd. is the same as that of M/s Seeroo Foods Pvt.Ltd., which account with Indian Overseas Bank, being Current Account No.117, was operated by the respondent. Aforesaid shows respondent actively participating in businesses, which as a practicing Chartered Accountant the respondent could not indulge in.

17. The third submission advanced by learned counsel for the respondent was predicated on a decision dated August 16, 2016 delivered by a Division Bench of this Court in Chat.A.Ref.No.4/2012 Council of The Institute of Chartered Accountants of India Vs. Gurvinder Singh & Anr. in which the view taken was that a Chartered Accountant would not be amenable to any disciplinary proceedings while acting as an individual and dealing with a complainant in a commercial matter. To wit : a

Chartered Accountant enters into an agreement to sell and receives an earnest money which he claims to have forfeited alleging default by the buyer. The buyer takes the stand that the Chartered Accountant never intended to sell the property and thus has cheated the buyer. This dispute cannot form the subject matter of a disciplinary proceedings because the Chartered Accountant is not acting as a Chartered Accountant. He is acting as the owner of the property.

18. In the instant case the admitted position is that the respondent is registered with the Council to practice as a Chartered Accountant. He cannot be a director of a company without the permission of the Council. The appellant is the promoter of various companies of which he is a director as per the evidence on record. Being a Chartered Accountant the respondent cannot actively carry on business through companies, trusts and firms. There is evidence that the respondent is doing so.

19. Affirming the verdict of guilt and keeping in view the gravity of the misconduct we answer the reference by imposing the penalty of removal of respondent's name from the Register of Members of the Institute of Chartered Accountants for a period of two years.

(PRADEEP NANDRAJOG)
JUDGE

(YOGESH KHANNA)
JUDGE

FEBRUARY 16, 2017

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