

**HONOURABLE SRI JUSTICE V.RAMASUBRAMANIAN**

**AND**

**HONOURABLE SRI JUSTICE P. KESHA RAO**

**REFERENCE CASE No.4 OF 2013**

**ORDER:** (*per V. Ramasubramanian, J*)

This is a reference made by the Institute of Chartered Accountants of India under Section 21 (5) of the Chartered Accountants Act, 1949 (for short 'Act, 1949'), for appropriate orders under Section 25 (6) of the Act, 1949.

2. Heard Sri C.V. Rajeeva Reddy, learned counsel for the petitioner. The learned counsel for the respondent is absent.

3. The respondent is a Member of the Institute of Chartered Accountants. He appears to have promoted a company, by name M/s. Rangoli Texdye Private Limited, along with his father, other relatives and friends.

4. A person by name Chandrakant Sharda, lodged a complaint with the Institute on 05.05.2003 alleging that the respondent lured him to make an investment of Rs.32.50 lakhs in the company promoted by him; that the complainant was taken on Board as a Director while the respondent became the Managing Director of the Company; that since the complainant underwent two by-pass surgeries in the year 1995 and was unable to participate in the day-to-day affairs of the company, the respondent convinced him to sign blank cheques in bulk quantities, for facilitating smooth functioning of the business; that the respondent also made him sign a bunch of blank cheques and papers, which were

given to Financial Institutions and Banks; that the complainant was made to offer his immovable property worth rupees several Crores to the State Bank of India for securing the working capital credit facility; that thereafter the respondent removed all the office records including sensitive and confidential information from the Corporate Office and absconded from 14<sup>th</sup> October, 2002 and that therefore the respondent was guilty of “other mis-conduct”, for which the Institute was obliged to take disciplinary proceedings.

5. Thereafter the complainant also filed the complaint in the prescribed format, viz., “Form No.8” on 13.09.2003. Then, the copy of the complaint was forwarded to the respondent on 10.02.2004 and he submitted his written statement on 24.03.2004. The complainant then submitted a rejoinder on 13.04.2004 and the respondent submitted his comments on 08.07.2004 and 17.10.2006.

6. In the meeting of the Council held in January, 2008 at New Delhi, the complaint, written statement, rejoinder and other materials were considered and the Council came to the *prima facie* conclusion that the respondent was guilty of “professional and/or other misconduct”, warranting an inquiry.

7. Therefore, the case was referred to the Disciplinary Committee and the Disciplinary Committee took up the matter in June, 2008. After appearing before the Committee and seeking time, the respondent seems to have absented himself. On the 7<sup>th</sup> date of hearing, both the complainant as well as the respondent was absent.

8. Finding that the hearing in the disciplinary proceedings was adjourned on earlier occasions at the request of the respondent and that for three years, there was no progress, the Disciplinary Committee proceeded *ex parte*. Eventually they submitted a report on 10.02.2011 holding that the respondent was guilty of “other misconduct”.

9. The report of the Disciplinary Committee was forwarded to the respondent on 13.07.2011 and they were called upon to send their representations. By a further letter dated 01.12.2011 the respondent was informed that the report of the Disciplinary Committee would be considered by the Council on 14.12.2011.

10. But the matter could not be taken up in the meeting of the Council on 14.12.2011. Therefore, the respondent was informed by a letter dated 09.03.2012 that the matter would be taken up in the meeting of the Council on 28.03.2012.

11. After further adjournments to 17.05.2012 and 19.06.2012, the matter was taken up by the Council, in its meeting held on 19.06.2012. Neither the complainant nor the respondent submitted any representation on the findings of the Disciplinary Committee. They were also not present.

12. Therefore, after considering the material on record, the Council decided to recommend to the High Court the penalty of removal of the respondent from the Register of Members for a period

of two years. It is this recommendation of the Council that has come up by way of the above Reference.

13. As the respondent remained *ex parte* before the Disciplinary Committee as well as before the Council, the entire proceedings were *ex parte*. The respondent has not chosen to appear even before us and hence we have no alternative except to proceed on the basis of the material on record.

14. It is seen from the material on record that the complainant originally sent a letter dated 05.05.2003. The Institute advised him to file the complaint in the prescribed format. Accordingly, a complaint in the prescribed format was filed on 13.09.2003.

15. In response to the said complaint, the respondent submitted his written representation on 24.03.2004. This representation did not contain anything, but a total denial of all the allegations made in the complaint. The respondent also questioned the jurisdiction of the Institute to initiate disciplinary proceedings, on the ground that the matter was *sub-judice* before Courts including Criminal Courts.

16. Considering the nature of the complaint and the reply sent by the respondent, the Disciplinary Committee framed the following charges against the respondent:

1.1.1. The Respondent opened a parallel bank account (Account No.CD 890) in the Nedungudi Bank (now Punjab National Bank) without the knowledge of the Complainant, State Bank of India, SIDBI. The Respondent had been operating the said account in the same Company's Name i.e., Rangoli Texdye Private Limited as in State Bank of

India with his sole operation. The bank statement for a brief period of 6 months shows innumerable cash withdrawals which have not been accounted in the Company's books of accounts.

1.1.2. The Complainant lodged a criminal complaint against the Respondent before the IV Metropolitan Magistrate, Hyderabad seeking investigation by the Abids Police Station, Hyderabad. The Police registered the crime and are yet to trace the whereabouts of the Respondent.

1.1.3. Two Creditors i.e. M/s. Morparia Industrials and M/s. D.H. & Sons lodged criminal complaints against the Respondent with XI Metropolitan Magistrate, Hyderabad seeking investigation by the Police. The Police registered the crime and are yet to trace the whereabouts of the Respondent.

1.1.4. The Respondent has not included the particulars of Energy, Technology Absorption, Foreign Exchange Earning and outgo in the 5<sup>th</sup> Annual Report as required in Section 217 (I) of the Companies Act, 1956. The Respondent did not appoint a whole time Company Secretary even though Company's paid up share capital is Rs.76.56 lakhs. The Respondent did this to hide his misdeeds.

1.1.5. The Respondent did not hold the Board Meetings as required under Section 285 of the Companies Act, 1956. The get-togethers of the directors were neither brought on records nor the attendance register and Minutes books of the meetings were maintained. No notice for convening the Annual General Meeting for the year 2000-01 was issued to the shareholders nor was it held. The Respondent failed to obtain confirmation of Balances in respect of various creditors and debtors, thus leaving a space for siphoning off the Company's fund.

1.1.6. The Respondent failed to make provision for the Gratuity amount. The Respondent is the authorised signatory with the P.F. Department for signing the workers P.F. Forms. As the Respondent is absconding, the workers are unable to withdraw their P.F. money from their respective accounts.

1.2. The aforesaid charges, if proved, would render the Respondent guilty of “Other Misconduct” falling under section 22 read with Section 21 of the Chartered Accountants Act 1949.”

17. On the basis of the materials available on record, the Disciplinary Committee found at the outset that since the complainant was also one of the Directors of the Company, the *inter se* disputes among the Directors cannot give rise to a complaint of misconduct. But at the same time, the Disciplinary Committee found that (i) an order passed by the Company Law Board in C.P. No.20 of 2003, (ii) the counter affidavit filed before the Company Law Board by SIDBI and (iii) the criminal complaints filed by various creditors against the respondent could not be overlooked completely. The Disciplinary Committee found from the records that the respondent was frequently shifting his residence and was becoming untraceable even for the creditors, who had lodged complaints. The SIDBI has taken a stand that a fake letter was submitted by the respondent in the name of State Bank of India for sanctioning enhanced working capital limit to the Company. The respondent was believed by the SIDBI to have fabricated a letter in the name of State Bank of India. It was also found from the allegations of SIDBI that the respondent had fabricated annual accounts of the company and submitted two completely different sets of balance sheets for the year ending 31.03.2000.

18. Therefore, even on the material available, such as the order of the Company Law Board and the counter affidavit filed by SIDBI, the Disciplinary Committee was constrained to come to the conclusion that the respondent, as the Managing Director of the Company, failed to conduct the affairs of the company on sound business principles and corporate practices and that without settling the dues of creditors, he embezzled substantial amounts of the company, thereby committed acts of 'fraud' and 'misfeasance'. Accordingly, the Disciplinary Committee came to the conclusion that the respondent was guilty of "other misconduct".

19. The Council in its recommendation found that the respondent became unavailable not merely to the creditors, but also to the Council of which he is a Member. Even the attempt made by the Hyderabad Branch of the Institute to locate the present address of the respondent did not bear any fruit. Therefore, the Council decided to recommend the punishment of removal from the Register for two years.

20. As held by a Division Bench of this Court in **Institute of Chartered Accountants of India, New Delhi v. Mukesh Gang, Chartered Accountant, Hyderabad**<sup>1</sup>, Section 21 (6) of the Act, 1949 (as it stood at the relevant point of time) confers wide powers upon the High Court to examine afresh, whether the misconduct attributed to the Member is established. The High Court is entitled, after

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<sup>1</sup>. 2016 (6) ALT 606 (D.B.)

examining the material, to record its own conclusions and impose a punishment as it may deem fit and proper. Therefore, let us first examine the material that was placed before the Disciplinary Committee and the Council to find whether the charges stood proved.

21. It is seen from the order of the Company Law Board in C.P. No.20 of 2003, dated 02.06.2004, passed on a petition filed under Sections 235, 236, 397 and 398 read with Sections 402 and 403 of the Companies Act, 1956 that the respondent was guilty of submitting two completely different sets of balance sheets for the year ending 31.03.2000. It was also found by the Company Law Board that the respondent fabricated a fake sanction letter and also opened a parallel account in another Bank. Therefore, the Company Law Board ordered an investigation under Section 237 (b) and directed the Central Government to appoint one or more Inspectors to investigate the affairs of the company. It is also found from the records which formed part of the disciplinary proceedings that there were three criminal complaints in Crime Nos.326 of 2002, 50 of 2003 and 93 of 2003. Though one of those complaints was filed by the very same complainant, viz., Chandrakant Sharda, the other two were filed by two other persons. There were also private complaints filed against the respondent at the instance of other parties.

22. As pointed out by the Disciplinary Committee, the Small Industries Development Bank of India had also lodged a complaint against the respondent for removal of hypothecated machinery and the

submission of fake documents. In a counter filed before the Company Law Board, SIDBI also made very serious allegations including one of becoming untraceable.

23. Therefore, in the light of the materials, we are of the view that the charges framed against the respondent stood proved. Except a bald denial, the respondent did not even attempt to come out clean. Therefore, we have no hesitation in coming to the conclusion that the charges are proved.

24. Coming to the quantum of penalty, it is seen that the charges are very grave in nature. While the members of the Legal Profession render services to identified individuals/persons, Chartered Accountants render services to persons whose activities impact a large number of stakeholders. Therefore, a Chartered Accountant, who is guilty of fabricating a document and submitting two completely different sets of balance sheets, deserves more serious punishment than the one proposed by the Institute. However, in view of the fact that the respondent has not appeared before us, we do not wish to impose a penalty more serious than what was proposed by the Council.

25. In view of the above, the Reference is answered, approving the proposal of the Council to remove the name of the respondent from the Register of the Members for a period of two years.

As a sequel thereto, miscellaneous petitions, if any, pending in the Reference shall stand closed.

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**V. RAMASUBRAMANIAN, J**

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**P. KESHA VA RAO, J**

**January 30, 2019**  
Mgr

