

**DISCIPLINARY COMMITTEE [BENCH – I (2019-2020)]
[Constituted under Section 21B of the Chartered Accountants Act, 1949]**

**Findings cum Order under Rule 18(17) and 19(2) of the Chartered Accountants
(Procedure of Investigations of Professional and Other Misconduct and
Conduct of Cases) Rules, 2007**

[File No. PR-43/09-DD/56/09/DC/165/2011]

In the matter of:

CA. Trilochan Singh Kakkar (M.No. 011327)

M/s T S Kakkar & Co
Chartered Accountants
H-7, Kirti Nagar
NEW DELHI – 110 015

...Complainant

Versus

CA. L. N. Malik (M.No.010423)

M/s L. N. Malik & Co
Chartered Accountants
Ganga Plaza, 18/13
WEA, Pusa Lane, Karol Bagh
NEW DELHI – 110 005

.....Respondent

MEMBERS PRESENT:

**CA. Prafulla Premasukh Chhajed, Presiding Officer,
Shri Jugal Kishore Mohapatra, I.A.S. (Retd.) (Government Nominee)
Ms. Rashmi Verma, I.A.S. (Retd.) (Government Nominee)
CA. Babu Abraham Kallivayalil, Member
CA. Dayaniwas Sharma, Member**

DATE OF FINAL HEARING/ORDER : 23.05.2019

PLACE OF FINAL HEARING/ORDER : ICAI, New Delhi

PARTIES PRESENT:

Complainant : Not Present

Respondent : CA. L.N. Malik along with his assistants

FINDINGS:

1. First of all, the Committee noted that the hearing in the present matter was already concluded on 23.01.2014 and the then Disciplinary Committee gave its report on 10.02.2014 holding the Respondent guilty of professional misconduct falling within the meaning of Clauses (8) and (9) of Part I of the First Schedule and Clause (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949. Against the report of the Disciplinary Committee, the Respondent filed writ petition before the Hon'ble High Court of Delhi on 26/05/2015 stating therein as under:-

“The Respondent no. 1 (The ICAI) has acted in utter disregard to principles of natural justice and has concluded the enquiry without affording due and necessary opportunity of being heard inter – alia the petitioner’s (the Complainant) right to subject the Complainant the test of cross-examination and demonstrate the falsity of his claim as to the petitioner having committed the professional misconduct”.

2. The Hon'ble High Court of Delhi vide its order dated 12.09.2017 set aside the aforesaid report of the Disciplinary Committee dated 10.02.2014 and ordered that the Disciplinary Committee shall conclude the proceedings after providing the Respondent an opportunity to examine the Complainant. If the Complainant is not available, the Disciplinary Committee shall proceed in accordance with law.
3. As per directions of the Hon'ble High Court of Delhi, a hearing in the above matter has been fixed on 23rd May, 2019 at New Delhi. On the day of hearing, the Committee noted that the Complainant was not present. The Respondent was present in person. The Committee apprised the Respondent that in terms of the directions given by the Hon'ble High Court of Delhi vide order dated 12th September, 2017, hearing has been fixed to afford the Respondent an opportunity to examine the Complainant on the evidence and material already before the Committee. The Respondent was put on oath. On being enquired, the Respondent stated that he is aware of the charges. The Respondent stated that the Complainant has withdrawn his complaint. The office also apprised the Committee that the Complainant vide his e-mail dated 3rd April, 2019 submitted a letter for withdrawal of his present complaint.
4. The Committee perused the charges leveled against the Respondent and noted that the Respondent accepted and carried out the audit of Fortune International Limited for the financial year 2002-03 without first communicating with the previous auditor

and without ensuring compliance of Section 224 & 225 of the Companies Act, 1956. It was also alleged that Respondent accepted the audit of the Company despite the fact that undisputed audit fee was remaining unpaid to the Complainant.

4. The Committee upon consideration of the matter vis-à-vis submissions of the Respondent on the same, the Committee was of the view that the disciplinary mechanism of the Institute is meant for proceedings against the erring members of the Institute on account of any professional and/or other misconduct in the execution of their professional related assignments and the same ought not to be used by the parties for resolving their personal disputes or clarifying their doubts with the members.
- 4.1 The Committee, thereafter, allowed the said request of complainant to withdraw the present complaint under Rule 6 of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. Upon agreeing to the request of the Complainant seeking withdrawal of the complaint, the committee has not dealt with the complaint on merit.
- 4.2 The Committee is also of the view that though it is allowing the withdrawal of complaint yet the Respondent needs to be more careful in future in discharging his professional duties.

CONCLUSION:

5. Thus the Committee acceded to the request of the Complainant permitting him to withdraw the case filed against the Respondent. Accordingly, the Committee hereby passes order for closure of the case.

Sd/-
(CA. PRAFULLA PREMSUKH CHHAJED)
PRESIDING OFFICER

Sd/-
(SHRI JUGAL KISHORE MOHAPATRA, I.A.S. (Retd.))
GOVERNMENT NOMINEE

Sd/-
(MS. RASHMI VERMA, I.A.S. (Retd.))
MEMBER

Sd/-
(CA. BABU ABRAHAM KALLIVAYALIL)
MEMBER

Sd/-
(CA. DAYANIWAS SHARMA)
MEMBER

DATE : 03rd February, 2020
PLACE : NEW DELHI