



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

[PR-106/2015/DD/104/15/DC/812/18]

**ORDER UNDER SECTION 21B(3) OF THE CHARTERED ACCOUNTANTS ACT, 1949 READ WITH
RULE 19(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATION OF
PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007.**

In the matter of:

Shri Anil Agarwal
102, Astha Apartments,
Saket,
Opp. Dhanwantri Hospital
Meerut
(U.P) – 250 001.

Versus

CA. Sunil Kumar (M.No.070321)
1st Floor, Bhawana Market
Gurudwara Road,
Meerut
(U.P.)-250 001.

[PR-106/2015/DD/104/15/DC/812/18]

MEMBERS PRESENT:

- 1. CA. Atul Kumar Gupta, Presiding Officer**
- 2. CA. Amarjit Chopra, Government Nominee**
- 3. CA. Rajendra Kumar P, Member**

1. That vide findings under Rule 18 (17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 dated 04.09.2019, the Disciplinary Committee was inter-alia of the opinion that **CA. Sunil Kumar (M.No.070321)** (hereinafter referred to as the **Respondent**) was **GUILTY** of professional misconduct falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.



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2. That an action under Section 21B (3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and a communication dated 26th November, 2019 was sent to him thereby granting an opportunity of being heard in person and/or to make oral/written representation before the Committee on 16th December, 2019 at New Delhi.
3. Further, on 16th December, 2019, the Committee noted that the Respondent was present and made submissions on the findings of the Committee holding him Guilty of professional misconduct within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.
4. The Committee noted that there are five charges against the Respondent in which he has been held guilty by the Committee, these are as under:-
 - 4.1 The Respondent has not disclosed in his Audit Report regarding sealing of the newly constructed area of the Club as 'illegal construction' by the Municipal Authorities.
 - 4.2 The Respondent shows the member corpus fund in capital account and merged the corpus fund into the Revenue Fund to the Alexander Athletic Club.
 - 4.3 The Respondent signed balance sheet without applying Mandatory Accounting Standards (i.e. AS-3, AS-4, AS-9 and AS-29).
 - 4.4 The Respondent has not used the proper format for issuing the audit report as laid down by the ICAI.
 - 4.5 The Respondent has nowhere mentioned the basis of valuation of stock and the physical verification of the same.



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5. The Committee noted the findings contained in Report of the Disciplinary Committee dated 04/09/2019 holding the Respondent guilty of professional misconduct, which are as under:-.

5.1 *"The first allegation against the respondent is that he has failed to make appropriate disclosures in the Audit Report / Notes to Accounts. The Alexander Athletics Club, hereinafter referred to as the Club, of which the respondent was the statutory auditor constructed an additional space. The Meerut Development Authority, under whose jurisdiction the said Club falls, vide its letter no. 101/14 Zone D-1/14 dated August 7, 2014 sealed the said construction and held the same as illegal and without proper approvals. The respondent should have made adequate disclosures about this fact as the amount involved in the construction was Rs. 67 Lakhs. The total value of the buildings as on March 31, 2014 of the Club stood at Rs.1.46 crores. Considering this the amount of Rs.67 Lakhs is material. The Respondent submitted that the said construction of building relates to the period 2014-15 and he audited the financial statements for the Financial Year 2013-14. The committee notes that the respondent has signed the financial statements for the year ended March 31, 2014 on August 21, 2014. The letter intimating the sealing of the said constructed portion received from the appropriate authority is dated August 7, 2014. It is also brought on record that the sealing of the said construction activity took place on August 6, 2014.*

As per Accounting Standard -4, "Contingencies and Event - occurring after the balance sheet date", para 15, "Disclosure should be made in the report of the approving authority of those events occurring after the balance sheet date that represent material changes and commitments affecting the financial position of the enterprise".

Further, para 17 of this Accounting standard requires that following information should be provided: (a) the nature of the event; (b) an estimate of the financial effect, or a statement that such an estimate cannot be made.

In view of above requirement of said Accounting Standard, the Committee noted that the Respondent is negligent in non-compliance of the requirement laid down by the Accounting Standard.



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5.2 The second charge against the respondent relates to clubbing of corpus fund of the club into the revenue fund. As per prudent accounting practice the corpus fund should be disclosed separately and not clubbed with revenue fund. The respondent submits that he merely followed the past practice, since 2010. The committee is of the opinion that a wrong practice cannot be correct even if it is followed consistently. It is prudent accounting principle that capital fund and revenue fund are two different components and needs to be shown separately and by merging the same the respondent is grossly negligent.

5.3 The third charge against the respondent is that he has attested the financial statements without following the mandatory accounting standards 3, 4, 9 and 29. The committee records that except for Accounting Standard 3 (Cash Flow Statement) all other accounting standards mentioned supra are applicable and the respondent should have followed the same in letter and spirit. The respondent is grossly negligent in not following the mandatory accounting standards of ICAI.

5.4 It is the fourth charge of the Complainant that the respondent has not used proper format for issuing audit report as laid down by ICAI. The Committee finds that the respondent has flouted "SA-700 – Forming an opinion and reporting on financial statements". This standard prescribes a specific format for reporting on financial statement of an enterprise. The respondent has not followed the format prescribed which depicts lack of professionalism and non-compliance of the requirements of the said standard. Thus the Committee is of the opinion that the respondent is grossly negligent on this count.

5.5 The fifth charge relates to valuation of inventories which is governed by Accounting Standard 2. The respondent submits that inventory has been valued by the management and he has accepted the same. This is clear violation of AS-2 which requires that the inventories have to be valued at lower of cost or net realisable value. The committee thus finds that the respondent is grossly negligent in not following the said standard.



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In view of the aforesaid paras, the Committee is of the opinion that the Respondent is held Guilty for negligence on his part while performing his duties. The Committee referred the Clause (7) of Part-I of the Second Schedule which states that "A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he does not exercise due diligence, or is grossly negligent in the conduct of his professional duties".

6. The Committee perused the above facts and submissions of the Respondent and looking into all these aspects, the Committee noted that the Respondent has failed/negligent in compliance of certain accounting standards and accounting policies, which are mandatory in nature.

Based on the above findings the Respondent being held guilty of professional misconduct, the Committee is of the view that ends of justice will be met, if the punishment awarded to the Respondent is commensurate with the seriousness of the nature of misconduct.

7. Thus, keeping in view the facts and circumstances of the case, the material on record before it, the Committee ordered that the Respondent i.e. CA. Sunil Kumar (M.No.070321) be reprimanded and a fine of Rs. 10,000/- (Rupees Ten Thousand only) be also imposed upon him to be paid within 30 days of receipt of this order.

Sd/-

**CA. ATUL KUMAR GUPTA)
PRESIDING OFFICER**

Sd/-

**(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE**

Sd/-

**(CA. RAJENDRA KUMAR P)
MEMBER**

DATE : 16/12/2019

PLACE : New Delhi



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CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2019-2020)]

[Constituted under Section 21B of the Chartered Accountants (Amendment) Act, 1949]

Findings under Rule 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

File No. : [PR-106/2015/DD/104/15/DC/812/18]

In the matter of:

Shri Anil Agarwal

102, Astha Apartments,

Saket,

Opp. Dhanwantri Hospital

Meerut

(U.P) – 250 001.

.....Complainant

Versus

CA. Sunil Kumar (M.No.070321)

1st Floor, Bhawana Market

Gurudwara Road,

Meerut

Sh. Anil Agarwal, Meerut -vs.- CA. Sunil Kumar (M.No.070321), Meerut



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(U.P.) - 250 001.

.....Respondent

MEMBERS PRESENT:

CA. Atul Kumar Gupta, Presiding Officer
CA. Amarjit Chopra, Government Nominee
CA. Rajendra Kumar P, Member

DATE OF HEARING : 15.05.2019

PLACE OF HEARING : ICAI Bhawan, New Delhi

PARTIES PRESENT: None

Charges in Brief:-

- 1) The Respondent has not disclosed in his Audit Report regarding sealing of the newly constructed area of the Club as 'illegal construction' by the Municipal Authorities.
- (2) The Respondent shows the member corpus fund in capital account and merged the corpus fund into the Revenue Fund to the Alexander Athletic Club.
- (3) The Respondent signed balance sheet without applying Mandatory Accounting Standards (i.e. AS-3, AS-4, AS-9 and AS-29).



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- (4) The Respondent has not used the proper format for issuing the audit report as laid down by the ICAI.
- (5) The Respondent has nowhere mentioned the basis of valuation of stock and the physical verification of the same.
- (6) The Club was running into losses whereas the Income & expenditure Account signed by the Auditor, there is excess of Income over Expenditure.

Brief facts of the Proceedings:

2. The Committee noted that in this case no party was present and notice intimating schedule of hearing of the Disciplinary Committee was duly served upon them and vide e-mail dated 12/05/2017, the Complainant has sought the adjournment stating that *"he had been admitted in hospital due to heart problem and had undergone angiography and has been advised for complete bed rest for next atleast fortnight. As such he would request the Committee to kindly fix the date of next hearing sometime after June 15"*.

On other side, the Respondent vide e-mail dated 13/05/2019 has also made request for adjournment stating that *"due to heart problem he has been advised by doctor for complete bed rest for 2-3 weeks and therefore he will not appear on 15.05.2019 and made a request for adjournment for atleast one month"*.

The Committee noted that this case was fixed earlier on 09/04/2019 and same was adjourned at the specific request of the Respondent and the parties were informed that no adjournment would be granted in future in caption case.

Further, the Committee noted that the above request (s) for adjournment of the parties had already been rejected and same was intimated to them through mail (s), however, they have chosen not to appear before the Committee.



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2.1 After noting above, the Committee decided to proceed ahead ex-parte the Complainant and the Respondent. The Committee took perusal of papers on record and after considering the case on merits basis, the Committee concluded the hearing in the captioned matter.

Findings of the Committee:

3. The findings of the Committee in subject case are as under:-

3.1 This case was presented before the Disciplinary Committee (Bench – II) wherein there were 6 (six) allegations against the Respondent.

3.2 The Committee also noted that for the charge no. (6) in the Prima Facie Opinion, the Respondent was held Not Guilty and accordingly, the Committee found 5 charges so confirmed by the Director (Discipline) in his Prima Facie Opinion.

3.3 Today, on the day of hearing i.e. 15/05/2019, neither the Complainant nor the Respondent were available and the Committee referred Rule 18(18) of the Chartered Accountants (Procedure of Investigation of Professional and/or Other Misconduct and Conduct of Cases) Rules, 2007 in the procedure to be followed, which states as under :

“The Committee may, at the request of any of the parties before it or due to other reasons, and on such terms as it thinks fit, and at any stage of the proceedings, adjourn the hearing;

provided that such adjournment shall not be given more than once at any state of the proceedings.



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[Explanation : For the purpose of this rule, inability of the complainant, advocate, authorized representative or witness, to appear shall not be treated as a valid reason for adjournment of a hearing.]

Since this matter was also listed earlier on 9th April, 2019 wherein also both parties failed to appear and a final notice of hearing was served. Following Rule 18(18), the Committee decided to proceed with the case based on the documents, records and written submissions made by the parties.

3.4 The first allegation against the respondent is that he has failed to make appropriate disclosures in the Audit Report / Notes to Accounts. The Alexander Athletics Club, hereinafter referred to as the Club, of which the respondent was the statutory auditor constructed an additional space. The Meerut Development Authority, under whose jurisdiction the said Club falls, vide its letter no. 101/14 Zone D-1/14 dated August 7, 2014 sealed the said construction and held the same as illegal and without proper approvals. The respondent should have made adequate disclosures about this fact as the amount involved in the construction was Rs. 67 Lakhs. The total value of the buildings as on March 31, 2014 of the Club stood at Rs.1.46 crores. Considering this the amount of Rs.67 Lakhs is material. The Respondent submitted that the said construction of building relates to the period 2014-15 and he audited the financial statements for the Financial Year 2013-14. The committee notes that the respondent has signed the financial statements for the year ended March 31, 2014 on August 21, 2014. The letter intimating the sealing of the said constructed portion received from the appropriate authority is dated August 7, 2014. It is also brought on record that the sealing of the said construction activity took place on August 6, 2014.

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In view of above requirement of said Accounting Standard, the Committee noted that the Respondent is negligent in non-compliance of the requirement laid down by the Accounting Standard.

3.5 The second charge against the respondent relates to clubbing of corpus fund of the club into the revenue fund. As per prudent accounting practice the corpus fund should be disclosed separately and not clubbed with revenue fund. The respondent submits that he merely followed the past practice, since 2010. The committee is of the opinion that a wrong practice cannot be correct even if it is followed consistently. It is prudent accounting principle that capital fund and revenue fund are two different components and needs to be shown separately and by merging the same the respondent is grossly negligent.

3.6 The third charge against the respondent is that he has attested the financial statements without following the mandatory accounting standards 3, 4, 9 and 29. The committee records that except for Accounting Standard 3 (Cash Flow Statement) all other accounting standards mentioned supra are applicable and the respondent should have followed the same in letter and spirit. The Respondent is grossly negligent in not following the mandatory accounting standards of ICAI.

3.7 It is the fourth charge of the Complainant that the respondent has not used proper format for issuing audit report as laid down by ICAI. The Committee finds that the respondent has flouted "SA-700 – Forming an opinion and reporting on financial statements". This standard prescribes a specific format for reporting on financial statement of an enterprise. The respondent has not followed the format prescribed which depicts lack of professionalism and non-compliance of the requirements of the said



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3.8 The fifth charge relates to valuation of inventories which is governed by Accounting Standard 2. The respondent submits that inventory has been valued by the management and he has accepted the same. This is clear violation of AS-2 which requires that the inventories have to be valued at lower of cost or net realisable value. The committee thus finds that the respondent is grossly negligent in not following the said standard.

In view of the aforesaid paras, the Committee is of the opinion that the Respondent is held Guilty for negligence on his part while performing his duties. The Committee referred the Clause (7) of Part-I of the Second Schedule which states that “A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he does not exercise due diligence, or is grossly negligent in the conduct of his professional duties”.

Accordingly, the Respondent is held guilty under the above Clause (7) of Part-I of the Second Schedule to the Chartered Accountants Act, 1949.

Conclusion:

4. Thus in conclusion, in the considered opinion of the Committee, the Respondent is held **GUILTY** of ‘Professional Misconduct’ falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountant Act 1949.

Sd/-
(CA. ATUL KUMAR GUPTA)

PRESIDING OFFICER



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Sd/-

(CA. AMARJIT CHOPRA)

GOVERNMENT NOMINEE

Sd/-

(CA. RAJENDRA KUMAR P)

MEMBER

DATE : 04-09-2019

PLACE : Mumbai