



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

[PR-180/2014/DD/234/14/DC/604/17]

**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:

Dr. Bhuwan Chandra Tewari

Room No.7,

Himalaya Bhavan

Gandhi Chowk,

Sadar Bazar, Ranikhet

DISTT. ALMORA (UTTARAKHAND) – 263 645

Versus

CA. Rakesh Kumar Bahuguna (M. No. 074151)

Hall No. 10, 1st Floor

Sanwal Chadha Complex

Durga City Centre, Distt - Nainital

HALDWANI – 263 139

[PR-180/2014/DD/234/14/DC/604/17]

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. Rakesh Kumar Bahuguna (M. No. 074151)** (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 is only one charge against the Respondent i.e. he had signed financial statement of M/s. Harikishan Tewari & Sons for the Financial Years 2010-11, 2011-12 and 2012-13 without intimating the Complainant and also failed to show the Complainant's share-holding despite being intimated about the partnership-ratio by the Complainant vide registered A/D Postal letters dated 28th December, 2010 and 01st August, 2012.

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 *"A perusal of records shows that suit was filed on 8.12.1999. It is also further noted that in the firm where Mr. B.C Tewari looking for the share in profit is having two partners i.e. Mr. A.D. Tewari and Mr. J.C. Tewari with a profit sharing ratio of 80% and 20% respectively. In the suit filed jointly by the Complainant and Mr. P.C. Tewari [another brother of the partner] were claiming to have 33% share of the Complainant. The Complainant submission was that they have intimated the outcome of the judgment to the concerned auditor of M/s. Harikishan Tewari & Sons, i.e. CA. R.K. Bahuguna [the auditor] and inspite of that he could not recognized their claim and failed to disclose in the financial statement so audited.*

5.2 *During the hearing, Counsel of the Respondent submitted that the impugned order as stated by the Complainant is under challenge by the partners of the firm and since there was no conclusion is being arrived, it was not possible for auditor to disclose any such amount as alleged. He also referred a letter written by Mr. Amba Dutt Tewari one of the partner to the auditor dated*



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3rd July, 2014 referring the judgment that the matter has been remanded back to the Civil Judge regarding the payment to Dr. B.C. Tewari and they intend to move High Court "ADJ. Rani Khet order and till the final decision, the Complainant cannot be treated as a partner with definite sharing in the firm and, therefore, audit was to be done as per existing partnership deed". Accordingly, the auditor opined that there was no disclosure was possible.

5.3 The Committee is of the opinion that entire facts of the case was well in the knowledge of Respondent and when there are already orders from the Hon'ble High Court, and Additional District Judge, Ranikhet were available with him. It was his duty to see that whatever will be amount that has to be paid by the firm i.e. M/s Harikishan Tewari & Sons and accordingly, need to create liability. It is also very important to note that after the judgement of the Hon'ble High Court, M/s. Harikishan Tewari & Sons went to file the appeal [WP No.1523] of 2010 which was also rejected by the Hon'ble High Court mentioning that present WP is liable to be dismissed and is hereby dismissed.

5.4 As per Accounting Standard pronounced by ICAI, AS-4, the term contingency is being defined as "a condition or a situation, the ultimate outcome of which, gain or loss will be known or determined only on the occurrence or non occurrence of one or more uncertain future events".

Further, para 9 of the AS- 4 prescribed the disclosure requirements which clearly states that disclosure requirements apply in respect of contingencies or events which effect the financial position to a material expenditure.

Moreover, para 10 of AS - 4, required that "the amount of a contingent loss should be provided for by a charge in the statement of profit and loss if: (a) it is probable that future events will confirm that, after taking into account any related probable recovery, an asset has been impaired or a liability has been incurred as at the balance sheet date, and (b) a reasonable estimate of the amount of the resulting loss can be made".

In view of the above Accounting Standard, it was imperative on the part of the auditor that there was a possibility of liability which certainly impact on the financial position of the auditee i.e. M/s Harikishan Tewari & Sons which should have been disclosed appropriately.



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In view of the various orders in favour of the Complainant and failing of inclusion of name of the Complainant in shareholding of the firm on the part of Respondent is a professional misconduct under within meaning of Clause (7) of part I of Second Schedule to the Chartered Accountant Act, 1949”.

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 in implementation of order of the Court which was very well in his knowledge.

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. Rakesh Kumar Bahuguna (M. No. 074151) 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-180/2014/DD/234/14/DC/604/17]

In the matter of:

Dr. Bhuwan Chandra Tewari

Room No.7,

Himalaya Bhavan

Gandhi Chowk,

Sadar Bazar, Ranikhet

DISTT. ALMORA (UTTARAKHAND) – 263 645

..... Complainant

Versus

CA. Rakesh Kumar Bahuguna (M. No. 074151)

Hall No. 10, 1st Floor

Sanwal Chadha Complex

Durga City Centre, Distt - Nainital

Dr. Bhuwan Chand Tewari, Almora -vs.- CA. Rakesh Kumar Bahuguna (M. No. 074151)

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[PR-180/2014/DD/234/14/DC/604/17]

HALDWANI – 263 139

..... 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:

**Respondent : CA. Rakesh Kumar Bahuguna
Counsel for the Respondent : CA. C. V. Sajan**

Charges in Brief:-

1. The Respondent signed financial statement of M/s. Harikishan Tewari & Sons for the Financial Years 2010-11, 2011-12 and 2012-13 without intimating the Complainant and



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also failed to show the Complainant's share-holding despite being intimated about the partnership-ratio by the Complainant vide registered A/D Postal letters dated 28th December, 2010 and 01st August, 2012.

Brief facts of the Proceedings:

2. The Respondent accompanied by his Counsel appeared before the committee. The office apprised the Committee that the Complainant vide letter/mail dated 07/04/2019 had stated that he has already submitted all the documents and due to hearing problem, he is unable to attend the hearing in person. The Committee noted the plea of the Complainant and decided to proceed ahead ex-parte the Complainant based upon documents availed by him.
 - 2.1 The Respondent was put on oath and with his consent charges were taken as read. The Respondent pleaded not guilty and wish to defend the charges levelled against him.
 - 2.2 The Committee perused the documents and records and also heard the oral submissions made by the respondent and his counsel pursuant to which 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 It is the allegation on the Respondent that he signed Financial Statements of M/s. Harikishan Tewari & Sons (hereinafter referred as **the Firm**) for the financial years



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2010-11, 2011-12 and 2012-13 and failed to show the Complainant's shareholding in the same.

- 3.2 On the day of hearing, the Complainant was not present, this matter was also posted for hearing on 9th April, 2019 and on the said date also the Complainant was absent. On the request of the Respondent, the matter was adjourned for hearing on April 9, 2019. The limited issue before the Committee was that a civil dispute was going on between the members of a family wherein Dr. Bhuwan Chandra Tewari, Ranikhet (the Complainant) approached the Hon'ble High Court of Uttarakhand at Nainital, wherein his appeal was allowed and the Hon'ble Court directed for a calculation of amount of 3 years prior to the year the suit is instituted.
- 3.3 The Committee also went through the records which shows that suit was filed on 8.12.1998. It is also further noted that in the firm were Mr. B.C Tewari looking for the share in profit is having two partners i.e. Mr. A.D. Tewari and Mr. J.C. Tewari with a profit sharing ratio of 80% and 20% respectively. In the suit filed jointly by the Complainant and Mr. P.C. Tewari [another brother of the partner] were claiming to have 33% share of the Complainant. The Complainant submission was that they have intimated the outcome of the judgment to the concerned auditor of M/s. Harikishan Tewari & Sons, i.e. CA. R.K. Bahuguna [the auditor] and inspite of that he did not recognize the said claim and failed to disclose in the financial statement so audited.
- 3.4 The Counsel for the Respondent submitted that the impugned order as stated by the Complainant is under challenge by the partners of the firm and since there was no conclusion, it was not possible for auditor to disclose any such amount as alleged. He also referred a letter written by Mr. Amba Dutt Tewari one of the partner to the auditor dated 3rd July, 2014 referring the judgment that the matter has been remanded back to the Civil Judge regarding the payment to Dr. B.C. Tewari and they intend to move High Court "ADJ. Rani Khet order and till the final decision, the Complainant cannot be



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treated as a partner with definite sharing in the firm and, therefore, audit was to be done as per existing partnership deed". Accordingly, the auditor opined that the disclosure is not warranted.

- 3.5 The Respondent further submitted that the liability of the firm can arise only if there is corresponding credential creation of assets or there was a charge to Profit & Loss A/c or where retired partner was invited and the amount payable to him was converted into a liability. In this case, none of the situation arose, so a liability was not possible to have been originated in the firm. He further stated that intent of the court order was not to modify, not to reconstitute the partnership. Regardless to inform that the Complainant informed the Respondent of the Court order, neither was it necessary to modify accounts in any manner nor was it possible to treat the Complainant as partner. He finally, submitted that even if the liability was to be created it would have been the personal liability of the partners to have been kept out of the firm.
- 3.6 The Bench reviewed all the papers submitted and oral submissions made by the Counsel of the Respondent along with the subsequent final submissions of the Respondent. The primary issue which was discussed in the above said para was whether inspite of the order of the Hon'ble High Court for the amount to be payable to the Complainant by M/s Harikishan Tewari & Sons., whether the auditor was liable to disclose the said liability even if exact valuation was not available.
- 3.7 The Committee is of the opinion that entire facts of the case were in the knowledge of Respondent and the orders from the Hon'ble High Court, and Additional District Judge, Ranikhet were available with him. It was his duty to see that whatever will be amount that has to be paid by the firm i.e. M/s Harikishan Tewari & Sons and accordingly, need to create liability. It is also very important to note that after the judgement of the Hon'ble High Court, M/s. Harikishan Tewari & Sons went to file the appeal [WP



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No.1523] of 2010 which was also rejected by the Hon'ble High Court mentioning that present WP is liable to be dismissed and is hereby dismissed.

3.8 As per Accounting Standard pronounced by ICAI, AS-4, the term contingency is being defined as *“a condition or a situation, the ultimate outcome of which, gain or loss will be known or determined only on the occurrence or non occurrence of one or more uncertain future events”*.

Further, para 9 of the AS- 4 prescribed the disclosure requirements which clearly states that disclosure requirements apply in respect of contingencies or events which effect the financial position to a material expenditure.

Moreover, para 10 of AS - 4, required that *“the amount of a contingent loss should be provided for by a charge in the statement of profit and loss if: (a) it is probable that future events will confirm that, after taking into account any related probable recovery, an asset has been impaired or a liability has been incurred as at the balance sheet date, and (b) a reasonable estimate of the amount of the resulting loss can be made”*.

In view of the above Accounting Standard, it was imperative on the part of the auditor that there was a possibility of liability which has an impact on the financial position of the auditee i.e. M/s Harikishan Tewari & Sons which should have been disclosed appropriately.

In view of the orders in support of the Complainant and non inclusion of name of the Complainant in shareholding of the firm on the part of Respondent is a professional



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misconduct under within meaning of Clause (7) of part I of Second Schedule to the Chartered Accountant 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

Sd/-

(CA. AMARJIT CHOPRA)

GOVERNMENT NOMINEE

Sd/-

(CA. RAJENDRA KUMAR P)

MEMBER

DATE : 04-09-2019

PLACE : MUMBAI



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