

**CONFIDENTIAL**

**DISCIPLINARY COMMITTEE [BENCH – II (2018-2019)]**

**[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-102/2013-DD/128/13/DC/455/2016]**

**In the matter of:**

**Mr. Vineet Khurana**  
M/s. Khurana Vineet & Associates  
Chartered Accountants  
S.C.O. 63, IIInd Floor,  
Sector 20-C,  
Chandigarh-160020.

**..... Complainant**

**Versus**

**CA. Brij Bhushan Sharma .....(M. No. 507610)**  
M/s. Hitesh Brij & Associates,  
House No. 2003, Ground Floor,  
Sector 21-C,  
Chandigarh-160021.

**.....Respondent**

**MEMBERS PRESENT:**

**CA. Prafulla P. Chhajed, Presiding Officer**  
**Shri Rajeev Kher, I.A.S. (Retd.), Govt. Nominee**  
**CA. Amarjit Chopra, Government Nominee**  
**CA. Mangesh P. Kinare, Member**  
**CA. Sushil Kumar Goyal, Member**

**DATE OF FINAL HEARING : 09.07.2018**

**PLACE OF FINAL HEARING : ICAI Bhawan, New Delhi**

**PARTIES PRESENT : None**

**Charges in Brief:-**

1. The Committee noted that in the Prima-Facie Opinion formed by Director (Discipline) in terms of Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Respondent had been held Prima Facie not guilty of professional misconduct on the grounds that no specific charge could be made by the Complainant in Form-I. However, the Board of Discipline on consideration of this case disagreed with the said prima facie opinion and decided that although a specific charge has not been made against the Respondent by the Complainant in his complaint in Form 'I', yet the same could be inferred from the documents attached to the complaint in Form 'I'. Thus, keeping in view the principle of 'Substance over Form', the Board opined that there was clear non-compliance on the part of the Respondent in terms of Clause (8) of Part I of the First Schedule read together with the Council Guidelines No. 1-CA/(7)/02/2008 dated 08.08.08 pertaining to the acceptance of audit in case of non-payment of undisputed audit fees.

1.2 Accordingly, the Board of Discipline held the Respondent Guilty of Professional Misconduct as specified under Clause (8) of Part I of First Schedule and Clause (1) of Part II of Second Schedule to the Chartered Accountants Act, 1949 and thus, referred the matter to the Disciplinary Committee to proceed under Chapter V of the Chartered Accountants (procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

**Brief facts of the Proceedings:**

2. On the day of hearing i.e. 09/07/2018, the Committee noted that none of the parties to the case was present, however, there was an e-mail dated 01/07/2018 from the Complainant in which he expressed his inability to be present before the Committee on the date of said hearing. Since, there was no request for adjournment of the case, the Complainant was advised by the office vide mail dated 06/07/2018 to consider

presenting his case through authorised Counsel/representative in his absence. But there was no response from the Complainant thereafter.

2.1 Further, the Committee noted that the Respondent was also not present and there was neither any request nor any intimation in this regard from him. The office apprised the Committee that the notice of hearing has been sent through speed post and e-mail to him.

2.2 Looking into nature of charges as contained in complaint read with decision of Board of Discipline as above and documents/papers on record apart from the fact that there is no adjournment request from either of the party, the Committee decided to proceed ahead based on merits of the case.

After considering all papers available on record, the Committee decided to conclude the matter.

### **Findings of the Committee**

3. The Committee noted that in view of observations of the Board of Discipline, the first charge against the Respondent is that he had accepted the audit of M/s. Fastrack Computing Limited (hereinafter referred as **the Company**) without communicating with previous auditor i.e. the Complainant.

3.1 On perusal of documents on record, the Committee noted that the Complainant has brought on record a letter dated 30/09/2010 in support of his appointment as Statutory auditor of the Company for Financial Year 2010-11. But on perusal of certain documents, such as Form 23AC and Audited Financial Statements of the Company for financial year 2010-2011, it is apparent that the Complainant was the Statutory Auditor of the Company and has conducted the audit of the Company.

3.2 In view of Written Statement of the Respondent, the Committee noted that he has submitted that the Company approached him for the audit for Financial Year 2010-2011 and in the process, he had to send the Complainant a written communication.

3.3 In furtherance, the Respondent also brought on record a courier slip dated 22<sup>nd</sup> August, 2011 showing that he has duly communicated his appointment with the Complainant through courier.

3.4 In this regard, the Committee noted the contents of Code of Ethics as at page no. 165 & 166 (2009 edition), which states as under:-

*“The Council has taken the view that a mere posting of a letter under certificate of posting is not sufficient to establish communication with the retiring auditor unless there is some evidence to show that the letter has in fact reached the person communicated with. A Chartered Accountant who relies solely upon a letter posted under certificate of posting therefore does so at his own risk. The view taken by the Council has been confirmed in a decision by the Rajasthan High Court in J.S. Bhati vs. The Council of the Institute of the Chartered Accountants of India and another. (Pages 72-79 of Vol. V of Disciplinary Cases published by the Institute – Judgement delivered on 29th August, 1975). The following observations of the Court are relevant in this context:-*

*“Mere obtaining a certificate of posting in my opinion does not fulfill the requirements of clause (8) of Schedule I as the presumption under Section 114 of the Evidence Act that the letter in due course reached the addressee cannot replace that positive degree of proof of the delivery of the letter to the addressee which the letters of the law in this case require. The expression ‘in communication with’ when read in the light of the instructions contained in the booklet ‘Code of Conduct’ cannot be interpreted in any other manner but to mean that there should be positive evidence of the fact that the communication addressed to the outgoing auditor by the incoming auditor reached his hands. Certificate of posting of a letter cannot, in the circumstances, be taken as positive evidence of its delivery to the addressee.” Members should therefore communicate with a retiring auditor in such a manner as to retain in their hands positive evidence of the delivery of the communication to the addressee. In the opinion*

*of the Council, communication by a letter sent "Registered Acknowledgement due" or by hand against a written acknowledgement would in the normal course provide such evidence.*

*The Council is of the opinion that it would be a healthy practice to communicate with the member who had done the work previously in every case where a Chartered Accountant is required to give a certificate or in respect of a verification of the books of account for special purpose as well as in cases where he is appointed as a Liquidator, Trustee, or Receiver and his predecessor was a Chartered Accountant.*

3.5 On the basis of above and in the absence of positive evidence of the communication having been received by the Complainant as being cited in the decision above, the Committee was of the view that as per the requirements of Clause (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949, the communication with the previous auditor should be through "Registered Post Acknowledgement due" mode only.

3.6 Thus, the Committee is of the opinion that the Respondent is Guilty of professional misconduct falling within the meaning of Clause (8) of Part I of First Schedule to the Chartered Accountants Act, 1949 for non-communicating his appointment with the Complainant i.e. previous auditor.

4. The second charge against the Respondent is that he has accepted and conducted the audit of the Company despite the fact that the Complainant's undisputed audit fees was pending.

4.1 In this regard, on perusal of audited Financial Statements of the Company for Financial Year 2010-2011, the Committee noted that an amount of Rs. 14,781/ (i.e. Rs. 96,579.00 - Rs. 81,798.00) has been paid during the year on account of audit fee payable.

4.2 The Committee however, noted that it is not clear that how much undisputed audit fees of previous auditor i.e. Complainant was due and how much was paid. No such evidence was provided by the Complainant also. Thus, in the absence of any

evidence regarding pendency of any undisputed fee of the Complainant, the Committee was of the view that the Respondent is not guilty on this charge.

**Conclusion**

5. Thus, upon consideration of all facts and records and in terms of reasoning as above, in the considered opinion of the Committee, the Respondent is **GUILTY** of professional misconduct falling within the meaning Clause (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949 and is **NOT GUILTY** in terms of Clause (1) of Part II of Second Schedule to the Chartered Accountant Act, 1949.

**Sd/-**  
**(CA. PRAFULLA P. CHHAJED)**  
**PRESIDING OFFICER**

**Sd/-**  
**(SH. RAJEEV KHER, I.A.S. (Retd.))**  
**GOVERNMENT NOMINEE**

**Sd/-**  
**(CA. AMARJIT CHOPRA)**  
**GOVERNMENT NOMINEE**

**Sd/-**  
**(CA. MANGESH P. KINARE)**  
**MEMBER**

**Sd/-**  
**(CA. SUSHIL KUMAR GOYAL)**  
**MEMBER**

**DATE : 05<sup>th</sup> February, 2019**  
**PLACE : New Delhi**

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

**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:**

**Mr. Vineet Khurana, M/s. Khurana Vineet & Associates, Chandigarh**

**-Vs-**

**CA. Brij Bhushan Sharma, (M. No. 507610), M/s. Hitesh Brij & Associates, Chandigarh**

**[PR-102/2013-DD/128/13/DC/455/2016]**

**MEMBERS PRESENT:**

**CA. Prafulla Premsukh 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**

1. That vide report dated 05.02.2019, the Disciplinary Committee has inter-alia held **CA. Brij Bhushan Sharma (M.No.507610)** (hereinafter referred to as the “**Respondent**”) **GUILTY** of professional misconduct falling within the meaning of Clauses (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949.
2. That pursuant to the said report, an action under Section 21B (3) of the Chartered Accountants (Amendment) Act, 2006 was contemplated against the Respondent and communications dated 3<sup>rd</sup> May, 2019 was addressed to him thereby granting an opportunity of being heard in person and/or to make a written representation before the Committee on 23<sup>rd</sup> May, 2019.
3. The Committee noted that on 23<sup>rd</sup> May, 2019, the Respondent was present and he made his oral submissions on the report of the Disciplinary Committee. The Committee also noted that the Respondent submitted a copy of e-mail dated 20<sup>th</sup> May, 2019 written by the Complainant to the Respondent.
4. The Respondent submitted that he had written a letter to the Complainant about NOC but one of the employees of the Complainant with mischievous intention had not given the said communication to the Complainant and kept it hidden from the Complainant. He also stated that the Complainant admitted the said fact in his aforesaid e-mail.
5. The Committee has considered the reasoning (s) as contained in paras no.3 to 3.6 and 5 of the Disciplinary Committee report holding the Respondent Guilty of professional misconduct vis-à-vis representation of the Respondent.
6. Keeping in view the facts and circumstances of the case, material on record and representations of the Respondent, the Committee is of the view that the professional misconduct on the part of the Respondent does not qualify for a severe sentence. Accordingly, it ordered that the Respondent, **CA. Brij Bhushan Sharma (M.No.507610) be reprimanded.**

**Sd/-**

(CA. PRAFULLA PREMSUKH CHHAJED)  
PRESIDING

OFFICER

Sd/-  
(SHRI JUGAL KISHORE MOHAPATRA)  
GOVERNMENT NOMINEE

Sd/-  
(MS. RASHMI VERMA)  
GOVERNMENT NOMINEE

Sd/-  
(CA. BABU ABRAHAM KALLIVAYALIL)  
MEMBER

Sd/-  
(CA. DAYANIWAS SHARMA)  
MEMBER

DATE: 23-05-2019  
PLACE : New Delhi