



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

[PR/G-163/10-DD/163/10-DC/219/2012]

[PR/G-164/10-DD/164/10-DC/220/2012]

[PR/G-165/10-DD/165/10-DC/221/2012]

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 J.K. Teotia, Additional Director (FS), SFIO, Mumbai

-vs-

CA. Devendra Kumar Kapur (M.No.070062), Mumbai

[PR/G-163/10-DD/163/10-DC/219/2012]

[PR/G-164/10-DD/164/10-DC/220/2012]

[PR/G-165/10-DD/165/10-DC/221/2012]

Date of Order: 6 August, 2020

MEMBERS PRESENT:

1. CA. Nihar Niranjan Jambusaria, Presiding Officer
2. Shri Arun Kumar, IAS (Retd.), Government Nominee
3. Ms. Nita Chowdhury, IAS (Retd.), Government Nominee
4. CA. (Dr.) Debashis Mitra, Member
5. CA. Jay Chhaira, Member

1. That vide report dated 11th February, 2020, the Disciplinary Committee held **CA. Devendra Kumar Kapur (M.No.070062), Mumbai** (hereinafter referred to as the “Respondent”) **GUILTY** of professional Misconduct falling within the meaning of Clauses (4) of Part I of the Second Schedule to the pre-amended Chartered Accountants Act, 1949 and ‘Other Misconduct’ read with section 22 of the said Act.

2. That an action under Section 21B (3) of the Chartered Accountants (Amendment) Act, 2006 was contemplated against the Respondent and communication dated 22nd July, 2020 was addressed to him thereby granting an opportunity of being heard in person and/or to make a written

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representation before the Committee on 06th August, 2020 through video conferencing facility.

3. The Committee noted that the Respondent vide e-mail dated 01st August 2020 has sought an adjournment in these cases, but the same was declined/refused by the Committee with prior approval of the Presiding Officer and was communicated to the Respondent vide e-mail dated 05th August 2020. After that the Respondent by reverting mail dated 05th August 2020 (late night) requested for an adjournment due to COVID – 19 pandemic prevailing in India and stated that the present case is also pending before Hon'ble Delhi High Court and he has to collect the interim Order and then have to consult his Counsel for the same.

4. The Committee noted that the present case was also fixed at last meeting i.e. 16th July, 2020 and was adjourned at the request of the Respondent and one more opportunity was granted to the Respondent where it was specifically communicated to him at that point of time that the adjournment is being granted as final adjournment by the Committee and no further adjournment request would be entertained by the Committee.

5. Moreover, the Committee noted that Appellate Authority vide its Order dated 26th February 2020 has specifically directed the Disciplinary Committee to conclude these cases within two months. Hence, looking into the above and time limit as directed by the Appellate Authority, the Committee instructed the Secretary to the Committee to send an online link of this meeting to the Respondent and direct him to appear before the Committee from his residence/place.

6. After having telephonic conversation with the Respondent, he appeared through video call after several requests and placed limited submission before

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the Committee that this matter is pending before various Judicial authorities/higher Courts and this matter may be kept in abeyance. After this short call and limited submission, the Respondent disconnected the call and did not appear before the Committee thereafter.

After having conference/video call, he submitted that he does not have any arrangement of coming on online link to attend the meeting even from his residence and he is unable to join the meeting.

7. The Committee while considering the facts of the case and papers/documents available on record observed that the Respondent while acting as the statutory auditor of the Company from the F.Y. 1993-94 to 1996-97 (except 1995-96), has in fact signed the cheques for the Company, thereby, involving himself in the day-to-day functioning of the Company which is not expected of an auditor who is expected to maintain the highest degree of independence. The Committee in this context was further of the view that while undertaking the responsibility of signing of the cheques on behalf of the Company, the Respondent had also undertaken the responsibility to ensure the compliance of all legal technicalities while performing the role of the statutory auditor whereby he was expected to act independently. The Committee took into consideration the findings in the report dated 08.02.2015, wherein, the Disciplinary Committee was of the view that the Respondent has acted in dual capacity whereby on one hand he has performed the managerial responsibilities of signing as authorised signatory and assuming the custodianship of the finances of the Company and on the other hand holding the position of the Statutory auditor as well.

8. The Committee considered the various submissions made by the Respondent as above and findings of the earlier Committee holding the Respondent guilty of professional misconduct. The Committee was of the view that inspite of the



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specific time limit prescribed by the Adjudicating Authority and reasonable time given to the Respondent while providing him last opportunity to defend or substantiate his case, the Respondent tries to shy away from the Committee. It is also very important to point out that at the initial punishment hearing held 12th July 2017 the Respondent was not present before the Committee. The Committee did not find merit in the arguments/requests forwarded by the Respondent rather the Committee finds that the Respondent was not inclined to present himself before the Committee even after several opportunities granted to him. The Respondent had been given the opportunity to appear from his residence/place, but the Respondent was making all the possible excuses so that the present case is delayed. The Committee decided to conclude the present hearing while looking into the gravity of charges involved in the present cases and the specific directions of the Appellate Authority.

9. Thus, keeping in view the facts and circumstances of the case as aforesaid, the material on record, submissions of the Respondent before it, this Committee orders that the name of the Respondent i.e. CA. Devendra Kumar Kapur (M.No.070062), Mumbai be removed from the register of members for a period of 02 (Two) Years and a fine of Rs. 5,00,000/- (Rupees Five Lakhs only) be also imposed upon him to be paid within 30 days of receipt of this order.

10. The Committee further orders that the above punishment in respect of removal of name of the member from register of members shall run concurrently with the punishment awarded to the Respondent in all the three disciplinary cases against him bearing reference no. [PR/G-163/10-DD/163/10-DC/219/2012], PR-164G/2010-DD/164/2010/DC/220/2012 and PR-165G/2010-DD/165/2010/DC/221/2012. In effect, the Committee orders that in respect of all three cases, the name of the



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Respondent be removed from the Register of Members for a period of 02 (two) years and he shall remit a consolidated penalty of Rs.5,00,000/- (Rs.Five Lakhs only) within a period of 30 days from the date of receipt of the order. Further, in the event of failure on the part of the Respondent to deposit the fine amount with the Institute, the suspension of the name of the Respondent from the Register of members shall be enhanced by a further period of 06 (six) Months.

[Handwritten signature]

Sd/-

(CA. NIHAR NIRANJAN JAMBUSARIA)
PRESIDING OFFICER

Sd/-

(SHRI ARUN KUMAR, IAS (RETD.)
GOVERNMENT NOMINEE

Sd/-

(MS. NITA CHOWDHURY, IAS (RETD.)
GOVERNMENT NOMINEE

Sd/-

(CA. (DR.) DEBASHIS MITRA)
MEMBER

Sd/-

(CA. JAY CHHAIRA)
MEMBER

Certified to be true copy

[Handwritten signature]
Mukesh Kumar Mittal
Assistant Secretary,
Disciplinary Directorate
The Institute of Chartered Accountants of India,
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

DISCIPLINARY COMMITTEE [BENCH-III (2019-20)]

[Constituted under section 21B of the Chartered Accountants Act, 1949]

Case ref. nos.:

- (i) PR/G-163/10-DD/163/10-DC/219/2012
- (ii) PR/G-164/10-DD/164/10-DC/220/2012
- (iii) PR/G-165/10-DD/165/10-DC/221/2012

Findings of the Disciplinary Committee pursuant to the Directions of the Appellate Authority dated 1st November 2018 in Appeals no. 2 to 4 of 2018 on the matters remanded back by the Authority after considering the appeal filed by the Respondent against the Order dated 12th July 2017 passed by the Disciplinary Committee of ICAI under Section 21B(3) of the Chartered Accountant Act 1949 read with Rule 19(1) of the of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

In the matter of :

**Shri J.K. Teotia
Additional Director (FA), Government of India
Serious Fraud Investigation Office
Ministry of Corporate Affairs
2nd Floor, Paryavaran Bhawan
CGO Complex, Lodhi Road
New Delhi - 110003**

.....Complainant

Versus

**CA. Devendra Kumar Kapur (M. No. 070062)
121, Maker Chambers V
221, Nariman Point
Mumbai - 400021**

.....Respondent

Members Present :

**Smt. Anita Kapur, Govt. Nominee, Presiding Officer
Shri Ajay Mittal, Member (Govt. Nominee)
CA. Manu Agrawal, Member
CA Debashis Mitra, Member**

Date of Final Hearing : 15th January 2020

Place of Final Hearing : New Delhi

Parties Present :

1. Ms. Deepmala Bagri, Asstt. Director (Law) – Representative of the Complainant Department along with Mr. Saurabh Kapoor, Law Consultant
2. Ms. Smriti Chaturvedi, Advocate, ACGC – Counsel for Complainant
3. CA. Devendra P Kapur – Respondent
4. Mr. Aditya Wadhwa, Advocate – Counsel for Respondent

SV (M)

1. The Committee noted that the extant hearing has emanated from the Order of the Appellate Authority dated 1st November 2018 in the appeal filed by the Respondent challenging the Order of the Disciplinary Committee. The Appellate Authority in its Order directed the Disciplinary Committee when it states that:

“39. ...the Disciplinary Committee is directed to examine and decide by reasoned order the preliminary issue of limitation as raised by the Appellant in the light of observations made in this Order and decide the other Grounds after examining the objections raised by the Appellant in appeal. Needless to say that the Disciplinary Committee will provide the Appellant adequate opportunity of being heard. The Appellant will be at liberty to raise before Disciplinary Committee all issues raised before us or any other issue as well and produce any evidence in support of their case...”

40... to decide these cases as per law prevailing at the relevant time including code of conduct and guidelines issued by the Council, whichever were in force at that relevant time, of the alleged misconduct and not as per the law enacted subsequently.”

Accordingly and in compliance with the aforesaid directions of the Appellate Authority, an opportunity of personal hearing was granted to both the parties on various occasions viz on 26.07.2019; 24.09.2019; 26.11.2019, 28.12.2019 and 15.01.2020. It is pertinent to mention that though various opportunities were provided, the Respondent sought adjournment on three occasions while the Complainant sought adjournment in the hearing on 24.09.2019 and finally the matter was heard and concluded on 15.01.2020.

Brief background :

1. It is noted that the said case was heard by the erstwhile Disciplinary Committee and vide Report dated 8th February 2015, the Disciplinary Committee was of the view that Respondent was guilty of professional misconduct falling within the meaning of Clause (4) of Part I of the Second Schedule to the Chartered Accountants Act, 1949. The Committee, thereafter, passed a single order dated 12th July 2017, wherein the Respondent was awarded a composite punishment for all the three cases, of the removal of his name from the register of members for a period of two years and also imposed a consolidated penalty of Rs. 5,00,000/- (Rupees five Lakhs Only) with a provision that in case the Respondent failed to deposit the penalty, the removal of the name of the Respondent from the Register of members would be enhanced by a further period of six months.

2. The Respondent, thereafter, filed 3 Appeals under Section 22 G of the Chartered Accountants Act, 1949. The facts in all the 3 Appeals are the same except that the Auditee-Company was different though belonging to the same group. The Appellate Authority vide its consolidated Order dated 1st November 2018, had set aside the order of the Disciplinary Committee dated 12th July 2017 and remanded the matters back to the Disciplinary Committee to examine the issue of limitation, contentions of the Respondent about his inability to file evidence in his defence, as well as to decide the cases as per law prevailing at the relevant time of the alleged misconduct. It was also directed that the Respondent to be provided with adequate opportunity of being heard on his objections.

3. In compliance with the direction of the Appellate Authority Order, the matter was heard on different dates as stated above and finally on 15th January 2020. It is noted that the Complainant's representative along with the authorized Counsel and the Respondent along with his authorized counsel were present in person. The Respondent was asked to limit the scope of proceedings as per the directions of the Appellate Authority to which the Counsel for the Respondent agreed and proceeded to make his submission before the Committee. The Committee has examined the Respondent on his submissions. Accordingly, hearing in the matter was concluded.

Findings of the Committee :

4. The Committee noted that pursuant to the directions of the Appellate Authority, the issues that have been remanded back for examination are:
- a) Preliminary issue of limitation as detailed in para 35, 36 and 37 of the Order of the Appellate Authority dated 1st November 2018 which according to the Respondent was raised before the Director (Discipline) and before the erstwhile Disciplinary Committee, but no findings were given.
 - b) To ascertain the actual services rendered by the Respondent to the Companies in addition to being their statutory auditor from the evidence available on record. Further, the contention raised by the Respondent about inability to file evidence in his defense also to be examined as to the evidence which he was precluded from leading (as detailed in para 38 of the Order).
 - c) to decide the cases in accordance with the law prevailing at the time of the alleged misconduct.

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5. In view of the pleadings of the Respondent before the Appellant Authority, the Disciplinary Committee vide its letter dated July 8, 2019 sought from the Respondent the grounds on which the appeal for limitation of time and inability to produce evidence thereof was being pleaded before the Appellant Authority and also to provide details as well as description of evidences thereof.

6. The Committee notes that vide his letter dated 13th September 2019, the Respondent in his written submissions has submitted s as under :

a) The Amendment to the Rules of limitation came in the year 2006, much before the instant proceedings were initiated in 2010. Therefore, the new rule of limitation, which prohibits initiation of a complaint after 7 years from the alleged period of misconduct, shall govern the instant proceedings. The complaints were filed after a delay of 13 years much after the expiry of 7 years, which ended at the most in the year 2004.

b) He did not retain any additional documents with him in relation to the JVG Group Companies as he had already supplied 31 Working Paper Files in original to the SFIO. As per the Audit Documentation, retention period of the audit record in Standard on Auditing (SA) 230 was only for a period of 7 years.

c) He was the statutory auditor for some of the JVG Group of Companies and had no independent executive authority in the Companies and played a very limited role in the Companies. He acted under the authority granted to him by the management of these companies pursuant to the Board Resolution.

d) JVG Group of Companies had nearly 9,000 branch offices, consolidated into 5,600 branches, with about 32,000 employees and nearly 1,000 bank accounts. The group companies had thousands of investors and the Respondent had only executed few cheques and a couple of agreements.

e) There was no mention of 'dual capacity' as misconduct under the said provision and nowhere the case of the Complainant was that the Respondent had a substantial interest in companies of the JVG Group.

f) Until section 226 of the Companies Act, 1956 was amended by way of the Companies (Amendment) Act, 2000, it permitted a shareholder of a company to be

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appointed as its statutory auditor. Similarly, the Compendium of Notes, as applicable during 1993-1997, also recognized that a person with financial stakes in a Company could audit it. The Respondent was merely authorized to sign on pre-approved cheques of specific amounts and had no executive role as Administrator.

During the hearing, he also raised certain other issues such as whether the proceedings in the extant case were being held after receipt of condonation of delay from the Appellate Authority as the time period of six months set by the Appellate Authority had lapsed. Further, Rule 3(5) of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 required that if there is *any change in the name of complainant at any later stage, the same be duly supported by a specific authorization made by an officer holding a post equivalent to that of the original complainant*. According to him, the Complainant who had originally filed the complaint with the Institute was the Additional Director, SFIO who had since retired from service and the case was now being represented before the Disciplinary Committee by an Assistant Director, SFIO which was against Rule 3(5) of CA Rules, 2007 and thus the extant proceedings were bad in law and without proper jurisdiction.

7. As regard the first and the second issues, the Committee notes that the Respondent has raised the issue of 'Limitation' in the context of Rule 12 of CA Rules, 2007. The Respondent has argued that the extant complaints filed by SFIO, are completely barred by Rule of Limitation which prohibits initiation of a complaint after 7 years from the alleged date of misconduct. As per the Respondent, there was a delay of 13 years. It was further argued that, the Director (Discipline) formed a *prima facie* opinion against the Respondent without considering the issue of limitation despite specific objection raised by him. Thereafter, the erstwhile Disciplinary Committee proceeded for inquiry and vide report dated 08.02.2015 it also held him guilty under Clause 4 Part I of Second Schedule to the Chartered Accountant Act 1949 without considering the said issue of 'Limitation'.

As per the Respondent, on account of absence of relevant documents he failed to provide evidence of the fact that he had signed a few cheques and documents and that too pursuant to a specific and limited mandate given to him by the companies and under no circumstances he had acted in any independent executive capacity.

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FINDINGS :

8. At the outset, the Committee noted the Respondent's objection relating to proceedings being held without receipt of condone from Appellate Authority for delay in disposing of the cases within the designated time period of six months which has expired in May 2019 itself. The Committee in this regard observed that the Appellate Authority remanded back the matters while opining that the Director (Discipline) as well as the Disciplinary Committee were required to address the plea of limitation as raised by the Appellant under Rule 12 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. The Authority observed as under:

“25. Though we found that this ground had been raised by the Appellant before the Director (Discipline) vide his preliminary submissions dated 21st January, 2011 and the same was briefly narrated in para (3.1) of the Prima Facie Opinion formed by the Director (Discipline) but the same was not properly addressed by her in the PFO and was dismissed by a brief mention ...”

“26. We have also noted that the Disciplinary Committee even has not discussed this issue of limitation anywhere either in its report or in its impugned order, much less giving any finding on the same.”

The Committee further noted that the Appellate Authority in its Order has further stated as below:


“36. While on the one hand, we find that the Appellant has taken this ground from very beginning but he has not submitted any details or description of the evidence which he wants to produce in support of his contention, which as per his version is not available now with him. On the other hand, we also find that the Director (Discipline) has summarily rejected the same without examining the facts of the matter and without passing a reasoned Order. The Disciplinary Committee has not even considered this ground much less giving any finding on the issues.”

In this regard, the Committee in its meeting held in November 2018, while taking note of the Appellate Authority Order, decided to get the issue verified from the Director (Discipline) and accordingly directed him to bring before it his views in all the three cases which have been remanded back as so that the Committee may accordingly consider the matters. The Director (Discipline), thereafter gave inputs on the same vide his note dated 3rd April 2019. In the meantime, the composition of the Committee underwent a change and accordingly, it was considered by the present Committee in

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its meeting held in May 2019 whereat after consideration, the Committee further decided to seek the submissions of the Respondent on the grounds pleaded upon by him along with the details and description of evidences thereof. Thereafter, notices for hearing were issued for meeting scheduled in July 2019, Sept 2019, Nov 2019 as well as Dec 2019. It is noted that a part of the delay has occurred on account of the fact that the Respondent has sought adjournments on three occasions except that in Sept 2019 when the Complainant sought adjournment. The said adjournments were granted in the interest of natural justice and to provide adequate opportunities to both the parties to give its submissions before the Committee. However, in context of Committee seeking condone for delay, it is noted that the Respondent has raised this issue only vide its mail dated Dec 27, 2019, when the Committee denied to grant him any further adjournments and last opportunity was granted to him to either present the matter before the Committee in extant hearing or arrange to make written submissions in the matter. It is viewed that when the Respondent himself is the major reason of such delay, he cannot argue on said ground. Further, the Order of the Committee was required to be passed within 6 months referred to in the Appellate Order is the Order under section 21B (3) of the Chartered Accountants Act, 1949. The Committee's present findings are under sub rule 17 of Rule 18 of Chartered Accountants Rules 2007. An Application has already been moved before the Appellate authority seeking extension of time. The Application was listed before the Appellate Authority on February 5, 2020 wherein the said Authority directed that a copy of the Application be supplied to the Non Applicant and response on his behalf be filed within 2 weeks. No Order was passed stalling proceedings before this Committee. Therefore, the Committee has proceeded to record its findings under Rule 18 (ibid). The Order under section 21B(3) of the Act will be passed in due course ,after giving an opportunity to the Respondent in terms of Rule 19(1) of the CA Rules 2007 and after considering the Order of the Appellate Authority on the Application seeking extension.

9. As regard the objection that the original Complainant has since retired and accordingly the matter if proceeded is a violation of Rule 3(5), this Committee is of the view that extant complaint was filed by the SFIO, a statutory authority, through its Additional Director Mr. J K Teotia. The Prima-Facie Opinion as formed on 16th July, 2012 and that in Form I, the Complainant is stated to be SFIO i.e. the Central Government. Rule 3(2) of the the Chartered Accountants (Procedure of Investigation of

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Professional and Other Misconduct and Conduct of Cases) Rules, 2007 provides as under :

“3. Procedure for filing complaint –

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“A complaint filed by or on behalf of the Central Government or any State Government, shall be authorized by an officer holding a post not below the rank of a Joint Secretary or equivalent and shall be signed by an officer holding a post not below the rank of an Under Secretary or equivalent in the Central or State Government, as the case may be.”

Hence, it is viewed that for the Committee it is the organization which has filed the complaint with it. As regard the Complainant, he had only been transferred in September 2012. It is felt that it is common in the Government Service that officers are transferred or retired or resign or leave the services for various reasons. It is the Central Government body, which is still pursuing the case before the Disciplinary Committee. Explanation to Rule 18(6) of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 provides as under :

“18.

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Explanation : For the purpose of this rule, the appearance includes, unless and otherwise directed, appearance by an advocate or through any authorized representative, who may be a Chartered Accountant, Cost Accountant or Company Secretary.”

Thus, requiring the Complainant to be represented by authorized representative as was done in this case. It has neither caused any prejudice to the Respondent nor alter the position of the Complainant. Thus, the objections raised are not maintainable in extant case. Accordingly, the Committee has decided to review the matters appealed against by the Respondent before the Appellate Authority as detailed in para 4 above. In this connection, it is useful to refer to the observations of the Appellate Authority on this issue in its Order dated 1st November 2018 specifically paras 34 to 38 of the Order of the Appellate Authority.

10. The Respondent has also cited Supreme Court judgments to claim that the time limit prescribed for taking action in a statute is sacrosanct and created a vested right of the Respondent. The Committee perused the judgments and noted that these judgments decide the issue of limitation with regard to language of particular applicable statute. However, in the instant case, the applicable Rule 12 of the

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Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 reads as under:

“12. Time limit on entertaining complaint or information:

Where the director is satisfied that there would be difficult in securing proper evidence of the alleged misconduct, or that the member or firm against whom the information has been received or the complaint has been filed, would find it difficult to lead evidence to defend himself or itself, as the case may be, on account of the time lag, or that changes have taken place rendering the inquiry procedurally inconvenient or difficult, he may refuse to entertain a complaint or information in respect of any misconduct made more than seven years after the same to the Board of Discipline for taking decision on it under sub-section (4) of Section 21A of the Act”

It is noted from Rule as extracted above that nobody can claim as a matter of right that since a period of 7 years or more has elapsed from the date of the misconduct that no proceedings would lie in such cases. But, it casts a responsibility on the Director (Discipline) to examine in view of the facts of the case as to whether the Respondent would find difficult to defend himself or lead evidence on account of time lag or such changes have occurred in the meantime which may render the enquiry procedure difficult.

11. In extant case, it is noted that the Respondent, in his written statement submitted before the Director (Discipline), had raised preliminary objection of limitation stating that the complaint was then filed after 15 years of alleged irregularities and it would be practically impossible for him to trace records and collect evidences.

The then Director (Discipline) in the Prima-Facie Opinion had stated that the investigation against the Respondent was initiated as early as in 1998 when the matter was already under investigation by EOW. It is viewed that since investigation by EOW (which arise on the same set of facts, as evident from copy of FIRs available on record) was going on even in 2003 and the Respondent was vehemently defending the criminal cases, it does not stand to reason as to how he is handicapped or precluded from adding his evidence in the present proceedings which are on a narrow compass of professional misconduct which is of civil nature.

12. The Respondent has been pleading that all the related documents were submitted to the Complainant Department without taking copy of the same due to which the issue of limitation arises. For this, the Committee notes the Respondent's

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letter dated Jan 30, 2008, whereby the Respondent has submitted documents to SFIO during 2007 and 2008. The documents mentioned in the said letter are found to be pertaining to audit conducted by him (**W-338 submission Sept, 2019**) viz the annual accounts, audit working papers etc. If he is able to supply documents to SFIO as late as in 2008, it is not known as to how he could not adduce his evidence in this matter where the Prima-Facie Opinion was formed in the year 2012. Even as per his own admission, he had then submitted the documents relating to audit. In this case, certain specific evidences have been adduced in form of copies of cheques etc. by the Complainant Department and have been relied upon by the Director (Discipline). The Respondent has not explained as to how any documents in his audit working papers would help him to challenge the cheques signed by him and other evidences showing his active involvement in the management of the Group. The Respondent was given sufficient opportunity of hearing to explain the nature of documents that he was precluded from producing and he could not satisfactorily explain the same. Further, all the relied upon documents in support of the charges into the RBI Report, SFIO Report have been supplied to the Respondent and he is given fair & reasonable opportunity to explain the circumstances appearing against him.

13. The Committee notes further issue which is required to be looked into by the Disciplinary Committee as per directions of the Appellate Authority is to ascertain the actual services rendered by the Respondent to JVG Group of Companies. The Committee notes that the charge against the Respondent is about acting as the statutory auditor besides holding the position of Executive Director (Finance) in the JVG Group of Companies and thus being involved in the day to day working of the Company. It has to be examined considering the evidence available on record. It is noted such charge requires evidence of the Respondent having audited the financials of the Group Companies and also that he was holding a position of authority in relation to financial affairs of the Group Companies.

14. The Committee notes that the Complainant department has investigated into the matter under Section 235 of the Companies Act, 1956 into the affairs of the Group Companies and its Investigation Report dated 10th July 2009 inter-alia mentioned the role of the Respondent in the working of the JVG Group Companies as under:

“... he was holding the position of Executive Director (Finance) in the JVG Group of Companies and was controlling and conducting the whole financial affairs of the Company. This way, he was holding both the positions of Statutory Auditor as well as

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*Executive Director (Finance). He had misused both the positions. On one hand, he showed rosy picture about financial health of the Company and allured the investors to deposit and invest their hard earned money with JVG Group of Companies, on the other hand, **he was the authorized signatory in various bank accounts** of the Company. He **signed various important business deals** as an authorized signatory on behalf of JVG Investments. He not only neglected his responsibility as statutory auditor of the JVG Group of Companies but also facilitated in siphoning of the huge amounts by misappropriating and transferring through various firms owned, managed and controlled by him through intra-group transactions. The siphoning off money of JVG Group of Companies, through the front Companies of Pee Dee Kapoor & Co. i.e., by the Respondent has already been investigated by EOW, Crime Branch, Delhi Police. In this case two FIRs bearing Nos. 239/98 and 240/98 have been filed against the Respondent. He was arrested by the EOW during the year 2003 and was remanded to Police custody for ten days (**emphasis added**).”*

15. The Committee also noted that an Inspection report of the JVG Group Finance Companies viz. JVG Finance Ltd and JVG Securities Ltd on the basis of inspection conducted by the RBI, an independent regulatory authority, is also available on record with reference to the position as on 31st March, 1997, wherein it has been mentioned that the Group companies did not function as independent units and were managed as a part of the group only. There was no separate management team or hierarchy of officers for any Company and all the Companies were managed jointly by a common team of Directors/Managers/Employees. It further mentioned that there was concentration of powers at the top with no hierarchy of management team. The RBI Inspection Report dated 15th July 2011 (**A copy of the said Report was supplied to the Respondent**), has categorically mentioned w.r.t the involvement or the role played by the Respondent in the Company as under:

*“...one of the intriguing features of the Management of the group was the involvement of the statutory auditor Shri D.K. Kapoor in the day today affairs of the Company, being the defacto Executive Director (Finance) of the JVG Group and known in the organization by such designation. He was controlling the finance, banking and accounting functions of all the Group Companies after Mr. V.K. Sharma he was the most important man in the group and had direct control over the finances of the group. He was the authorized signatory for the operation of various bank accounts of the Companies and almost all the cheques were signed/approved by him. **The Inspecting Officer saw salary sheets of the group employees signed by him with the***

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designation of Executive Director (Finance). He also signed different agreements with the outside parties on behalf of the Company in the capacity of Executive Director (Finance). Needless to the point out that performance of such executive functions in the group, directly conflicted with the functions of the statutory auditors, and writing of audit report was only done as merely statutory obligation which the Company to comply with. As such there was no auditor of the Company which checked the financial and accounting accuracy of the group companies, as what was to be supposedly checked was done by the same man (**emphasis added**)”

16. The Committee thus noted that the role of the Respondent as brought out by the Inspection report of the RBI is same as that reported by the Complainant’s department. It is noted that the findings of RBI Inspection are independent of the Complainant department. Apart from ‘Resolution’ produced on record which states as under :

“RESOLVED that Mr. Devendra Kumar Kapur be and is hereby authorised to countersign cheques of such amounts and drawn on such Banks as may be specified from time to time, jointly with any other Authorised Signatory after their approval by the Competent Authority. Further, resolved that he should also ensure the compliance of all legal technicalities for the payments placed before him for his counter signatures and see that the same are properly accounted for as per the accounting procedures adopted by the Company”

Copies of numerous cheques of the Company signed by the Respondent are also available on record. Such cheques issued are for substantial amounts. Thus apart from being authorised signatory on cheques, he was entrusted with the responsibility to ensure the compliance of all legal technicalities for the payment placed before him and also to see that they are properly accounted for as per the accounting procedure adopted by the Company.

17. It also noted that the following documents/evidences are also available with it and are cited against the Respondent in other case of the Committee (ref. no PR-G-163/2010-DD/163/2010-DC/222/2012) which is based on the same investigation report of the Complainant as filed in extant case and the said evidences constitute

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sufficient evidence even in this case to show that he was working as ED of the JVG Group:

- Documents signed by him as Executive Director (Finance) and addressed to him as Executive Director (Finance) are annexed at **(C-15 to C-24)**,
- A list showing details of cellular phones of **JVG Group of Companies (C-25 to C-26)** showing the mobile number of the Respondent as that of Executive Director (Finance),
- A brochure containing a photograph of the Respondent stating his designation as Executive Director (Finance) of **JVG Group of Companies (C-28)** ,
- Copy of Bank Account Opening Forms alongwith related communication for Syndicate Bank, Hauz Khas, New Delhi wherein the Respondent is referred as E.D/E.D. (Finance), **JVG Group (C-107, 108, 111, 114-121)**
- Statements given on oath, wherein Smt. Neeru Sawhney who was the Company Secretary of M/s. JVG Department Stores Ltd., while giving reply to Question No. 3 dated 11.12.2008 **(C-134 to C-139)** also referred the Respondent as E.D. (Finance). She was asked through Question No. 5 dated 11.12.2008 to state who had taken interview for her recruitment to the post of Company Secretary. She in her reply to above question stated that "Interview was taken only by D.K. Kapur".
- Statement on oath of Shri V.K. Sharma, ex-CMD of JVGFL, wherein he mentioned that the Respondent was also working as Executive Director (Finance) of **JVG Group of Companies (C-140 to C-173)** and used to supervise/control all the financial activities/transaction of JVGFL. Shri Sharma further disclosed that the Respondent was drawing monthly salary and other benefits from the Company. The Company had given him independent powers in the matters of Finance. This disclosure of Shri V.K. Sharma is also proved from the letter of the Respondent dated 07.12.1996 **(C-174 to C-175)** addressed to M/s. Wimberley Allison tong & Goo Inc., London (England).

From the above, it is noted that said evidences signifies his role in respect of JVG Group of Companies- thus are evidences of his role in extant matters too. It is further viewed that signing of the cheques for the Company as well as above evidences thereby, indicates his involvement in the day-to-day functioning of the Company which is not expected of an auditor who is expected to maintain highest degree of independence. Further, undertaking the responsibility to ensure the compliance of all legal technicalities while performing the role of the statutory auditor indicates that he had performed the managerial responsibilities of signing as authorised signatory,

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assumed the management of the financial affairs of the Company and on the other hand he was giving his opinion on the financial statements of the Companies while holding the position of the Statutory auditor as well, which shows a clear case of conflict of interest in the dual roles.

18. The Committee notes that during the course of hearing he has accepted to have signed the cheques in pursuance to resolution while stating that signing a few cheques did not amount to executive action. It is further pleaded by him that the copies of cheques signed by him are available only in the fourth complaint filed against him by SFIO under case ref. no PR-G-206/10-DD/201/2010-DC/222/2012 and not in extant three cases. It is relevant to note that the SFIO Report dated 10th July 2009 states that the Respondent was acting as Executive Director (Finance) of JVG Group of Companies and funds were siphoned off by the JVG Group through the front entities of the Respondent. The Committee notes that the extant complaints along with the fourth complaint have emanated out of a common Investigation Report of Serious Fraud Investigation Office after conducting investigation in pursuance to the single Order of the Ministry of Corporate Affairs dated 09.07.2007 under Section 235 of the Companies Act, 1956. Thus, the evidences relied upon by SFIO while conducting investigation of JVG Group and filed in the four complaints were common. It is a matter of compilation in Volumes that they were all compiled with one complaint and left in others. Thus, the copies of signed cheques as well as copies of the audit reports on financial statements of various JVG Group Companies provide sufficient evidence of his dual capacity. Such copies of cheques were duly given to the Respondent and he was well aware that such a piece of evidence existed in the record of the Disciplinary Committee in matters against him.

19. Further, it is noted that there are copies of Form 16A exhibits payment of Rs.3,50,000 to the Respondent firm for the periods 95-96 on which TDS was deducted under Sec 203 of the Income Tax Act, 1961 whereas Note 27 of the Audit Report for the FY 1996-97 shows that audit fees payable was only Rs.1,10,000 (in the column of previous year figure). It is viewed that the balance signifies additional earnings of the Respondent from the Company which is substantially more than that obtained from his auditing services and indicates the importance of services being rendered by him.

20. The Committee, thus, noted in view of evidences available that the Respondent while acting as the statutory auditor of the Company had signed the cheques for the Company, thereby, involving himself in the day -to -day functioning of the Company

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which is not expected of an auditor who is expected to maintain highest degree of professional independence. The Audit fees received by him is much less than the fees paid for other services as discussed earlier. The Committee in this context was further of the view that by undertaking the responsibility of signing of the cheques on behalf of the Company, the Respondent had also undertaken the responsibility to ensure the compliance of all legal technicalities while performing the role of the statutory auditor whereby he was expected to act independently. Thus, the Committee is of the considered opinion that the Respondent had acted in dual capacity whereby on one hand he had performed the managerial responsibilities of signing as authorised signatory and assuming the custodianship of the finances of the Company and on the other hand giving his opinion on the financial statements of the Companies while holding the position of the Statutory auditor as well.

21. The Committee notes that the third issue is to take decision on the matters referred in accordance with the law which was prevalent when the alleged misconduct was committed i.e. in terms of code of conduct and guidelines which were in force at the time when alleged misconduct took place. It is noted that erstwhile Disciplinary Committee had held the Respondent guilty of professional misconduct falling within the meaning of Clause (4) of Part I of Second Schedule to CA Act. The Respondent has contended before the Appellate Authority that the alleged misconduct has taken place during 1993-1994 to 1996-1997 whereas Clause (4) of Second Schedule stands amended in the year 2006 and therefore application of amended Clause (4) is illegal and invalid. So, the basic question before this Committee is to find if the Respondent is guilty of professional misconduct within the meaning of Clause (4) of Part I, Second Schedule to CA Act as existing when the alleged misconduct took place.

22. It is noted may be mentioned that Clause (4) of Part I, Second Schedule to CA Act, 1949 prior to its Amendment reads as under (Code of Conduct, 1988) :

***“Clause (4) : “Expresses his opinion on financial statements of any business or any enterprise in which he, his firm or a partner in his firm has a substantial interest, unless he discloses the interest also in his report.*”**

Clause (4) is explained in Code of Conduct, 1988 Edition when it states as follows:

“ If the opinion of auditors are to command respect and the confidence of the public, it is essential that they must disclose every factor which is likely to affect their independence. Since financial interest in the business can be one of the important factors which may disturb independence, the clause provides that the existence of such an interest direct or indirect should be disclosed. This is

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intended to assure the public as regards the faith and confidences that could be reposed on the independence opinion expressed by the auditors.

...Public conscience is expected to be ahead of the law. Members, therefore, are expected to **interpret the requirement as regards independence much more strictly than what the law requires and should not place themselves in positions which would either compromise or jeopardise their independence.**

Member must take care to see that they do not land themselves in situations where there could be conflict of interest and duty. **For example, where a Chartered Accountant is appointed the Liquidator of a company, he should not qua a Chartered Accountant himself, audit the Statement of Accounts to be filed under Section 551(1) of the Companies Act, 1956. The audit in such circumstances should be done by a Chartered Accountant other than the one who is the Liquidator of a company.**

The Council has, in this connection, issued a **Guidance Note** which is reproduced below:

“Attention of the members is invited to the provisions of Clause (4) of Part I of the Second Schedule to the Chartered Accountants Act which provides that a Chartered Accountant in practice shall be deemed to be guilty of professional misconduct if he expresses his opinion on financial statements of any business or any enterprise in which he, his firm or a partner in his firm has a substantial interest, unless he discloses his interest also in his report.”

Recently, new areas of professional work have been added, e.g. Tax Audit, Audit of non-corporate borrowers of banks and financial institutions, audit of stock exchange brokers, etc. The Council wishes to emphasise that the aforesaid requirement of Clause (4) of Part I, Schedule II of the Act are equally applicable while performing functions of these audits by members. **Some of the situations which may arise in the applicability of Clause (4), Part I, Schedule II to the Act, are discussed below for the guidance of members.**

1. Where the member, his firm or his partner or his relative has substantial interest in the business or enterprise.

The independence of mind is a fundamental concept of audit and/or expression of opinion on the financial statements in any form and, therefore, must always be maintained. Nothing can substitute for the essential and fundamental requirements of independence. Therefore, the Council's views are clarified in the following circumstances.

(i) An enterprise/concern of which a member is either an owner or a partner.

The holding of interest in the business or enterprise by a member himself whether as sole-proprietor or partner in a firm, in the opinion of the Council, would affect his independence of mind in the performance of professional duties in conducting the audit and/or expressing an opinion on financial statements of such enterprise. Therefore, a member should not audit financial statements of such business or enterprise.

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perform the managerial functions or day-to-day operations of the Company which would in fact beyond doubt impair his independence to perform the statutory audit. The spirit behind such Guidance Note was limited to ensure that the expertise of the auditor may be used to draw the financial statements which in today's scenario has been categorically prohibited to ensure the existence of independence. The Committee further noted that the allegations raised in the instant complaint is not with respect to the writing of accounts of the Company by the Respondent but relating to the dual role played by the Respondent during the said years.

25. In fact as per pre-amended CA Act, if the member was in way connected with the management of affairs of an entity either in advisory capacity or in factual control (i.e he had interest direct or indirect), he should not accept the audit assignment because members were then expected to interpret the requirement regarding independence much more strictly than what the law required and he should not place himself in a compromising situation or in that which jeopardised his independence. In order to give a relief to such situation, the then Code stated that firstly a member should not take such assignment and if taken then such interest should be disclosed in the audit report. Thus, it is viewed that there was clear denial to hold such dual positions and even if it was done it should be ensured that independence of auditor was not compromised and that disclosure of such interest in the audit report was essential.

26. In extant case, it was noted that numerous cheques of the Company were signed by the Respondent as the authorised signatory in the capacity of the authorised signatory pursuant to the resolution dated 11th August 1994 passed at the Board Meeting of the Company as detailed in preceding discussion. In this context, the Committee is of the view that when a person is entrusted with the responsibility to act as the statutory auditor of the Company, he is expected to act independently to form an opinion as regard to the true and fair view of the financial position and operating results of a Company and if duties pertaining to financial operations are also undertaken by him which by nature fall within the day to day operations of the Company, then he cannot be deemed to have acted independently as statutory auditor. Thus, the Respondent was holding dual position in JVG Group of Companies and he also expressed audit opinion on the financial statements of such Companies without disclosure of his interest in the Company in the audit report. Hence, the member is guilty of professional misconduct under Clause 4, Part I of Second Schedule to pre-amended CA Act .

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Conclusion :

27. On an assessment of the facts available on record and after hearing the Respondent in context of all grounds raised by him,

(i) The Respondent has failed to convincingly establish before the Committee, the line of defense in relation to evidences which he was prevented to adopt or place before the Committee due to the fact that there was a time lag in filing the complaint so as to invoke Rule 12 which is a discretionary and not absolute right conferring any right on the Respondent.

(ii) While acting as the statutory auditor of the Company from the F.Y. 1993-94 to 1996-97 (except 1995-96), the Respondent was involved in its operations when he was authorised signatory of cheques and had to review legal technicalities of such payments along with its accounting. Hence, he failed to maintain highest degree of independence. Thus in the considered opinion of the Committee, the Respondent is guilty of Professional Misconduct falling within the meaning of Clause (4) of Part I of the Second Schedule to the pre-amended Chartered Accountant Act 1949. The Conduct of the Respondent also brought disrepute to the profession and in such circumstances 'Other Misconduct' read with Sec 22 of the said Act will also become applicable.

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Sd/-
(Smt. Anita Kapur)
Presiding Officer

Sd/-
(Shri Ajay Mittal)
Member (Govt. Nominee)

Sd/-
[CA. (Dr.) Debashis Mitra]
Member

Sd/-
[CA. Manu Agrawal]
Member

Date : 11th February, 2020

Place : New Delhi

Certified to be True Copy
Mohit Khanna
(Mohit Khanna)
Assistant Secretary
Disciplinary Committee
The Institute of Chartered Accountants of India