



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)

DISCIPLINARY COMMITTEE [BENCH - I (2020-2021)]
[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 :

Shri Rajiv Agarwal, Managing Director, M/s. Scan Holdings (P) Limited, New Delhi
-Vs-
CA. Naveen Choudhary (M.No.083596), Noida
[PR-172/14-DD/204/14-DC/669/2017]

MEMBERS PRESENT (Through Video Conferencing):

1. CA. Nihar N Jambusaria, Presiding Officer
2. Ms. Rashmi Verma, I.A.S. (Retd.) (Government Nominee)
3. CA. G. Sekar, Member
4. CA. Pramod Jain, Member

1. That vide findings dated 10.02.2020 under Rule 18 (17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Disciplinary Committee was inter-alia of the opinion that **CA. Naveen Choudhary (M. No.083596)** (hereinafter referred to as the **Respondent**) was **GUILTY** of professional misconduct falling within the meaning of Clause (1) of Part I of Second Schedule to the Chartered Accountant Act, 1949.

2. That pursuant to the said findings, an action under Section 21B (3) of the Chartered Accountants (Amendment) Act, 2006 was contemplated against the Respondent and a communication was addressed to him thereby granting an opportunity of being heard in person and/or to make a written representation before the Committee on 19th January, 2021.

3. The Committee noted that on 19th January, 2021, the Respondent was present along with his Counsel through video conferencing. The Committee informed the Respondent



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that appearance through authorized representative is not allowed at this stage. Accordingly, the Counsel for the Respondent withdrew himself from the hearing. The Respondent, thereafter, made his verbal submissions on findings of the Disciplinary Committee.

4. The Committee observed that the Respondent in his verbal representations only stated that he has been falsely implicated in the matter.

5. The Committee has considered the reasoning as contained in findings dated 10th February, 2020 holding the Respondent Guilty of professional misconduct vis-à-vis verbal representations of the Respondent on the findings of the Disciplinary Committee.

6. Keeping in view the facts and circumstances of the case, material on record and verbal representations of the Respondent made before it, the Committee is of the view that the professional misconduct on the part of the Respondent is established and ends of justice shall be met if reasonable punishment is given to him. Accordingly, the Committee orders that the name of the Respondent i.e., CA. Naveen Choudhary (M.No.083596) be removed from the Register of members for a period of 3 (three) months and a fine of Rs.50000 (Fifty Thousand Rupees only) be imposed on CA. Naveen Choudhary (M.No.083596) to be paid within 30 days of receipt of this order.

sd/-
(CA. NIHAR N JAMBUSARIA)
PRESIDING OFFICER

(approved and confirmed through e-mail)
(MS. RASHMI VERMA, I.A.S. (RETD.))
GOVERNMENT NOMINEE

sd/-
(CA. G. SEKAR)
MEMBER

sd/-
(CA. PRAMOD JAIN)
MEMBER

CA. Naveen Choudhry (M.No.083596), Noida
[PR-172/14-DD/204/14-DC/669/2017]

Certified to be true copy


Anurag Sharma

Assistant Secretary,
Disciplinary Directorate

The Institute of Chartered Accountants of India,
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

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/172/2014/DD/204/2014/DC/669/2017]

In the matter of:

Shri Rajiv Agarwal
Managing Director
M/s. Scan Holdings (P) Limited
F-4, Shopping Complex
A Block, Meera Bagh
New Delhi-110 087

..... Complainant

Versus

CA. Naveen Choudhary (M.No.083596)
Plumeria Garden Estate,
Omicron, Greater Noida,
NOIDA 201308

..... Respondent

MEMBERS PRESENT:

CA. Atul Kumar Gupta, Presiding Officer
Sh. Rajeev Kher, I.A.S. (Retd.), Govt. Nominee
CA. Amarjit Chopra, Government Nominee
CA. Rajendra Kumar P, Member

DATE OF HEARING : 09.04.2019

PLACE OF HEARING : ICAI Bhawan, New Delhi

PARTIES PRESENT:

Complainant : Shri Rajiv Agarwal, Managing Director, M/s. Scan Holdings (P) Limited, New Delhi
Counsel for the Complainant : Advocate, S. Krishnan
Respondent : CA. Naveen Chaudhary with his assistant Mr. Nitish Chaudhary

Charges in Brief:-

1. The Respondent, being statutory auditor of M/s. Scan Holding (P) Ltd. (hereinafter referred as **the Company**) has sent malicious complaints to various statutory authorities pointing out discrepancies and inadequacy in the accounts when he himself had written and certified those accounts which has led to the proceedings being initiated by Department and infact, demand under the Income Tax Act 1961.

Brief facts of the Proceedings:

2. Before proceeding in this case, the Committee noted that earlier Committee who considered the Prima Facie Opinion has directed that the charge as regard writing of books of accounts along-with auditing the same should also be inquired into under Clauses (4) and (7) of Part I of Second Schedule of the Act.
 - 2.1 In this regard, the Committee was of the view that at this stage it cannot enhance the charges and drop the said Clauses against the Respondent.
 - 2.2 After that, the Committee noted that the Complainant alongwith Counsel and the Respondent in person were present and appeared before it.
 - 2.3 The Complainant and the Respondent were put on oath. The Counsel for the Complainant explained the charges in brief. On being asked whether the Respondent pleads guilty, he replied in negative.
 - 2.4 The Committee directed the Respondent to proceed ahead with his defence. The Respondent submitted that:-
 - 2.4.1 He has conducted the Statutory Audit of Complainant Company i.e. M/s. Scan Holdings Pvt. Ltd during the period 2002 to 2008. When the Respondent went to the

office of Complainant Company for conducting the audit for Financial Year 2008-09, the Respondent found Shri Bhuvnesh Bhardwaj, Accountant of the Company was forging signatures of employees in the salary register. On detailed scrutiny, it came to notice that this practice is going on from earlier years also. On further scrutiny of books of accounts of the Company, numbers of financial irregularities and tax evasion came to the Respondent's notice.

2.4.2 Some of the prominent irregularities were

- (i) Bogus Import and Export and misleading report, if any, u/s 92E of Income Tax Act, 1961 on Transfer Pricing.
- (ii) Evasion of Central Sales Tax
- (iii) Evasion of Stamp Duty, Income Tax and Capital Gains Tax
- (iv) Corruption/Illegal money brought through Complainant Company, perhaps belonging to some UPA Ministers and declared as "Commission"
- (v) Converting corruption money of an MLA by showing consultation fee / salary to his wife
- (vi) Exploring innovative ideas to evade taxes and accumulate foreign currency overseas.
- (vii) Booking expenses relating to overseas joint venture and overseas subsidiary Company in Indian Company with an object to reduce tax liability in India.
- (viii) Non deduction of tax at source payments made to Directors and to cover up this default transferred personal property / loss of directors to the Company.

When the Respondent raised the objection, the Complainant started using abusive, derogatory, uncivilised language and threatened to the extent of spoiling not only the Respondent's career but of his children also.

2.4.3 In view of various financial irregularities as stated above, the Respondent refused to give an unqualified report, the Complainant falsely implicated the Respondent in a case and filed a complaint with Institute of Chartered Accountants of India, New Delhi. ✓

2.4.4 During the course of audit of Scan Holdings Pvt. Ltd for Financial Year 2008-09 out of various financial irregularities one such irregularity was related to various payments aggregating to Rs.4,70,000/- at different intervals made to Mrs. Anju Sharma, wife of Ex-MLA Mr. Vinay Sharma and debited under the head "Consultation Fee". On further enquiry, accountant of the Company informed that bills are yet to be prepared. Surprisingly, he also informed that in previous years, the same type of payments were made and declared as "Salary". When the

Respondent asked for other documentary evidence he was informed that since it is an adjustment entry, hence Company has no record relating to her employment. Since, the Respondent refused to give an unqualified report until his observations are explained satisfactorily; the management illegally removed him from the post of auditor.

2.4.5 In Financial Year 2008-09; the Complainant Company has incorporated a wholly owned subsidiary in UAE with the sole object of evasion of tax. The main features of this Company are as under:-

- (i) The Registered Office of the Company is shown at the same address as that of M/s. JAXA, Chartered Accountant who has been advising Indian Citizens how to abuse Indian Income Tax Act, 1961.
- (ii) All the Directors of the Company are Indians and all the affairs of that Company such as sale, purchase, banking, books of accounts are managed by Complainant / parent Company in India.
- (iii) No audit for Books of Accounts has got been done.
- (iv) No Income Tax Return has been filed.
- (v) All the expenses to manage that subsidiary Company are booked in parent Company just to reduce the tax liability of Indian Company.
- (vi) During first year of operation transactions of sale / purchase worth more than Rs.2.00 crores have been shown between parent and subsidiary Company on paper only. No physical movement of goods has taken place.
- (vii) In subsequent years, the business of Indian Company is also transferred to that subsidiary Company and is used as a conduit just to avoid tax liability.

The same Company has been used as a conduit to make bogus import and export resulting thereby evasion of central sales tax and showing double sales in Indian Company as well as in UAE Company. Further, U/s 92E of the Income Tax Act, 1961 either no report on Transfer Pricing has been issued or if it is issued it must be having misleading facts.

2.4.6 During Financial Year 2008-09, the Respondent had rendered number of services to the Complainant Company but when the Respondent refused to give an unqualified audit report, the Complainant refused to pay for that services also.

2.4.7 During the course of the personal hearing, the Committee wanted to know from the Respondent as to why he did not suspect any wrong doings. The Respondent in his reply stated that during the course of the audit he had no reason to suspect as vouchers and relating supporting bills were available. However, in the year 2008-09 when the

assessment for the year 2005-06 happened, he noticed that there were many bills/ invoices which appeared to be fake. He also noticed that salaries were accounted in the name of persons/ employees who did not exist. It was also noticed by him that expenses of travel which were never undertaken are also debited to the accounts as expenses.

2.4.8 The Committee perused the papers on records and on such perusal has found that an intimation has been sent by the Respondent to the Police Authorities against an employee of ICAI on the charges of taking bribe. The Committee demanded evidence of the same but the Respondent remained silent and did not bring any material evidence on record to prove his point. The Committee warns the Respondent against making such baseless allegations.

After recording the submissions of both the parties, the Committee concluded the hearing in the captioned matter.

Findings of the Committee:

3. The Committee noted the above charge of the Complainant as explained in para 1 above. In respect of this, the Respondent stated that he has conducted the Statutory Audit of Complainant Company i.e. M/s. Scan Holdings Pvt. Ltd during the period 2002 to 2008. When he went to the office of Complainant Company for conducting the audit for Financial Year 2008-09, he found that the Accountant of the Company was forging signatures of employees in the salary register.

On detailed scrutiny, it came to notice that this practice is going on from earlier years also. On further scrutiny of books of accounts of the Company, numbers of financial irregularities and tax evasion came to his notice.

In view of various financial irregularities in the books of accounts of the Company, he refused to give an unqualified audit report and consequently, the Complainant falsely implicated the Respondent and filed the complaint with Institute of Chartered Accountants of India, New Delhi.





- 3.1 After considering the charge and defence of the Respondent, the Committee perused the documents on record and noted that the Respondent vide letter dated 25th November, 2013 written to ACIT regarding details of tax evasion during Assessment Year 2007-08. In said letter, he stated that:-

"whatever information is provided by me is based on my association with the Company for about ten years and from the books of Company. In case Company refutes any information I am ready to assist to the Department to expose their lie".

- 3.2 Further, the Committee also perused that the Respondent had also addressed a letter dated 14/09/2012 to the Commissioner of Police for registration of FIR against the Directors of the Company including Complainant and other persons.

Moreover, the Respondent has also addressed a letter dated 18/02/2013 to the Registrar of the Companies for initiating action against the Directors of the Company.

- 3.3 Further, the Committee noted that the Respondent was the auditor of the Company for Financial Years 2002-2003 to 2007-2008, however, he has disclosed the confidential information of the auditee client in year 2012 and 2013, which is not the audit period of the Respondent i.e. after 5 years of completing the last audit of the Company.

The Committee on perusal of Clause (1) of Part I of the Second Schedule which provides as under:

"Clause (1) : discloses information acquired in the course of his professional engagement to any person other than his client so engaging him, without the consent of his client or otherwise than as required by any law for the time being in force;"



Further, the Code of Ethics with respect to the aforesaid clause provides”

“It is not possible to set out all the circumstances under which disclosure of information may be required by law. If under any legal compulsion and if it is not legally permissible to claim privilege under the Evidence Act, 1872 (S.126), the disclosure made by a member of such information may not be considered as misconduct. However, such matters involve niceties of law and expert legal advice may be sought prior to such disclosure.

The only circumstances in which this duty of confidence may give rise to a difficulty is where the accountant has reason to believe that the client has been guilty of some unlawful act or default. This matter is of special significance in the case where the client is guilty of tax evasion”

- 3.4 In view of above provisions of Chartered Accountant Act and Rules framed there-under, the Committee observed that there was no single reasons/necessity to disclose the information of the auditee client to said authorities. Moreover, if there was any necessity to bring on record certain irregularities in the books of accounts, the Respondent ought to have communicated the same to the Company/auditee first, but he chose to take the other recourse.

Moreover, in view of submissions of the Respondent before the Committee, the Committee observed that to settle certain personal goals with the Complainant, the Respondent had disclosed certain confidential information to the Government authorities without any valid/ legal reason, which is not permitted as per Ethical Standards of the Institute.

- 3.5 Thus, in view of above, the Committee is of the opinion that the Respondent has misused his position as an Statutory Auditor of the Company and held him Guilty of professional misconduct falling within the meaning of Clause (1) of Part I of the 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 (1) of Part I of the Second Schedule to the Chartered Accountant Act 1949.

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Sd/-
(CA. ATUL KUMAR GUPTA)
PRESIDING OFFICER

Sd/-
(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

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

Sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

DATE : 10.02.2020
PLACE : NEW DELHI

Certified True Copy

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Assistant Secretary
Disciplinary Directorate
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