



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

PPR/13/15/DD/12/INF/15/BOD/420/18

**ORDER UNDER SECTION 21 A (3) OF THE CHARTERED ACCOUNTANTS ACT, 1949 READ WITH RULE 15(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATIONS OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007.**

In the matter of:-

**CA. Neeraj Kumar Agarwal (M.No. 503441)**

.....Complainant

And

**CA. Sandeep Khandelwal (M.No. 500250),  
Partners, M/s. M N R S & Associates (FRNo. 018340N),  
Chartered Accountants,  
New Delhi  
[PPR/13/15/DD/12/INF/15/BOD/420/2018]**

.....Respondent

**MEMBERS PRESENT:**

**CA. Prasanna Kumar D., Presiding Officer  
Mrs. Rani Nair, (IRS, Retd.), Government Nominee  
CA. Durgesh Kumar Kabra, Member**

**Date of final hearing: 9<sup>th</sup> March 2020**

1. The Board of Discipline vide Report dated 6<sup>th</sup> January, 2020 was of the opinion that **CA. Neeraj Kumar Agarwal and CA. Sandeep Khandelwal** are guilty of "Other Misconduct" falling within the meaning of Clause (2) of Part-IV of the First Schedule to the Chartered Accountants Act, 1949 read with section 22 of the said Act.

2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against **CA. Neeraj Kumar Agarwal and CA. Sandeep Khandelwal** and communication dated 26<sup>th</sup> February, 2020 was addressed to them thereby granting them an opportunity of being heard in person and/or to make written representation before the Board on 9<sup>th</sup> March, 2020.

3. CA. Sandeep Khandelwal appeared personally before the Board on 9<sup>th</sup> March 2020. However, CA. Neeraj Kumar Agarwal did not appear before the Board and had informed that he is out of country and is unable to appear. CA. Sandeep Khandelwal requested the Board to consider the written representation which is already on record before passing any Order against them. BA



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4. **CA. Neeraj Kumar Agarwal** and **CA. Sandeep Khandelwal** in their written representation dated 2<sup>nd</sup> March, 2020, inter-alia stated as hereunder:-

- (a) The alleged letter of NPCC dated 21<sup>st</sup> April, 2014 (which was treated as Information) was without any authorization of any nature whatsoever. In absence of proof of any proper authorization, the letter can at best be considered as "anonymous Information" and the Directorate is barred from entertaining any such information under Rule 7 (3) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.
- (b) The Respondents referred to para 7.3 of the opinion that the issue has already been considered by the Professional Development Committee, ICAI and a clarification was sought from the firm of the Respondents. In response, the firm of the Respondents had clarified and reiterated the reasons for such lower fee. It was also recorded in the said opinion that although Council of ICAI has given recommendatory scale of fees for members of Institute but there is no restriction for quoting minimum fees particularly where work is assigned through tendering process. This in itself had closed the issue at hand once. Carrying out the present proceedings thereafter amounted to double jeopardy where the same issue was again called in question.
- (c) No objection of any nature was ever received from NPCC Ltd.
- (d) The only allegation in the opinion was that the Respondents have put hurdles by putting low bid thereby disrupting the tendering process. Surprisingly, the opinion itself records that the intention was to obtain the assignment in the question. Both these findings cannot go hand in hand. Either there can be intention to disrupt/ cancel the tendering process and put hurdles or there can be the intention to obtain the assignment. Such kind of contradictory inference defies common sense and logic.
- (e) There is no allegation that the Respondents were otherwise not qualified to participate in the tendering process. Such allegation could have carried some meaning only if the Respondents were not qualified to bid or had refused to accept the assignment after being declared the lower bidder.
- (f) The sole reason for participation by the firm and quoting low was to gain experience of PSU audits and was nowhere a charity (although charity is also not prohibited). Had the intention of the firm was to disrupt or get the tender process cancelled, it would have quoted for the entire country and not just the



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regions which were closed to its Head office/ Branch office which were easy to manage.

- (g) The rationale behind quoting low price was to get the assignment even at the cost of suffering financial losses, with a thinking that the consequent work exposure would add to the credentials of the firm and which would help the firm getting jobs in future.
- (h) Under any bidding, a party is free to bid an amount of its choice and there is no bar in this regard. Therefore there was no mockery of the tendering process. The Respondents had affirmed their willingness to carry out the assignments at the quoted rates. Therefore any question of casual approach does not arise at all.
- (i) The Board framed and considered an additional issue at the fag end of the enquiry regarding the cost sheet. The Board actually based the entire decision on the fact that no such cost sheet was provided by the Respondents. It is quite clear that the cost sheet is to be maintained by members of the Institute (i) responding to tenders and (ii) accepting professional work based thereupon. Therefore the requirement of maintaining the cost sheet arises only when the professional work is accepted. i.e. tender is granted to such member and not otherwise.

5. The Board has carefully gone through the facts of the case and also the oral representation of CA. Sandeep Khandelwal and written representation of CA. Sandeep Khandelwal and CA. Neeraj Kumar Agarwal. Considering the above submissions, the Board was of the following view :

5.1 As per Rule 3 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 read with Rule 11 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the requirement of authorization is not applicable to 'Information' cases.

5.2 The Board while giving its findings had noted that the Council of ICAI has given recommendatory scale of fees for members of Institute. However, it cannot be inferred that the professional assignment can be carried out without charging any amount or charging a fee as low as Re.1 or 1 paisa which is practically no fees. The Board had also observed that the members are required to maintain the detailed Cost Sheet in respect of the budgeted cost to be incurred on the project while responding to tenders and accepting



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the professional work based thereupon so as to justify the fee quoted by them. The Board had also observed that the tendering process was disrupted due to such a low bid by the Respondent(s) on the first occasion, the repeat quoting of much lesser fee which is absurd i.e. 1 paise does have a far reaching effect of disrupting a legal tender process of a public sector company. However, by repeat quoting of much lesser and absurd fee of Rs.1 and/or 1 Paisa, the Board opined that the act on the part of the Respondent(s) had a disrupting impact on the entire process of bidding which is not expected of a Chartered Accountant and clearly brings disrepute to the profession.

6. The Board was of the view that, as per the findings of the Board as contained in its report, it has already been conclusively proved that the Respondent(s) are Guilty of Other Misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule of the Chartered Accountants Act, 1949 read with Section 22 of the said Act.

7. Upon consideration of the facts of the case, the consequent misconduct of CA. Neeraj Kumar Agarwal and CA. Sandeep Khandelwal and keeping in view their representation, the Board decided to impose a fine of Rs.15,000/- (Rs. Fifteen Thousand Only) each on CA. Neeraj Kumar Agarwal (M.No. 503441) and CA. Sandeep Khandelwal (M.No. 500250) payable within a period of 60 days from the date of the receipt of the Order.

*CAK*

Sd/-  
**CA. PRASANNA KUMAR D.**  
(PRESIDING OFFICER)

Certified to be true copy  
*R.S. Srivastava*  
R.S. Srivastava  
Assistant Secretary,  
Disciplinary Directorate  
The Institute of Chartered Accountants of India,  
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

BOARD OF DISCIPLINE (BENCH- I)

Constituted under Section 21A of the Chartered Accountants Act 1949

Findings under Rule 14(9) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007

File No. : PPR/13/15/DD/12/INF/15/BOD/420/2018

QUORUM:

CA. Sushil kumar Goyal , Presiding Officer  
Mrs. Rani Nair (IRS, Retd.), Government Nominee  
CA. Durgesh Kabra, Member

In the matter of:

CA. Neeraj Kumar Agarwal (M.No. 503441) and CA. Sandeep Khandelwal (M.No. 500250), Partners, M/s. M N R S & Associates (FRNo. 018340N), Chartered Accountants, in Re:

1-35-B, First Floor,

Lajpat Nagar – II,

Central Market,

New Delhi – 1100 024

.....Respondent(s)

DATE OF HEARING : 24<sup>th</sup> July, 2019

PLACE OF HEARING : New Delhi

PARTIES PRESENT:

Respondent(s) : CA. Neeraj Kumar Agarwal

: CA. Sandeep Khandelwal

Counsel for the Respondent(s) : CA. C.V. Sajan

FINDINGS:

1. The Board noted the allegation in the instant case, that is, M/s National Projects Construction Corporation Limited (NPCC Ltd)., issued NIT No. 400782/208 dated 28/03/19

19.11.2013 for appointment of internal Auditors for conducting audit at its different Zones / Corporate Office where the Respondent firm quoted Rs. 1.00 for Corporate Office, Faridabad and Rs. 1.00 for Delhi Zone, Gurgaon (having 05 units, one being at Jodhpur, Rajasthan). Considering abysmally low rate quoted by the Respondent Firm not viable, NIT No. 400782/208 dated 19.11.2013 was cancelled. Quotations were invited afresh vide NIT No. 400782/02 dated 02.01.2014 by uploading on NPCC website. In response to the same, the Respondent firm again quoted an abysmally low rate of Rs.0.01 (One paise only) for Corporate Office, Faridabad and Rs.0.01 (One paise only) for Delhi Zone, Gurgaon (having 05 units, one being at Jodhpur, Rajasthan). The Respondent firm was invited on 14.03.2014 and 24.03.2014 for discussion and to give presentation and action plan as to how the Respondent firm proposes to complete the internal audit work successfully within time schedule at such a low quote. However, the Respondent firm could not justify the point. Hence it was decided to cancel the bid of the Respondent firm for Corporate Office, Faridabad and Delhi Zone, Gurgaon. The Respondent Firm has thus put deliberate hurdle in discharging of public work by quoting Rs.1.00 / Rs. 0.01 repeatedly.

2. The Board noted that the Respondent(s) along with their Counsel were present before it at the time of hearing and duly considered the submissions made thereat.

3. The Board noted the following submissions of the Respondent(s):-

- (a) while finalizing their fee quote, they noticed that even in past years the audit assignment of NPCC Ltd. was conducted at very nominal rate, even the allotment was done at lower than cost of efforts involved in tendering process. The fee charged by other CA firms under L-1 was starting from Rs. 5000/- which was also in the nature of just token fee.
- (b) there was non-availability of any precedence of minimum fees either from ICAI side or otherwise, which could have been said to be the minimum fee without any argument. The Respondent(s) further opined that there could be no such minimum fee, where consideration is to solely earn goodwill and get qualified for similar assignments particularly where there are no regulations / restriction on quoting minimum fees.

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- (c) the Respondent firm had gone through the provisions of quotation of fees guidelines of ICAI and found that there are guidelines which provides only recommendatory fees which is not binding on the members.
- (d) in the meeting held with NPCC staff, they have clearly mentioned all above facts and found them in agreement with Respondents' stand, but later suo-moto cancelled the tender and consequent bidding process. On inquiring from NPCC staff by the Respondent(s) no reply was received. They also submitted that without testing their skills or execution of the work, how NPCC has found their quote as disrupting the tendering process.
- (e) the Respondent firm had quoted nominal fees to earn goodwill, entitlement for similar assignments in future and above all, exposure to aspirant CAs (Article trainees), who were keen but to whom they were not able to provide exposure of PSUs / Govt. due to their inability to secure such work citing non-existence of any fair criterion of allotment of such work (similar to bank audits) to all willing practitioners.

4. The Board also noted that it had directed the office to seek details from PDC of ICAI regarding decision of the Council regarding maintenance of cost sheet in respect of proposed assignments wherein members apply in response to tenders. The PDC, in response to the same, provided with the relevant extract from the minutes of the Council meeting with respect to requirement of maintaining Cost-sheet by the members of the Institute responding to tenders, which is produced as under:

"Requirement to maintain Cost-sheet

*It was decided by the Council at its 301st meeting in December, 2010 that a Cost sheet be maintained by the members of the Institute responding to tenders and accepting the professional work based thereupon, incorporating details of the costs being incurred therein having regard to number of persons involved, hours to be spent, etc., so that the same may be called for by the Institute for perusal. A copy of the Cost-sheet is enclosed."*

5. The Board also perused the Council Guidelines regarding **Minimum Scale of Fees in respect of Audit** and observed that such guidelines are recommendatory in nature and suggest fees to be charged depending upon the nature and complexity of particular assignment and time involved in completing the same.

6. The Board noted that the Council of ICAI has given recommendatory scale of fees for members of Institute. However, it cannot be inferred that the professional assignment can be carried out without charging any amount or charging a fee as low as Re.1 or 1 paisa which is practically no fees. Further, it is noted that the members are required to maintain the detailed Cost Sheet in respect of the budgeted cost to be incurred on the project while responding to tenders and accepting the professional work based thereupon so as to justify the fee quoted by them. The Board also noted that the Respondent(s) participated in the open bid offer by NPCC and quoted abysmal rates as Re.1 (One) or 1 (one) Paisa which appeared to be a mockery of the tendering process and reflected a casual approach on the part of the Respondent(s) thereby resulting in bringing disrepute to the profession. The Board also observed that the tendering process was disrupted due to such a low bid by the Respondent(s) on the first occasion, the repeat quoting of much lesser fee which is absurd i.e. 1 paise does have a far reaching effect of disrupting a legal tender process of a public sector company. However, by repeat quoting of much lesser and absurd fee of Rs.1 and/or 1 Paisa, the Board opined that the act on the part of the Respondent(s) had a disrupting impact on the entire process of bidding which is not expected of a Chartered Accountant and clearly brings disrepute to the profession at large which needs to be condemned.

**CONCLUSION:**

7. Thus, in conclusion, in the considered opinion of the Board, the Respondent(s) are held **GUILTY** of "Other Misconduct" falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with section 22 of the said Act.

Sd/-  
CA. SUSHIL KUMAR GOYAL  
(PRESIDING OFFICER)

Sd/-  
MRS. RANI NAIR (IRS, Retd.)  
(GOVERNMENT NOMINEE)

Sd/-  
CA. DURGESH KUMAR KABRA  
(MEMBER)

DATE: 6<sup>th</sup> JANUARY, 2020  
PLACE: NEW DELHI

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Certified Copy  
Assistant Secretary  
Directorate of Company Administration  
Ministry of Corporate Affairs  
New Delhi