



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

[PR- 8/15-DD/21/2015/DC/578/17]

**ORDER UNDER SECTION 21B(3) OF THE CHARTERED ACCOUNTANTS ACT, 1949 READ WITH
RULE 19(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATION OF
PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007.**

In the matter of:

Shri Rakesh Dhawan, New Delhi

-vs-

CA. Raj Kumar Sawhney (M.No.010516), New Delhi

[PR- 8/15-DD/21/2015/DC/578/17]

Date of Order : 07th September, 2020

MEMBERS PRESENT:

1. CA. Nihar N 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 03rd February, 2020, the Disciplinary Committee held **CA. Raj Kumar Sawhney (M.No.010516), New Delhi** (hereinafter referred to as the “Respondent”) **GUILTY** of professional Misconduct falling within the meaning of Clause (3) of Part II of the Second Schedule to the Chartered Accountants Act, 1949 as amended from time to time.

2. That 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 07th September, 2020.



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3. The Respondent did not appear before the Committee on 07th September, 2020, but through e-mail dated 03rd and 04th September, 2020, he has informed that he has already submitted the representation in this matter and due to ongoing COVID problem and a senior citizen, he is avoiding travelling out of home.

4. The Committee considered the facts of the case and various documents/submissions on record along-with findings of the earlier Committee holding the Respondent guilty of professional misconduct.

5. The Committee noted that the allegations of the Complainant such as securing audit based on false information and not disclosing complete information in the empanelment application with Bank, it is viewed that the Respondent has not denied that he has not secured audit work of the branch of Punjab National Bank.

Since the Bank empanelment form is signed by all the partners of the firm, the Respondent cannot escape from his responsibility of pointing out the correct information in the bank empanelment form about full-time employment/association of other partners with Companies.

5.1 Further, it cannot be denied that the Respondent was not aware of the employment/engagement of other partners of the firm. Hence, the Committee was of the view that the Respondent deliberately gave false information for empanelment and hid the fact of full-time employment of other partners, which is a serious offence.

5.2 Accordingly, ends of justice can be met if severe punishment is given to him in commensurate with above misconduct.



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6. 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. Raj Kumar Sawhney (M.No.010516) be removed from the register of members for a period of 01 (one) Year.

Sd/-
(CA. NIHAR N 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



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CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – I (2019-2020)]

[Constituted under Section 21B of the Chartered Accountants 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

[Ref. No. PR- 8/15-DD/21/2015/DC/578/17]

In the matter of:

Shri Rakesh Dhawan,

218, Kailash Hills,

New Delhi – 110 065

.....Complainant

Versus

CA. Raj Kumar Sawhney (M.No.010516)

J-6/108, Rajouri Garden,

New Delhi – 110 027

.....Respondent

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,



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CA. Babu Abraham Kallivayalil, Member,
CA. Dayaniwas Sharma, Member

DATE OF FINAL HEARING : 16.10.2019 (Decision taken on 17.12.2019)

PLACE OF FINAL HEARING : ICAI, New Delhi

PARTIES PRESENT:

Counsel for the Respondent : Shri Vivek Sharma



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BRIEF OF THE DISCIPLINARY PROCEEDINGS:-

1. The Committee noted that first hearing in the above matter was fixed on 28th August, 2019. The notice of the said hearing was duly sent to the Complainant and the Respondent. However, the said hearing was adjourned at the request of the Respondent.

1.1 On the day of next hearing held on 16th October, 2019, the Committee noted that the Complainant was not present. The Respondent was not present but his Counsel was present. The Committee noted that notice of the hearing was duly sent to the Complainant and the Respondent. Since the Complainant was absent without any prior intimation and there was no request for adjournment of hearing, the Committee decided to proceed ahead in the matter ex-parte the Complainant. On being enquired from the Counsel for the Respondent as to whether he is having proper vakalatnama from the Respondent, he stated that he would file the same. On the same, the Committee allowed him to file the same within 3 days of the hearing. When the Committee enquired from the Counsel for the Respondent as to whether he is aware of charges leveled against the Respondent, he replied in affirmative and pleaded not guilty on behalf of the Respondent. Thereafter, he made his submissions and the Committee raised questions to him. After hearing the final submissions, the Committee decided to conclude the hearing in the matter.

2. In respect of above directions, the Committee observed that in spite of directions to the Counsel for the Respondent to file his vakalatnama, he did not file his Vakalatnama in the matter. Accordingly, the Committee decided not to give weightage to the submissions of the Counsel for the Respondent.

CHARGES IN BRIEF AND FINDINGS OF THE DISCIPLINARY COMMITTEE:-

3. As regard the brief background of the matter, the Committee noted that the Respondent was a partner and a full time practicing CA in the firm, M/s. LD & Associates (hereinafter referred to as the “**Respondent Firm**”). He was holding a full time Certificate of Practice. It was alleged that the partners of the Respondent firm were engaged in full time employment despite holding full time



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COP and this fact has not been informed to the Institute. The employment details of the partners were as follows:

- a. Mr. Lokesh Dhawan is employed as Executive Director (Finance, IT & Secretarial) Interiors Division of Krishna Maruti Ltd. The Complainant attached the Salary Slips of CA. Lokesh Dhawan along with Bank Statements for the respective months.
- b. Mrs. Neelam Dhawan is employed as full time director in Hot Biz Systems Pvt. Ltd. and her DIN number is 01201946.
- c. Mr. Harihar Sahu is employed as full time employee in Krishna Maruti Limited in the Finance Department.

4. In view of above background, the Committee noted that the Respondent was held prima facie guilty in respect of the following charges:-

4.1 The Respondent firm has undertaken the audit work of the Group Companies of Krishna Maruti Ltd. In this regard, the Complainant provided copy of the letter of appointment as auditors issued to the Respondent firm by SKH Cabs Manufacturing (P) Limited for the financial year 2012-13 along with Form 23B filed by the Respondent with the ROC. The balance sheet as on 31.03.2013 was duly signed by the Respondent. It is further alleged that directors of SKH Cabs Manufacturing (P) Limited are Mr. Ashok Kapur and Mr. Sunandan Kapur who are also the Directors in Krishna Maruti Limited. Thus, the Respondent has undertaken the audit work for the Company in which the partners of the Respondent were employed.

4.2 Despite the fact that Mr. Harihar Sahu and Mr. Lokesh Dhawan are employed full time with Krishna Group and Mrs. Neelam Dhawan is engaged full time with Hot Biz Systems Pvt. Ltd. and consequently, they cannot devote any time to audit work at all. The audits are being performed by individuals who are neither partners nor employees of the Respondent firm.

4.3 The Respondent and his firm managed to secure the position of branch statutory auditor of 2 branches of State Bank of India in April 2012 (Branch Code 4041 and 1535). At the time of securing these branch audits, he deliberately gave false information for empanelment and hid the fact of the full time employment of other partners, which is a serious offence. Similarly, he also



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gave false information at the time of applying for empanelment for audits to Punjab National Bank in April 2013.

5. The Committee noted that the Respondent has made the following submissions in his defence:-

5.1 He does not have any interest either in Krishna Maruti Limited nor has taken any audit work in Krishna Maruti Limited. It is also submitted that Krishna Maruti Limited is neither holding nor subsidiary Company of SKH Cabs Manufacturing Pvt Limited as claimed by the Complainant. The said fact can be verified from the balance sheet of SKH Cabs Manufacturing Pvt Limited which has been enclosed by the Complainant himself.

5.2 It is further noted that even the reference to the provisions Section 144 of the Companies Act, 2013 by the Complainant does not hold good legally as Section 144 was not applicable for the year 2012-13.

5.3 He does not have any relationship or information about Hot Biz Systems Private Limited as claimed by the Complainant. He is not involved directly or indirectly through his relatives in Hot Biz Systems Pvt Limited, hence he is not unable to comment on it.

5.4 He does not have any information or documents related to the personal affairs of Mr. Lokesh Dhawan, who is brother of the Complainant or Mr. Harihar Sahu, as claimed by the Complainant and hence, he is unable to comment on it.

5.5 The Respondent stated that there is a personal dispute between two brothers i.e. the Complainant and Mr. Lokesh Dhawan and he has been dragged unnecessarily in this dispute.

6. The Committee observed that the Complainant has not submitted his further submissions on the prima facie opinion.



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7. As regards the charge of conducting the audit of the Companies/ group Companies wherein the partners of the Respondent firm are employed, upon perusal of the submissions and documents on record, it is noted that CA. Lokesh Dhawan, partner in the Respondent firm was drawing salary income from M/s Krishna Maruti Limited. It is also observed that Ms. Neelam Dhawan, another partner of the Respondent firm is acting as Director in Hot-Biz Systems Private Limited.

7.1 It is also observed that the Respondent has signed audit report of SKH Cabs Manufacturing Pvt Ltd. for the year ending 31st March, 2013 and Form 23B filed by the Respondent on behalf of the Respondent firm, which as per the Complainant is a Group Company of Krishna Maruti Limited. The Complainant has alleged that by undertaking the audit of M/s SKH Cabs Manufacturing Pvt Ltd., the Respondent has undertaken the audit work of the Group Company of M/s Krishna Maruti Limited in which partners of his firm are alleged to be working as employee. It is also seen that Mr. Ashok Kapur and Mr. Sunandan Kapur are Directors in both the Companies i.e. M/s Krishna Maruti Limited as well as M/s SKH Cabs Manufacturing Pvt. Ltd whose audit report has been signed by the Respondent.

7.1.1 However, it is observed that there was nothing on record to show that the Company, SKH Cabs Manufacturing Pvt Ltd was either holding or subsidiary companies of Krishna Maruti Limited or to show as to how both the companies were connected to each other. Further, on perusal of financial statement of Krishna Maruti Ltd for the financial years 2011-12 and 2013-14 downloaded from MCA website, it is further noted that SKH Cabs Manufacturing Pvt. Ltd was not shown either as subsidiary or holding companies. Moreover, the same was not even shown as related party of Krishna Maruti Ltd. In absence of any relationship between these two companies, it cannot be stated that Krishna Maruti Ltd was having substantial interest in SKH Cabs Manufacturing of which audit was conducted by the Respondent firm. Moreover, on perusal of financial statement of other group companies i.e. Krishna Group Antolin Private Limited and Krishna Quinette Seats Pvt Ltd, it is noted that auditor of these companies for the financial year 2012-13 were not the Respondent firm. Hence, the charge that the Respondent firm was auditor of the companies in which the partners of the firm were having substantial interest does not stand at all.



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7.1.2 The Committee on perusal of Form 26AS (TDS statement) also noted that the name of M/s Krishna Maruti Ltd. was appearing therein with the name of some other Companies which indicates that the Respondent firm has rendered professional services to Krishna Maruti Ltd. However, it is noted that the Respondent firm was not auditor of M/s. Krishna Maruti Ltd, Krishna Quinette Seats Pvt Ltd and Krishna Groupo Antolin Pvt Ltd. In view of above facts, the Committee decided to hold the Respondent **Not Guilty** with respect to charge related to audit of group companies.

8. As regard the charge that audit was performed by individuals who are neither partners nor employees of LD & Associates, it is noted that as per clause (2) of Part I of Second Schedule to the Chartered Accountants Act, 1949, a member of the Institute would be held guilty of professional misconduct if he *“certifies or submits in his name, or in the name of his firm, a report of an examination of financial statements unless the examination of such statements and the related records has been made by him or by a partner or an employee in his firm or by another chartered accountant in practice;”*. There is nothing on record which shows that audit was not performed by the Chartered Accountant in practice. There is no bar if the examination of financial statement is made by a Chartered Accountant in practice who is neither partner or in employment of the firm. Accordingly, the Committee decided to hold the Respondent **Not Guilty** with respect to this charge.

9. As regards the next allegations raised by the Complainant such as securing audit on the basis of false information and not disclosing complete information in the empanelment application with Bank, it is viewed that the Respondent has not denied that they have not secured audit work of branch of Punjab National Bank. Since the Bank empanelment form is signed by all the partners of the firm, the Respondent cannot escape from his responsibility of pointing out the correct information in the bank empanelment form about full time employment / association of other partners with companies. Further, it cannot be denied that the Respondent was not aware about the employment / engagement of others partners of the firm. Hence, the Committee is of the view that the Respondent was involved in providing false information and did not disclose full time employment association of his partners. Thus, the Respondent is **Guilty** of professional misconduct with respect to this charge.

Conclusion



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10. Thus in the considered opinion of the Committee, the Respondent is **GUILTY** of professional misconduct falling within the meaning Clause (3) of Part II of the Second Schedule to the Chartered Accountants Act, 1949 in respect of charge related to providing false information and incomplete information in the bank empanelment form.

10.1 In respect of other charges related to the audit of group companies and the audit being performed by the persons who were neither partners nor employees of the Respondent firm, the Respondent is **Not Guilty** of the professional misconduct falling within the meaning of Clause (4) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

Sd/-

(CA. PRAFULLA PREMSUKH CHHAJED)

PRESIDING OFFICER

Sd/-

(SHRI JUGAL KISHORE MOHAPATRA, I.A.S. (Retd.))

GOVERNMENT NOMINEE

Sd/-

(MS. RASHMI VERMA, I.A.S. (Retd.))

MEMBER

Sd/-

(CA. BABU ABRAHAM KALLIVAYALIL)

MEMBER

Sd/-

(CA. DAYANIWAS SHARMA)

MEMBER

DATE : 03rd February, 2020

PLACE : NEW DELHI