



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

PR/283/16-DD/23/17-DC/1245/2019

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.

File No. : PR/283/16-DD/23/17-DC/1245/2019

In the matter of:

Shri Sanjay Rai,
Additional Director (Investigation),
SFIO, Ministry of Corporate Affairs,
Govt. Of India,
100 Everest 6th Floor, Netaji Subhash Marg,
Mumbai- 400002

.....Complainant

Versus

CA. Baddakoti Chinnappa Gowda, (M. No. 204458)
M/s Chinnappa & Associates (FRN 007124S)
Chartered Accountants,
No. 210, 2nd Floor,
Commerce House, Conningham Road,
Bengaluru- 560052

.....Respondent

Members present:

Smt. Anita Kapur, Member (Govt. Nominee) & Presiding Officer
CA. Chandrashekhar Vasant Chitale, Member
CA. P.K.Boob, Member

Date of Final Hearing: 8th July, 2021

Place of Final Hearing: New Delhi

Party Present:

CA. Baddakoti Chinnappa Gowda – Respondent (appeared from his personal location)

1. That vide report dated 22nd January 2021 (copy enclosed), the Disciplinary Committee was of the opinion that CA. Baddakoti Chinnappa Gowda, (M. No. 204458) was GUILTY of Other Misconduct falling within the meaning of Clause (2) of Part IV of First Schedule of the Chartered Accountant Act 1949 relating to the work undertaken by the Respondent for M/s. Unigateway2U Trading Pvt. Ltd (erstwhile M/s Unipay2U Marketing Pvt. Ltd.) (hereinafter referred to as 'UNIPAY') for financial year 2009-10. It was alleged that the Respondent gave false statements on oath during the investigation proceeding under Section 240(2) of Companies Act, 1956 on 04th October, 2012 but subsequently admitted certain facts on 8th March, 2013 only after being confronted with concrete evidences. It was noted that Clause (2) of Part IV of the First Schedule states as under:



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“(2) in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work”

2. An action under Section 21B (3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and communication dated 19th June 2021 was addressed to him thereby granting him an opportunity of being heard in person and/or to make a written representation before the Committee on 8th July 2021.

3. The Respondent appeared before the Committee on 8th July 2021 through video conferencing from his personal location and made his oral representations on the findings of Disciplinary Committee. The Committee considered the oral submissions made by the Respondent. The Respondent, at the outset, submitted that IPC proceedings were initiated against him and charge-sheet had also been filed against him for the allegation of giving false statement on oath. He thereafter confessed that contradictory statements were made by him under oath.

4. The Committee considered the oral submissions of the Respondent and noted that there were apparent contradictions. The falsity of the first statement made on oath by the Respondent in reply to question no 8 on 4th October, 2012, that he had not rendered any other services to the UNIPAY was proved by his own statement recorded as a reply to another question no 13 on 8th March 2013 that he had prepared the Balance sheet and other financial statements in December 2010 which were forwarded to the e-mail id of Unipay2U group as well on an oral request from Ms. Uma. The Committee further noted that similar contradiction was apparent in Reply to Question No. 1 raised during statement recorded on 4th October, 2012 when read with his reply to question no 10 raised during statement on oath recorded on 8th March 2013 wherein he initially submitted that TDS was paid on adhoc basis without any individual calculations and he had arranged a person on outsourcing basis to sort out the TDS problems but later on he submitted that he had totally received a sum of Rs. 8.60 lacs through cheques from the UNIPAY for TDS work in M/s Fintelli Advisory Services.

5. The Committee thus viewed that the misconduct on the part of the Respondent has been held and established within the meaning of Clause (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949 and keeping in view the facts and circumstances of the case as aforesaid, ordered that the name of the Respondent, **CA. Baddakoti Chinnappa Gowda, (M. No. 204458)** be removed from the Register of members for a period of 1 (one) month along with a fine of Rs. 50,000/- (Rupees Fifty Thousand Only) be levied upon him that shall be payable within a period

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of three months from the date of receipt of the Order. In case the Respondent, failed to pay the same as stipulated, the name of the Respondent **CA. Baddakoti Chinnappa Gowda, (M. No. 204458)** be removed for a further period of 1(one) month from the Register of members on the lines of Section 64 of the Indian Penal Code.

R

Sd/-
[Smt. Anita Kapur]
Member (Govt. Nominee) & Presiding Officer

Sd/-
[CA. Chandrashekhar Vasant Chitale]
Member
[Approved and confirmed through e-mail]

Sd/-
[CA. P.K. Boob]
Member
[Approved and confirmed through e-mail]

Place: New Delhi
Date: 8th July, 2021

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Certified to be true copy
Mohita Khanna
CA. Mohita Khanna
Assistant Secretary,
Disciplinary Directorate
The Institute of Chartered Accountants of India,
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

CAI Bhawan, Vaidya Nagar, Sharda, Delhi-110032
The Institute of Chartered Accountants of India,
Disciplinary Directorate,
Assistant Secretary,
CA. Mohit Khanna
Certified to be true copy

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH - III (2020-21)]
[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

File No. : PR/283/16-DD/23/17-DC/1245/2019

In the matter of:

**Shri Sanjay Rai,
Additional Director (Investigation),
SFIO, Ministry of Corporate Affairs,
Govt. Of India,
100 Everest 6th Floor, Netaji Subhash Marg,
Mumbai- 400002**

.....Complainant

Versus

**CA. Baddakoti Chinnappa Gowda, (M. No. 204458)
M/s Chinnappa & Associates (FRN 007124S)
Chartered Accountants,
No. 210, 2nd Floor,
Commerce House, Conningham Road,
Bengaluru- 560052**

.....Respondent

MEMBERS PRESENT:

**CA. Atul Kumar Gupta, Presiding Officer
Smt. Anita Kapur, Member (Govt. Nominee)
Shri Ajay Mittal, Member (Govt. Nominee)
CA. Chandrashekhar Vasant Chitale, Member
CA. Manu Agrawal, Member**

Date of Final Hearing: 28th September, 2020 through Video Conferencing

The following persons were present:

- (i) Sh. Pradeep Yadav – the Complainant’s Representative (appeared from his personal location at Mumbai)**
- (ii) CA. Baddakoti Chinnappa Gowda – the Respondent (appeared from his personal location at Bengaluru)**

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Allegations of the Complainant:

1. Shri Sanjay Rai, Additional Director (Investigation), SFIO, Ministry of Corporate Affairs, Govt. Of India, Mumbai (hereinafter referred to as the "**Complainant**") has filed complaint in Form 'T' dated 9th January, 2017 (**C-1 to C-45**) against CA. Baddakoti Chinnappa Gowda, (M. No. 204458), M/s Chinnappa & Associates (FRN 007124S), Bengaluru (hereinafter referred to as the "Respondent and Respondent Firm" respectively) on the basis of investigation conducted by it into affairs of M/s Unipay2U Marketing Pvt. Ltd.(hereinafter referred to as '**UNIPAY**') erstwhile Unigateway2U Trading Pvt. Ltd.(herein after referred to as '**UNIGATEWAY**') and its group Companies. It was noted that the allegations were raised against the Respondent stating that he was the statutory auditor of M/s. Unigateway2U Trading Pvt. Ltd (erstwhile M/s Unipay2U Marketing Pvt. Ltd.) for financial year 2009-10:

a) that the Respondent gave false statements on oath during the investigation proceeding under Section 240(2) of Companies Act, 1956 on 04th October, 2012 and subsequently admitted certain facts on 08th March, 2013 only after being confronted with Concrete Evidences

b) The Company had collected approx 400 crore of money in the name of Gold Trading from various parts of the country and paid commission on the same. The TDS on above payments was around to Rs. 41 to 45 crore and the Company had paid a total TDS of approx 12 crore to 13 crore only. Thus, it was alleged that lesser TDS was deposited in respect of commission paid on gold trading as in effect the matter of TDS was being handled by the Respondent through his concern M/s Fintelli Advisory Services.

Proceedings:

2. At the time of hearing on 28th September 2020, the Committee noted that the Complainant's Representative and the Respondent were present during the hearing. Thereafter, they all gave a declaration that there was nobody except them in their respective room from where they were appearing and that they would neither record nor store the proceedings of the Committee in any form. Being the first hearing, the Complainant as well as the Respondent was put on oath. Thereafter, the Committee asked the Respondent whether he wished the charges to be read out or it could be

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taken as read. The Respondent stated before the Committee that he was aware of the charges raised against him and the same might be taken as read. On being asked, as to whether the Respondent pleaded guilty, he did not plead guilty and opted to defend his case.

Thereafter, the Complainant explained the charges alleged against the Respondent. Thereafter the Respondent made his submissions on the charges made against him. Both the Complainant and the Respondent were examined by the Committee on the submissions made by them. Based on the documents available on record and after considering the oral and written submissions made by both parties before it, the Committee concluded hearing in the matter.

Findings of the Committee:

3. The Committee noted that at the outset that the Respondent was reported to be statutory auditor of UNIGATEWAY for financial year 2009-10 for which the Respondent submitted that he was only involved in the incorporation of UNIGATEWAY and that he was neither he was appointed as statutory auditor nor engaged in any of its audit process. As per him, the Complainant department had wrongly interpreted that mere sending and receiving E-mail to his e-mail id meant that he had rendered service but he had not signed the financials of the Company for the year 2009-10. The balance Sheet of the UNIPAY was prepared by the Company accountant only and the Extract of tally Financials in Excel format i.e. Balance sheet and Profit & Loss with suspense account was given to him by the accountant of UNIPAY due to RBI Notice received from Chennai RBI office. He also stated that he himself was not involved in writing books of accounts of tally data entry as tally accounting was done by UNIPAY internal staff and execution work was carried out by M/s Fintelli Advisory Services.

4. The Committee in this regard noted that the Complainant department had not adduced any evidence in form of appointment letter or certified financial statements of UNIPAY to corroborate its allegation that the Respondent was appointed as statutory auditor of UNIPAY. Thus, in light of the submissions made by the Respondent that the Extract of tally Financials in Excel format i.e. Balance sheet and Profit & Loss with suspense account was given to him by the accountant of UNIPAY due to RBI Notice received from Chennai RBI office and not for any audit purpose, the Committee was of

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the view that since this charge could not be established against the Respondent , therefore, no misconduct could be attributed to him in regard and accordingly, he was held not guilty with respect to this charge.

5. As regard the allegation that lesser TDS was deposited in respect of commission paid on gold trading as in effect the matter of TDS was being handled by the Respondent through his concern M/s Fintelli Advisory Services, the Committee noted the submission made by the Respondent. The Respondent in his oral and written submissions submitted that M/s Fintelli Advisory Services was an independent service provider rendering accounting, VAT/GST filing, TDS, ETDS filing services since last 18 years owned by his wife who was well experienced in accounting and taxation since 1998 and thus the Respondent in no way was related to the TDS deposit work in respect of commission paid on gold trading. He also stated that all the payments related to this work were received by his wife in her Punjab National Bank account, Ananadnagar Branch and not by the Respondent.

6. The Committee in this regard perused copy of the bill dated 30.11.2010 **(D-8)** raised by M/s Fintelli Advisory Services and noted that the same was signed by the wife of the Respondent who as per the submissions of the Respondent was independently managing and owning M/s Fintelli Advisory Services. However, on perusal of e-mails exchanged between the Respondent and the Company **(D-23 and D27-D29)** from the email id of the Respondent firm, it is noted that the Respondent had asked the Company official to co-ordinate with his Audit staff to provide certain details for the purpose of issuing TDS Certificate and further corresponded with regard to execution of the said task. Also, vide its email dated 29th May 2010 titled 'Scope of work - Accounts and Management Consultancy, the scope of work of FINTELLI was provided **(D-25)**. Further, vide email dated 6th December 2010 and 15th July 2010, the Respondent provided the provisional Balance Sheet of UNIPAY for the F.Y. 2009-10 **(D-26)** and Form 32 **(D-30)** respectively. Thus, it is evident that the Respondent was involved in providing support to the Company in the guise of proprietorship firm Fintelli Advisory Services which was owned by his wife. However, since the member had not certified any filing and in the absence of any document which indicate the lapse on the part of the Respondent to have wrongly assessed the payments due with

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the Company, the Committee decided to exonerate him of Clause (4) of Part I and Clause (3) of Part II of the Second Schedule.

7. As regard the allegation that the Respondent gave false statements on oath during the investigation proceeding under Section 240(2) of Companies Act, 1956 on 04th October, 2012 and subsequently admitted certain facts on 08th March, 2013 only after being confronted with Concrete Evidences, the Committee noted the oral as well as the written submissions made by the Respondent. The Respondent in this regard submitted that he never gave false statement on oath.

8. The Committee in this regard noted that the Respondent in his earlier statement recorded under Section 240(2) of Companies Act, 1956 on 4th October, 2012 (C24-C31) stated as under:

"Reply to Question No. 2: I am associated only with one company namely M/s. Unigateway2u Trading Pvt. Ltd. in initial formation of the company with ROC, Bangalore and change in directorship in M/s. Unipay2u Marketing Pvt. Ltd. with ROC, Chennai and was not associated with other group companies.

*Reply to Question No. 8: My association with UG2UMPL was about 3 to 4 months from June 2010 to August 2010. After formation of the company in August 2010, neither the promoters nor the other officials from the company approached me for any services. I have received the payment for formation of the company by cash and the fees paid was Rs. 17,800/- approximately apart from the ROC fees and stamp duty which was paid by the Directors through cash. **I had not rendered any other services to the company.***

However, later during his statement recorded under Section 240(2) of Companies Act, 1956 on 08th March, 2013, the Respondent stated as under (C32-C42):

*Reply to Question No. 1: During June / July 2010, the employee of the company M/s. Unipay2U Marketing P Limited Madam Uma or Lakshmi had asked me to help the company for sorting out the TDS returns / payments as many people / agents of the company had asked for TDS certificates..... **I had observed that the TDS was paid adhoc basis by them without any individual calculations (Means TDS deducted on what amount and what basis and for whom). Hence, I had arranged a person***

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on outsourcing basis to sort out the TDS problems and issued of TDS certificates by one Mr. Sachet..... I only arranged for this on out sourcing basis as we are not into TDS calculation and filing. I had not done any work for the company other than this. In addition to this, I had verified the provisional balance sheet prepared by the company for RBI queries in excel format somewhere in August 2010.

Reply to Question No. 10: I had totally received a sum of Rs. 8.60 lacs through cheques from the company for TDS work in Fintelli Advisory Services and I spent a sum of around Rs. 6.00 lacs on outsourcing and other related expenditures.

Reply to Question No. 13: I have prepared the balance sheet and other financial statements in December 2010 and forwarded the same to Ms Uma and also to Mr. T. Sudarshan at his e-mail id of Unipay2U group. I had not worked as auditor or internal auditor. The provisional balance sheet was prepared and given on an oral request from Ms. Uma. I am having particular answers to other queries.”

9. The Committee thus noted that there were apparent contradictions in the statements on oath given by the Respondent as in reply to question no 8 during statement recorded on 4th October, 2012, the Respondent had submitted that he had not rendered any other services to the UNIPAY but in reply to another question no 13 during statement recorded on 8th March 2013, he had submitted before the Complainant Department that he had prepared the Balance sheet and other financial statements in December 2010 and forwarded the same to Ms Uma and also to Mr. T. Sudarshan at his e-mail id of Unipay2U group on an oral request from Ms. Uma. The Committee further noted that in Reply to Question No. 1 during statement recorded on 4th October, 2012, the Respondent stated that he observed that TDS was paid adhoc basis by them without any individual calculations (Means TDS deducted on what amount and what basis and for whom) and he had arranged a person on outsourcing basis to sort out the TDS problems but in reply to question no 10 during statement on oath recorded on 8th march 2013, he submitted that he had totally received a sum of Rs. 8.60 lacs through cheques from the UNIPAY for TDS work in M/s Fintelli Advisory Services. The Committee was thus of the considered view that contradictions were quite apparent in the statement on oath given under Section 240(2) of the Companies

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Act 1956 and as per the submissions of representative of the Complainant Department that criminal proceedings had also been filed before the Metropolitan Magistrate Bengaluru as for making a false statement on oath which was an offence under IPC. Thus, in opinion of the Committee, the allegation relating to giving a false Statement on Oath had been established which clearly brought disrepute to the profession and accordingly, the Respondent was **GUILTY** of Other Misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949.

Conclusion :

7. Thus in conclusion, in the considered opinion of the Committee, the Respondent was held **GUILTY** of professional misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949.

Sd/-
[CA. Atul Kumar Gupta]
Presiding Officer

Sd/-
[Smt. Anita Kapur]
Member, (Govt. Nominee)

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

Sd/-
[CA. Chandrashekar Vasant Chitale]
Member

Sd/-
[CA. Manu Agrawal]
Member

Certified to be True Copy

Mohita Khanna
(Mohita Khanna)
Assistant Secretary
Disciplinary Directorate
The Institute of Chartered Accountants of India

DATE: 22nd January, 2021

PLACE: New Delhi

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