



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

[PR/141/18/DD/232/2018-DC/1022/2019]

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/141/18/DD/232/2018-DC/1022/2019]

In the matter of:

Shri A. Chandra Mohan,
Power Attorney Holder of
M/s. ANC Agro Mills,
28/2B, Nonepalle,
Distt.- Kurnool,
NANDYAL – 518 502 (AP)

.....Complainant

Versus

CA. Suresh Kumar M, (M.No. 029139)
No. 8, Sai Residency Apartment,
TTD Road,
Srinivas Nagar,
NANDYAL – 518 501 (AP)

.....Respondent

Members present:

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

Date of Final Hearing: 8th July, 2021

Place of Final Hearing: New Delhi

Party Present:

CA. Suresh Kumar M (M.No. 029139)

1. That vide report dated 3rd February 2021 (copy enclosed), the Disciplinary Committee was of the opinion that **CA. Suresh Kumar M, (M.No. 029139)** was **GUILTY** of professional misconduct falling within the meaning of Clause (1) of Part II of Second Schedule read with Chapter X of Council General Guidelines 2008 1-CA(7)/02/2008 dated 08th August, 2008 in respect of amounts received by the Respondent from M/s ANC Agro Mills, Nandyal (AP) (hereinafter referred to as the "Firm") when he was its auditor. It was alleged that amounts were received by the Respondent in the bank account of his spouse, Smt. Sunita Magham through cheque vide two separated entries of Rs 10,00,000/- and Rs. 2,00,000/- on 24.02.2011 and 18.02.2013 respectively and, thereafter, he also acted as guarantor for the promissory notes taken by the Firm on 02.03.2017 and 01.04.2017 for the amounts payable by his wife. It was noted that Clause (1) of Part II of Second Schedule and Chapter X of the Council Guidelines No.1-CA(7)/02/2008, dated 8th August, 2008 state as under:-

Second Schedule

Part II

"Professional misconduct in relation to members of the Institute generally:



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A member of the Institute, whether in practice or not, shall be deemed to be guilty of Professional misconduct, if he-

- (1) contravenes any of the provisions of this Act or the regulation made thereunder or any guidelines issued by the Council"

"Chapter X

Appointment of an auditor when he is indebted to a concern

A member of the Institute in practice or a partner of a Firm in practice or a Firm shall not accept appointment as auditor of a concern while indebted to the concern or given any guarantee or provided any security in connection with the indebtedness of any third person to the concern, for limits fixed in the statute and in other cases for amount exceeding Rs. 10,000/-."

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 through video conferencing.

3. During hearing on 8th July 2021, the Respondent appeared before the Committee through video conferencing from his personal location and made his oral representations on the findings of Disciplinary Committee. The Respondent, at the outset, submitted that the amounts stated in the promissory notes were significantly higher than the actual debt amount of Rs 12.00 Lakhs, as evident from the documents on record, so it could be easily understood that he would not have willfully agreed to sign promissory notes to undertake such a huge non-existent obligation. He further stated that loan of Rs 12.00 lakhs was given by the firm to his wife and the whole of loan was in the name of the wife of the Respondent. Thus, there was no indebtedness on his part with the firm and indebtedness of the wife of the Respondent should not be considered for invoking the charge of professional misconduct within Clause (1) of Part II of the Second Schedule for the purpose of Clause X the Council Guidelines dated 8th Aug 2008.

4. The Committee considered both the oral as well written submissions of the Respondent made by the Respondent vide his letter dated 24th June 2021 and noted that alleged amounts were received by cheque in the account jointly held by the Respondent and his wife and thus the fact remains that it was the Respondent who was also indebted to the Firm. Further, it was noted that by also standing as surety for amount repayable to the Firm while acting as its auditor, there was clear violation of the Council Guidelines No.1-CA(7)/02/2008, dated 8th August, 2008 as laid down in Chapter X.

5. The Committee thus viewed that the misconduct on the part of the Respondent has been held and established within the meaning within the meaning of Clause (1) of Part II of Second Schedule of the

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Chartered Accountant Act 1949 read with Chapter X of Council General Guidelines 2008 1-CA(7)/02/2008 dated 08th August, 2008 and keeping in view the facts and circumstances of the case as aforesaid, ordered that the Respondent, **CA. Suresh Kumar M, (M.No. 029139)** be 'reprimanded' along with a fine of Rs. 20,000/- be levied upon him that shall be payable within a period of 3 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. Suresh Kumar M, (M.No. 029139)** be removed for a period of 1(one) month from the Register of members on the lines of Section 64 of the Indian Penal Code.

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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, Shadra, Delhi-110032

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/141/18/DD/232/2018-DC/1022/2019]

In the matter of:

Shri A. Chandra Mohan,

Power Attorney Holder of

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Versus

CA. Suresh Kumar M, (M.No. 029139)

No. 8, Sai Residency Apartment,

TTD Road,

Srinivas Nagar,

NANDYAL - 518 501 (AP)

.....Respondent

MEMBERS PRESENT:

Smt. Anita Kapur, Presiding Officer & Member (Govt. Nominee)

Shri Ajay Mittal, Member (Govt. Nominee)

CA. Chandrashekhar Vasant Chitale, Member

Date of Final Hearing: 21st December, 2020

Place of Hearing: New Delhi (through Video Conferencing)

Parties Present:

The following were also present:

- (i) Shri A. Chandra Mohan - the Complainant's Representative
- (ii) CA C.V. Sajan- Counsel for the Respondent



Charges in Brief:

1. The Committee noted that in the Prima Facie Opinion formed by Director (Discipline) in terms of Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Respondent was prima facie held guilty of Professional Misconduct falling within the meaning of Clause (1) of Part II of the Second Schedule to the Chartered Accountants Act 1949. The said Clause to the Schedule state as under:-

“Clause (1): contravenes any of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council”

Brief Background and Allegations against the Respondent:

2. Shri A Chandra Mohan, (hereinafter referred to as the “**Complainant**”) POA Holder of M/s ANC Agro Mills, Nandyal (AP) (hereinafter referred to as the “**Firm**”) had filed a complaint (**C-1 to C-122**) against the CA. Suresh Kumar M, (**M.No.029139**), Nandyal (AP) (hereinafter referred to as the “**Respondent**”) wherein the allegations made are discussed as under:

a) The Complainant had alleged that the Respondent while being the statutory auditor of M/s ANC Agro Mills, Nandyal (AP) (hereinafter referred to as the “**Firm**”) had taken an amount of Rs. 54 lakhs from the Firm on the pretext of investing in for the Firm in order to reduce its Income Tax Liabilities. The said amount was taken as loan by him.

b) It was further alleged that the Respondent also received the amounts in the bank account of his spouse (Smt. Sunita Magham) and stood as surety and also as that of his uncle (Mr. Mohan Magham) by threatening to expose the deals of the Firm to the Income Tax authorities. According to the Complainant, total amount so received by the Respondent was Rs. 1,36,94,804/- and

c) As regard the third allegation, the Complainant alleged the Respondent threatening to expose the deals of the Firm to the Income Tax authorities

Proceedings:

B/A

3. The Committee noted that the Counsel for the Complainant and the Counsel for the Respondent appeared before the Committee from their personal location. Thereafter, they both gave declaration that there was nobody present except them in their respective rooms from where they were appearing and that they would neither record nor store the proceedings of the Committee in any form. Being first hearing, the Committee asked the Counsel for the Complainant to present his case before the Committee. The Committee, thereafter, asked the Counsel for the Respondent to make his submissions on the matter. The Committee examined the Respondent in the matter and thereafter considered the submissions received from both the parties.

Based on the documents available on record and after considering the oral and written submissions made by both parties before it, the Committee concluded the hearing in the matter.

Findings of the Committee:

4. At the time of hearing, the Committee noted that the Director (Discipline) had held the Respondent *Prima facie* guilty only for first leg of charge no 2 only as stated in Para 2 above related to receiving the amounts when the Respondent was auditor of the Firm. It was alleged that amounts were received by him in the bank account of his spouse, Smt. Sunita Magham and, thereafter, also acting as guarantor for the promissory notes taken by the Firm on 02.03.2017 and 01.04.2017 for the amounts payable by his wife. Accordingly, the Committee held the enquiry on the said allegation only.

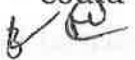
5. The Committee noted that the only charge which was upheld against the Respondent at *prima facie* stage was in respect of loan taken by the Respondent from the said Firm in the bank account of his wife through cheque vide two separated entries of Rs 10,00,000/- and Rs. 2,00,000/- on 24.02.2011 and 18.02.2013 respectively. It further noted that the Counsel for the Respondent not only admitted before the Committee that the said two cheques were received by the

B (M)

wife of the Respondent and thus there was an element of indebtedness by his wife to the Firm but also stated that there was an arrangement of mutual understanding wherein the Firm allowed itself to act as lenders to its auditor. When the situation became out of control, the Complainant preferred to file a complaint against the Respondent. He further submitted that when Firm raised its demand to pay back the amount taken by his wife, it obtained the signatures of the Respondent on blank documents under threat and coercion, subsequently made them into promissory notes dated 02.03.2017 and 01.04.2017 for the amount payable by his wife to the firm.

5.1 On being asked by the Committee about the details of remedial action taken by him in form of issuing a public notice if signatures of the Respondent were obtained by the Firm on a blank document under duress or threat/force as was expected of a prudent person to alert the general public and to avoid its misuse, the Counsel for the Respondent submitted that when the documents were signed, a Panchayat was conducted with elders and well-wishers of both sides and a mutual discussion was conducted to settle the matter but later on FIR was filed against the Respondent and his wife by the Complainant on 17.03.2018 (**D-7 & D-8**) which left the Respondent with no scope to go back to any authority/police to file the complaint as already a criminal case was initiated against them.

6. In view of the above, the Committee noted that the Respondent had failed to file any police complaint or give any public notice despite the fact that he was made to sign a blank document under duress or threat in April 2017 whereas the Complainant lodged FIR in March 2018 which goes to doubt the genuineness of the submissions made by the Respondent before the Committee as it was difficult to comprehend the reason for not taking any remedial action when a grave prejudice could have been caused to the Respondent by the alleged illegal actions of the Firm.



7. The Committee also noted that certain amounts were received by cheque in the account jointly held by him with his wife. Thus, the Committee was of the considered opinion that by being indebted to the Firm and by standing as surety to loan taken from Firm while acting as the auditor of the Firm, the Respondent had violated the Council Guidelines No.1-CA(7)/02/2008, dated 8th August, 2008 which provides as under:

“Chapter X

Appointment of an auditor when he is indebted to a concern

10.0 A member of the Institute in practice or a partner of a Firm in practice or a Firm shall not accept appointment as auditor of a concern while indebted to the concern or given any guarantee or provided any security in connection with the indebtedness of any third person to the concern, for limits fixed in the statute and in other cases for amount exceeding Rs. 10,000/-.”

Conclusion:

8. Accordingly, in light of the same, the Committee was of the considered opinion that the Respondent was Guilty of professional misconduct falling within the meaning of Clause (1) of Part II of Second Schedule read with Chapter X of Council General Guidelines 2008 1-CA(7)/02/2008 dated 08th August, 2008.

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Sd/-

[Smt. Anita Kapur]

Presiding Officer & Member, (Govt. Nominee)

Sd/-

[Shri Ajay Mittal]

Member, (Govt. Nominee)

Sd/-

[CA. Chandrashekhar Vasant Chitale]

Member

(approved & confirmed through e-mail)

DATE: 3rd February, 2021

PLACE: New Delhi

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Certified to be True Copy

Mohita Khanna

(Mohita Khanna)

Assistant Secretary

Disciplinary Committee

The Institute of Chartered Accountants of India