



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

DISCIPLINARY COMMITTEE [BENCH-I (2021-2022)]
[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 Amit Kumar Saboo, Kolkata

-Vs-

CA. A.K. Sarkar (M.No.044999) of M/s. A.K. Sarkar & Co.,
Chartered Accountants, Kolkata
[PR-137/16-DD/201/16-DC/910/2018]

MEMBERS PRESENT:

CA. NIHAR N JAMBUSARIA, PRESIDING OFFICER

SHRI JUGAL KISHORE MOHAPATRA, I.A.S. (RETD.) (GOVERNMENT NOMINEE)

MS. RASHMI VERMA, I.A.S. (RETD.) (GOVERNMENT NOMINEE)

CA. ANUJ GOYAL, MEMBER

1. That vide findings 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. A.K. Sarkar (M.No.044999)** (hereinafter referred to as the **Respondent**) was **GUILTY** of professional misconduct falling within the meaning of Clause (8) of Part I of the First Schedule and Clause (1) of Part II of the 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 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 26th June, 2021.



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3. The Committee noted that on 26th June, 2021, the Respondent was present at ICAI Kolkata Office and made his verbal representations before the Disciplinary Committee on the said findings.
4. The Committee observed that the Respondent also made his written representations on the findings of the Disciplinary Committee.
5. The Committee has considered the reasoning as contained in findings holding the Respondent Guilty of professional misconduct vis-à-vis verbal and written 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 written as well 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, however, keeping in view the circumstances as brought on record by the Respondent, the said misconduct does not qualify for a severe sentence. Accordingly, the Committee orders that **the Respondent, CA. A. K. Sarkar (M.No. 044999) be reprimanded.**

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

[approved and confirmed through e-mail]
(SHRI JUGAL KISHORE MOHAPATRA, I.A.S. (RETD.))
GOVERNMENT NOMINEE

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

[approved and confirmed through e-mail]
(CA. ANUJ GOYAL)
MEMBER

DATE : 26/10/2021
PLACE : DELHI

Jyotika
प्रमाणित सत्य प्रतिलिपि / Certified true copy

सीए. ज्योतिका ग्रोवर / CA. Jyotika Grover
सहायक सचिव / Assistant Secretary
अनुशासनसूचक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
अनुशासनसूचक निदेशालय, शिवदास नगर, शाहदरा, दिल्ली-110032
ICAI, Shivdas Nagar, Shahdara, Delhi-110032

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

[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-137/16-DD/201/16-DC/910/2018

In the matter of:

Shri Amit Kumar Saboo
90, Phears Lane, Room #705, 7th Floor
KOLKATA – 700 012.

.....Complainant

Versus

CA. Atindra Kumar Sarkar (M.No.044999)
AC-93/A Prafulla Kannan East
2nd Floor (Above Bank of Baroda)
Kestopur VIP Road
KOLKATA – 700 101

.....Respondent

MEMBERS PRESENT (Through Video Conferencing):

CA. Nihar N Jambusaria, Presiding Officer,
Shri Jugal Kishore Mohapatra, I.A.S. (Retd.) (Government Nominee),
Ms. Rashmi Verma, I.A.S. (Retd.) (Government Nominee),
CA. G. Sekar, Member,
CA. Pramod Jain, Member

DATE OF FINAL HEARING : 30.07.2020
PLACE OF FINAL HEARING : Through Video Conferencing

PARTIES PRESENT:

Complainant - CA. Amit Kumar (through video conferencing from ICAI Bhawan, Kasba, Kolkata)
Respondent - CA. A. K. Sarkar (through video conferencing from ICAI Bhawan, Kasba, Kolkata)

BRIEF OF THE DISCIPLINARY PROCEEDINGS:-

1. The Committee noted that on the day of hearing i.e. 30th July, 2020, both the Complainant and the Respondent were present. Since the matter was partly heard & adjourned in last hearing held on 08.11.2019, the Committee decided to continue with the hearing in the matter and none of the party present raised objection to the same. The Committee noted that the Complainant has submitted a request for withdrawal of his complaint. After keeping in view the facts of the case and documents on record, the Committee asked the Complainant and the Respondent to make their submissions on merits of the case. The Complainant and the Respondent made their submissions. The Committee also posed questions to the Complainant and the Respondent. After hearing the final submissions, the Committee decided to conclude the hearing in the matter.

CHARGES IN BRIEF AND FINDINGS OF THE DISCIPLINARY COMMITTEE:-

2. In the extent matter, the Respondent accepted the position of the auditor of M/s GRS Projects and Infrastructures Private Limited (hereinafter referred to as "Company") for the financial years 2014-15 to 2018-19. The Complainant was the previous auditor of the said Company till the financial year 2013-14. The Complainant made the following allegations against the Respondent:-

- i) The Respondent accepted the position of auditor of the Company without first communicating with the Complainant who was the previous auditor of the Company. The Complainant stated that Form ADT-1 has also been filed with MCA website in regards to the appointment of the Respondent as auditor of the Company.
- ii) Before acceptance of audit, the Respondent failed to ensure as to whether payment of outstanding professional fee of Rs. 40,000.00 was made to the previous auditor (complainant).

3. The first charge against the Respondent was of accepting the audit without communicating first with the previous auditor. The Respondent denied the charge and submitted that he had been appointed as statutory auditor by the Company for the financial years 2014-15 to 2018-19. He accordingly sent a letter on 10th August, 2015 to the Complainant for seeking his NOC on respondent's appointment as statutory auditor. Since he did not receive any objection from

the Complainant, he presumed that the Complainant had no objection in the matter. The Respondent further submitted that he had also called up the Complainant personally on his mobile number several times but received no response.

3.1 In respect of first charge, it is observed that the Respondent failed to submit any positive proof whatsoever in support of his statement that the said letter seeking NOC was sent to the Complainant. A mere statement that the said letter was put into the Letter Box is not by itself sufficient even to presume that the same was dispatched to the Complainant. The Committee is of the view that the expression 'in communication with' when read in the light of the instructions contained in the booklet 'Code of Conduct' cannot be interpreted in any other manner but to mean that there should be positive evidence of the fact that the communication addressed to the outgoing auditor by the incoming auditor reached his hands. Certificate of posting of a letter or sending letter through ordinary post cannot, in the circumstances, be taken as positive evidence of its delivery to the addressee. Further, in the opinion of the Council, communication by a letter sent "Registered Acknowledgement due" or by hand against a written acknowledgement would in the normal course provide such evidence. Hence, the Committee viewed that the Respondent failed to ensure compliance of the requirement of clause (8) of Part I of First Schedule to the Chartered Accountants Act, 1949 and thus, he is guilty of professional misconduct falling within the meaning of Clause (8) of Part I of First Schedule to the Chartered Accountants Act, 1949.

4. In respect of second allegation relating to accepting audit without ensuring payment of undisputed fees to the previous auditor, during the course of hearing, the Respondent stated that outstanding audit fees was paid to the previous auditor. On a specific question posed to the Respondent as to when it was paid to the Complainant, the Respondent could not give any reply to the same. On the contrary, the Complainant stated that the outstanding fees was paid to him much after the audit was completed by the Respondent. The Committee noted that as per Chapter VII of the Council General Guidelines, 2008 on "Appointment of an Auditor in case of non-payment of undisputed fees", A member of the Institute in practice shall not accept the appointment as auditor of an entity:-

in case the undisputed audit fee of another Chartered Accountant for carrying out the statutory audit under the Companies Act, 1956 or various other statutes has not been paid:

Provided that in the case of sick unit, the above prohibition of acceptance shall not apply.

Explanation 1:

For this purpose, the provision for audit fee in accounts signed by both - the auditee and the auditor shall be considered as "undisputed" audit fee.

Explanation 2:

For this purpose, "sick unit" shall mean where the net worth is negative.

4.1 Since the Respondent failed to bring on record any documentary evidence to the fact that the outstanding fees payable to the Complainant (previous auditor) was paid before acceptance and completion of audit, the Committee is of the view that the Respondent failed to ensure compliance of the requirement of Council General Guidelines, 2008 and accordingly, he is guilty of professional misconduct falling within the meaning of Clause (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949

Conclusion:-

5. Thus in the considered opinion of the Committee, the Respondent is **GUILTY** of Professional Misconduct falling within the meaning of Clause (8) of Part I of First Schedule & (1) of Part II of Second Schedule to the Chartered Accountants Act, 1949.

sd/-

**(CA. NIHAR N JAMBUSARIA)
PRESIDING OFFICER**

[approved and confirmed through e-mail]
**(SHRI JUGAL KISHORE MOHAPATRA,
I.A.S.(RETD.)), GOVERNMENT NOMINEE**


[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**

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