

DISCIPLINARY COMMITTEE [BENCH – I (2021-2022)]

[Constituted under Section 21B of the Chartered Accountants Act, 1949]

Findings cum Order under Rule 18(17) and Rule 19(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007

Ref. No. PR-184/2019-DD/240/2019/DC/1439/2021

In the matter of:

**CA. Mani Kuntal Bardoloi (M.No.052300),
Partner, M/s. M.K. Bardoloi & Co.,
Chartered Accountants,
A T Road, Tarajan,
Jorhat – 785 001**

.....Complainant

Versus

**CA. Omprakash Prithani (M.No.094610)
Partner, M/s. P V A R & Associates,
Chartered Accountants,
Sundari Complex,
G.F Road Bengenakhowa,
Golaghat (Assam) -785 621**

.....Respondent

MEMBERS PRESENT :-

**Shri Jugal Kishore Mohapatra, I.A.S. (Retd.) (Govt. Nominee), Presiding Officer (Through VC)
Ms. Rashmi Verma, I.A.S. (Retd.) (Govt. Nominee), (Through VC)
CA. Anuj Goyal, Member (in-person at ICAI Bhawan, New Delhi)
CA. Durgesh Kumar Kabra, Member (in-person at ICAI Bhawan, New Delhi)**

**DATE OF FINAL HEARING : 15.12.2021
PLACE OF FINAL HEARING : Through Video Conferencing**

PARTIES PRESENT:

**Complainant : CA. Mani Kuntal Bardoloi,
Respondent : CA. Omprakash Prithani
Counsel for the Respondent : CA. C V Sajan**



BRIEF OF THE DISCIPLINARY PROCEEDINGS:-

1. The Committee noted that on the day of hearing held on 15.12.2021, the Complainant was present. The Respondent alongwith his Counsel was present. The Complainant and the Respondent were put on oath. On being enquired from the Respondent whether he is aware of the charges, the Respondent replied affirmatively and pleaded not guilty to the charges. Thereafter, the Complainant made his contentions on the charges. The Counsel for the Respondent made his submission in defence. The Committee also posed questions to the Complainant and the Respondent. After hearing the submissions of the Complainant and the Respondent, the Committee decided to conclude the hearing in the above matter.

CHARGES IN BRIEF AND FINDINGS OF THE DISCIPLINARY COMMITTEE:-

2. The Committee noted that the charge against the Respondent is that he had accepted the audit assignment of M/s Hawaipur Community Development Project (hereinafter referred to as the "Firm") for financial year 2017-18 despite objection on appointment raised by the Complainant being the previous auditor due to outstanding fees.

3. In respect of above charge, the Committee noted that the Respondent made following submissions in his defence:-

3.1 The Respondent stated that he pursued the matter of outstanding fees with the client and got the money paid to the Complainant. Further, when he enquired the matter with the client it was found that there were no outstanding fees payable.

3.2 The Respondent stated that the Director (Discipline) has not gone into the fact as to whether outstanding fees were undisputed or not. The Respondent also stated that even if the cash system is followed by the firm, the outstanding fees become a contingent liability and an auditor who is signing the balance sheet is supposed to provide a contingent liability in notes to the accounts and disclose the same.

4. The Complainant stated that the Respondent has nowhere written that outstanding fees is disputed. The Complainant also stated that the payment was received on 24th June, 2019 but that does not cure the professional misconduct already committed by the Respondent.

4.1 During the course of hearing the Committee enquired from the Complainant as to whether there were any undisputed fees outstanding as on 31.03.2017, the Complainant replied in negative. He also stated that audit fees were paid to him after 6-7 months of audit. To a question posed to the Complainant as to how much professional fees was outstanding as per the balance sheet of 31st March, 2017, the Complainant submitted that it was not shown in the Balance Sheet as the client was maintaining books of accounts in cash system.

5. On perusal of the documents on record, the Committee observed that the Complainant did the audit of the firm for the financial year 2016-17 and the Respondent has conducted audit for the next financial year 2017-18. The Committee also observed that on 24th June, 2019, the entire outstanding amount of Rs.1,05,150/- was paid to the Complainant vide NEFT in his HDFC account. However, it is noted that outstanding audit fees was neither provided in the books of accounts nor any contingent liability towards the same was shown in the financial statement and the said fact was admitted by the Complainant during the course of hearing. As regard the ethical requirement of accepting audit in case of outstanding audit fees, the Committee went through the Chapter VII of the Council General Guidelines, 2008 and noted the provisions of Chapter VII as under:-

“Chapter VII

Appointment of an Auditor in case of non-payment of undisputed fees

7.0 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.

7.1 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.

7.2 Explanation 2:

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

*The Institute of Chartered Accountants of India
1100011 - दिल्ली - भारत
श्री अशोक नगर, श्रीवास्तव कॉलोनी, दिल्ली - 1100011*

Handwritten signature/initials

5.1 From the above, it is clear that a member of the Institute in practice shall not accept the appointment as auditor in case of non-payment of undisputed fees. The said chapter also defines the undisputed fees as the provisions for audit fees in accounts signed by both the auditee and the auditor. During the course of hearing, the Complainant admitted that the audit fees was not shown in the balance sheet of the Company. The Committee is of the view that since audit fees was not provided as outstanding in the balance sheet, the same cannot be considered as undisputed audit fees. Hence, there was no misconduct on the part of the Respondent in accepting the audit for the financial year 2017-18. Thus, the Committee decided to hold the Respondent not guilty with respect to charge leveled against him.

Conclusion:-

6. Thus, in the considered opinion of the Committee, the Respondent is **NOT GUILTY** of Professional Misconduct falling within the meaning of Item (1) of Part II of Second Schedule to the Chartered Accountants Acts, 1949.

6.1 Accordingly, the Committee passed an Order for closure of this case under Rule 19 (2) of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of cases) Rules, 2007.

(approved and confirmed through e-mail)

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

(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**

(approved and confirmed through e-mail)

**(CA. DURGESH KUMAR KABRA)
MEMBER**

सही प्रतिलिपि होने के लिए प्रमाणित /
Certified to be true copy

Date:- 25.01.2022

बिष्वा नाथ शिखरी / Bishwa Nath Thakri
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahdara, Delhi-110032