



भारतीय सनदी लेखाकार संस्थान
()
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)

[PR 272/16-DD/310/16/DC/1128/2019]

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 272/16-DD/310/16/DC/1128/2019]

In the matter of:

CA Anil Bhandari,
Anil Bhandari & Associates,
Pragati Arcade 1st Floor, No. 243,
3rd Main Road,
Chamrajpet,
Bengaluru 560 004

---Complainant

CA. M.S. Srinath (M.No.200915)
63, Behind Lankesh Patrike Building,
E A T Street,
Basavanagudi
Bengaluru 560004

---Respondent

MEMBERS PRESENT:

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

Date of Final Hearing: 09.09.2021 through Video Conferencing
Place of Final Hearing: New Delhi

Party Present:-

1) CA. M.S. Srinath – the Respondent (appeared from his personal location)

1. That vide report dated 3rd February 2021 (copy enclosed), the Disciplinary Committee was of the opinion that **CA. M.S. Srinath (M.No.200915)** was **GUILTY** of Professional Misconduct falling within the meaning of Clause (8) of Part I of First Schedule and Item 1 of Part II of the Second Schedule to the Chartered Accountants Act, 1949 read with Chapter VII of Council General Guidelines 2008 1-CA(7)/02/2008 dated 08th August, 2008 in respect of the tax audit of of M/s Vardhman Steel Centre (hereinafter referred to as the "**Firm no. 1**") and M/s Shinag Allied Enterprises (hereinafter referred to as the "**Firm no. 2**") for financial year 2015-16. It was alleged against the Respondent that he accepted the said appointment without communicating with the Complainant being the previous auditor of both the Firms and also when the undisputed audit fees was pending for payment to the previous auditor by the said Firms.



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It was noted that Clause (8) of Part I of First Schedule and Item 1 of Part II of the Second Schedule to the Chartered Accountants Act, 1949 state as under:

First Schedule

Part I

“(8) accepts a position as auditor previously held by another chartered accountant or a certified auditor who has been issued certificate under the Restricted Certificate Rules, 1932 without first communicating with him in writing”

Second Schedule

Part II

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

Council Guidelines No.1-CA(7)/02/2008, dated 8th August,2008

Chapter VII

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”

2. An action under Section 21B (3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and communication dated 25th August 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 9th September 2021 through video conferencing.

3. The Respondent appeared before the Committee on 9th September 2021 through video conferencing from his personal location and made his oral representations on the findings of Disciplinary Committee. The Committee considered both the oral submissions as well written submissions made vide letter dated 20th August 2021 by the Respondent. The Respondent, at the outset, submitted that he had not sent any written communication but had taken the oral concurrence of the Complainant. He further stated that the Management of the Company made payment to the tune of Rs.1,55,000/- and clear the dues of the Complainant before the Respondent could sign the audit report.

4. The Committee considered the oral as well as the written submissions of the Respondent and noted that as per the Code of Ethics, the Respondent was required to communicate with the Complainant being the retiring auditor in such a manner so as to retain in his hands positive evidence of the delivery of the communication which he could not do as he had sought his consent orally. It further noted as regard Firm no. 1 that partial amount of Rs. 1,55,000/-, out of the total outstanding amount to the tune of Rs.3,09,653/- was paid to the Complainant on 19th October 2016



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much after the date of signing the audit report by the Respondent thereby violating the Council General Guidelines 2008 1-CA(7)/02/2008 dated 08th August, 2008.

5. The Committee thus viewed that the misconduct on the part of the Respondent has been held and established within the meaning of Clause (8) of Part I of First Schedule and Item 1 of Part II of the Second Schedule to the Chartered Accountants Act, 1949 and keeping in view the facts and circumstances of the case as aforesaid and ordered that the Respondent, **CA. M.S. Srinath (M.No.200915)** be Reprimanded along with a fine of Rs. 25,000/- (Rupees Twenty Five Thousand Only) that shall be payable within a period of three months from the date of receipt of this Order and in case the Respondent failed to pay the same as stipulated, the name of the Respondent, **CA. M.S. Srinath (M.No.200915)** 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.

(R)

Sd/-

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

Sd/-

[Shri Ajay Mittal, IAS (Retd)]
Member (Govt. Nominee)

Sd/-

[CA. Chandrashekhar Vasant Chitale]
Member

Sd/-

[CA. P.K. Boob]
Member

प्रमाणित सत्य प्रतिलिपि / Certified true copy

Mohita Khanna

सी.ए. मोहिता खन्ना / CA. Mohita Khanna
सहायक सचिव / Assistant Secretary
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आइसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahdara, 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-272/16-DD/310/2016]-DC/1128/2019]

In the matter of:

CA. Anil Bhandari (M. No. 054656)
M/s Anil Bhandari & Associates
No. 243, Pragati Arcade, 1st Floor,
3rd Main Road, Chamrajpet
Bangalore 560018

.....Complainant

Versus

CA. M.S. Srinath (M.No.200915),
63, Behind Lankesh Patrike Building,
E A T Street,
Basavanagudi
Bengaluru-560004

.....Respondent

MEMBERS PRESENT:

CA. Atul Kumar Gupta, Presiding Officer
Smt. Anita Kapur, Government Nominee, Member
Shri Ajay Mittal, Government Nominee, Member
CA. Chandrasekhar Vasant Chitale, Member

Date of Final Hearing: 21st December, 2020 through Video Conferencing
Place of Hearing:

The following was also present:

- (i) CA. Anil Bhandari - Complainant (from his office)
- (ii) CA. M. S. Srinath – Respondent (from Bangalore office of ICAI)

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

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Other Misconduct and Conduct of Cases) Rules, 2007, the Respondent was held prima facie guilty of Professional Misconduct falling within the meaning of Clause (8) of Part I of the First Schedule to the Chartered Accountants Act 1949. The said Clause to the Schedule state as under:-

First schedule

Part I

"accepts a position as auditor previously held by another chartered accountant or a certified auditor who has been issued certificate under the Restricted Certificate Rules, 1932 without first communicating with him in writing"

Charges alleged against the Respondent

2. The allegation against the Respondent was that he had accepted the tax audit of M/s Vardhman Steel Centre (hereinafter referred to as the "Firm no. 1") and M/s Shinag Allied Enterprises(hereinafter referred to as the "Firm no. 2") for financial year 2015-16 without communicating with the Complainant being the previous auditor and also when the undisputed audit fees was pending for payment by the said Firms.

Proceedings:

3. The Committee noted that the Complainant and the Respondent appeared before the Committee from respective locations.

Thereafter, they all 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 Respondent was put on oath. Thereafter, the Committee asked the Respondent whether he was aware of the charges made against the Respondent and whether he pleaded guilty in the matter or not. The Respondent agreed to be aware of the charges alleged against him and pleaded not guilty 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.

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Findings of the Committee:

4. The Committee noted that there were two allegations raised in the matter and the Director(Discipline) while forming his prima facie opinion dated 16th April 2019 held the Respondent not guilty of second charge relating to non-payment of undisputed fees. The Board on the consideration of the PFO of the Director(Discipline) concurred with it to the extent that the Respondent was guilty of professional misconduct falling within the meaning of Clause (8) of Part I of the First schedule to the Chartered Accountant Act 1949 but also noted that there was an amount outstanding to the tune of Rs.3,09,653/- in the name of the Complainant Firm in the copy of the financial statement of the entity, M/s Vardhman Steel Centre for the F.Y. 2014-15 audited by the Complainant which was filed with the Income Tax Department and thus did not concur with the views expressed by the Director(Discipline) in Para 7.5 of the PFO wherein Director(Discipline) had held the Respondent not guilty of professional misconduct falling within the meaning of clause (1) of Part II of Second Schedule and thus decided to refer the case to the Disciplinary Committee to proceed under Chapter V of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. Accordingly, the Committee held the enquiry on the date of hearing on both the allegations discussed in paragraph (1) above.

5. The Committee noted that the first allegation raised against the Respondent was that he had accepted the tax audit of M/s Vardhman Steel Centre (hereinafter referred to as the "Firm no. 1") and M/s Shinag Allied Enterprises (hereinafter referred to as the "Firm no. 2") for financial year 2015-16 without communicating with the Complainant being the previous auditor. It further noted the submissions made by the Respondent wherein he stated that he had taken oral consent from the Complainant during their meeting alongwith clients, wherein the Complainant had informed that he had no objection to his accepting the appointment subject to payment of his fees and whenever the Complainant had sent message for his fees, the same was forwarded to clients. The Complainant, however, insisted before the Committee that he had not given any oral consent.

6. The Committee in this regard noted that as per the Code of Ethics, incoming Auditor should communicate with the retiring auditor in such a manner as to retain in his hands positive evidence of the delivery of the communication to the addressee. In the opinion of the

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Council of ICAI, communication by a letter send "Registered Acknowledgement due" or by hand against a written acknowledgement would in normal course provide such evidence but in the extant case, the Respondent had clearly failed to produce any positive evidence to establish that he had communicated with the Complainant and had submitted to have sought his consent orally. Thus, in light of the provisions as envisaged in Code of Ethics, the Committee was of the opinion that the Respondent was guilty of professional misconduct for this charge falling within the meaning of clause (8) of Part- I of First schedule to the Chartered Accountants Acts, 1949.

7. The Committee noted that the second allegation raised against the Respondent was that the undisputed audit fee was pending for payment by the said Firms. It further noted the submissions made by the Respondent wherein he stated that he requested the client to make payment to the tune of Rs.1,55,000/- and clear the dues of the Complainant before he could sign the audit report and enclosed the copy of payment made and e-mail sent to the Complainant (W-5).

8. The Committee in this regard noted that as regards Firm no. 2, there was no audit fee payable as evident from signed financial statements (D-42) produced by the Complainant but as regards Firm no. 1, there was an amount outstanding to the tune of Rs.3,09,653/- in the name of the Complainant Firm in the copy of the financial statement of the entity, M/s Vardhman Steel Centre for the F.Y. 2014-15 audited by the Complainant which had been filed with the Income Tax Department (D-78 & D-80). Further, it was noted that a partial amount of Rs. 1,55,000/- was paid to the Complainant on 19th October 2016 much after the date of signing the audit report by the Respondent. Thus, in light of the above, the Committee was of the opinion that the Respondent is guilty of professional misconduct falling within the meaning of Clause (1) of Part II of Second Schedule read with Chapter VII of Council General Guidelines 2008 1-CA(7)/02/2008 dated 08th August, 2008 as he not only accepted the audit but conducted it as well of the Firm no 1 while the undisputed audit fees of the Complainant had not been paid.

Conclusion

9. Thus in conclusion, in the considered opinion of the Committee, the Respondent is held **GUILTY** of professional misconduct falling within the meaning of Clause (8) of Part I of the First

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Schedule and Clause (1) of Part II of Second Schedule read with Chapter VII of Council General Guidelines 2008 1-CA(7)/02/2008 dated 08th August, 2008.

[Handwritten signature]

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

Sd/-
[Smt. Anita Kapur]
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

Certified to be True Copy
Mohita Khanna
(Mohita Khanna)
Assistant Secretary
Disciplinary Directorate
The Institute of Chartered Accountants of India