



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

PR/234/18/DD-289/18/BOD/516/2019

ORDER UNDER SECTION 21A(3) OF THE CHARTERED ACCOUNTANTS ACT, 1949 READ WITH RULE 15(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATIONS OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007.

In the matter of:-

CA. B.J. Singh, New Delhi

...Complainant

-Vs.-

CA. Bhaiya Rajeev Kumar (M.No.057911)

M/s Thakur Vaidyanath Aiyer & Co.(FRN. No. 000038N), New Delhi

...Respondent

[PR/234/18/DD-289/18/BOD/516/2019]

**MEMBERS PRESENT:**

CA. Prasanna Kumar D., Presiding Officer

(In person)

Mrs. Rani Nair, (IRS, Retd.), Government Nominee

(Through video conferencing)

CA. Satish Kumar Gupta, Member

(Through video conferencing)

Date of Final Hearing: 11<sup>th</sup> February, 2022

1. The Board of Discipline vide Report dated 1<sup>st</sup> February, 2022 held that CA. Bhaiya Rajeev Kumar (M. No .057911) is Guilty of Professional Misconduct falling within the meaning of Item (8) of Part I of First Schedule to the Chartered Accountants Act, 1949.

2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against CA. Bhaiya Rajeev Kumar (M. No. 057911) and communication dated 4<sup>th</sup> February, 2022 was addressed to him thereby granting him an opportunity of being heard in person and/or to make written representation before the Board on 9<sup>th</sup> February, 2022. CA. Bhaiya Rajeev Kumar vide email dated 8<sup>th</sup> February, 2022 requested for adjournment of the hearing in his case. The Board vide communication 10<sup>th</sup> February, 2022 granted him one more opportunity to appear in person and/or to make written representation before it on 11<sup>th</sup> February, 2022.

3. CA. Bhaiya Rajeev Kumar did not appear before the Board and vide email dated 10<sup>th</sup> February, 2022 stated that he is out of Delhi on an Audit Assignment and thus, is not available. The Board, keeping in view the provision of Rule 15 (1) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 considered the case of the Respondent for award of punishment.

4. The Board has carefully gone through the facts of the case.

5. As per the Findings of the Board as contained in its report, with respect to the allegation that CA. Bhaiya Rajeev Kumar accepted the audit of The International Union against Tuberculosis and Lung disease ("Union") for the period 1<sup>st</sup> April 2016 to 13<sup>th</sup> December 2017 without communicating



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with the Complainant who was the previous auditor of the Union, the Board considered the Agreement dated 7th November, 2017 and its respective clauses entered into between the Respondent Firm and the Union and noted that the intention of the parties entering into the agreement was that the Union hired the services of CA. Bhaiya Rajeev Kumar to carry out the audit of the Global Fund Project of the Union and the clauses/ terms of reference highlighted in the Findings of the Board clearly negate the plea of CA. Bhaiya Rajeev Kumar that he acted only as a Contractor. The Board further took into view the Consolidated Audit Report on Audit of The Global Fund Project – Axshya managed by the Union for the Financial Year 2016-17 issued by CA. Bhaiya Rajeev Kumar and observed that the Independent Auditor's Report as submitted on the letter head of the Respondent Firm addressed to the Regional Director, The International Union Against Tuberculosis and Lung Diseases, The Union South – East Asia Office, C-6, Qutab Institutional Area, New Delhi – 110016 specifically contained Management's Responsibility, Auditor's Responsibility, Basis of Qualified Opinion, Qualified Opinion and Other Matters. On perusal of the same, that is format of the Report, its contents, the language used in the said Report, the inclusions and exclusions as per format issued by the Institute, the Board held that it is conclusively established that CA. Bhaiya Rajeev Kumar has conducted the audit of the Union. The Board further observed that the compliance of prior communication with previous auditor is mandatory in terms of Item (8) of Part I of First Schedule for acceptance of all types of audit and the Respondent plea that the said audit was for internal purpose of the Union or a fixed period assignment or a Utilisation audit and not a Statutory Audit is not a valid ground to not to communicate with the Complainant before accepting the audit of the Global Fund Project of the Union. The Board also noted that CA. Bhaiya Rajeev Kumar had admitted in his submissions that he did not communicate with the Complainant prior to the acceptance of the Financial Audit for Principal recipient and their 7 Sub-recipients of The Global Fund Project implemented by The Union for the period 01 April 2016 – 31 March 2017 and gave his reasons for the same which are not acceptable. Thus, having regard to the attendant circumstances, the evidences and submissions on record, the Board held that it is clear that CA. Bhaiya Rajeev Kumar acted as the Financial auditor for Principal recipient and their 7 Sub-recipients of The Global Fund Project implemented by The Union for the period 01 April 2016 – 31 March 2017 on the terms as provided in the Agreement dated 7th November 2017 and did not communicate with the Complainant firm before accepting the aforesaid audit. Thus, it has already been held that CA. Bhaiya Rajeev Kumar is Guilty of Professional Misconduct falling within the meaning of Item (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

6. Upon consideration of the facts of the case and the consequent misconduct of CA. Bhaiya Rajeev Kumar (M.No.057911), the Board decided to Reprimand CA. Bhaiya Rajeev Kumar (M. No. 057911).

Sd/-  
CA. PRASANNA KUMAR D.  
(PRESIDING OFFICER)

DATE: 11<sup>th</sup> February, 2022

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

नीलम पुंडीर / Neelam Pundir  
कार्यकारी अधिकारी / Executive Officer  
अनुशासनात्मक निदेशालय / Disciplinary Directorate  
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया  
The Institute of Chartered Accountants of India  
आईसीएआई भवन, विश्वास नगर, शाहपुरा, दिल्ली-110032  
ICAI Bhawan, Vishwas Nagar, Page 2 of 2 110032

**CONFIDENTIAL**

**BOARD OF DISCIPLINE**

**Constituted under Section 21A of the Chartered Accountants Act 1949**

**findings under Rule 14(9) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007**

**File No. : [PR/234/18/DD-289/18/BOD/516/2019]**

**CORAM:**

|   |                              |
|---|------------------------------|
| CA. Prasanna Kumar D., Presiding Officer        | (In Person)                  |
| Mrs. Rani Nair (IRS, Retd.), Government Nominee | (Through Video Conferencing) |
| CA. Satish Kumar Gupta, Member                  | (Through Video Conferencing) |

**In the matter of:**

CA. B.J. Singh,  
706, Akashdeep Building  
26-A, Barakhamba Road,  
New Delhi-110001

.....Complainant

-Vs.-

CA. Bhaiya Rajeev Kumar (M.No.057911)  
M/s Thakur Vaidyanath Aiyer & Co.(FRN. No. 000038N)  
Chartered Accountants,  
221, Deen Dayal Marg, ITO  
New Delhi-110002

.....Respondent

DATE OF FINAL HEARING : 24<sup>th</sup> March, 2021  
PLACE OF HEARING : Vishwas Nagar, New Delhi/ Through video conferencing

**PARTIES PRESENT(through video conferencing):**

Respondent : CA. Bhaiya Rajeev Kumar  
Counsel for the Respondent : CA. K. N. Gupta

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**Findings:**

**Brief background of the case:**

1. The International Union against Tuberculosis and Lung disease (hereinafter referred as the "Union"), a non-profit French Organisation having its branch in India was one of the principle recipients of TB grant funded by Global Fund to implement Axshya Project in India. The said organisation appointed the Complainant to conduct the audit of Axshya Project for Phase-III (funded by the Global Fund) for the financial periods starting from 01/10/2015 till 31/12/2017, which consisted of three accounting periods i.e. First Period being 01/10/2015 to 31/03/2016 (6 months); Second Period being 01/04/2016 to 31/03/2017 (12 months) and Third Period being 01/04/2017 to 13/12/2017 (9 months). It was agreed by the Union and the Complainant that though in principle the Complainant will be auditors for the full project period of 27 months, the agreement will be entered between the parties for separate accounting periods as stated above. Accordingly, the Complainant submitted its Audit Report for the period 01/10/2015 to 31/03/2016 to the Union wherein the Complainant had pointed out various irregularities in the functioning of the project which contained detailed management responses and further comment on management responses. Hence, it is alleged that aggrieved by the said qualified report, the Union did not appoint the Complainant for the next accounting period i.e. 01/04/2016 to 31/03/2017 (inspite of the understanding as stated above) and appointed the Respondent instead without formally terminating the agreement between the Union and the Complainant.

**Charges alleged :**

2. The Board noted the charge alleged against the Respondent that the Respondent accepted the audit of the "Union" for the period 1<sup>st</sup> April 2016 to 13<sup>th</sup> December 2017 without communicating with the Complainant who was the previous auditors as required within the meaning of Item (8) of Part I of First Schedule to the Chartered Accountants Act, 1949.

**Proceedings held:**

3. During the hearing held on 24<sup>th</sup> March, 2021, the Respondent alongwith his Counsel was present before the Board through video conferencing. The Respondent was put on oath. The Respondent alongwith his Counsel confirmed that they have read and understood the contents of the modalities and protocols of e-hearing and follow them. However, the Complainant was not present and had sent an email stating that on





account of his ill health, he will not be able to attend the hearing and confirmed that he will abide by the decision of the Board. Accordingly, the Board decided to proceed ahead with the hearing in the case. Thereafter, on being asked by the Board as to whether the Respondent pleaded guilty in respect of the charges alleged against him, he replied in negative and his Counsel made detailed submissions before the Board. The Respondent was examined by the Board.

Upon consideration of the documents and submissions on record, the Board decided to conclude the proceedings in the case with the direction to the Respondent to provide the copy of the following documents and also mark a copy of the same to the Complainant:

- a. Report on the Audit of Global Fund Project 'Axshya' for the period 1st April, 2016 to 31st March, 2017 including Action taken Report on the Audit Observations of the previous Auditors on their Audit Report for the period from 1<sup>st</sup> October, 2015 to 31<sup>st</sup> March, 2016
- b. Copy of the Bill for the Audit of Global Fund Project 'Axshya' for the period 1<sup>st</sup> April, 2016 to 31<sup>st</sup> March, 2017 including the basis of its charging.

Accordingly, the decision on the conduct of the Respondent was kept reserved by the Board.

Thereafter, the Respondent vide his email dated 24/03/2021, in compliance of above directions, submitted the requisite information/ documents. A copy of the said submissions was sent to the Complainant vide email dated 1<sup>st</sup> April 2021 to provide his comments thereon, if any followed by email dated 6<sup>th</sup> April 2021 granting him 10 days additional time to submit his reply keeping in view his request made vide email dated 2<sup>nd</sup> April 2021. It was also followed by reminder email dated 25<sup>th</sup> June 2021, but, no reply was received from the Complainant.

4. Thereafter, the Board at its meeting held on 6<sup>th</sup> August, 2021, on consideration of the documents and submissions on record, took a decision on the conduct of the Respondent.

**Submissions of the Respondent:**

5. The Respondent in his defence, inter-alia, submitted as under:-
  - a. The International Union against Lung Diseases, India Branch office (The Union) is a "Not for profit organization" and its Head office is in France. It works on Health related Projects in India.

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- b. 'The Union' works in the Health Sector in India, mainly on Tuberculosis and Lung Disease, Tobaccos Control, etc. and have been carrying out many Projects in India in collaboration with some of the International Funding Agencies like The Global Fund against AIDS, Tuberculosis and Malaria, USAID, etc. The Respondent was appointed as Independent Auditors for the audit of accounts of Projects on contractual basis for a specific period to verify the utilization of funds received from the International Funding agencies.
- c. 'The Union' had for the first time sent a RFQ through e-mail to the Respondent Firm on 27th January, 2016 to submit a proposal for the Audit of Global Fund Project - AXSHYA - Phase III for the period from 1st October 2015 to 31st December 2017, divided into three periods given as under:

| Phase       | Period   |
|-------------|--|
| Phase - III | 1 <sup>st</sup> October 2015 to 31 <sup>st</sup> March 2016  |
|             | 1 <sup>st</sup> April 2016 to 31 <sup>st</sup> March 2017    |
|             | 1 <sup>st</sup> April 2017 to 31 <sup>st</sup> December 2017 |

- d. The Respondent Firm submitted their Technical and Financial Proposal to 'The Union' on 2nd February, 2016 in physical mode.
- e. The Respondent Firm was shortlisted by 'The Union' with other CA Firms on the basis of evaluation of their Technical proposal and Technical Round Interview by 'The Union'.
- f. After shortlisting in Technical Evaluation, 'The Union' started the evaluation of the Financial Proposal of all the CA Firms selected in Technical Evaluation.
- g. In May 2016, 'The Union' called CA Firms (including the Respondent Firm) for a meeting to discuss on the Financial proposals submitted by respective CA Firms who were shortlisted in Technical round and after deliberations requested the Respondent to submit a Revised Financial proposal, on the basis of the discussions.
- h. Thereafter, the Respondent submitted his Revised Financial proposal on 25<sup>th</sup> May, 2016.
- i. After the Final evaluation of Revised Financial Proposals of all the CA Firms selected in Technical Evaluation, M/s. Khanna & Annadhanam (K & A) was awarded the assignment on the basis of their lowest bid and was appointed as Auditor for the grant for the period 1<sup>st</sup> October 2015 to 31<sup>st</sup> March, 2016.
- j. K & A was appointed as auditor of the Global Fund Project for the period 1st October 2015 to 31st March 2016, as per Agreement dated 19th September 2016 between K & A and The Union. This Audit assignment was only for the period 1st October 2015 to 31st March 2016.

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- k. On 8<sup>th</sup> June, 2017, the 'Union' again asked pre-approved audit Firms for India by the Global Fund to submit a Technical and Financial proposal for audit of the Global Fund Project -AXSHYA for the period from 1<sup>st</sup> April 2016 to 31<sup>st</sup> March 2017.
- l. The Respondent submitted their Technical and Financial proposal on 16th June 2017 in response to 'The Union' email dated 8th June 2017 in physical mode. The Respondent submitted the copy of Acknowledgement of Submission of their proposal alongwith his submissions in this regard.
- m. The Respondent Firm was selected in the evaluation process and was appointed to audit the Global Fund Project - AXSHYA for the period from 1st April 2016 to 31st March 2017 and the Agreement with 'The Union' for this purpose was signed on 7th November 2017.
- n. The Respondent had not taken NOC (No Objection Certificate) from the previous Auditors (K & A) considering the following facts:
  - i. The selection of the Audit Firm was made through bidding process by inviting Technical and Financial Proposals and it was not a direct appointment of a C.A Firm by the Management;
  - ii. It was "not a Statutory Audit", as required under any Indian Law / Regulation but a Grant Utilization Audit at the request of a Donor Agency (Global Fund);
  - iii. The Statutory Auditors of Union were M/s A.K.G & Associates, Chartered Accountants, New Delhi during the above period who conducted the Statutory Audit as per the applicable Laws in India.
  - iv. The appointment of the previous Auditors (K & A) was made only for the period 1<sup>st</sup> October 2015 to 31st March 2016 as per the Agreement dated 19th September, 2016 between K & A and The Union. As per the terms and conditions of the Agreement, there was no clause of renewal of Agreement for the appointment of an Auditor.
  - v. 'The Union' has appointed auditors for only one year term or part thereof and the agreement is also executed for only one year or part of the year, as the case may be.
  - vi. As per the Global Fund Audit guidelines, the Final approval of the appointment of auditors by 'The Union' is done by The Global Fund, Head Office, which is a Foreign Funding / Donor Agency.
  - vii. The Audit of Global Fund project- AXSHYA was carried out as per the audit guidelines of Global Fund.
  - viii. The Audit Report was submitted to Global Fund and not to any Indian Authority.
  - ix. Therefore, considering the above facts, the Respondent was of the opinion that obtaining "NOC" is not mandatory for this audit work and accordingly, the Respondent had not taken NOC from the previous Auditors (K & A).

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- o. The Complainant and the Respondent were contractors to the "Union" and not Auditors and the Respondent relied upon Agreement dated 7<sup>th</sup> November, 2017. The Respondent further referred to the decision in the matter "'Union' of India, represented by the Registrar of Companies, Bihar Vs. M.N. Basu [1962 SCC online Cal 175]" wherein it was observed as under:

*"Misconduct implies failure to act honestly and reasonably either according to the ordinary and natural Standard or according to the Standards of a particular profession but error or misinterpretation of law and specially one view or another over a debatable construction cannot be a ground for the allegation and finding of Professional Misconduct against a Chartered Accountant".*

- p. The Report of the Respondent to be submitted to the "Union" was for Internal purpose only.
- q. There was no overlap in the Contract of the Complainant and the "Union" with the Contract of the Respondent with the "Union".
- r. Bonafide belief of the Respondent vs. malafide intention of the Complainant: The Respondent in this regard referred to the decisions in the matters "Council of the Institute of Chartered Accountants of India v. Somnath Basu [2006 SCC Online Cal 590]" and "S. Ganesan v. A.K. Joscelyne [1956 SCC Online Cal 43]"

The Respondent referred to the decision in the matter S. Ganesan v. A.K. Joscelyne [1956 SCC OnLine Cal 43] wherein the Hon'ble Calcutta High Court observed as under:

*"Professional Misconduct on the part of the person exercising one of the technical professions cannot fairly or reasonably be found, merely on a finding of a bare non-performance of a duty or some default in performing it. The charge is not one of inefficiency, but of misconduct and in an allegation of misconduct, an imputation of a certain mental condition is always involved. I think, it would be impossible for any professional man to exercise his profession if he was to be held guilty of Misconduct simply because he had not, in a given case, been able to do all that was required in the circumstances or that had misconceived his duty or failed to perform a part of it. I think the test must always be whether in addition to the failure to do the duty, partial or entire, which had happened, there had also been a failure to act honestly and reasonably. "*

Therefore, if in the view of the Board of Discipline, the mistake of the Respondent of not obtaining the NOC from the Complainant, which is not deliberate or intentional and 'technical' in nature, perhaps due to misinterpretation, if any, at the most of the Regulations in this regard, the same should not be a ground to initiate any proceedings for Professional Misconduct against the Respondent.

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- s. On 3rd July, 2021, the Respondent had sent a mail to The International Union against Lung Diseases (The Union) on the above matter and requested them to provide clarification on the following issues:
- i. The process of Appointment of Auditors of The International Union against the Lung Diseases for the Global Fund Project AXSHYA.
  - ii. Whether the Previous Audit Firm Khanna & Annadhanam was invited in the bidding process in the Second Year i.e. for the period 01.04.2016 to 31.03.2017.
  - iii. If the Previous Audit Firm Khanna & Annadhanam was not invited in the bidding process then the reason for not inviting them in that bidding process considering the fact that they were the Auditors of previous period 1st October, 2015 to 31st December, 2016.
- t. 'The Union' had replied to his above e-mail dated 3rd July, 2021 on 6th July, 2021 and clarified as under:
- "1. 'The Union' followed competitive bidding process for appointment of project auditors for conducting audit of Project Axshya funded by The Global Fund for FY 2016-17.
  2. Request for bid was not sent to M/s Khanna & Annadhanam (K&A), Chartered Accountants for FY 2016-17 as their performance for period Oct 2015 to Mar 2016 was not satisfactory.
  3. As per agreement with K&A, they were appointed for audit of Project Axshya only for the period from Oct 2015 to Mar 2016 and if not extended beyond that date, the agreement stands terminated automatically. Hence, question of termination of agreement with K&A does not arise.
  4. Appointment of auditors for FY 2016-17 was done after obtaining concurrence of The Global Fund.
- u. As per the Para 2.14.1.8(i) of Clause (8) of the First Schedule Part-I Professional Misconduct in relation to Chartered Accountant in Practice:
- "It must be pointed out that professional courtesy alone is not the major reason for requiring a member to communicate with the existing accountant who is a member of the Institute or a certified auditor.*
- The underlying objective is that the member may have an opportunity to know the reasons for the change in order to be able to safeguard his own interest, the legitimate interest of the public and the independence of the existing accountant.*
- It is not intended, in any way, to prevent or obstruct the change. When making the enquiry from the retiring auditor, the one proposed to be appointed or already appointed should primarily find out whether there are any professional or other reasons why he should not accept the appointment."*

As per the clarification provided by 'The Union', the appointment of the Auditor of The Global Fund Project AXSHYA was not of continuing nature and the selection of the Auditors was through competitive bidding process for each year. Therefore, in view of the Respondent it was not important to know the reason for change of Auditors since it

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was through a competitive bidding process and the appointment was only for a fixed term for which the Audit Firm was selected in the competitive bidding process.

- v. The Audit Fees for the period 1<sup>st</sup> April, 2016 to 31<sup>st</sup> March, 2017 was Rs. 6,45,000/- as the Audit Fees was for full 12 months as against only six months for the previous year.
- w. Further, since the Project started only from 1<sup>st</sup> October, 2015 therefore, during the first six months of this Project, lesser project activities had taken place as it was its initial phase.
- x. As regards calling of bids and process of selection of Audit Firms for the three Audits of the Project Grants under reference, the Board may contact the 'Client'.
- y. As per para 2.14.1.8(iii) of clause 8 of First schedule of Code of Ethics, the Professional reasons for non-acceptance of Audit would be:-

- a) Non-compliance of the provisions of Sections 139 and 140 of the Companies Act, 2013.
- b) Non-payment of undisputed Audit Fees by Auditees.
- c) Issuance of a qualified report.

However, in extant case Para (a) and (b) are not applicable and the Respondent had taken full care of Para (c), i.e. issuance of a qualified report. He had issued a 174 page "Action Taken Report" on the Audit Observations of the previous Audit for the period from 1<sup>st</sup> October, 2015 to 31<sup>st</sup> March, 2016.

**Observations and Findings of the Board:**

- 6. The Board took into view the provision of Item (8) of Part I of First Schedule to the Chartered Accountants Act, 1949 which provides as under:-  
*"(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."*
- 7. The Board noted that the Agreement dated 7<sup>th</sup> November, 2017 entered into between the Respondent Firm and the Union specifically provided the following:-

*"WHEREAS The Union is hiring Thakur, Vaidyanath Aiyar & Co, Chartered Accountants for conducting financial audit for Principal recipient and their 7 Sub-recipients of The Global Fund Project implemented by The Union for period 01*

*Co*

*April 2016 – 31 March 2017 and will be conducted as per terms of reference attached along with this agreement."*

8. The Board further noted that the Terms of Reference attached to the said Agreement dated 7<sup>th</sup> November, 2017 provided as under:-

*"Section IV – Objective of the Audit*

*The Global Fund requires a consolidated grant-specific audit – this involves one overall audit opinion on consolidated grant financial statements, i.e. combining the balances and transactions of the PR and SRs. Additionally, the auditor is also required to give audit opinion on grant financial statements of PR and each SR. The objective of the audit of the Grant Program Financial Statements (GPFS) is to enable the auditor to express an independent professional opinion on:*

- i. Whether the financial position of the grant program at the end of the reporting period and of the funds received and expenditures for the reporting period, are presented fairly in all material respects by the PR (and SRs) in the GPFS and in accordance with the applicable accounting framework;*
- ii. Whether, in all material respects, the grant funds have been used in conformity with the provisions of the Grant Agreement, including the approved budget and work plan and any amendments thereto as contained in implementation letters;*
- iii. Whether the GPFS agree with the program accounts (books of account) which provide the basis for preparation of the GPFS and reflect the financial transactions of the program, as maintained by the program implementing entities;*
- iv. Whether the GPFS agree or reconcile with other information reported to PR i.e. Progress Updates, Annual Financial Reports (AFR) and Quarterly Financial Reports."*

Further, Section VI of the Terms of Reference provided the following Clause:-

*"Section VI – Audit Scope*

- ii. The audit will be carried out in accordance with International Standards on Auditing (ISA).*

Moreover, Section VII of the Terms of Reference provided the following Clause:-

*"Section VII-Audit Report*

*The Audit Report/s [i.e. a) Consolidated Audit Report i.e. combining the balances and transactions of the PR and SRs, and b) Audit Report of PR and each SR] including the management letter should be submitted to The Regional Director, The Union South-East Asia Office; the audit firm will issue an opinion on the grant financial statements in accordance with ISA (International Standard on Auditing)."*

*GA*

*[Signature]*

Considering the above, the Board noted that the intention of the parties entering into the agreement was that the Union hired the services of the Respondent to carry out the audit of the Global Fund Project of the Union and the clauses/ terms of reference highlighted above clearly negate the plea of the Respondent that he acted only as a Contractor.

9. The Board further noted that the Respondent submitted invoices issued to the Client vide his email dated 24<sup>th</sup> March, 2021 wherein it is observed that in three invoices dated 29/11/2017, 04/01/2018 and 06/01/2018, the description of services has been mentioned as:

*"Fee for audit of The Global Fund Project implemented by The Union for the period from April 2016 to March 2017....."*

Further, the Respondent was not able to substantiate his claim with documentary evidence that he was merely working as Contractor to the client as the word audit was used by the Respondent in all the three invoices dated 29/11/2017, 04/01/2018 and 06/01/2018 issued by him.

10. The Board further took into view the Consolidated Audit Report on Audit of The Global Fund Project – Axshya managed by the Union for the Financial Year 2016-17 issued by the Respondent wherein it observed as under:-

- i. At page 4 and 5 of the Audit Report, the Scope of Audit as state hereunder has been provided:-

***"Scope of Audit***

- a. The scope of the Audit is Principle Recipient including 7 Sub-Recipient's (SR's) including SSR's for period from 01 April, 2016 to 31 March 2017.*
- b. The Audit will be carried out in accordance with International Standards on Auditing (ISA).*
- c. The Annual Financial Statements are free from material mis-statements and the terms of the sub-recipients are complied with in all material respects.*
- d. The Auditor expresses a professional opinion as to whether the Financial Statements give a true and fair view of the financial position of the PR and SRs for the reporting period from April 1, 2016 to 31 March 2017) and of the funds received and expenditure incurred for the accounting period ended that date.*
- e. The books of accounts as maintained by the PR and SRs shall form the basis for preparation of the individual PR and SR financial statements.*
- f. As part of the Audit testing procedures, particular attention should be paid to the following areas:*

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- i. *Compliance with applicable legislation,*
  - ii. *Grant Expenditures,*
  - iii. *System of Internal controls,*
  - iv. *Follow up on the status of findings from previous audit reports,*
  - v. *Designated bank account,*
  - vi. *Safeguarding of assets,*
  - vii. *Disbursements to SR and SSRs,*
  - viii. *Data retention and supporting documentation,*
  - ix. *Goods and services have been procured transparently, competitively and in accordance with the Grant Agreement and relevant procurement Guidelines of the PR.*
  - g. *Funds have been spent in accordance with the condition laid down by The Global Fund and PR from time to time with due attention to economy and efficiency, and only for the purpose for which the financing was provided.*
  - h. *Expenditures if any, ineligible for financing by the PR (as documented in the Agreement with The Global Fund) are disclosed adequately in the financial statements.*
  - i. *All necessary supporting documents, records and accounts have been kept in respect of the project."*
  - ii. The Independent Auditor's Report as submitted on the letter head of the Respondent Firm addressed to the Regional Director, The International Union Against Tuberculosis and Lung Diseases, The Union South – East Asia Office, C-6, Qutab Institutional Area, New Delhi – 110016 specifically contained Management's Responsibility, Auditor's Responsibility, Basis of Qualified Opinion, Qualified Opinion and Other Matters. On perusal of the same, that is format of the Report, its contents, the language used in the said Report, the inclusions and exclusions as per format issued by the Institute, the Board held that it is conclusively established that the Respondent has conducted the audit of the Union and the denial of the Respondent on the ground of Contract executed or Respondent was only Contractor or there was Contractual obligation lacks merits on the face of it.
11. The Board took into view the Code of Ethics, 2009 (Edn. Reprinted May, 2009, Page 166 & 167) wherein it is provided as under:-

*"The Council has also laid down the detailed guidelines on the subject as under:-*

*1. The requirement for communicating with the previous auditor being a Chartered Accountant in practice would apply to all types of audit viz., statutory audit, tax audit, internal audit, concurrent audit or any other kind of audit.*

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*6. A communication is mandatorily required for all types of audit/report where the previous auditor is a Chartered Accountant. For certification, it would be healthy practice to communicate. In case of assignments done by other*

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*professionals not being Chartered Accountants, it would also be a healthy practice to communicate."*

The Board further observed that the compliance of prior communication with previous auditor is mandatory in terms of Item (8) of Part I of First Schedule for acceptance of all types of audit and the Respondent plea that the said audit was for internal purpose of the Union or a fixed period assignment or a Utilisation audit and not a Statutory Audit is not a valid ground to not to communicate with the Complainant before accepting the audit of the Global Fund Project of the Union.

12. The Board also took into view Code of Ethics, 2009 (Edn. Reprinted May, 2009, Pg. 163 to 164) and the relevant portion of the same is as under:-

*"The existence of a dispute as regards the fees may be root cause of an auditor being changed. This would not constitute valid professional reasons on account of which an audit should not be accepted by the member to whom it is offered. However, in the case of an undisputed audit fees for carrying out the statutory audit under the Companies Act, 1956 or various other Statutes having not been paid, the incoming auditor should not accept the appointment unless such fees are paid. In respect of other dues, the incoming auditor should in appropriate circumstances use his influence in favour of his predecessor to have the dispute as regards the fees settled. The professional reasons for not accepting an audit would be:*

- (i) Non-compliance of the provisions of Sections 224 and 225 of the Companies Act as mentioned in Clause (9);*
- (ii) Non-payment of undisputed audit fees by auditees other than in case of sick units for carrying out the statutory audit under the Companies Act, 1956 or various other statutes; and*
- (iii) Issuance of a qualified report.*

*In the first two cases, an auditor who accepts the audit would be guilty of Professional Misconduct. In this connection, attention of members is invited to the Council Guidelines No. 1-CA/(7)/02/2008 dated 08.08.08 appearing in Chapter-3 of the book and also published at page 686 of October, 2008 issue of the Journal. In the said Guidelines, Council has explained that the provision for audit fee in accounts signed by both the auditee or the auditor shall be considered as "undisputed" audit fee and "sick unit" shall mean where the net worth is negative.*

*In the last case, however, he may accept the audit if he is satisfied that the attitude of the retiring auditor was not proper and justified. If, on the other hand, he feels that the retiring auditor had qualified the report for good and valid reasons, he should refuse to accept the audit.*

*OK*

*X*

..... If there is no valid reason for a change, it would be healthy practice not to accept the audit. If he decides to accept the audit he should address a communication to the retiring auditor.”

Accordingly, the Board viewed that since the Respondent had decided to accept the audit, he ought to have communicated with the Complainant, being the previous auditor of the Union.

13. The Board also noted that the Respondent had admitted in his submissions that he did not communicate with the Complainant prior to the acceptance of the Financial Audit for Principal recipient and their 7 Sub-recipients of The Global Fund Project implemented by The Union for the period 01 April 2016 – 31 March 2017 and gave his reasons for the same which are not acceptable.
14. Thus, having regard to the attendant circumstances, the evidences and submissions on record, the Board held that it is clear that the Respondent acted as the Financial auditor for Principal recipient and their 7 Sub-recipients of The Global Fund Project implemented by The Union for the period 01 April 2016 – 31 March 2017 on the terms as provided in the Agreement dated 7<sup>th</sup> November 2017 and did not communicate with the Complainant firm before accepting the aforesaid audit and thus, has committed an act of Professional Misconduct falling within the meaning of Item (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

**CONCLUSION:**

15. The Board of Discipline, in view of the above, is of the considered view that the Respondent is **Gulity** of Professional Misconduct falling within the meaning of Item (8) of Part I of First Schedule to the Chartered Accountants Act, 1949.

Sd/-

CA. PRASANNA KUMAR D.  
(PRESIDING OFFICER)

DATE: 1<sup>st</sup> February, 2022

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प्रमाणित सत्य प्रतिलिपि / Certified true copy

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