



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

PR/174/13-DD/169/13-DC/505/16

**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.**

[PR/174/13-DD/169/13-DC/505/16]

In the matter of:

CA. Arvind Mohan Johari,
14, Premnagar,
Ashok Marg,
LUCKNOW - 226001

... Complainant

-Vs-

CA. Rajeev Kumar, (M. No. 072441)
2nd Floor, Shrawan Plaza, 1A
Sapru Marg (Opp. SSP Office),
LUCKNOW- 226001

..... Respondent

MEMBERS PRESENT:

- 1. CA. (Dr.) Debashis Mitra, Presiding Officer (Present in person)**
- 2. Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee (Present in person)**
- 3. CA. Rajendra Kumar P, Member (Present through Video Conferencing)**
- 4. CA. Cotha S Srinivas, Member (Present in person)**

DATE OF MEETING : 25.04.2022 (Through Physical/ Video Conferencing Mode)

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 dated 10.02.2022, the Disciplinary Committee was inter-alia of the opinion that **CA. Rajeev Kumar, (M. No. 072441)** (hereinafter referred to as the **Respondent**) was **GUILTY** of professional and/or other misconduct falling within the meaning of Item (2) of Part IV of First Schedule and Item (5),(6) & (7) of Part I & Item (1) of Part II of the Second Schedule to the Chartered Accountant Act, 1949 read with Section 22 of the Act.

2. The Committee noted that the Respondent was present at the ITO office of ICAI. The Respondent submitted that the loan was raised by a partnership firm but immovable property



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covered in the charge was contributed as capital by the Company. Since the charge does not involve any asset of the Company, hence he, by relying on the judgement of the Hon'ble Supreme Court, found no reason to report. He further stated that there was no revenue loss and it was a matter of simple reporting.

3. The Committee noted that the Respondent failed to report that a charge was created in the name of the Company, but the loan was disbursed to a partnership firm. The Committee also noted that in financial statements for the year ending 31.03.2008 and 31.03.2009 the name of Rajeev Aaron and Associates appeared in the list of Advances recoverable/adjustable, which proves that the Respondent/ his firm was indebted to the Company.

4. The Committee also noted that as per report by the inspecting officer dated 03rd June 2009, two directors were absconding, and no communication was served to them. The Committee noted that when directors were not available for attending any communication, then as to how they made themselves available for attending the director/shareholders' meeting of the Company. The Committee noted that the Respondent turned his eyes closed on these issues. Accordingly, the Committee observed serious lapses on the part of the Respondent while conducting his professional duties and his actions had brought disrepute to the profession. In the opinion of the Committee, the Respondent does not deserve any mercy.

5. Therefore, keeping in view the facts and circumstances of the case, material on record and submissions of the Respondent before it, the Committee ordered that the name of the Respondent - CA. Rajeev Kumar, (M. No. 072441) be removed from the Register of members for a period of 03 (Three) years along with fine of Rs. 5,00,000/- (Rupees Five Lakhs).

Sd/-

(CA. (DR.) DEBASHIS MITRA)
PRESIDING OFFICER

Sd/-

(MRS. RANI NAIR, I.R.S. RETD.)
GOVERNMENT NOMINEE

Sd/-

(CA. RAJENDRA KUMAR P)
MEMBER

Sd/-

(CA. COTHA S SRINIVAS)
MEMBER

Date: 01.06-2022

Place: New Delhi

एवं प्रमाणित किये कि सचिब सचिव /
Certified to be true copy

श्री. अरवि चण्डन / CA. Aravind Chandon
सचिव कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासन-निर्देशक / Disciplinary Director
The Institute of Chartered Accountants of India
आरविमोहन भवन, विश्वास नगर, शहदरा, दिल्ली-110032
ICAI Bhowan, Vishwas Nagar, Shehdra, Delhi-110032

CONFIDENTIAL

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

[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-174/13-DD/169/2013/DC/505/2016]

In the matter of:

CA. Arvind Mohan Johari,
14, Premnagar,
Ashok Marg,
Lucknow – 226 001

....Complainant

Versus

CA. Rajeev Kumar, (M. No. 072441)
2nd Floor, Shrawan Plaza, 1A
Sapru Marg (Opp. SSP Office)
Lucknow - 226 001

....Respondent

MEMBERS PRESENT:

CA. (Dr.) Debashis Mitra, Presiding Officer
CA. Amarjit Chopra, Government Nominee (Through VC)
CA. Babu Abraham Kallivayalil, Member (Through VC)

DATE OF FINAL HEARING : 17.08.2021
PLACE OF FINAL HEARING : ICAI Bhawan, Delhi

PARTIES PRESENT :

Counsel for the Respondent : CA. C.V. Sajan

CHARGES IN BRIEF:-

1. The Committee noted that in the present case the Respondent was held Prima-Facie Guilty by Director (Discipline) of Professional and/or Misconduct falling within the meaning of Item (2) of Part IV of First Schedule and Item (5),(6) & (7) of Part I and Item (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949 in respect of following charges:
 - a. The Respondent failed to disclose a charge of Rs. 100 crore against the immovable property in accounts audited by him of the Company for the financial year 2006-07, 2007-08 and 2008-09 and also failed to report that this charge has been illegally created by a person masquerading as a Director of the M/s Carlton Hotels (P) Limited, Lucknow [hereinafter referred to as the 'Company'].
 - b. The Respondent has failed to report that the Company is headless i.e. not having valid Directors and that all resolutions of Board & shareholders meetings of Company including his appointment as Statutory Auditor is void.
 - c. The Respondent's acceptance of appointment as statutory auditor of the Company is in gross violation of section 226(3) of the Companies Act, 1956 as he was indebted to the Company for Rs. 84,255/- as on 31st March,2009 as well as for Rs. 49,255/- as on 31st March,2008.
 - d. The Respondent has conducted audit on a back date and failed to report statutory violations.
 - e. The Respondent did certification of two sets of audited accounts for the same year.

BRIEF FACTS OF THE PROCEEDINGS:

2. On the day of final hearing on 17/08/2021, the Committee noted that the Complainant was not present before it, however, on behalf of the Respondent his Counsel CA. C V Sajan was present through Video Conferencing mode. The Committee noted that earlier this case was fixed on 13th July, 2021 and was adjourned on the request of the Complainant. The Committee looking into

continuous absence of the Complainant decided to conclude the hearing ex-parte the Complainant.

- 2.1 Accordingly, the Committee started the proceedings by enquiring from the Counsel of the Respondent that since the composition of the Committee had changed further to the hearing held on 16th March 2020, as to whether he wish to have a de-novo hearing. On the same the Counsel of the Respondent submitted that the Committee may continue its proceedings in his matter from the stage it was completed in the last hearing. The Committee acceded to his request and continued the hearing.
- 2.2 Thereafter, the Respondent presented his line of defense by presenting the arguments, among others, that he was not indebted to the Company and the mistake in the director report should not be made the basis of the complaint. The Committee posed certain questions to him to understand the issue involved and the role of the Respondent in the case. After considering all papers available on record and after detailed deliberations and recording the submissions, the Committee decided to conclude the matter.

FINDINGS OF THE COMMITTEE

3. With regard to first charge relating to failure of the Respondent to disclose a charge of Rs. 100 crore against the immovable property in accounts audited by him of the Company for the financial year 2006-07, 2007-08 and 2008-09 and also failure of the Respondent in reporting that this charge has been illegally created by a person masquerading as a Director of the Company, the Committee noted that the Respondent vide submission dated 14th June, 2017 had submitted that the Company was never involved in creating the charge. He further submitted that the Company had not borrowed any money from UCO Bank nor stood as any Guarantor for anyone. The Committee also noted that the Counsel of the Respondent in this regard had submitted that alleged charge document is filed by non-existent Director and challenges it to be a forged document. He further submitted that accordingly there was no need of disclosing the same by the Respondent.

- 3.1 The Committee in this regard noted that charge was created in name of UCO Bank and UCO Bank vide letter dated 13.03.2020 had confirmed that charge was created by M/s Carlton Hotels (P) Limited through it authorised signatories. Further UCO bank had also given date of disbursement of loan and closure date as under:

Limit Sanctioned (in Rs.)	1 st Disbursement date	Closure Date
Rs. 100.00 Crores	16.01.2007	28.02.2015
Rs. 30.00 Crores	10.10.2009	21.11.2015

- 3.2 The Committee looking into the above noted that charge was created by the Company and loan was duly disbursed also. Accordingly, the Committee was of the view that the submissions of the Respondent cannot be accepted and he was required to mention about this charge in the annexure to Audit Report for the year ending 31st March, 2007. The Respondent not only failed to exercise due diligence in conduct of his duties but also failed to disclose material fact in the financial statements. Accordingly, the Committee hold the Respondent **GUILTY** of this charge.
4. With regard to next charge relating to failure of the Respondent in reporting that the Company is headless i.e. not having valid Directors and that all resolutions of Board & shareholders meetings of the Company including his appointment as Statutory Auditor is void, the Committee also noted that the Respondent vide submission dated 14th June, 2017 had submitted that the report by an inspecting officer (on page C-150 of Prima facie opinion) was not sufficient to form an opinion. The Respondent in his later submissions submitted that although the Directors of the Company were alleged as absconders by the Investigating Officer(s), but the directors were always in action and hence there was no basis for assuming that the meetings of directors and shareholders did not take place. He further submitted that certificate on Secretarial Compliance filed by the Company gives clean chit so far as compliance of statutory

requirements with regards to adoption of accounts and convening of AGM are concerned.

- 4.1 On the merits of the case, the Committee noted that according to report by an Inspecting Officer dated 3rd June, 2009 (**on page C-150 of Prima facie opinion**) two directors were absconding since long and several notices were sent to them were unserved and phone calls made on their telephone/mobile number reveals that their mobile numbers are switched off and landline phones were not answered. The Committee hence was of view that when directors are not available for attending any communication then as to how they made themselves available for attending director/shareholders meeting of the Company.
- 4.2 The Committee further noted that for the year ending 31st March 2010 Form 20B, Form 23AC and 23ACA were filed on 20th April, 2013. The delay in filing of forms itself confirms the statement/report of the Inspecting Officer that Directors were absconding/ not available. The Committee viewed that the Respondent was required to submit his defence with more documentary evidence in this regard. Accordingly, the Committee viewed that the Respondent not only failed to exercise due diligence in conduct of his duties but also failed to disclose material fact in the financial statements. Accordingly, the Committee hold the Respondent **GUILTY** of this charge.
5. With regard to next allegation that the Respondent accepted the appointment as statutory auditor despite he was indebted to the Company for Rs. 84,255/- as on 31st March, 2009 as well as for Rs. 49,255/- as on 31st March, 2008, the Counsel of the Respondent argued that the name appearing in financials statements is of another person with same name.
- 5.1 The Committee noted that the Respondent vide his submission dated 14th June, 2017 had mentioned that the alleged entry was an error on the part of the accounts team and the adjustment accounting entry was forgotten to be passed by them and thus the debit balance was the result of an oversight and nothing was recoverable from the Respondent. The Committee hence noted that

submissions of the Counsel of the Respondent cannot be accepted as the same is clearly in contradiction with the further written submission of the Respondent available on record.

- 5.2 The Committee further noted that financial statements clearly depict name of Rajeev Aron and Associates in list of advances recoverable/ adjustable as on 31st March 2008 and 31st March 2009 which proves that the Respondent firm was indebted to the Company. The Committee viewed that the Respondent was required to submit his stand with documentary evidence in this regard.
- 5.3 Looking into failure of the Respondent in providing documentary evidence vis-à-vis apparent violation of Section 226(3)(d) of the Companies Act, 1956, the Committee decided to hold the Respondent **GUILTY** for Professional and/ or Other Misconduct falling within the meaning of Item (2) of Part IV of First Schedule and Item (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949 on this charge.
6. With regard to next allegation that the Respondent has conducted audit on a back date and failed to report statutory violations, the Committee noted that these were contentions of the Complainant only and were based on inquiry report of the Ministry of Corporate Affairs. The Committee looking into absence of corroborative evidence in support of the charge, decided to extend benefit in favour of the Respondent.
7. With regard to next allegation that the Respondent has conducted certification of two sets of audited accounts for the same year, the Committee noted that the contentions of the Complainant were based on the averment that since there were two Directors reports, therefore the Respondent might had conducted certification for two financial statements. The Committee noted that the Complainant failed to bring other set on record to prove his allegation/charge and hence the Committee was convinced with the submissions of the Respondent/ his Counsel. The Committee looking into absence of corroborative evidences decided to extend benefit in favour of the Respondent.

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CONCLUSION

8. In view of the above findings stated in above paras vis a vis material on record, the Committee is of the considered opinion that the Respondent is Guilty of charges mentioned in sub para a, b and c of para 1 above. Accordingly, the Committee hold the Respondent **GUILTY** of Professional and/or Misconduct falling within the meaning Item (2) of Part IV of First Schedule and Item (5),(6) & (7) of Part I & Item (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the Act.


sd/-
(CA. (Dr.) DEBASHIS MITRA)
PRESIDING OFFICER

approved & confirmed through email
(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

approved & confirmed through email
(CA. BABU ABRAHAM KALLIVAYALIL)
MEMBER

DATE: 10TH FEBRUARY, 2022
PLACE: NEW DELHI

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


बिष्व नाथ तिवारी / Bishwa Nath Tiwari
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक विभाग / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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