

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – IV(2022-2023)]

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

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

File No. :[PR/37/2016/DD/72/2016/DC/671/2017]

In the matter of:

**Ms .PunitaKhatte
205 B, Beverly Park 1
GURGAON – 122 002.....Complainant**

Versus

**CA. Neeraj Puri(M. No. 089976)
Partner, M/s I.M. Puri & Co (FRNo.006352N) Chartered Accountants
C-30, Chirag Enclave
NEW DELHI – 110 048 Respondent**

MEMBERS PRESENT:

**CA. (Dr.) Debashis Mitra, Presiding Officer (in person)
Shri Jiweh Nandan, I.A.S. (Retd.), Member, Government Nominee (in person)
Ms. Dakshita Das, IRAS (Retd.), Member, Government Nominee (in person)
CA. Mangesh P Kinare, Member (in person)
CA. Sripriya Kumar, Member (through Video- Conferencing Mode)**

DATE OF FINAL HEARING :13.10.2022

PARTIES PRESENT :

Complainant: Ms. PunitaKhatte(Through VC)

Respondent: CA. Neeraj Puri(Through VC)

Counsel for the Respondent: Mr. Ashish Makhija, Advocate alongwith Ms. Vaishnavi, Advocate (Through VC)





Charges in Brief:-

1. The Committee noted that in the Prima-Facie Opinion formed by Director (Discipline) in terms of Rule 9 of Professional and Other Misconduct falling within the meaning of Clause (11) of Part- I, Clause (2) of Part-IV of First Schedule and Clause (7) of Part – I of Second Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act.
2. The case was related to a complaint wherein allegations under which the Respondent was held Prima facie Guilty by the Director Discipline are as follows:
 - 2.1 That the Respondent has been engaged in other business/ occupation in addition to the profession of Chartered Accountancy without any permission from the Council of ICAI. It is alleged that the Respondent was working as Director of the Company, namely M/sPebblebrook Hospitality Private Ltd.
 - 2.2 The Respondent was interfering in the day-to-day functioning of the Company. It is observed that there is an email dated 8thFebruary, 2016 on record sent by the Respondent instructing to stop payment of remuneration to Mrs. Shalini Wadhwa, Chairperson of the Company with immediate effect.
 - 2.3 Falsification of the accounts of the Company ETPL by the Respondent wherein an amount of Rs. 75,00,000/- advanced as Loan to another group Company namely M/s RW Gaming Innovations Private Limited was shown as an investment. The Respondent had signed the balance sheets of both the Companies i.e. ETPL and M/s RW Gaming Innovations Private Limited for financial year 2011- 12 wherein in the balance sheet of ETPL, the said amount is shown as Investment while in the balance sheet of M/s RW Gaming Innovations Private Limited, the same is shown as a liability instead of showing the same under the head "share application money pending for allotment"- a specific category in the balance sheet.

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Brief facts of the Proceedings:

3. On the day of final hearing i.e. 13/10/2022, the Committee noted that the Complainant, Ms. Punita Khatter was present through Video Conferencing Mode. The Committee noted that the Respondent Mr. Neeraj Puri was also present along with his counsel Mr. Ashish Makhija, Advocate along with his assistant Ms. Vaishnavi through Video Conferencing Mode. The Committee noted that pursuant to change in the composition of the Committee subsequent to the hearing held on 1st June, 2022 in the instant case, the Counsel for the Respondent, in meeting of Committee held on 10th August 2022, opted for de novo hearing and accordingly both parties i.e. Complainant and the Respondent were administered on Oath in the said meeting; and thereafter, the charges against the Respondent, as given in para 2 to 2.3 above were read out and the Respondent pleaded Not Guilty to the charges levelled against him. The Committee noted that the instant matter was heard by the Committee since 2018 and was part-heard and adjourned on various occasions; and part heard by the Committee in the current year on 1st June 2022, 10th August 2022 and 26th August 2022.
- 3.1 Thereafter, the Committee asked the Complainant to brief the charges levelled against the Respondent. Accordingly, the Complainant presented the charges in detail. The Complainant inter-alia relied upon her various written submissions on record including the latest written submissions dated 13-09-2022. The Complainant presented her detailed oral submissions related to charges made in Prima Facie Opinion against the Respondent holding him guilty of Professional and Other Misconduct.
4. Thereafter, the Respondent's Counsel presented his defence by presenting the arguments on various charges levelled against the Respondent. He relied upon his various written submissions on record including latest written submissions dated 26/08/2022 and 09/09/2022. The Counsel for the Respondent in his submissions, explained his defence with respect to all the three charges made against the Respondent. The Counsel for the Respondent denied the allegations levelled against the Respondent and presented various documents in

support of his defence that the Respondent was not the internal auditor of the company. He also placed on record various documents through which he made his arguments before the Committee that the Respondent was not the Executive Director / Managing Director of M/s. Pebblebrook Hospitality Pvt. Ltd.

5. The Committee instructed the Complainant to substantiate the charges alleged against the Respondent and to present her case before it. The Complainant, while making her detailed oral submissions reiterated the facts mentioned in Prima Facie Opinion. Regarding first charge, she submitted that the letterheads of the Company were printed at Respondent's office, having e-mail ID, and phone number of the Respondent. She further alleged that the Respondent was directly involved himself in the setting up of Company by the name of M/s. Pebblebrook Hospitality Private Limited. The address of registered office of this Company is same as that of the office cum residential address of the Respondent.
6. The Counsel for the Respondents submitted that there has been a dispute *inter se* between the Directors and the Respondent as a Chartered Accountant has been caught in a crossfire between the partners/or the Directors. These Directors have also filed number of cases against each other at various Forums and these cases are still going on. Therefore, the auditor (i.e. Respondent) was easiest scapegoat against whom the complaint could be filed.
7. The Counsel for the Respondent further submitted that in the year 2014-15, the dispute amongst the directors went to Company Law Board and directors filed various petitions/applications and they have also roped the Respondent and the disputes became irreconcilable. In the year 2016, the Complainant's authority to operate bank account was also removed by Delhi High Court. The counsel for the Respondent further submitted that there was a complete non-cooperation at the behest of the Complainant because all the accountants were working under her directions.

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8. The Counsel for the Respondent also presented before the Committee various emails on records which reflected that the Respondent was not interfering in day-to-day affairs of the Committee. With regard to the third charge of share application money, the Counsel has mentioned that the said accounting treatment was made in compliance with the provisions as contained in paragraph 8.2 of the Revised Guidance Note on Schedule VI to the Companies Act, 1956 issued by ICAI.
9. As regards the allegation that the Respondent was also acting as the Internal Auditor-cum-Secretarial record keeper for the Company despite being statutory auditor of the Company, the Committee noted that the said allegation has been dealt with at the stage of formation of prima facie opinion by the Director (Discipline); and the Respondent was exonerated on this charge. The Committee noted the submissions of the counsel for the Respondent that the Respondent had signed the balance sheet of M/s. Pebblebrook Hospitality Pvt. Ltd. for the FY 2011-12 and after that period, he had not signed the balance sheet of the said company; and during the period under question, he had never acted as internal auditor of the said company and no engagement letter to that effect existed, and no proof to the contrary in order to substantiate the allegation has been brought on record.
10. The Committee noted that the Respondent has been held prima facie guilty of professional and other misconduct by the Director (Discipline) vide prima facie opinion dated 22.07.2017 in respect of three charges; and that the Committee would consider only these three charges.
11. Based on the documents/material as available on record and after considering the detailed submissions – written as well as oral, of both the parties and facts and circumstances of the case, the Committee concluded hearing in the captioned matter and arrived at the following findings.

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Findings of the Committee

12. The Committee noted that the first charge against the Respondent was that he was working as director of the Company viz. M/s. Pebblebrook Hospitality Pvt. Ltd. in addition to practicing the profession of Chartered Accountancy without obtaining specific permission from the Council of ICAI thus having engaged in other business / occupation. In this respect, the Counsel for the Respondent inter-alia submitted that it can be observed from Form 32 filed with the Registration of Companies that the name of the Respondent was appearing therein as a director who has resigned from the Company with effect from 15th March 2013. The Respondent became Director in this Company on 11th July, 2012 and resigned on 15th March, 2013. The Respondent was Director of this company for almost eight months and this Company did not do any business in said period and the Respondent was a Director Simpliciter. With regard to the allegation that the Respondent was acting as the Executive Director of this Company, the attention of the Committee was drawn by the Counsel for the Respondent to Form 32 filed for cessation as Director of the company by the Respondent with Registrar of Companies which clearly showed that the Respondent had resigned from the company with effect from 15.3.2013 as a "Director" of the Company. The counsel for the Respondent submitted that the resignation letter dated 15.03.2013 of the Respondent mentioning resignation as "Director / Managing Director / whole-time Director" of the company was standard format of the letter and the same be correlated with the decision taken at the Extra ordinary General Meeting of the members of the Company on 11.07.2012 appointing the Respondent as 'Non Executive, Part time Director' of the company and Form 32 filed for cessation of the Respondent as 'Director' of the company with the Registrar of Companies. The Committee felt that the wordings in the resignation letter dated 15.03.2013 of the Respondent per se did not prove the charge that the Respondent was executive or managing director of the company.

12.1 The Counsel for the Respondent submitted the duly notarised affidavits dated 03/01/2018 filed by Mr. Rahul Rajput and Mr. Lalit Kumar respectively stating therein that they had filed and digitally signed Form 32 for appointment of Mr.

Neeraj Puri as Director of the Company Pebblebrook Hospitality Pvt. Ltd. with effect from July 11,2012 on the MCA portal. Having re-verified the copies of documents, drafts available with them and confirm that the said form had an inadvertent error of ticking the "Executive" box instead of "Non – Executive" box. It was an inadvertent error by oversight and may kindly be treated accordingly.

The Committee noted that the submissions of the counsel for Respondent that the Respondent was Director in M/s. Pebblebrook Hospitality Pvt. Ltd. from 11th July, 2012 to 15th March, 2013, and in Form-32 relating to Particulars of appointment of Managing Director, Directors etc., of the company, the designation of Respondent has been shown as 'Director' and then the box "Executive Director" has been tick-marked and selected to be made effective from 11th July, 2012. In Form-32 relating to cessation of Managing Director, Directors etc. of the Company to be made effective from 15th March 2013, the designation of Respondent has been shown as 'Director' and the further details as to category of 'Chairman' 'Executive Director' or Non-Executive Director' has been left blank and not selected. The Respondent had submitted to ICAI on 26-08-2022 along with other documents, the copies of the affidavits signed and notarised on 03-01-2018 by Mr. Rahul Rajput and Mr. Lalit Kumar respectively. M/s Pebblebrook Hospitality Pvt. Ltd. was incorporated on 11-07-2012. Mr. Rahul Rajput in his affidavit verified and notarised on 03-01-2018 has stated that he had filed and digitally signed Form 32 for Appointment of Mr. Neeraj Puri as Director of M/s. Pebblebrook Hospitality w.e.f. 11-07-2012 on MCA portal; and after re-verification of documents, he had confirmed that the said Form 32 had an inadvertent error by oversight of ticking the "Executive" box instead of the "Non-Executive" box. Further, Mr. Lalit Kumar in his affidavit verified and signed on 03-01-2018 has stated that he had digitally signed as a Professional, Form 32 for appointment of Mr. Neeraj Puri as Director of M/s. Pebblebrook Hospitality Pvt. Ltd. w.e.f. 11-07-2012 on MCA portal; and after re-verification of documents, he had confirmed that the said Form 32 had an inadvertent error by oversight of ticking the "Executive" box instead of the "Non-Executive" box.

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12.2 The respondent also brought on record copy of resolution passed by at the Extra Ordinary General Meeting of the Members of the Company in its meeting held on 11/07/2012 appointing the Respondent as Non-Executive / Part-time Director of the company and certified by the Director Ms. Bhanu Nisha. Further, there is consent letter dated 11/07/2012 of the Respondent, wherein he had consented to act as a part time Non-Executive director of the Company.

12.3 The Committee noted the submissions of the Respondent that the email dated 15.03.2013 sent by the Respondent to certain persons asking to transfer funds which is alleged to be pointing towards involvement of the Respondent in day-to-day affairs of the company, was on behalf of the firm of Chartered Accountants; and the said email did not establish that the Respondent had any powers, explicit or implicit of management and therefore the Respondent cannot be treated as deemed managing/executive Director. The Committee felt that the email dated 15/03/2013 sent by the Respondent per se does not substantiate the fact of the involvement of Respondent in day-to-day affairs of the Company; or prove the allegation that he was an Executive Director of the Company. The Committee further noted the submissions of the Respondent that the registered address of the Company, viz.C-30, Chirag Enclave, New Delhi – 110048, which is also the professional address of the Respondent, was lent by the father of Respondent to the Company to facilitate its registration and to extend help in starting a new project; for which the Respondent could not be held responsible and the fact that the registered address of company and the professional address of Respondent being same does not prove or substantiate the charge that the Respondent was the Executive/Managing Director of the Company.

12.4 As regards the allegation that the Respondent being a Director in the Company viz. M/s. Omnicom Indian Marketing Advisory Services Pvt. Ltd., had signed the balance sheet of the Company, the Committee noted the submissions of the Respondent that the Respondent was not appointed as auditor of the M/s. Omnicom Indian Marketing Advisory Services Pvt. Ltd. but was only a non-executive Director in the said company. Further, for the purpose of

appointment as non-executive Director in a Company, specific permission of the Council of ICAI was not required to be obtained. The Committee noted that the Respondent had brought on record the certified copy of the Resolution passed in the Extra Ordinary General Meeting of the Members of Omnicom India Marketing Advisory Services Pvt. Ltd. held on 14.04.2007, through which Mr. Neeraj Puri (Respondent herein) was appointed as Non-Executive / Part-time Director of the Company w.e.f. 15.04.2007. The Committee, taking note of the said proof adduced by the Respondent, was of the view that the Respondent was appointed only as non-executive / part-time Director of the Company; and there was no other document to conclusively prove that the Respondent was not a non-executive director but was the managing director / executive director of the said company.

12.5 This brings to the question as to whether it can be said, in the given contextual situation, that the Respondent was engaged in other business/occupation falling within the meaning of clause (11) of Part I of First Schedule to the Chartered Accountants Act, 1949. The Committee noted that members in practice have been generally permitted by ICAI to become an ordinary / simple Director of any company who is not a Managing Director or Whole-time Director; and members are not required to obtain specific permission of the Council in such cases.

12.6 The Committee was of the view that the Respondent was appointed only as Director-Simpliciter in M/s. Pebblebrook Hospitality Pvt. Ltd w.e.f. 11.07.2012 and he resigned from the company as Director w.e.f. 15.03.2013 and was not drawing any monthly remuneration as applicable to 'Executive Director'. The Resolution of the Extra Ordinary General Meeting of the Members of the Company held on 11.07.2012 clearly mentioned that Mr. Neeraj Puri (Respondent herein) has been appointed as non-executive / part-time Director in professional capacity. Ms. Bhanu Nisha who signed the certified copy of the resolution was the Director of the Company. The Committee noted that the mistake which had kept in while filing Form 32 with the Registrar of Companies is due to inadvertence; and no evidence existed to conclusively demonstrate that the Respondent acted as "Managing/Executive Director" of the Company.

The Committee opined that no necessary inference arises from the mere fact of mentioning 'Director' in Form 32 filed with the Registrar of Companies at the time of cessation as Director or mentioning 'Director/Managing Director/Whole-time Director' of the company by the Respondent in his resignation letter dated 15.03.2013 or the address of registered office of the company is same as of the professional address of the respondent firm, that the Respondent was actually an executive / managing director of the company. The Committee therefore concluded that the provisions of clause (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949 have not been infringed by the Respondent.

12.7 In view of above noted findings, the Committee opined that it was an inadvertent error on the part of Mr. Rahul Rajput and Mr. Lalit Kumar while filing Form 32 for the appointment of the Respondent as Director of M/s. Pebblebrook Hospitality Pvt. Ltd. that they wrongly ticked "Executive" box instead of the "Non executive" box in said Form 32; and that the Respondent was a part-time / Non-Executive Director in the said company. The Committee noted that in the Code of Ethics, it is clearly mentioned that a Chartered Accountant in practice holding a Certificate of Practice is also allowed to act as a part-time / non-executive Director and no specific permission from the Council is required in this regard. Therefore, the Committee dismissed the said charge against the Respondent.

13. With regard to the next charge that the Respondent was interfering in the day-to-day functioning of the Company, the Committee noted the submissions of the Counsel for the Respondent that the audit was conducted by the Respondent till 31stMarch, 2015 and the e-mail which is relied upon in the allegation was dated 12thMay, 2015 addressed to the Complainant asking her to stop remuneration to Mrs. Shalini Wadhwa and the Respondent had not signed the balance sheet of this Company after 31stMarch, 2012 and thus, this email was not relevant. The Counsel for Respondent submitted that Ms. Shalini Wadhwa was based out of India and the Respondent was her tax consultant and so in good faith the Respondent had passed the message through said email that does not mean that he was interfering or managing the affairs of the Company.

13.1 The Committee observed that with regard to this allegation, there is nothing on record except email communication exchanged between the Respondent and the Complainant. It is noted that through said email dated 12/05/2015, the Respondent had informed the Complainant to stop payment of remuneration to Mrs. Shalini Wadhwa with due intimation to Mrs. Shalini Wadhwa also and said mail was then exchanged by the Complainant to the Company on 08/02/2016. In view of this, it is observed that the Respondent had not made direct communication/instruction to the auditee Company but had just passed a message in good faith to the Complainant, which did not tantamount that the Respondent was interfering in the day-to-day functioning of the Company. Further, the Respondent had also brought on record the letter dated 18.12.2017 of Ms. Shalini Wadhwa addressed to the Respondent in which the former had mentioned that she was in talks with the then Managing Director of the company viz. Ms. Punita Khatter (complainant herein), regarding discontinuation of her salary from the company in 2015-16; and during her visit abroad, in the course of a telephonic discussion with the Respondent, due to paucity of time, she had requested the Respondent to pass on a message to the Complainant. The Committee, noting the above, found that the Respondent had just passed on a message of Ms. Shalini Wadhwa to the Complainant vide his email dated 12.05.2015, and such an act did not conclusively prove that the Respondent was interfering in the day-to-day functioning of the company. Moreover, the complainant failed to bring on record any other corroborative evidence in this regard before the Committee. The Committee in the absence of any strong evidence in support of the allegation decided to extend the benefit of doubt in favor of the Respondent and exonerated the Respondent from this charge and held him not guilty of Other Misconduct falling within the meaning of clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949.

14. The next and last charge against the Respondent relates to falsification of the accounts of the Company M/s. ETTPL by the Respondent wherein an amount of Rs. 75,00,000/- advanced as Loan to another group Company namely M/s RW Gaming Innovations Private Limited was shown as an investment. The Committee noted the defense of the Counsel for the Respondent in this regard

that as per the government notification dated 30th March, 2011, the revised Schedule VI was applicable for the balance sheet and profit and loss account to be prepared for the financial year commencing on or after 1st April, 2011. So, for the 2011-12 financial year, this new Guidance Note on revised Schedule VI to the Companies Act was applicable and as per provisions of said Guidance Note regarding share application money pending allotment, Share application money pending allotment is to be disclosed as a separate line item on the face of the balance sheet between shareholders' funds and non-current liabilities. Share application money not exceeding the issued capital and to the extent not refundable is to be disclosed under this line items. If the company's issued capital is more than the authorized capital and the approval of the increase in authorized capital is pending, the amount of the share application money received over and above the authorized capital should be shown under the head 'other current liabilities and in compliance with the guidance note, the said amount as been shown under the head 'current liability'.

14.1 The Committee referred to the Guidance Note on the Revised Schedule VI to the Companies Act, 1956 issued by ICAI and observed as under:-

8.2. Share Application Money pending allotment

8.2.1. Share Application money pending allotment is to be disclosed as a separate line item on the face of Balance Sheet between "Shareholders' Funds" and "Non-current Liabilities". Share application money not exceeding the issued capital and to the extent not refundable is to be disclosed under this line item. If the company's issued capital is more than the authorized capital and approval of increase in authorized capital is pending, the amount of share application money received over and above the authorized capital should be shown under the head "Other Current Liabilities".

14.2 The Committee further noted the submissions of the counsel for the Respondent that a legal notice dated 18.01.2016 was issued to M/s. R W Gaming Innovations Pvt. Ltd. and its Directors at the behest of the

Complainant through her Advocate informing that despite their client having invested the amount of Rs. 75,00,000/- in 750,000 equity shares of the company, no share certificates have been issued to the complainant so far despite repeated requests; and therefore, the share certificates for 750,000 equity shares be issued to the complainant within 15 days failing which recourse to legal remedies will be taken. The Committee also noted the submissions of the counsel for Respondent that the complainant in her present complaint has alleged that the Respondent has falsified accounts with respect to an amount of Rs.75,00,000 which was advanced as a loan to M/s. R W Gaming Innovations Pvt. Ltd. but has stealthily got the said amount shown as an investment in the books of accounts of the complainant; and looking into the contradictory stand of the complainant herself as taken in the legal notice and the present complaint, it could be clearly seen that the present complaint is without substance and evidence.

- 14.3 In view of the provisions as contained in the said Guidance Note, the Committee agreed with the submissions of the Counsel for the Respondent and was of the view that there was no fault on the part of the Respondent to treat the said share application money pending allotment as 'current liability' and the Respondent had only complied with the provisions of the Guidance Note on Revised Schedule VI issued by ICAI. Thus, the Committee held the Respondent not guilty of professional misconduct on this charge falling within the meaning of clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

Conclusion:

15. In view of the above findings, considering the arguments and submissions of the parties, and documents on record, the Committee found that the Respondent is **NOT GUILTY** of Professional and Other Misconduct falling within the meaning of Clause (11) of Part- I, Clause (2) of Part-IV of First Schedule and Clause (7) of Part – I of Second Schedule to the Chartered Accountants Act, 1949.

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Order:

16. Accordingly, in terms of Rule 19(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee passed Order for CLOSURE of this case against the Respondent.

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Sd/-
(CA. (DR.) DEBASHIS MITRA)
PRESIDING OFFICER

Sd/-
(SHRI JIWESH NANDAN, I.A.S. (RETD.))
GOVERNMENT NOMINEE, MEMBER

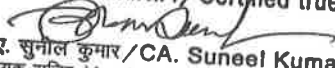
Sd/-
(MS. DAKSHITA DAS, IRAS (RETD.))
GOVERNMENT NOMINEE, MEMBER

Sd/-
(CA. MANGESH P KINARE)
MEMBER

Sd/-
(CA. SRIPRIYA KUMAR)
MEMBER

DATE: 16.01.2023

PLACE: NEW DELHI

प्रमाणित सत्य प्रतिलिपि / Certified true copy

सी.ए. सुनील कुमार / CA. Sunee Kumar
सहायक सचिव / Assistant Secretary
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ़ चार्टर्ड एकाउंटेंट्स ऑफ़ इंडिया
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