



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

[PR/12/19-DD/60/19-DC/1328/2020]

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/12/19-DD/60/19-DC/1328/2020]

In the matter of:

CA. Sitaram Pareek (M.No.016617),

Partner, M/s. Sarda & Pareek, Chartered Accountants

Mahavir Apartments,

Third Floor, 598, M G Road

Near Suncity Cinema, Vile Parle (East)

Mumbai- 400057

.....Complainant

Versus

CA. Sitaram M. Bhat (M.No.030696),

Proprietor, M/s S.M. Bhat & Associates,

Chartered Accountants

Office No.3, Ish Prasad old Police Lane,

Andheri (East)

Mumbai - 400055

.....Respondent

MEMBERS PRESENT:

1. **Mrs. Rani Nair, I.R.S. (Retd.), Presiding Officer and Government Nominee** (Present through Video Conferencing mode)
3. **Shri Arun Kumar, I.A.S. (Retd.), Government Nominee** (Present in person)
4. **CA. Rajendra Kumar P, Member** (Present in person)
4. **CA. Cotha S Srinivas, Member** (Present in person)

DATE OF MEETING : 27.12.2022 (Through 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 31st October 2022, the Disciplinary Committee was inter-alia of the opinion **CA. Sitaram M. Bhat (M.No.030696), Mumbai** (hereinafter referred to as the **Respondent**) was **GUILTY** of professional

CA. Sitaram Pareek (M.No.016617), Partner, M/s. Sarda & Pareek, Chartered Accountants, Mumbai -Vs- CA. Sitaram M. Bhat (M.No.030696), Mumbai



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misconduct falling within the meaning of Item (8) of Part I of the First Schedule and Item (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

2. The Committee noted that the Respondent was not present before it; he, however, vide his e-mail dated 27th December 2022 had submitted that he is 76 years old, and has health issues. He further requested for a lenient view in his matter. The Committee noted that this case was earlier fixed on 7th December 2022 and was adjourned at the request of the Respondent. The Committee on consideration of the request of the Respondent vide his email dated 27th December 2022, decided to proceed with this case ex-parte with the Respondent.

3. The Committee further noted that the Respondent in his submission dated 27th December 2022 had also stated that, as per his client, they had paid all the dues and the balance payable is in dispute. The Committee also observed that the Respondent had already admitted his mistake relating to non-communication with the Complainant.

4. The Committee, while considering the age and ill health of the Respondent and request of the Respondent to deal his case sympathetically, decided to give reasonable a punishment to commensurate with his above professional misconduct.

5. Therefore, keeping in view the facts and circumstances of the case, the material on record, and the submissions of the Respondent before it, the Committee ordered that the name of the Respondent - CA. Sitaram M. Bhat (M.No.030696), Mumbai, be reprimanded along with a fine of Rs. 1,00,000/- (Rupees One Lakh only).

sd/-

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

PRESIDING OFFICER & GOVERNMENT NOMINEE

sd/-

(SHRI ARUN KUMAR, I.A.S. RETD.)

GOVERNMENT NOMINEE

sd/-

(CA. RAJENDRA KUMAR P)

MEMBER

sd/-

(CA. COTHA S SRINIVAS)

MEMBER

DATE: 11.02.2023

PLACE: NEW DELHI

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

नीलम पुंडीर / Neelam Pundir
कार्यकारी अधिकारी / Executive Officer

CA. Sitaram Pareek (M.No.016617), Partner, M/s. Sarda & Pareek, Chartered Accountants, Mumbai -Vs- CA. Sitaram M. Bhat (M.No.030696), Mumbai

The Institute of Chartered Accountants of India
आईसीएआर भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

CONFIDENTIAL

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

[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/12/19-DD/60/19-DC/1328/20]

In the matter of:

**CA Sitaram Pareek (M. No. 016617),
Partner, M/s. Sarda & Pareek Chartered Accountants
Mahavir Apartments,
Third Floor, 598, M G Road
Near Suncity Cinema, Vile Parle (East)
MUMBAI – 400057.**

.....Complainant

Versus

**CA. Sitaram Mahabaleshwar Bhat (M.No.030696)
Proprietor, M/s S.M. Bhat & Associates,
Chartered Accountants
Office no. 3, Ish Prasad old Police Lane,
Andheri (East)
MUMBAI 400055.**

.....Respondent

MEMBERS PRESENT:

**CA. (Dr.) Debashis Mitra, Presiding Officer (Present in person)
Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee (Present in person)
Shri Arun Kumar, I.A.S.(Retd.), Government Nominee (Present in person)
CA. Cotha S Srinivas, Member (Present through Video Conferencing Mode)**

DATE OF FINAL HEARING : 05.08.2022 (through physical/video conferencing mode)

PARTIES PRESENT :

**Complainant: CA Sitaram Pareek (Through Video Conferencing Mode)
Counsel for the Respondent: CA. G. Sathyanarayana (Through Video Conferencing Mode)**

CHARGES IN BRIEF:-

1. The Committee noted that the Respondent was held Prima-Facie Guilty by the Director (Discipline) of Professional Misconduct falling within the meaning of Item (8) of Part I of the First Schedule and Item (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949 on charge that the Respondent accepted the statutory audit of M/s Akshaet Engineering and Construction Services Private Ltd (hereinafter referred to as the "Company") for financial year 2016-17 without communicating with the Complainant being the previous auditor and without ensuring payment of outstanding undisputed audit fee of the Complainant.

BRIEF FACTS OF THE PROCEEDINGS:

2. On the day of the final hearing held on 05th August 2022, the Committee noted that the Respondent's Counsel, CA. G. Satyanarayana was present through Video Conferencing Mode. The Committee noted that the Complainant was also present through Video Conferencing Mode.
 - 2.1 Thereafter, the Committee enquired from the Counsel of the Respondent as to whether he was aware of the charges against the Respondent. On the same, the Counsel of the Respondent replied in the affirmative and pleaded Not Guilty to the charges on behalf of his client. The complainant was administered on oath.
 - 2.2 The Committee asked the Complainant to open the charges. Thereafter, the Respondent's Counsel presented his line of defense by presenting the arguments and 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. The Committee noted the Respondent's Counsel while explaining the charges submitted that the Company, i.e. Akshat Engineering & Construction Service Pvt.

Ltd. had approached the Complainant firm a number of times to resolve pending fees with them. However, the Company failed to come to any conclusion and the Company had no option but to appoint another Chartered accountant to avoid heavy penalty for non-filing of its returns with ROC. In these circumstances, the Company approached the Respondent to audit the final accounts for Financial Year 2016-17, which the Respondent did to save his client from financial loss.

4. The Committee on perusal of papers on record noted that the Complainant was the statutory auditor of the Company until the financial year 2015-16. The Complainant firm vide letter dated 10th October, 2016 (**Page C-23 of Prima-facie opinion**) tendered resignation. Thereafter, the Company appointed one M/s JMK & Co as its auditor. The Complainant mentioned that vide letter dated 16th December, 2016 (**Page C-23 of Prima-facie opinion**) he issued NOC to M/s JMK & Co. subject to clearance of his outstanding dues. On 15th April 2017, the Complainant wrote a letter to M/s JMK & Co. to clear outstanding dues before accepting the statutory audit as they had signed the tax audit report for the financial year 2015-16. In response to the same, M/s JMK & Co. vide letter dated 24th April, 2017 (**C-26 to C-27**) informed the Complainant that they have not accepted the statutory audit of the Company.
5. The Committee noted that the Company had appointed the Respondent vide letter dated 16th August 2017, which was duly accepted by the Respondent vide his letter dated 17th August 2017. The Respondent has issued and signed an audit report along with financial statements on 2nd September 2017.
6. The Committee also noted that the Complainant came to know about the appointment of the Respondent on verification of the ROC website. The Committee noted that the Complainant vide letter dated 18th September 2018, (**C-10**) had communicated to the Respondent regarding non-communication and pending fees.
7. The Committee noted that as regards communication with the previous auditor is concerned, according to provisions of Item (8) of part I of the First Schedule to

the Act, the incoming auditor must communicate with the outgoing auditor in writing as reproduced below:

“a) A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he -

Item (8) of Part I of First Schedule: *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;”*

Besides, the “Code of Ethics” (2009 edition) for the Chartered Accountants too emphasizes in this regard in following manner:

‘It must be pointed out that the professional courtesy alone is not the major reason for requiring a member to communicate with the existing accountant who is 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. The object of the incoming auditor, in communicating with the retiring auditor is to ascertain from him whether there are any circumstances which warrant him not to accept the appointment.’

8. The Committee, in view of the above, noted that it is abundantly clear that before acceptance of the audit, the Respondent was required to have NOC from the previous auditor i.e., the Complainant in his hand. The Committee also noted the submission of the Respondent dated 13th August 2021 wherein he admitted that he failed to take NOC from the Complainant firm. Further, no evidence was brought on record by the Respondent to establish that he communicated with the Complainant before accepting the audit. The Committee looking into the

acceptance of the Respondent for not communicating with the Complainant before accepting the audit decided to hold him guilty of Professional Misconduct falling within the meaning of Item (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

9. As regards to the second charge relating to non-payment of undisputed outstanding fee, the Counsel for the Respondent submitted that after the Respondent conveyed it to his client, the latter approached the Complainant firm and offered them to pay fees, but the Complainant firm did not accept the offer and demanded a huge amount. The Committee accordingly noted that payment of fee to the Complainant Firm remained unpaid.
10. The Committee noted that as per Council General Guidelines, 2008 dated 08.08.2008, the provisions of audit fees made in accounts signed by both the auditor and the auditee shall be considered as "undisputed" audit fees. The Council General Guidelines, 2008 further states that a member in practice shall be deemed to be guilty of professional misconduct, if he accepts the appointment as an 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.
11. The Committee noted that in the present case, the Respondent had admitted that dues of the Complainant were not paid due to deadlock between his client and the Complainant. The Committee looking into the same, concluded that there was a clear cut violation of Council General Guidelines, 2008 dated 08.08.2008 as the Respondent accepted the audit before payment of fee of the Complainant. Accordingly, the Committee held the Respondent guilty of Professional Misconduct falling within the meaning of Item (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

CONCLUSION

12. In view of the above findings stated in the above para's vis a vis material on record, the Committee, in its considered opinion, holds the Respondent is

GUILTY of Professional Misconduct falling within the meaning of Item (8) of Part I of the First Schedule and Item (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

sd/-

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

sd/-

(SMT RANI NAIR, IRS (RETD.)
GOVERNMENT NOMINEE

sd/-

(SHRI ARUN KUMAR, IAS (RETD.)
GOVERNMENT NOMINEE

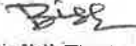
sd/-

(CA. COTHA S. SRINIVAS)
MEMBER

DATE : 31.10.2022

PLACE : NEW DELHI

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