

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2022-2023)]
[Constituted under Section 21B of the Chartered Accountants Act, 1949]

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

File No. : [PR-400/18-DD/14/2019/DC/1477/2021]

In the matter of:

CA. Dinesh Sanwarmal Chaudhary (M.No.044741)

M/s Dinesh Chaudhary & Co.

Chartered Accountants

1002 Hubtown Solaris, N.S.Phadke

Marg, Andheri (East)

MUMBAI – 400069

.....Complainant

Versus

CA. Chirag Pravin Patel (M.No.128407)

M/s C.P.Patel & Associates

Chartered Accountants

A-702, JVM Olive, Bhayanderpada,

Near Lodha Splendora, G.B. Road,

THANE (WEST) – 400615

.....Respondent

MEMBERS PRESENT:

Mrs. Rani Nair, I.R.S. (Retd.), Presiding Officer and Government Nominee
(Present in person)

Shri Arun Kumar, I.A.S.(Retd.), Government Nominee (Present in person)

CA. Rajendra Kumar P, Member (Present through Video Conferencing)

CA. Cotha S Srinivas, Member (Present in person)

DATE OF FINAL HEARING : 07.12.2022 (through physical/video conferencing mode)

PARTIES PRESENT :

Complainant: CA. Dinesh S. Chaudhary (Through Video Conferencing Mode)

Respondent: CA. Chirag P. Patel (Through Video Conferencing Mode)

Counsel for the Respondent: Shri S.G. Gokhale, Advocate (Through Video Conferencing Mode)

Handwritten signatures:
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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 (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949 on the charge that the Respondent accepted the tax and statutory audit of the M/s Supreme Transport Organization Pvt. Ltd. (hereinafter referred to as the "Company") for the Financial Year 2017-18 without considering the written objection raised by the Complainant regarding non-payment of his audit fee.

BRIEF FACTS OF THE PROCEEDINGS:

2. On the day of the final hearing held on 07th December 2022, the Committee noted that the Respondent alongwith his Counsel Shri. S G Gokhale was present at BKC office of ICAI at Mumbai. The Complainant was present through Video Conferencing mode. The Committee asked the Respondent whether he is aware about the charge against him. The Respondent replied in affirmation and pleaded not guilty.
3. Both the parties made their submissions before the Committee. The Committee posed certain questions to both parties to understand the issue involved and the role of the Respondent in the case. Thereafter, the Committee gave the directions to the Complainant to submit documents/ information related to Ledger account of the Company in books of the Complainant for year 2016-17, 2017-18 and 2018-19. With the above, the Committee decided to conclude the hearing by reserving the judgment in the instant matter.
4. Thereafter this matter was placed in hearing held on 27th December 2022 wherein the same members, who heard the case earlier, were present for consideration of the facts and arriving at a decision by the Committee. The Committee noted that instant case was concluded on 7th December 2022 and the decision of the bench was kept reserved on account of further clarification/documents from the

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Complainant. The Committee noted that the Complainant vide email dated 10th December 2022 had submitted the requisite documents. Keeping in view the facts and circumstances of the case, material on record and submissions of the parties the Committee passed its judgement.

FINDINGS OF THE COMMITTEE

5. The Committee noted that the Complainant was the tax auditor as well as statutory auditor of the Company i.e. M/s Supreme Transport Organization Pvt. Ltd. for the financial year 2016-17. The Committee also noted the Respondent, before accepting audit of the Company, vide his letter dated 27th September 2018 sought NOC from the Complainant (page C-2 of the prima-facie opinion). In response to the same, the Complainant vide his letter dated 28th September 2018 objected to such appointment of the Respondent in the Company due to pending fee of the Complainant amounting to Rs.4,63,940/- plus Interest and Rs.9,65,000/- plus GST for the F.Y.s 2016-17 and 2017-18 respectively. The Complainant also submitted to the Respondent that apart from those dues, fee is also pending for work done by him with respect to the individuals and two another private limited company.
6. The Committee noted that crux of the matter is that inspite of the such objection raised by the Complainant, the Respondent accepted such appointment as auditor in the Company for the F.Y.2017-18 and this fact has been admitted by him in his written statement.
7. The Committee on perusal of the Balance sheet of the Company for the Financial year ended 31st March 2017 (Page D-67 of prima-facie opinion) observed that an amount of Rs. 7,13,000/- has been shown as payable to the Complainant under the head 'Trade Payables'. The Committee noted that apart from this nothing was disclosed in the Balance Sheet pending amount due to the Complainant.

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8. The Committee noted that the Complainant vide his letter dated 10th December 2022 had submitted that audit for the Financial Year 2016-17 was completed in September 2017 and hence the bill for audit fee of financial year 2016-17 was raised in 2017. He accordingly concluded that fee of Rs. 4,63,490/- is still outstanding for F.Y. 2016-17. He also submitted copies of his ledger account and copy of invoices raised by him on the Company.
9. As regards plea of the Complainant that bill of fee of F.Y. 2016-17 was raised in 2017, noted that the Complainant himself in tax audit report of the Company for the F.Y. 2016-17 had mentioned that method of accounting as "mercantile" (page D-28 of prima-facie opinion). Hence, he was required to show the audit fee in books of the Company in the financial year 2016-17 itself.
10. As regards voucher submitted by the Complainant, the Committee noted that the vouchers are computer generated and none of the voucher contains any stamp/ signature to establish that the same is received by the Company.
11. The Committee on perusal of the same noted that Chapter VII of Council Guidelines No. 1-CA (7)/02/2008, dated 8th August, 2008 states as under:

"A member of the Institute in practice shall not accept the appointment as auditor of an entity in case the undisputed audit fee of another Chartered Accountant for carrying out the statutory audit under the Companies Act, 1956 or various other statutes has not been paid:

***Provided** that in the case of sick unit, the above prohibition of acceptance shall not apply.*

Explanation 1:

For this purpose, the provision for audit fee in accounts signed by both - the auditee and the auditor shall be considered as "undisputed" audit fee.

Explanation 2:

For this purpose, "sick unit" shall mean where the net worth is negative."

12. On perusal of papers and documents on record, the Committee noted that the amount of audit fee was paid to the outgoing auditor by the auditee company and

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the amount which according to the Complainant was claimed to be, was compliance work other than audit work done by the Complainant. The Committee draws reference to the Council General Guidelines, 2008 dated 08.08.2008 which clearly 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. (Emphasis drawn).

13. The Committee noted that the Council guidelines are very categorical regarding the payment restricted to "undisputed audit fee" only nor any other compliance fee. The Committee hence opined that maximum undisputed amount due to the Complainant based balance sheet signed by the Company and the Complainant can only Rs. 7,13,000/-.
14. As regards payment of amount of Rs. 7,13,000/- is concerned, the Counsel for the Respondent submits that prior to the appointment of Respondent in September 2018, this outstanding amount was paid by two entries which is duly reflected in HDFC bank account statement amounting to Rs. 2,00,000/- and Rs.5,00,000/- on 12th December 2017 and 7th February 2018 respectively. He also brought on record copies of concerned bank statements. The Complainant also did not dispute the amount of Rs.7,00,000/- received from the Respondent.
15. The Committee, accordingly, finds no merits in the argument of the Complainant and opined that the amount of undisputed audit fee was paid by the Company before acceptance of appointment for audit by the Respondent.

CONCLUSION

16. In view of the above findings stated in above para's vis a vis material on record, the Committee in its considered opinion, holds the Respondent is **NOT GUILTY** of Professional Misconduct falling within the meaning of Item (1) of Part II of the

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Second Schedule to the Chartered Accountants Act, 1949 with respect to charge mentioned in para 1 above.

17. 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 passes Order for closure of this case against the Respondent.

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

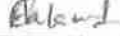
Sd/-
(SHRI ARUN KUMAR, I.A.S. RETD)
GOVERNMENT NOMINEE

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



अरुण कुमार / Arun Kumar
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक विभाग / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्डेड अकाउंटेंट्स ऑफ इंडिया
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