

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.: [PPR/P/94/2016/DD/80/INF/16/BOD/593/2021]

CORAM: (Present in Person)

CA. Rajendra Kumar P, Presiding Officer

Ms. Dolly Chakrabarty (IAAS, retd.), Government Nominee

In Re:

CA. Rajkumar S. Adukia (M.No.034769), Mumbai

DATE OF FINAL HEARING : 29th March, 2023

PLACE OF FINAL HEARING : Mumbai

PARTIES PRESENT (in person):

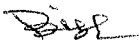
Respondent : CA. Rajkumar S. Adukia

BACKGROUND OF CASE:

1.1. The attention of the Director(Discipline) was drawn to the decision of the Council taken at its 352nd meeting held from 17th to 19th March, 2016 wherein vide item No.85, the Council considered the matter of "Action against CA. Rajkumar S. Adukia (M.No.034769), Mumbai (hereinafter referred to as the 'Respondent') former Council member for making false allegations against then President-in-Office, CA. Manoj Fadnis and thereupon it had been decided as under:-

"After deliberations, it was decided that since the issue in question is of the image of the Institute, office of the President and that of the examination system, the matter be referred to the Director (Discipline) for investigation under Item (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949."

1.2. On an overall examination of allegations together with the reference received from the Council and the Examination Department of the Institute, the matter was treated as "Information" within the meaning of Rule 7 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.



CHARGE ALLEGED:

2. It has been alleged against the Respondent that he wrote an email dated 4th January, 2016 (sic. 6th January, 2016), to all Council Members that the then President, CA. Manoj Fadnis had not declared his conflict of interest in May, 2015 examinations, even though his children and relatives had appeared in the examination. He also wrote to other persons also stating therein that the then President, CA. Manoj Fadnis compromised his position and participated in the Examination Committee proceedings despite his conflict of interest, even after clarifications given by then President as well as the Secretary. Also, there is an email dated 11th January, 2016 wherein while responding to a member, the Respondent mentioned that, "*Mr. President has goofed up the matter.*"

Thus, by using such type of words, he has tried to tarnish the image of the President of the Institute without any basis or substantiation.

The Respondent was held Prima Facie Guilty of Other Misconduct falling within the meaning of Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act by the Director(Discipline) and the said Opinion had been accepted by the Board. Accordingly, the case was for enquiry before the Board.

BRIEF OF PROCEEDINGS HELD:

3. At the time of hearing held in the case on 29th March 2023, the Respondent was present in person before it. Thereafter, the Respondent was put on oath. On being asked by the Board as to whether the Respondent pleaded guilty in respect of the charge alleged against him, he replied in negative and made detailed oral as well as written submissions to defend on the charges alleged against him. On consideration of the documents and submissions on record, the Board concluded the proceedings in the case.

BRIEF SUBMISSIONS OF THE RESPONDENT:

4. The Respondent in his submissions, inter-alia, submitted as under:
 - 4.1 The Respondent drew attention to the Minutes of the Board of Discipline meeting held on 11th February 2021 communicated to the Respondent on 8th August 2021 which specifically stated that the Board of Discipline pursued the matter and held the Respondent "Guilty" of Other Misconduct. It is surprising to note that the Prima Facie Opinion was withheld for the period of 4 years from 2017 to 2021. The Prima Facie Opinion is dated 7th November 2017. The final reply was submitted on 16th December 2016, action was initiated on 19th March 2016 by way of Table Item and matter referred to Director(Discipline) on 5th August 2016 .It evidently means that this Prima

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Facie Opinion had been formed but was not presented to the Board in accordance with the applicable Rules for over 4 years. It can be verified from the records of the Disciplinary Directorate how many Prima Facie Opinions were presented in this intervening period. It is inconceivable that there is no recorded reason for such an inordinate delay. The Respondent calls for the Director(Discipline), ICAI to be summoned and examined for this specific reason. This evidently demonstrates bias and prejudice against the Respondent. This casts doubts on the intent as to why the Prima Facie Opinion was withheld for such a long period of time and not forwarded to the Board, and then communicated to the Respondent.

- 4.2 Any inquiry for Professional or Other Misconduct against a member of ICAI is required to be conducted in accordance with the provisions contained in Chapter V of the Chartered Accountants Act, 1949 (hereinafter referred to as the "CA Act") and the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 (hereinafter referred to as the "Rules"). Such Rules that contain the procedures for any inquiry against a member of ICAI require strict adherence.
- 4.3 Since he has not been provided with the copies of the communication made by the Director(Discipline) with the Informant, instant case is an anonymous case and thus, cannot be proceeded with.
- 4.4 For the purpose of holding any member of the Institute guilty of professional or other misconduct under clause (2) of Part IV of the First Schedule to the Chartered Accountants of India Act, 1949, an opinion of the Council is mandatory.
- 4.5 The Respondent has not been provided with a copy of any such opinion of the Council.
- 4.6 Certain facts of the matter have been thoroughly ignored and misunderstood, and thus the Prima Facie Opinion of the Director Discipline is not sustainable.
- 4.7 Further, without the opinion of the Council, the Director(Discipline) could not have formed his Prima Facie Opinion in the instant case, holding the Respondent to be prima facie guilty under this clause. The Respondent specifically states that whereas the disciplinary mechanism of various professional Institutes in India are a mirror reflection, Institute of Company Secretaries of India has been following the practice of referring matters to its Council for its opinion before proceeding in matters of professional misconduct for bringing disrepute to the profession or the Institute. The words used in the relevant Acts and Rules as applicable to the two Institutes are the same, but the spirit and intent of law has not been followed by DD ICAI.
- 4.8 The DD ICAI has at no stage pointed out how and why he believes the act of the Respondent constituted as anything that brought disrepute to the profession or the Institute. Just because the Respondent dissented to the Council's view and expressed his opinions does not mean that he brought disrepute to the profession or the Institute. If any and every kind of alleged misconduct is deemed to bring disrepute to the profession or the Institute, then every other clause of the two Schedules would become meaningless.
- 4.9 All the Council members act for the benefit of the profession and for the benefit of the ICAI. However, any view expressed which is not the view of most of the council

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members does not tantamount to misconduct. Expressing a view that is different from others does not necessarily constitute professional misconduct. In fact, as long as the expression of the view is done in a professional and respectful manner and is based on valid reasoning and evidence, it ought to be viewed as a positive aspect of a healthy professional discourse. That is how democratic organizations work. In this matter, the Respondent gave a specific reason for his viewpoint. Further, Professional misconduct can be typically defined as behavior that falls below the expected standards of professionalism and ethics in CA profession. This includes actions such as dishonesty, negligence, and lack of integrity. However, expressing a dissenting view cannot be considered misconduct, otherwise contrarian views will never be expressed, and that can only sound the death knell of democratic processes.

- 4.10 Freedom of speech and expression is a fundamental right guaranteed by the Constitution of India under Article 19(1)(a). This right allows citizens to express their thoughts, opinions, and beliefs freely without fear of censorship or retaliation. It must be noted that the Constitution is binding both on the Council of ICAI and the Respondent. Hence, when the Respondent provides certain opinions, expresses his views and speaks on certain matters, the same is allowed as per the Constitution and the said right cannot be taken away from the Respondent. It is important to note that individuals are free to express their opinions and beliefs. It must be noted that the freedom of speech and expression is a crucial component of democracy and plays a critical role in promoting open and transparent governance, encouraging public debate and discourse, and protecting the rights and freedoms of citizens. Hence, the Respondent firmly believes that there cannot be misconduct with the given facts.
- 4.11 The whole enquiry is based on the presumption that he has written that the President had compromised his position as a President. He contended that nowhere he had stated that the President has compromised his position.

OBSERVATIONS OF THE BOARD:

- 5 At the outset, the Board noted that the Respondent in his submissions raised certain technical objections with respect to the case. The Board decided to deal with the same prior to arriving at its Findings on the conduct of the Respondent.
- 5.1 As regard the objection of the Respondent that the Prima Facie Opinion was withheld for a period of 4 years from 2017 to 2021 and thus, requested for summoning the Director(Discipline) and examining for this specific reason, the Board noted that the Prima Facie Opinion formed by the Director(Discipline) was placed before it on eight earlier occasions also before being finally accepted. However, the same could not be taken up earlier either due to paucity of time or had been deferred with certain directions. Hence, the claim of the Respondent that the Prima Facie Opinion was formed but not presented to the Board for over 4 years stands negated. Accordingly,

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the request of the Respondent for examination of the Director(Discipline) on the said ground is not accepted. The Board also took into view the following observation made by the Apex Court in Union Of India vs Orient Engg. & Commercial Co. Ltd. (1977 AIR 2445, 1978 SCR (1) 622) as under while coming to the said view :

"It is not right that everyone who is included in the witness list is automatically summoned, but the true rule is that if grounds are made out for summoning a witness, he will be called " .

Courts also deprecate the practice of summoning officers at the drop of a hat. Also, application for summoning such a witness should not be granted as a matter of course, as the proceedings before the Board are summary in nature. But at appropriate stage and in deserving cases, the Board can pass Orders for summoning the witness(es) keeping in view the facts of the case and conduct of the member alleged in mind.

5.2As regard the objection of the Respondent that any inquiry for professional or other misconduct against a member of ICAI is required to be conducted strictly in accordance with the provisions contained in Chapter V of the said Act and that since he has not been provided with the copies of the communication made by the Director(Discipline) with the Informant, instant case is an anonymous case, the Board noted that the instant case was treated as "Information" within the meaning of Rule 7 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 on the basis of reference received from the Council and the Examination Department of the Institute. Thus, it can not be said that the instant case is 'anonymous' as the sender of the said information is clearly identified. Further, as per Section 21(2) of the Chartered Accountants Act 1949 the Director (Discipline) is empowered to initiate action on the basis of information received from any source. Also, Procedure, a hand-maiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. Accordingly, the Board was of the view that the said objection is not tenable.

5.3As regard the objection of the Respondent that he has not been provided with an Opinion of the Council, the Board noted that the Appellate Authority in the matter of Gyan Prakash Agarwal (Appeal No. 08/ICAI/2014), Rajiv Maheshwari (Appeal No.

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05/ICAI/2014) and Sameer Kumar Singh Vs. ICAI (Appeal No. 07/ICAI/2014) observed as under:

"15. Based on the above and by taking note of the written submissions made on behalf of the Institute of Company Secretaries of India, the Institute of Cost Accountants of India and the Institute of Chartered Accountants of India containing the detailed Page 9 of 14 analysis of the issue in question, we are of the considered view that the proper and correct interpretation which can be given to Clause (2) of Part-IV of the First Schedule to the respective Acts, in the light of the principles laid down and having regard to the case laws of various courts and further considering the basic objects, reasons and purpose of the amendment brought in the statutes as quoted above is that, 'Prima Facie Opinion (PRIMA FACIE OPINION)' formed by the Director (Discipline) in all such complaints / information cases serves the purpose for proceeding further for taking disciplinary action against the errant members as in terms of the amended mechanism for conduct of cases, it is the Director (Discipline) who has to form the first Prima Facie Opinion for the disciplinary proceedings to be initiated. Therefore, the opinion of Council as is mentioned in the clause (2) of Part-IV of the First Schedule to the Act has to be given a purposive meaning and has to be read in consonance with the letter and scheme of the enactment".

Hence, the issue had already been decided by the Hon'ble Appellate Authority, and therefore, there is no merit in the argument of the Respondent in this regard. Further, the Board was of the view that there is no inclusive definition of 'Other Misconduct' under the Chartered Accountants Act 1949 and what constitutes 'Other Misconduct' is determined from the conduct of the member alleged on the basis of substantial, corroborative and circumstantial evidence on record.

6. As regard the charge alleged against the Respondent, the Board noted that the bone of contention in the instant case are the six emails sent by the Respondent, five from his email id: rajkumarradukia@caa.in and the sixth one from the email id: info@msend.me in his name as the Chairman of the IT Committee at the relevant time. For a better appreciation of the alleged misconduct on the part of the Respondent the contents of these emails are reproduced hereunder:

S.no.	Date of email	Email addressed to	Context in which email sent by the Respondent	Contents of the email
1.	6 th January, 2016	Members of the Council	conflict of interest by CA. Manoj Fadnis, then President ICAI during the examination of	"Dear Council Colleagues CA. B. Muralidharan informed to me on Monday

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			May, 2015 and November 2015	<p>afternoon i.e. 4th January, 2016 when we were discussing about DISA AT, that Mr. President has not declared his interest in May 2015 examination</p> <p>I have come to know from my information his children and relatives appeared in May 2015 examination.</p> <p>I have also come to know from my information his children and relatives appeared in November 2015 examination.</p> <p>I demand appropriate enquiry and action."</p>
2.	11th January 2016	CA. Sapna Lunawat with a copy to the other functionaries of ICAI	clarification sought about the filing of ISA-AT exam form in case of candidates who have not passed the one day ISA-ET exam	"Mr. President has goofed up the matter"
3.	5 th February 2016	Members of the Council	immediate enquiry / MOGI Malpractices in DISA Jan 2016 Exam/Conduct of examination committee	"it is reported that Gwalior centre result is 100 percent and all toppers are from Gwalior. Earlier I had objected for

				<p>person other than council member getting involved in examination committee affairs. My suggestion was unheard by Mr. President and Council.</p> <p>I also objected for chairing of examination committee by Mr. President when his son is appearing for exam, suggestion is not implemented."</p>
4.	11 th January 2016	Yamuna Nagar branch of ICAI with a copy to other functionaries of ICAI	In response to a query on 7 th January, 2016 from the Yamuna Nagar branch of ICAI regarding ISA AT,	"Mr. President has goofed up whole issue".
5.	8 th January 2016	Sh. K.V. Chowdary, CVC with a copy to other functionaries of ICAI	financial irregularities in ICAI EX- Urgent: Matter regarding payment of M/s Finesse Graphics & Prints Pvt. Ltd. for 552 nd EC meeting on 15.01.2016	"Various financial irregularities in ICAI needs investigation, why Mr. President delayed payment. What was his interest, he made it to go to different committees purchase committee, finance committee etc.

				<p>Mr. President what we expect from you minimum is to resign from examination committee when your son has appeared for examination. CA Rajesh You need to file claim from Mr. President for mental harassment and delay in making payment inspite of committee approval."</p>
6.	13th Jan 2016	Shri Nilesh Shah	<p>"Clarification regarding eligibility to appear for ISA-AT scheduled to be held on 23rd January, 2016"</p>	<p>"The Committee further informed that the matter regarding abolishment of the Eligibility Test from DISA Course was discussed during the Faculty meets held on 5th June, 2015 at Mumbai, 30th June, 2015 at Hyderabad, 1st July, 2015 at Delhi, 15th July, 2015 at Kolkata and 4th and 5th August, 2015 at Mumbai attended by</p>

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				<p>expert faculties from all over India and was of the view that the ISA Eligibility Test must be abolished.</p> <p>It was informed to Exam Department three times about the abolishment of the same.</p> <p>I have also informed President, ICAI about the same and he has duly accepted the suggestion. After that President, ICAI has not taken up the matter and the issue was goofed up.</p> <p>.....</p> <p>I also want to bring to your notice that the son of President, ICAI had appeared in the IPCC Examination and he is the chairman of the Examination Committee. He should not head the Examination Committee. It is a conflict of interest.</p> <p>Members are the receivers of the services of ICAI. Under Consumer</p>
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				<i>Protection Act, 1986 action can be taken."</i>
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7. On a careful perusal of the contents of the said emails together with the context in which the same had been sent, the Board observed that the Respondent in his capacity as a member of the Council at the relevant time had a dissenting view on certain issues which was expressed in written form to the other Members of the Council/others. The Board was of the view that even though as a citizen of this Country one has the right to freedom of Speech and Expression enshrined in the Constitution of India, however, the same right has also endowed upon each citizen the duty to exercise these rights with caution so as not to infringe upon the rights of other citizens. The Board was of the opinion that although the Respondent should have been more careful in his choice of words while sending the email communication to the Members of the Council/others referring to then President in Office, however, the same cannot be stretched upon so as to amount to Other Misconduct falling within the meaning of Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 especially when the term 'Other Misconduct' has not been defined conclusively in the Statute and is therefore non-exhaustive. Accordingly, the Board was of the view that the Respondent is not guilty in respect of the charge alleged.

CONCLUSION:

8. Thus, in conclusion, in the considered opinion of the Board, the Respondent is **NOT GUILTY** of Other Misconduct falling within the meaning of Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act. Accordingly, the Board passed Order for closure of the case in terms of the provisions of Rule 15 (2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

Sd/-

CA. Rajendra Kumar P

(Presiding Officer)

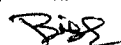
DATE: 03-05-2023

Sd/-

Ms. Dolly Chakrabarty (IAAS, retd.)

(Government Nominee)

सही प्रतिकृति होने के लिए प्रमाणित
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