

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/10/2020-DD/38/2020-DC/1468/2021]

In the matter of:

CA. Anil Singh (M.No.075112)

M/s A. A. Singh & Co.

Chartered Accountants

Chamber No. 19-20, Harmony Arcade

17/1 Telegraph Road, The Mall

KANPUR – 208001

.....Complainant

Versus

CA. Mudassar Siddique (M.No. 421213)

M/s DGS & Associates

Flat No. 104, 1st Floor, H. No. 33/29,

Lari Compund, Jajmau,

KANPUR– 208010

.....Respondent

MEMBERS PRESENT:

CA. (Dr.) Debashis Mitra, Presiding Officer (Present through Video Conferencing Mode)

Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee (Present through Video Conferencing Mode)

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

CA. Rajendra Kumar P, Member, (Present in person)

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

DATE OF FINAL HEARING : 29.12.2022 (through Physical/video conferencing mode)

PARTIES PRESENT :

Complainant: CA. Anil Singh (Through Video Conferencing Mode)

Respondent: CA. Mudassar Siddique (Through Video Conferencing Mode)

Counsel for the Respondent: CA. C.V. Sajan (Through Video Conferencing Mode)

CHARGES IN BRIEF:-

1. The Committee noted that the Respondent was held Prima-Facie Guilty by the Director (Discipline) for 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 the following charges:
 - 1.1 That the Respondent, after accepting the position as Tax auditor of M/s S B International, Kanpur (hereinafter referred to as "Entity") for the financial year 2018-19 had, sent an e-mail to the Complainant on 28th October 2019 (page C-5 of the Prima-facie opinion) enclosing a letter dated 11th October 2019 for obtaining an NOC.
 - 1.2 That the Respondent, despite being indebted to the entity, had conducted audit of the entity. According to the Complainant, the Respondent had taken advances from the Entity on 31st January 2018 of INR 3,00,000/- which were still outstanding as of February 2019 i.e. during the financial year 2018-19, the period of audit conducted by the Respondent.

BRIEF FACTS OF THE PROCEEDINGS:

2. The Committee noted that during the hearing held on 07th December 2022, both the parties were administered oath. The Committee also noted the Respondent had pleaded not guilty on the charges framed in prima-facie opinion.

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- 2.1 On the day of the final hearing held on 29th December 2022, the Committee noted that the Respondent and his Counsel CA. C.V. Sajan were present through Video Conferencing Mode. The Complainant was present through Video Conferencing mode. The Committee also noted that the witness (Mr. Biju Abraham) was also available through Video Conferencing mode.
- 2.2 Thereafter, the Complainant submitted his allegations, and the Respondent's Counsel presented his line of defence by presenting the arguments that the communication by his client was proper. The Counsel for the Respondent, with the permission of the Committee, read the written submissions of witness dated 28th December 2022. With the permission of the Committee, he cross-examined the Complainant also.
- 2.3 The Committee posed certain questions to both parties to understand the issue involved and the role of the Respondent in the case. The Committee, thereafter, directed the Respondent to submit the following documents within next 7 days:
 - a. Audited Financial statement of the Entity i.e. M/s SB International for the F.Y. 2018-19.
 - b. Copy of Bills raised by him, on entity, during the Financial Year 2017-18.

With the above, the Committee concluded the hearing by reserving its Judgement.

3. Thereafter, this matter was placed in hearing held on 16th January 2023 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 the Respondent in response to documents sought from him in the hearing held on 29th December 2022 had submitted the audited financial statements but failed to submit copies of bills specifically called from him.
 - 3.1 Accordingly, keeping in view the facts and circumstances of the case, the material on record and the submissions of the parties, the Committee passed its judgement.

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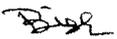
FINDINGS OF THE COMMITTEE

4. The Committee noted that the first charge is regarding that the Respondent after accepting the position as tax auditor of the Entity for the financial year 2018–19, had sent an e-mail to the Complainant on 28th October 2019 (page C-5 of the Prima-facie opinion) enclosing a letter dated 11th October 2019 for obtaining an NOC. The Committee, upon perusal of the documents on record, noted the following sequence of facts:
- a. The Respondent was appointed as auditor of the entity on 10th October 2019 (Page D-5 of the prima-facie opinion).
 - b. The Respondent vide letter dated 11th October 2019 (Page D-6 of the prima-facie opinion) requested the entity to arrange NOC from the Complainant.
 - c. The Respondent vide letter dated 11th October 2019 (Page D-9 of the prima-facie opinion) also sent a letter to the Complainant requesting for NOC.
 - d. The Respondent accepted the audit on 23rd October 2019.
 - e. The Respondent sent an email to the Complainant on 28th October 2019 (page C-5 of the Prima-facie opinion) enclosing letter dated 11th October 2019 for obtaining NOC.
 - f. The Complainant vide return email on 28th October 2019 (page C-6 of the Prima-facie opinion) conveyed his objections.
 - g. The Respondent submitted that he signed the financials of the entity for F.Y. 2018-19 on 30th October 2019 (audited balance sheet provided by the Respondent along with his submissions dated 4th January 2023). The Committee observed that date of 30th October 2019 was written by hand whereas date mentioned in the said Balance Sheet was 27th October 2019.
- 4.1 It is observed by the Committee that the letter dated 11th October 2019 (Page D-9 of the prima-facie opinion), sent by the Respondent to the Complainant requesting for an NOC, has not been properly acknowledged, but rather only initials (without mentioning the name of the receiver) have been made by some unknown person, and that too without mentioning any date of receipt thereon.

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The validity of these signatures was denied by the Complainant. The Respondent also did not establish the actual recipient of that letter.

- 4.2 The Committee noted on the bottom of the letter dated 11th October 2019 (Page D-9 of the prima-facie opinion), sent by the Respondent to the Complainant requesting for NOC, it is mentioned that "a registered post is already sent to your office." However, the Respondent never produced any such copy on record to prove that such a letter was also sent via speed post.
- 4.3 It is further observed by the Committee that the Respondent has been silent in his written statement on this allegation made by the Complainant about the production of a back-dated letter dated 11th October, 2019 on 28th October, 2019 through email. The Committee noted that if the letter was initially delivered to the Complainant through hand delivery, as claimed by the Respondent at the 8(5) stage then it is not known why he did not mention this fact in his written statement filed before the Director (Discipline). The Respondent however chose to be silent at the time of filing of his written statement and when at Rule 8(5) he was specifically asked by the directorate only then he mentioned that the letter was hand delivered. The Committee finds it be an afterthought only on the part of the Respondent. Further to this, the absence of proper acknowledgement on the face of the letter further makes the delivery of the communication questionable and cannot be taken as the positive evidence of delivery / communication as required under Code of Ethics 2009.
- 4.4 The Committee noted that the Respondent accepted the audit on 23rd October 2019. The Committee noted that, even if the Respondent's contention that he hand delivered the letter to the Complainant on October 11 is assumed to be correct, he has clearly failed to explain why he needed to accept the appointment before 26th October 2019, i.e., without waiting for the 15 days mentioned in the said letter. Hence, the defence adopted by the Respondent being contradictory is not acceptable.




- 4.5 Further to above, the Respondent in his defence, has brought on record a letter dated 11th October,2019 (page D-6 of prima-facie opinion) wherein he had asked the entity to arrange NOC from the previous tax auditor and thereafter there are three letters dated 12th October,2019 (page D-7 of prima-facie opinion), 18th October,2019 (page D-8 of prima-facie opinion) and 23rd October,2019 (page D-10 of prima-facie opinion) wherein the entity has written the letters to the Respondent regarding their efforts to get the NOC from the previous auditor i.e., from the Complainant. However, the Respondent approached the entity to obtain the NOC from the outgoing auditor, despite the fact that the Code of Ethics (2009) requires the incoming auditor to communicate with the outgoing auditor prior to accepting his appointment in order to inquire about any professional objections of the outgoing auditor in the incoming auditor's acceptance of the appointment.
- 4.6 The Committee noted that the Respondent's Counsel failed to explain why the Respondent communicated via email on 28th October 2019, despite the fact that the Respondent had already accepted the audit on 23rd October 2019, before 15 days deadline specified in the email or letter dated 11th October 2019.
- 4.7 The Committee further noted that the Respondent submitted that he signed the financials of the entity for F.Y. 2018-19 on 30th October 2019 (audited balance sheet provided by the Respondent along with his submissions dated 4th January 2023). The Committee noted that the date of 30th October 2019 was handwritten, whereas the date on the balance sheet was 27th October 2019. This also indicates afterthought on the part of the Respondent.
- 4.8 The Committee noted that as per Clause 8 Part I of First Schedule states as under

A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he –

“(8) 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;”

- 4.9 The Committee looking into the reasonings mentioned in the above paras and on perusal of documents containing email communications on record, observed that before acceptance of the audit, the Respondent had not communicated with the previous auditor, i.e., Complainant in a manner as prescribed under Code of Ethics -2009. The Committee, accordingly, holds the Respondent guilty under the said charge under Item (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949.
5. The Committee noted that the second charge was that the Respondent despite being indebted, had conducted the audit of the entity. The Committee noted that, according to the Complainant, the Respondent had taken advances from the Entity on 31st January 2018 of INR 3,00,000/- which were still outstanding as of February 2019 i.e. during the financial year 2018-19, the period of audit conducted by him.
- 5.1 The Committee, upon perusal of Balance Sheet of the entity for the Financial Year 2017-18 signed by the Complainant on 30th October 2018 noted that under the heading Loans and Advances the name of the Respondent appeared (page R-12 of the prima-facie opinion).
- 5.2 The Counsel for the Respondent in defence stated that there is accounting omission in the books of accounts of the Company treating the amount of Rs.3 lakhs as advance given to the Respondent. He further added that the nature of the amount was expenditure, and that instead of recording it as expenditure in the balance sheet signed by him for the financial year 2017-18, the Complainant had disclosed it under the heading Loans and advances.
- 5.3 The Committee noted that the Respondent failed to submit copy of the bills despite the same was specifically called by the Committee during hearing held on 29th December 2022.

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- 5.4 The Committee noted that the Respondent in his defence also brought on record a ledger account of Miscellaneous Expenses (as Enclosure 3 with documents submitted on 04th January 2023). The Committee on perusal of the same noted that on 03rd April 2018 amount of Rs. 3,00,000/- was reversed with a narration that states as under:

"Being The Error of Last Financial Year 2017-18 Audited Balance sheet received in the Month of October 2018 rectified back date as per the advice of Partner of the firm".

- 5.5 The Committee observed that the authenticity of the said ledger account was in question because of the following reasons:
- The said ledger did not have the signatures of the client and was produced by the Respondent under his signatures only.
 - The entry was passed on 3rd April 2018 and contains narration of October 2018. Further, the Balance Sheet for the F.Y. 2017-18 was signed by the Complainant on 30th October 2018. Hence it is incomprehensible that the same client, who is signing financials on 30th October 2018, is not incorporating changes in financials for 2017-18 suggested by him in April 2018.
 - Further, the Committee on perusal of W-15 of prima-facie opinion, produced on record by the Respondent himself, noted that Mudassar Siddiqui Advance account clearly depicts NIL balance and which was duly certified by the partner of the SB international. However, the same is contradictory to the Mudassar Siddiqui Advance Account produced by the Respondent as Enclosure 3 on 04th January 2023.

- 5.6 The Committee noted that Respondent's witness Mr. Biju Abraham vide his letter dated 28th December 2022 in this regard, had submitted as under:

"...that ledger account of "Mudassar Siddique Advance account" for FY 2017-18 provided by us which showed thee advance amount of Rs.3.00 L as squared off, although represented the truth, was not in alignment with audited accounts. I regret in the inadvertent error."

He also placed a copy of said account on record, which contained his digital signatures.

5.7 The Committee noted that the Respondent had not brought on record any clear facts in this regard that may show that he was discharged from his liability before 1st April 2018 rather, he failed to justify the alleged loan and advance to be miscellaneous expenses. The Committee noted that benefit cannot be extended to him merely on tally entry passed by him as per the advice of one of the partner of the entity (witness). The Committee looking into the apparent defects in the accounts as mentioned in the above paras decided not to accept the account produced on record by the witness.

5.8 Further to above, the Committee noted that, even if the contention of the Respondent is assumed to be correct that he was not indebted and accounts were amended later, even then he failed to establish the compliance of Accounting Standards in respect of treatment of prior period expenditure in the subsequent year audited by him.

5.9 In this regard Chapter X of council Guidelines No.1- CA(7)/02/2008, dated 8th August,2008 reads as below:

"A member of the institute in practice or partner of firm in practice or a firm shall not accept the appointment as auditor of a concern while indebted to the concern or given any guarantee or provided any security in connection with the indebtedness of any third person to the concern, for limits fixed in the statute and in other cases for amount exceeding Rs. 10,000".

5.10 The Committee, looking into the reasonings mentioned in the above paragraphs, noted that the Respondent failed to substantiate his bonafide and concluded that the Respondent during the period of his audit, was owing a sum of Rs.3,00,000/- to the entity. Hence, the Respondent has violated the guidelines of the Council as mentioned above, and thus, the Respondent is 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

6. In view of the above findings stated in above paras vis a vis material on record, the Committee gives its charge wise findings as under:

Charges (para ref.)	Findings (para ref.)	Decision of the Committee
1.1	4 to 4.9	Guilty - Item (8) of Part I of the First Schedule
1.2	5 to 5.10	Guilty - Item (1) of Part II of the Second Schedule

7. The Committee, accordingly, in its considered opinion holds the Respondent **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

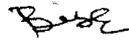
Sd/-
(MRS. RANI NAIR, I.R.S. RETD.)
GOVERNMENT NOMINEE

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

Sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

Sd/-
(CA. COTHA S SRINIVAS)
MEMBER

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy



बिषा नाथ तिवारी / Bishwa Nath Tiwari
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahdara, Delhi-110032

DATE: 11.02.2023
PLACE: New Delhi

CA. Anil Singh (M.No.075112) of M/s. A.A. Singh & Co., Chartered Accountants, Kanpur -Vs- CA. Mudassar Siddique (M.No.421213) of M/s. DGS & Associates, Kanpur





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

[PR/10/2020-DD/38/2020-DC/1468/2021]

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/10/2020-DD/38/2020-DC/1468/2021]

In the matter of:

CA. Anil Singh (M.No.075112)
M/s A. A. Singh & Co.
Chartered Accountants
Chamber No. 19-20, Harmony Arcade
17/1 Telegraph Road, The Mall
KANPUR – 208001

.....Complainant

Versus

CA. Mudassar Siddique (M.No. 421213)
M/s DGS & Associates
Flat No. 104, 1st Floor, H. No. 33/29,
Lari Compound, Jajmau,
KANPUR– 208010

.....Respondent

MEMBERS PRESENT:

1. **CA. Ranjeet Kumar Agarwal, Presiding Officer** (Present in person)
2. **Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee** (Present in person)
3. **Shri Arun Kumar, I.A.S. (Retd.), Government Nominee** (Present in person)
4. **CA. Sanjay Kumar Agarwal, Member** (Present in person)
5. **CA. Sridhar Muppala, Member** (Present through video-conferencing mode)

DATE OF MEETING : 28.03.2023 (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 11.02.2023, the Disciplinary Committee was, inter-alia, of the opinion that **CA. Mudassar Siddique (M.No. 421213)** (hereinafter referred to as the **Respondent**) was **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.





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

[PR/10/2020-DD/38/2020-DC/1468/2021]

2. The Committee noted that the charges against the Respondent were as follows:

2.1 That the Respondent, after accepting the position as Tax auditor of M/s S B International, Kanpur (hereinafter referred to as "Entity") for the financial year 2018-19, sent an e-mail to the Complainant on 28th October 2019 (page C-5 of the Prima-facie opinion) enclosing a letter dated 11th October 2019 for obtaining an NOC.

2.2 That the Respondent, despite being indebted to the entity, had conducted an audit of the entity. According to the Complainant, the Respondent had taken advances from the entity on 31st January 2018 of INR 3,00,000/- which were still outstanding as of February 2019 i.e. during the financial year 2018-19, the period of audit conducted by the Respondent.

3. The Committee noted that the Respondent was present through Video Conferencing Mode. The Committee noted that the Respondent relied upon his written submissions dated 28th February 2023, the Respondent in his submissions before it, wherein he, inter-alia, mentioned that the interest of the party concerned was not affected due to his non communication and admitted that this non communication was his first mistake. He pleaded before the Committee to pardon him and assure that he would follow all the Institute's guidelines properly.

4. The Respondent regarding the charges relating to advance, submitted that the Complainant in the previous year's financial statements wrongly showed "advance" in his name and that the nature of that amount was expenditure.

5. The Committee, while considering his oral and written submissions on record, noted that the Respondent had accepted his mistake of non-communication with the previous auditor, i.e., the Complainant in a manner as prescribed under the Code of Ethics -2009. The Committee also noted that the Respondent had not brought on record any concrete documentary evidence to establish that the amount of Rs. 3.00 Lacs received by him from the entity was for reimbursement of expenses.

6. Accordingly, the Committee, looking into the charges *vis-a-vis* submissions of the Respondent decided to give a reasonable punishment to the Respondent in the instant matter.



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

[PR/10/2020-DD/38/2020-DC/1468/2021]

7. 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 Respondent, CA. Mudassar Siddique (M. No. 421213), be reprimanded along with a fine of Rs. 5,000/- (Rupees Five Thousand Only).

sd/-

(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

sd/-

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

sd/-

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

sd/-

(CA. SANJAY KUMAR AGARWAL)
MEMBER

sd/-

(CA. SRIDHAR MUPPALA)
MEMBER

DATE: 13th MAY, 2023

PLACE: NEW DELHI

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy
CA. Nitika Gupta
सीए नीतिका गुप्ता / CA. Nitika Gupta
सहायक निदेशक / Assistant Director
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahdara, Delhi-110032