

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. : PR-255/2016-DD/312/16/BOD/523/2019

CORAM (present in person):

**CA. Prasanna Kumar D., Presiding Officer
Ms. Dolly Chakrabarty (IAAS, retd.), Government Nominee
CA. (Dr.) Raj Chawla, Member**

In matter of:

**CA. Vinay Kumar Aggarwal
M/s Aggarwal & Rampal, Chartered Accountants
2nd Floor, 19 DDA Commercial Complex, Madangir
NEW DELHI – 110 062.**

.....Complainant

-Vs-

**CA. Nitesh Agrawal (M.No. 527125)
38, Khemchand Market, Khanpur
NEW DELHI – 110 062.**

.....Respondent

**DATE OF FINAL HEARING : 10th August, 2022
PLACE OF FINAL HEARING : New Delhi/ through video conferencing**

PARTIES PRESENT (through Video Conferencing):

**Complainant : CA. Vinay Kumar Aggarwal
Counsel for the Complainant : Shri S.P Mehta, Advocate
Respondent : CA. Nitesh Agrawal
Counsel for the Respondent : Shri Ashok Chhabaria, Advocate**

FINDINGS:

BRIEF BACKGROUND OF THE CASE:



1. The Respondent was appointed as Manager Audit and Taxation on 15.07.2013 in M/s Aggarwal & Rampal i.e. the Complainant's Firm and he was terminated from the Complainant firm on 25.02.2014.

Charges Alleged:

- 2.1 The Respondent was running his own practice without knowledge of the Complainant Firm and was soliciting business in personal capacity from the clients of the Complainant Firm.
- 2.2 Misuse of Digital signature of the Complainant on 01.04.2014 in filing 20, Form and Form 23AC of M/s. Astra Netcom (India) Pvt. Ltd.
- 2.3 Advising CA. Ankit Agrawal to file application with Regional Director (North region) for removal of the Complainant firm as auditor of M/s. Astra Netcom (India) Pvt. Ltd.
- 2.4 Signing of Balance sheet of M/s Gulmehar Marketing Private Limited for the year ended 31st March, 2013 on behalf of Complainant Firm by the Respondent on 2nd September, 2013 despite the fact that the Complainant firm was neither appointed as auditor of the said Company nor the Respondent was authorised to sign the Balance sheet on behalf of the Complainant Firm as he was simply working as Manager Audit & Taxation.
- 2.5 The Respondent is operating as Managing Partner of the firm/Company named M/s Global Tax Solutions which is neither registered with the ICAI nor any intimation in this regard is given to ICAI by the Respondent.

The Board in its meeting dated **04/10/2019** considered the PFO dated 01/04/2019 and concurred with the reasons given against the charge mentioned in point (a) and (c) of para 9.1 of the PFO but **did not** concur with the reasons given against the charge(s) mentioned in point (b), (d) and (e) of para 9.1 of the PFO and was of the view that the role of the Respondent needs to be examined through further investigation and thus, did not agree with the PFO of the Director against the said charges that the Respondent is NOT GUILTY of Professional and/or Other Misconduct. Accordingly, the conduct of the Respondent was examined by the Board with respect to the charge specified at para 2.2, 2.4 and 2.5 above only.

Brief of Proceedings held:

- 3.1 At the time of hearing held in the case on 24th August, 2021 wherein the Complainant alongwith his Counsel and the Respondent were present before it through video conferencing, the Board adjourned the hearing in the case with the direction to the Respondent to submit following information/ documents with a copy to the Complainant within 15 days:



1. The constitution status of M/s Global Tax Solution, when did it start/close, details of the proprietor/partners alongwith the proof of the same.
2. Details of bank accounts and authorised signatories to the said account.
3. Copy of the Income Tax return of M/s Global Tax Solutions and the Respondent for the A.Y. 2014-15 and 2015-16.
4. Role of the Respondent in the Global Tax Solutions before qualifying CA?
5. Justification for the use of the mobile number and address of the Respondent on the letter head of M/s Global Tax Solutions.

3.2 Thereafter, at the time of hearing held on 25th April, 2022 the Complainant alongwith his Counsel and the Respondent were present before the Board through video conferencing. Since there was a change in the composition of the Board since the last hearing, the Board gave an option to the parties to the case as to whether they would like to have a De -Novo enquiry or continue from the last proceedings to which they stated that they would like to start the proceedings afresh. The Board adjourned the hearing in the case with the direction to the parties to the case to provide the following with a copy to the other party to the case to provide their comments thereon, if any:

The Complainant:

1. To send PFX file of his digital signature.

The Respondent:

1. Justification for the use of the mobile number and address of the Respondent on the letter head of M/s Global Tax Solutions.
2. Clarify the capacity in which the appointment letter dated 6th February 2014 and 11th February, 2014 duly signed by him as authorized signatory of M/s Global Tax Solutions had been issued to Ms. Priyanka Tamar and Mr. Gaurav Sharma respectively, keeping in view his specific submission that post 6th August 2012 i.e. after becoming a member of the Institute, he was not associated with M/s Global Tax Solutions.

3.3 Thereafter, at the time of hearing held on 24th June, 2022 the Counsel for the Complainant alongwith the representative of the Complainant as well as the Respondent alongwith his Counsel was present before the Board through video conferencing. The Board noted that the Respondent vide letter dated 30th May 2022 submitted his response on the direction given by the Board in its meeting held on 25th April, 2022 with a copy marked to the Complainant. The



Complainant provided his response vide email dated 23rd June 2022 which was shared by the office with the Respondent. On perusal of the submissions on record, the Board noted that the Respondent did not submit his clarification on point no. 2 specified above and he also sought time for making his submissions on the response submitted by the Complainant vide email dated 23rd June 2022. The Board adjourned the hearing in the case with the direction to the Respondent to submit the following documents/ information with a copy marked to the Complainant to provide his comments thereon, if any:

1. To seek the following information from M/s Global Tax Solutions(partnership firm) and also provide the copy of the covering letter through which the said information has been sought and received from the said partnership firm:
 - (a) The details of the employees of M/s Global Tax Solutions(partnership firm)for the relevant period.
 - (b) The copy of the Statement of bank account(s) of M/s Global Tax Solutions(partnership firm) for the relevant period.
 - (c) The names of the authorized signatory to the bank accounts of M/s Global Tax Solutions (partnership firm) for the relevant period.
2. Clarify the capacity in which the appointment letter dated 6th February 2014 and 11th February, 2014 duly signed by him as authorized signatory of M/s Global Tax Solutions had been issued to Ms. Priyanka Tamar and Mr. Gaurav Sharma respectively, keeping in view his specific submission that post 6th August 2012 i.e. after becoming a member of the Institute, he was not associated with M/s Global Tax Solutions.
3. His comments on the further submissions of the Complainant made vide email dated 23rd June 2022, if any.

The Board also directed the office to seek clarification from the company M/s Astra Netcom(India) Pvt. Ltd. as to which Chartered Accountant/CA firm the payment for filing of Form 20B, 66 and 23AC for the F.Y. 2012-13 on 1st April 2014 had been made together with the proof of payment.

- 3.4 Thereafter, at the time of hearing held on 29th June, 2022 the Counsel for the Complainant alongwith one of the partner of the Complainant firm and the Respondent was present



before the Board through video conferencing. The Board noted that in compliance to its direction on 24th June 2022, the clarification from the company M/s Astra Netcom (India) Pvt. Ltd. and response of the Respondent had been received which was shared with the other party also. Thereafter, the Board adjourned the hearing in the case with the direction to the following to provide the following information with a copy to the other party to the case to provide their comments thereon, if any:

(a) Complainant :

- (i) To seek details from Syndicate Bank as regard the authorised signatory of M/s Global Tax Solutions.

(b) Respondent:

- (i) To clarify as regard the use of the word 'the three parties/partners to the deed' in the Partnership deed of M/s Global Tax Solutions executed on 12th March 2014.
- (ii) His comments on the further submissions of the Complainant as regard PFX made vide email dated 23rd June 2022, if any.

3.5 Thereafter, at the time of hearing held on 18th July 2022 the Respondent and his Counsel were present before the Board through video conferencing. However, due to certain technical glitch at the end of the Respondent hearing in the case was deferred with the direction to the office to send a reminder to the Respondent for his comments on the further submissions of the Complainant as regard digital signature in PFX form made vide email dated 23rd June 2022, if any with a copy to the other party to the case.

3.6 Thereafter, at the time of hearing held on 5th August, 2022 the Complainant and the Respondent alongwith their respective Counsels were present before the Board through video conferencing. The Board noted that at the time of last hearing held in the case on 18th July 2022, it had directed the office to send a reminder to the Respondent for his comments on the further submissions of the Complainant as regard digital signature in PFX form made vide email dated 23rd June 2022, if any with a copy to the other party to the case. The Board noted that the response of the Respondent had been received which had been shared with the Complainant also. Thereafter, the Board adjourned the hearing in the case with a direction to the Respondent to provide the following with a copy to the Complainant to provide his comments thereon, if any:

1. An Affidavit to the effect that he was not associated with the operation of Global Tax Solution's bank account maintained with Syndicate Bank in any capacity since the time he got his Certificate of Practice.
- 3.7 Thereafter, during the hearing held in the case on 10th August, 2022, the Complainant and the Respondent alongwith their respective Counsels were present before the Board through video conferencing. The Board noted that the Respondent sent his response on the direction of the Board given on 5th August 2022. The Counsel for the Complainant made his oral submissions before the Board which were duly countered by the Respondent. On consideration of the documents and submissions on record, the Board concluded the proceedings in the case.

Brief of the Submissions of the parties to the case:

(a) Respondent:

- 4.1 The Respondent, in his defense, inter alia, submitted as under:-
 - a. The partners of M/s Global Trust Solution are relatives of the Respondent and share the same residential address. The address on letter head of M/s Global Trust Solution is residential address of the Respondent. Professional address of the Respondent is different from the residential address. As regards the use of mobile number in the letter head, at the time of incidence there was only two mobile phones in the family of the Respondent. One was used by the father of the Respondent and second one was commonly used by all the other family members including the Respondent. Therefore the same number has been used on the letter head of the M/s Global Trust Solution.
 - b. Regarding misuse of Complainant's digital signature for filing MCA Forms of M/s Astra Netcom India Pvt. Ltd, the Respondent submitted that the said forms were filed on instruction of the Complainant.
 - c. Regarding signing of the Balance Sheet of M/s Gulmehar Marketing Pvt. Ltd. on behalf of complainant firm without their authorization, the Respondent submitted that he did not intend to write the Complainant firm's name as there was no relation between the complainant firm and the aforesaid company. Complainant firm name was mentioned as a result of a clerical error and the same was attempted to be rectified as soon as it came to the knowledge of the Respondent. Further it was done only in the attachment to Form 23AC and 20B under the Companies Act, 2013. The audit was performed by the Respondent in his individual capacity and not on behalf of the Complainant firm.



- d. The Respondent was neither the legal nor beneficial owner of M/s Global Trust Solution and the income tax return has also been submitted for the board to verify the fact the Respondent has not entered into any financial transaction with the said firm.
- e. Syndicate Bank letter dated 14th June, 2017 stated that the account of M/s Global Trust Solution was opened on 28th May, 2014 and the Respondent is not the beneficiary of the said account, he has not operated the said account in his personal capacity. Further the Canara Bank vide its letter dated 27th June, 2022 has mentioned the Respondent as authorised signatory of the said Bank account.
- f. There is no evidence to prove that the DSC was stolen from the office of the Complainant. The data for filing of return which included DSC, Audited Financial Accounts and Audit Report was handed over in pen drive. The DSC were copied in pen drive to be handed over to the Respondent.
- g. Action taken report filed by the police in response to the Complaint filed by the Complainant u/s 156(3) CrPC, it is clearly mentioned that there is no evidence to prove that the DSC were stolen.
- h. The Respondent has also submitted an affidavit stating that the Respondent has not operated the bank account of M/s Global Trust Solution in any capacity.

(b) Complainant:

4.2 The Complainant in his submissions, inter-alia, submitted as under:

- i. Complainant DSC was in PFX file and was not handed over as claimed by the Respondent. M/s Global Trust Solution was admittedly registered at the residential address of the Respondent, and the phone number of the Respondent besides the documents i.e. appointment letters bearing signatures of the Respondent are already matter of record filed by the Complainant.
- ii. In respect of the certificate of Syndicate Bank dated 14th June, 2017, the Respondent in his submission mentioned that "the Respondent is not the beneficiary of the said account in his personal capacity". This statement confirmed that the said account was being operated by the Respondent himself.
- iii. The Counsel of the Complainant personally enquired from one of the branch of Canara Bank from his reliable sources and came to know that the said account was converted into partnership account in the last week of June, 2022.

(c) Astra Netcom (India) Pvt. Ltd.:

4.3 The Ex-Director of Astra Netcom (India) Pvt. Ltd. in its submissions, inter-alia, submitted as under:



1. The said company M/s Astra Netcom (India) Private Limited, has been struck off by the Ministry of Corporate Affairs.
2. He was known to CA Vinay Kumar Aggarwal personally/ professionally and had family relations for many years until this episode. Due to their relationship and trust that they reposed in him, they appointed him CA of the company since incorporation. He also filed our Tax Returns, so much so that all their data and digital signatures were always in his possession. All the statutory compliances of the company were the responsibility of CA Vinay Kumar Aggarwal, and for that, they used to pay a lump sum amount as fees every year. For the FY 2012-13, the year under question also, they have paid fees to CA Vinay Kumar Aggarwal, which has been acknowledged by his office vide their email dated 30th November 2013, but there was an extraordinary delay in work and filing of returns on one pretext or the other, due to which they let him know their displeasure and conveyed to him that they would not want him to continue as their CA and requested him to return their files and documents after filing the due returns for FY 2012-13. He refused to return and documents and resigned from the company. However, after much follow-up, the ROC return was finally filed by him on 01st April 2014.
3. Further, since he was not acting in his professional capacity and they came to know that he was divulging their business information to others, they filed an application for removal of Auditor with the Regional Director, Ministry of Company Affairs. But till the time the order of the Regional Director was passed company was struck off on account of non-compliance.

Observations of the Board:

5. In respect of the charge relating to misuse of digital signatures of the Complainant by the Respondent, the Board on perusal of the copy of Form 20B, Form 66 and Form 23AC of M/s. Astra Netcom (India) Pvt. Ltd. for the F.Y. 2012-13 noted that the same was filed with the ROC on 01.04.2014 with the digital signature of the Complainant after the Respondent had left the Complainant's firm on 25th February 2014 .M/s Astra Netcom (India) Private Limited vide communicated dated 28th June 2022 submitted to the Board that they appointed the Complainant as the CA of the company since incorporation due to his personal and family relations with the Company. The Complainant also filed their Tax Returns, so much so that all their data and digital signatures were always in his possession. All the statutory compliances of the company were the responsibility of Complainant and for that, they used to pay a lump sum amount as fees every year. For the FY 2012-13, the year under question also, they have paid fees to CA. Vinay Kumar Aggarwal, which has been acknowledged by his office vide their email dated 30th November 2013. Due to extraordinary delay in work and filing of returns, they



discontinued the Complainant and requested him to return their files and documents after filing the due returns for FY 2012-13. He refused to return and documents and resigned from the company. However, after much follow-up, the ROC return was finally filed by him on 01st April 2014. The Board on perusal of the email dated 30th November 2013 written by the Respondent to the director of the company with a copy marked to the Complainant noted that apart from the confirmation of the receipt of audit fees for the F.Y. 2012-13, the Respondent requested for early finalization of audit.

- 5.1 The Respondent admitted that these Forms were uploaded by him and further submitted the digital signature of Mrs. Amita Gupta (Director, M/s. Astra Netcom India Pvt. Ltd.) in this regard was provided to him by the Complainant Firm. He used the digital signature of the Complainant only once for filing the financial statements of the company which had been audited by the Complainant and that too in respect of the said client only.
- 5.2 The Board also noted that the Complainant had also filed case with EOW in respect of misuse of his digital signatures. The Respondent brought on record copy of letter dated 22.05.2016 of EOW. On perusal of the same, it is clear that complaint lodged by the Complainant against the Respondent was closed by EOW on 08/4/2014.
- 5.3 In view of the above, the Board opined that although the Respondent admitted of filing the aforesaid Forms with the ROC using the digital signatures of the Complainant, but since the assignment was allotted to the Complainant firm, filing was done by him on the instructions of the Complainant's Firm and fees was also paid to the Complainant Firm only i.e., the beneficiary is the Complainant firm only, the Board held the Respondent not guilty in respect of the charge alleged.
- 5.4 As regard the next charge related to signing of Balance sheet of M/s Gulmehar Marketing Private Limited for the year ended 31st March, 2013 on behalf of Complainant Firm, the Board noted that in financial statements attached to Form 23AC, the name of Respondent signing on behalf of Complainant Firm was appearing. However these documents are sd/- copies and did not bear signature of the Respondent. The Respondent brought on record duly signed copy of Balance Sheet of the said Company as on 31.03.2013 signed on 02.09.2013 by him in his personal name and not in the Complainant's Firm name. The Board further observed that in Form 23AC the name of the auditor was the Respondent in his individual capacity and not the Complainant Firm. Also, Form 23AC containing alleged balance sheet was certified by the Respondent himself. As regards attaching of financial statements with Form 23AC, wherein the Respondent seemed to have signed on behalf of Complainant Firm, the Respondent submitted that he vide letter / e-mail dated 12.03.2014/ 06.03.2014 tried to rectify the



mistake also. The said letter of the Respondent was much before the letter dated 11.04.2014 written by the Complainant Firm to M/s Gulmehar Marketing Private Limited. The said error could not be rectified as there was no error in the form itself, but only in the attachments. In the Forms the name of the auditor was correctly mentioned as CA Nitesh Agrawal and not M/s Aggarwal & Rampal. Thus, the Board opined that the mistake was clerical and the Respondent had tried to rectify the mistake and that too before the communication made by the Complainant firm to the said Company. Accordingly, the Board held the Respondent not guilty in respect of this charge too.

- 5.5 As regard the charge of operating as managing partner of M/s Global tax Solutions without intimation to ICAI, the Board on perusal of the copy of the partnership deed of the firm M/s Global tax Solutions noted that the Respondent did not have any legal or beneficial ownership in the said firm. He also brought on record an Affidavit to the effect that he has not operated the bank account of M/s Global Trust Solution in any capacity. He also brought on record copy of letter issued by Syndicate Bank dated 14/06/2017 stating that the account of M/s Global Tax Solution with Syndicate Bank was opened on 28/05/2014, the respondent is not the beneficiary of the said account and he has not operated the said account in his personal capacity. He also submitted copy of letter issued by Canara Bank dated 27/06/2022 whereby the bank mentioned the authorised signatories of the said Bank account and the Respondent was not one of them. As regard signing the letter dated February 06, 2014 and February 11th, 2014 in the capacity of Authorised Signatory of Global Tax Solution, the Respondent stated that since the partners of Global Tax Solution are the relatives of the respondent, and they were not available in the month of February 2014, for their personal reasons, the respondent signed the said appointment letters on being asked on their behalf in good faith, and to avoid any loss being caused to them. Except for signing the said appointment letter as Authorised Signatory only, the respondent never dealt with the persons to whom letters were issued.
- 5.6 As regard the justification for the use of mobile number and address of the respondent on the letter head of M/s Global Tax Solutions, the Respondent stated that the partners of M/s Global Tax Solution are his relatives and share the same residential address. The address on the letter head of M/s Global Tax Solution is residential address of the respondent. Professional address of the respondent is different from the residential address. Professional address of the respondent is 38, Khemchand Market, Khanpur, New Delhi – 110062. Further the address in the partnership deed of M/s Global Tax Solution is B-22A, Duggal Colony, Khanpur, New Delhi – 110062. Further, at the time of incidence there were only two mobile

phones in the family of the respondent. One was used by the father of the respondent and second one was commonly used by all the other family members including the respondent. Therefore, the same number has been used on the letter head of M/s Global Tax Solution.

- 5.7 The Board also perused the copy of the income tax return of the firm M/s Global Tax Solution and that of the Respondent during the relevant period and noted that the respondent did not enter into any financial transaction with the said firm.
- 5.8 In view of the above, the Board held that there are no direct or circumstantial evidences to suggest that the Respondent was acting as the Managing partner of M/s Global Tax Solution and thus, requiring the specific approval of the Council to act in the said capacity apart from holding the full time Certificate of Practice. Accordingly, the Board held the Respondent not guilty in respect of the charge alleged.

CONCLUSION:

- 6 Thus, in conclusion, in the considered opinion of the Board, the Respondent is held **NOT GUILTY** of Professional and Other misconduct falling within the meaning of Item (11) of Part I and Item (2) of Part IV of 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. PRASANNA KUMAR D.
(PRESIDING OFFICER)

Sd/-
Ms. DOLLY CHAKRABARTY (IAAS,retd.)
(GOVERNMENT NOMINEE)

Sd/-
CA.(Dr.) RAJ CHAWLA
(MEMBER)

DATE: 10th February 2023

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

Mohit Kumar

मोहित कुमार / MOHIT KUMAR
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
भारतीय सनदी लेखाकार संस्थान
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahdara, Delhi-110032