



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

[PR/281/2016-DD/07/2017-BOD/574/2020]

ORDER UNDER SECTION 21A(3) OF THE CHARTERED ACCOUNTANTS ACT, 1949 READ WITH RULE 15(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATIONS OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007

In the matter of:-

Mr. Vijay Kumar
Chief Manager, SMEAG-SAG
ICICI Bank Ltd.
Mumbai.

.... Complainant

-Vs-

CA. Anil Kumar Gupta (M.No.082320)
M/s Gupta Anil & Co.
New Delhi.

.... Respondent

[PR/281/16-DD/07/2017/BOD/574/2020]

MEMBERS PRESENT (in person):

CA. Rajendra Kumar P, Presiding Officer
Ms. Dolly Chakrabarty (IAAS, retd.), Government Nominee

Date of Final Hearing: 17th March, 2023

1. The Board of Discipline vide Findings dated 10th February, 2023 was inter-alia of the view that CA. Anil Kumar Gupta (M.No.082320) is Guilty of "Professional Misconduct" falling within the meaning of Item (11) of Part-I of the First Schedule of the Chartered Accountants Act, 1949 with respect to the first charge only.
2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against CA. Anil Kumar Gupta and communication dated 1st March 2023 was addressed to him thereby granting him an opportunity of being heard in person and/or to make written representation before the Board on 17th March 2023.
3. CA. Anil Kumar Gupta appeared before the Board through video conferencing on 17th March 2023 and made his oral representation thereat. While making his oral representation, he requested the Board to take a lenient view in the case.
4. The Board has carefully gone through the facts of the case along with the oral representation of CA. Anil Kumar Gupta.



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5. As per the Findings of the Board as contained in its report, the Respondent performed the attestation function by issuing various certificates to the Bank while being involved with the Borrowing Company in managerial capacity and has thus played dual role simultaneously. On the one hand, the Respondent, while holding full time COP, had issued certificates for specific reporting to the Bank while on the other hand, he also played the managerial role as CEO to assist the borrowing company in its day-to-day operations. Accordingly, the contention of the Respondent that he was never employed with the Borrowing Company and was engaged in a professional capacity was found to be contradictory as he was very much a part of management of the Borrowing Company. Accordingly, the Board held the Respondent Guilty of "Professional Misconduct" falling within the meaning of Item (11) of Part-I of the First Schedule to the Chartered Accountants Act, 1949 with respect to the first charge only.
6. Thus, upon consideration of the facts of the case, the consequent misconduct of **CA. Anil Kumar Gupta** and Keeping in view his oral representation before it, the **Board decided to Reprimand CA. Anil Kumar Gupta (M. No.521013).**

Sd/-

CA. Rajendra Kumar P.
(Presiding Officer)

Sd/-

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

DATE: 19th April 2023

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, Shahdra, Delhi-110032

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/281/2016-DD/07/2017/BOD/574/2020]

CORAM (present in person):

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

In the matter of:

Mr. Vijay Kumar
Chief Manager, SMEAG-SAG
ICICI Bank Towers, S4E,
Bandra Kurla Complex, Bandra-East
Mumbai- 400 051

.....Complainant

Versus

CA. Anil Kumar Gupta (M.No.082320)
M/s Gupta Anil & Co
7/38, Ansari Road, Darya Ganj
New Delhi- 110002

.....Respondent

DATE OF FINAL HEARING : 22nd November 2022
PLACE OF FINAL HEARING : New Delhi/through video conferencing

PARTIES PRESENT (through video conferencing):

Complainant : Mr. Vijay Kumar
Respondent : CA. Anil Kumar Gupta
Counsel for Respondent : Adv Piyush Sharma

FINDINGS:

BRIEF BACKGROUND OF THE CASE:

1. The ICICI Bank extended various credit facilities to M/s Anil Printers Limited ("Borrowing Company") and it has been alleged that the Respondent was employed with the Borrowing Company while acting as its Authorized Signatory and had also issued certificates to Bank on behalf of the Borrowing Company so as to assist the Borrowing company in availing the credit facilities by providing security of its immovable property to the Bank. The Borrowing Company entered into a lease agreement with M/s Sarvin Printers Private Limited on 11th June 2012. The said agreement was entered into to stall bank's action under the SARFAESI Act 2002.

CHARGE ALLEGED:

- 2.1 As part of the compliance and statutory requirements, the Borrowing Company was required to submit certain information certified by the Independent Chartered Accountant to the Complainant Bank. The Respondent has been certifying various information on behalf of the Borrowing Company with the Bank while being employed with the Borrowing Company as CEO and was also holding full time Certificate of Practice (COP).
- 2.2 While holding Certificate of Practice, he was also holding the Directorship in M/s Sarvin Printers.
- 2.3 The Respondent played an instrumental role in thwarting bank's efforts to recover dues under SARFAESI Act from the Borrowing Company as he acted as the Director of M/s Sarvin Printers and was also acting as CEO of the Borrowing Company while stating that M/s Sarvin Printers and the Borrowing Company have entered into a lease agreement dated 11th June, 2012 which was unstamped and unregistered and appeared to be back dated as no rent has been paid by M/s Sarvin Printers to the Borrowing Company as per the financial statements for the FY 2012-13.

BRIEF OF PROCEEDINGS HELD:

- 3 At the time of hearing held in the case on 22nd November 2022, the Respondent and the Complainant along with his Counsel were present before the Board through video conferencing. Accordingly, the Board decided to proceed ahead with the hearing in the case. The Respondent and the Complainant was put on oath. On being asked by the Board

as to whether the Respondent pleaded guilty in respect of the charges alleged against him, he replied in negative and his Counsel made detailed oral submissions on the charges alleged against the Respondent. The Respondent was examined by the Board. The Complainant also made his submissions to substantiate the allegations alleged against the Respondent. 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 written submissions, inter alia, stated as under:
- a) The Complainant has alleged that the Respondent was liable for sanctioning the lease agreement entered into between M/s Anil Printers Ltd. and M/s Sarvin Printers and was responsible for derailing the legal proceedings initiated by the Bank against M/s Anil Printers Ltd under the SARFAESI Act 2002. The Complainant itself vide a letter dated 08.11.2016 to the Disciplinary Directorate stated that one, Mr. Ashokka Aggarwal was the key person in M/s Anil Printers Ltd and was responsible for taking all decisions for the said company. It is, therefore, stated that the Complainant is approbating and reprobating in the same breath which is without prejudice to the Respondent's other defences in the present proceeding.
 - b) The Respondent was engaged by Anil Printers Ltd. purely and truly in a professional capacity on retainer ship basis for looking after business, finance, accounts, taxation and legal matters. The role of the Respondent in the said company was limited to financial aspects and were commensurate with the functions performed by a Chartered Accountant in practice.
 - c) The involvement of the Respondent in the internal affairs or day-to-day functioning of the said company on remuneration being received in professional capacity and relating to financial accounting and related areas does not, under any stretch of imagination, hold the Respondent guilty for Professional Misconduct as alleged or at all.
 - d) The Respondent's domain was limited to finance, accounts, taxation and legal matters, which despite falling within the meaning of internal affairs of a company do not relate to "managerial capacity" in any manner whatsoever. Neither the Complainant nor the Director (Discipline) have proved the involvement of the Respondent in the affairs of the company in a managerial capacity and/or full time basis and/or on salary.



- e) The Respondent's use of the e-mail id being anil.gupta@anilprintersltd.com for and on behalf of the said company does not have any bearing on the role of the Respondent in the said company. A company exercise sample caution and security in its day-to-day operations and as such an independent professional working in important matters like finance and accountancy requires supervision on all fronts. Every mail sent by the Respondent on behalf of the said company is monitored by the company and use of the company's domain name is essential to maintaining the privacy and security of the company.
- f) The remuneration received by the Respondent were disbursed by the said company as professional charges as evident from deduction of tax at source for the payments made to the respondent under section 194J of the Income Tax Act, 1961. Moreover, no tax has been deducted at source under Section 192 of the said Act of 1961 which pertains to salaried employees.
- g) The Respondent was an authorized signatory and has performed attestation by issuing various certificates of the said company, which is neither in contravention to the duties performed by a Chartered Accountant nor in violation of any law or regulation governing the functioning of Chartered Accountants.
- h) The books of accounts of the said company having been audited by B.K. Khare & Co. do not show any discrepancy apropos the remuneration received by the Respondent or ascertain the full-time involvement of the Respondent with the said company.
- i) The allegation of the Complainant that the Respondent was employed in M/s Anil Printers Ltd. and M/s Sarvin Printers on a full-time basis during the same time period is self-contradictory, incoherent and lacks rationale.
- j) The role of an Additional Director in a company is temporary and bereft of the managerial responsibilities associated with a full time Director of a company.
- k) The financial statements of M/s Anil printers Ltd. and M/s Sarvin Printers have been audited by B.K. Khare & Co. and Shashank Manerikar & Co. respectively, whereas the Respondent has signed the financial statements merely on account of being an Additional Director on part-time basis. The lease agreement dated 11.06.2012 does not contain any signature of the Respondent in as much as the Respondent was neither aware of the existence of such a lease agreement nor involved in managerial and key decisions of the said companies and in view of the fact that the Respondent was appointed as the Additional Director on 18.01.2013.

- l) Legitimacy of the lease agreement cannot be decided on exchange of affidavits before this Directorate and should be decided by the Civil Court adjudicating the Civil Suit. Arguendo, even if the Lease Agreement is found to be backdated and fraudulent, the Respondent is neither a signatory to the agreement nor was aware of its existence in its entirety.

OBSERVATIONS OF THE BOARD:

- 5 On perusal of the documents and submissions on record, the Board observed that three charges had been levelled against the Respondent. As regard the first charge, the Board noted that the Respondent stated that he was appointed by the borrower company on a retainership basis on the basis of oral understanding. No formal monthly bills were raised by him on the borrower company. The remuneration received by him were disbursed as professional charges as evident from deduction of tax at source for the payments made to the respondent under section 194J of the Income Tax Act, 1961. In this regard, the Board noted that the Respondent was authorised by the borrowing company to avail financial, monetary, and any other products and services offered by the bank. Further, he was also authorised to execute Forms and documents to bind the Borrowing Company in all transactions with the Bank. The same is evident from the Borrowing Company's Board Resolution dated 11th May 2010 which also authorised the Respondent to act as the Borrowing Company's authorised signatory to bind the Borrowing Company in all transactions with the Bank and to complete and sign all necessary Forms and documents thereof. Vide communication dated 18th May 2010, the company informed ICICI Bank Ltd. that Respondent is one of the individuals who is authorised to operate the account severally.
6. The Board also noted that the Complainant brought on record extracts of certain communications held between the Respondent and the Bank via e-mail on behalf of the Borrowing Company using the email ID of the Respondent as anil.gupta@anilprintersltd.com wherein the domain name of the company was used and thus indicate that he was authorized to perform the managerial responsibilities of acting as an authorized signatory to the extent of binding the Borrowing Company in all the transactions with the Bank:

| Date | Email-id | Basic Content of the email |
|------------|--|-------------------------------------|
| 30/6/2011 | anil.gupta@anilprintersltd.com | Rescheduling of ECB Dues |
| 10/8/2011 | anil.gupta@anilprintersltd.com | Thank you mail |
| 08/6/2011 | anil.gupta@anilprintersltd.com | Provisional Financial Statement |
| 12/8/2011 | anil.gupta@anilprintersltd.com | LRN of ECB |
| 05/4/2011 | anil.gupta@anilprintersltd.com | Insurance Policies |
| 20/6/2011 | anil.gupta@anilprintersltd.com | Information |
| 02/12/2011 | anil.gupta@anilprintersltd.com | Stock Audit on behalf of ICICI Bank |
| 12/8/2011 | anil.gupta@anilprintersltd.com | CAL of HK |
| 28/10/2011 | anil.gupta@anilprintersltd.com | Use of CC A/c |

Although, the Respondent contented that the use of the domain of the borrower company in his email-id was to maintain the privacy and security of the company, however, on perusal of the contents of the aforesaid emails, keeping in view the principle of substance over form, the Board was of the view that the same clearly reflected that he was involved in the management of the day to day affairs of the company and held out to the banks dealing with the borrower company that he was the authorized signatory of the company.

7. The Board also noted that on the one hand, the Respondent held out to the Complainant bank that he is one of the authorized signatory to the bank transactions whereas on the other hand, the Respondent also issued a certificate dated 21st December 2009 to the borrower company as regards its directors status. He also issued a Limit confirmation Certificate dated 21st December 2009 to ICICI bank and a few other Certificates to the borrower company.
8. Moreover, the Counsel for the Respondent himself stated/admitted during the course of hearing before Board that there were certain lapses on the part of the Respondent and that he should have been more careful.
9. In this regard, the Board took into view Regulation 190A of Chartered Accountants Regulations, 1988, which deals with the provision for Chartered Accountants in practice not to engage in any other business or occupation, and the same reads as below:

“A Chartered Accountant in practice shall not engage in any business or occupation other than the profession of accountancy, except with the permission granted in accordance with a resolution of the Council”.

The permissible categories of engagements approved by the Council under Regulation 190A, are available in Appendix No. 9 to the Chartered Accountants Regulations, 1988 which provides as under:

(B) “Members of the Institute in practice may engage in the following categories of business or occupations, after obtaining the specific and prior approval of the Council in each case:-

1. Full time or part-time employment in business concerns provided that the member and/or his relatives do not hold substantial interest in such concerns.”

Therefore, the Board viewed that the Respondent performed the attestation function by issuing various certificates to the Bank while being involved with the Borrowing Company in managerial capacity and has thus played dual role simultaneously. On the one hand, the Respondent had while holding full time COP, had issued certificates for specific reporting to the Bank while on the other hand, he also played the managerial role as authorised signatory to assist the borrowing company in its day-to-day operations. Accordingly, the contention of the Respondent that he was never employed with the Borrowing Company and was engaged in the professional capacity is found to be contradictory as he was very much a part of management of the Borrowing Company. Accordingly, the Board held the Respondent guilty in respect of the charge alleged.

10. As regard the second charge, the Board noted that the Respondent was appointed as an Additional Director of the Company M/s Sarvin Printers with effect from 18th January 2013. He authenticated the financial statements of the company for the F.Y. 2012-13 in the said capacity. He also continued to hold the said position till 15th April 2017.
11. The Board observed that the permissible categories of engagements approved by the Council under Regulation 190A, are available in Appendix No. 9 to the Chartered Accountants Regulations, 1988. Further, a member in practice shall be permitted to be a Director (Director Simplicitor), Promoter/Promoter Director, Subscriber to the

Memorandum and Articles of Association of any company including a Board Managed Company. Further, the expression 'Director Simplicitor' shall be used for an ordinary/simple Director, who fulfills the following conditions :

- (a) **he is required to attend the Board meetings only.**(emphasis provided)
- (b) He will not be paid any remuneration except the sitting fees for attending the Board meetings; and
- (c) **He will be devoting his time for the company only to attend Board meetings and not for any other purpose.** (emphasis provided)

A Member in practice is permitted generally to be a Director Simplicitor in any Company including a Board-Managed Company and as such he is not required to obtain any specific permission of the Council in this behalf irrespective of whether he and/or his relatives hold substantial interest in that Company. Further, there is no bar for a member to be a Promoter/Signatory to the Memorandum and Articles of Association of any Company. There is also no bar for such a promoter/signatory to be a Director Simplicitor of that Company irrespective of whether the objects of the Company include areas which fall within the scope of the profession of Chartered Accountancy. Therefore, members are not required to obtain specific permission of the Council in such cases.

In the said connection, the Board noted that the Ethical Standards Board of ICAI at its Meeting held on 23rd April, 2011 after discussions decided as under:

'A CA in practice can be a 'Director Simplicitor', which includes an independent director. The independent directors are part of the Board where the Accounts are approved, they being party to approval of financial statement. As such, there is no bar in their signing the financial statement. However, they cannot be involved in the day to day affairs of the company.'

The Board observed that apart from authenticating the Financial Statements of the company for the F.Y. 2012-13 there was no other document signed/authenticated by the Respondent in the capacity of the director of the company. Thus, there was no evidence to indicate that the Respondent was involved in the management of the day-to-day affairs of the company.

Accordingly, the Board held that the Respondent was only a director simplicitor in the company and was not required to obtain the prior and specific permission of the Council before holding such position along with holding the full time Certificate of Practice. Thus, the Board held the Respondent not guilty in respect of the charge alleged.

12. As regard the third charge, the Board noted that the Respondent was appointed as an Additional Director of the Company M/s Sarvin Printers with effect from 18th January 2013. The Lease agreement had been entered on 11th June 2012 between the borrower company and M/s Sarvin Printers when the Respondent was not associated with M/s Sarvin Printers. He is not a signatory to the said Lease Agreement. Since the association of the Respondent with M/s Sarvin Printers at the time of execution of the said Lease Agreement is not established, the charge that the Agreement appears to be back dated and had been entered into to thwart bank's efforts to recover dues under SARFAESI Act from the Borrowing Company is not sustainable. Thus, the Board held the Respondent not guilty in respect of the charge alleged.

CONCLUSION:

13. Thus, in conclusion, in the considered opinion of the Board, the Respondent is **GUILTY** of Professional Misconduct falling within the meaning of Item (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949 with respect to the first charge only and **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 in respect of other two charges.

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

प्रमाणित सत्य प्रतिलिपि / Certified true copy

मुकेश कुमार मिश्रा / Mukesh Kumar Mittal
सहायक सचिव / Assistant Secretary
अनुशासन-नात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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