

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/39/2020/DD/12/2021/BOD/676/2022]

CORAM: (present in Person)

CA. Rajendra Kumar P, Presiding Officer

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

CA. Priti Savla, Member

In the matter of:

Shri H V Sharma

Chief Auditor,

Uttar Haryana Bijli Vitran Nigam,

Room No. 101, Ground Floor, Shakti Bhawan, Sector 6,

Panchkula (Haryana) – 134109.

.....Complainant

Versus

CA. Rachit Goyal (M. No. 520418)

Partner, M/s A A R S H & Associates (FRN 024177N),

Chartered Accountants

House No. 3317, Sector 19D,

Chandigarh – 160019.

.....Respondent

DATE OF FINAL HEARING : 16th May, 2023

PARTIES PRESENT (in person):

**A.R. for the Complainant Dept. : Shri Sandeep Malik, Section Officer, UHBVN
(alongwith Shri Prem Singh, Section Officer, UHBVN)**

Respondent : CA. Rachit Goyal

Counsel for the Respondent : Shri Ankit Awal, Advocate

FINDINGS:

BRIEF BACKGROUND OF THE CASE:

1. A tender / NIT (Notice Inviting Tender) no. CA/RA/2020-21/01 was floated by the Complainant Department through Haryana E-Tender portal for engagement of 12 number

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of Chartered Accountants on contract basis for one year and all terms and conditions of Contract agreement was properly laid down in the EOI (Expression of Interest) dated 01.06.2020 published by the Complainant Department. The Respondent firm i.e., M/s A. A. R. S. H. & Associates participated in the said tender / NIT vide its Offer no. CA/RA/2020-21/01 dated 17.07.2020. In this regard, the work was awarded to the Respondent firm vide Complainant Department's memo No. CA/RA-1/UH/Engagement of CAs/50/Ch.126 dated 08.09.2020 being lowest rates offered by the Respondent firm. It is stated that as per terms and conditions of the work order dated 08.09.2020, the Respondent firm was required to supply manpower within 30 days, but the Respondent firm started to make certain excuses for its inability to provide the required Chartered Accountants due to one reason and others.

CHARGE ALLEGED:

Against the aforementioned background, the Complainant alleged against the Respondent as under:

2. The Respondent firm had not provided twelve numbers of Chartered Accountants on one year contract for which work order was issued in their favour. The services of above CAs were urgently required by the Complainant Department to run the important work pertaining to energy bills being issued to consumers on monthly / bi-monthly basis. It is alleged that the Complainant Department had again and again requested the Respondent firm to start the work, but they regularly tried to defy the contractual obligations without any cogent and valid reasons. The Respondent firm had given the excuse of Covid-19, whereas the NIT was floated by the Complainant Department and the Respondent firm had submitted / applied for the tender during the pandemic (Covid-19) time only without reference of any such conditions. The Complainant Department also assured to provide all safeguards to secure their employees from corona pandemic same as their personal staff. The Respondent firm had not started the work allotted to them in spite of all above requests and assurances due to which the Complainant Department had to face huge difficulties / financial loss due to above attitude of the Respondent firm.

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BRIEF OF PROCEEDINGS HELD:

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S.no.	Date of Hearing(s)	Status of Hearing(s)
1.	16 th May, 2023	Heard and concluded.

BRIEF SUBMISSIONS OF THE PARTIES TO THE CASE:

A. RESPONDENT:

4. The Respondent in his defence, inter-alia, stated as hereunder:

4.1 He had filed the application for Tender against notice inviting vide Tender No. CA/RA-2020-2021/1 on 29-06-2020, which was considered as a technically qualified bid by UHBVN and after evaluating financial bids, he was considered as "L2 Firm" i.e. second best option for the tender allotment as communicated by the officials of UHBVN. Before filing the tender applications, the Respondent tried to make contacts with UHBVN Department for clarification on tender documents through telephonic communications and to provide SOPs and audit manuals to him, but he was asked to wait till allotment of tender.

4.2 Thereafter, successful qualification of technical bid for tender, he got to know about rumoured modus operandi of the Department i.e. Uttar Haryana Bijli Vitran Nigam which displayed a bad image of embezzlement, corruption and harassing customers and employees especially young CAs over the years. The Respondent submitted newspapers reports and the popular world opinion about the UHBVN offices that their Department has been indulged in issuing bogus inflated bills. All the process was initiated by their internal Departmental officers, which later on approved or vetted by internal audit team.

4.3 The Respondent applied for tender after understanding of tender document, but it was the LOA dated 08-09-2020 and contract agreement which clarified the Respondent of various discrepancies and conditions hindering on the ground of independence, making it hard for Respondent to carry out the same in professional capacity. First of all, the process of allotting the tender was delayed for a good period of time, as the tender allotment letter was issued on 08.09.2020 while the bid was opened on 13.08.2020. The

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Respondent was communicated initially that their bid was second best i.e. L2, and no communication was initiated by UHBVN thereafter since LOA, despite Respondent's numerous queries till August end, he took his attention to other important assignments of his firm and therefore were unable to hold all the 12CAs and had to let them go back to their respective hometowns.

4.4 Further as per LOA, the commencement of the work shall take place immediately after signing of contract agreement, but no such contract was ever signed. There were some conditions in the contract agreement that were violating ethics of a highly reputed professional capacity such as Chartered Accountant, therefore the Respondent even requested to the Department for some modifications in the agreement so that he will have independence, but they were reluctant in doing the same. Even when the Respondent met their officials in person and had discussions regarding the work agreement, the Respondent asked for the audit manuals and SOPs and again were denied. But on the other side, as per agreement, he will be considered wholly liable for financial loss, if any, because of misconduct of CAs during term.

4.5 It would have been ethically wrong, if the Respondent had entered into this tender of manpower supply agreement without taking independence ethics and morality into consideration. It is therefore for this reason that he resisted in providing bank guarantee and were hesitating to get engaged in such assignment, thus, the Respondent even offered for some changes in the contract, which was never signed. Further, a relevant part of Board's Report of UHBVN, commenting on "Internal Financial Control Systems and Their Adequacy" for financial year 2019-20 can be read as under:

"The Company has well defined and adequate IFSC. The internal financial control is monitored by respective DDOS, FA/HQRS as well as by the Internal Audit Parties under the control of Chief Auditor of the company".

As it can be seen that from above extract that whole system of Internal Financial Control Systems is being managed under the control of Chief Auditor which further states there should be proper SOPs and audit manuals, which were not provided to the Respondent despite numerous requests.

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- 4.6 The proposed work contract contained a morally wrong condition that CA Firm will bear the financial loss without giving any audit manual/SOPs/power to such firm, which only poses a liability on the firm for the work which is actually carried out under supervision of UHBVNL officials only. Even though Department of UHBVN was putting liability of financial loss on the CA Firm, resulting from future work to be carried out by 12 number of CAs, being appointed by the Respondent to UHBVN, they were not providing him any audit manual, SOPs, physical verification of the Offices which is factually wrong as only liability of probable loss was imposed without any power. Hence, it was morally wrong that CA Firm will be held responsible and liable for the work carried out under the supervision of UHBVN Officials.
- 4.7 Difference between L1 and L2 was only Rs 25,325/- per month i.e., $(345,079 - 319,544/-) * 12 = 3,03,900/-$, which is in contradiction to the erroneous recovery/loss claimed by the UHBVN of Rs 13, 11,528/- and factually incorrect. It was only after issuance LOA, and communications with officials held for signing of the contract agreement, which ultimately was never executed or entered them, which was due to several reasons but primarily it started because of difficulties and staff management limitation caused by COVID 19 pandemic situation to which UHBVN were extremely rigid and unreasonable even to the extent that they refused to follow the 4th June, 2020, Guidelines issued by Ministry of Health and family welfare (MoHFW).
- 4.8 Thereafter, not without any delay a response was filed by the Respondent on 21st September 2020, showing his inability to perform the assignment unless issues raised under letter dated 15th September, 2020 is properly resolved and along with Audit Manual, as the same, was basis of this assignment, was quite evident from para 2 of tender document, as scope of work. In response to this a letter communication was done with Ethical Standard Board of ICAI, and accordingly on 28th September 2020, refusal to perform this assignment was given due to non-availability of any audit manual which was in contradiction of tender document as well as LOA, thereby changing the form and substance of this assignment to a manpower supply contract.
- 4.9 UHBVN neither followed the principles of natural justice nor did they comply to their own terms and conditions as laid down in their tender document and LOA, namely:

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- a. UHBVN, has purposely, ignored criticality of the position on COVID 19 pandemic so as to use it to their own inconvenience, resulting even violating the mandatory MOHFW Guidelines dated 4th June 2020, thereby ignoring the applicability mandatory 14 days quarantine in case for Respondent's staff is COVID suspected or is in close contact to a COVID effected or suspected person.
- b. Non-requirement of audit manual for performing this assignment, as stated by UHBVN, is in itself a contradiction to the terms of tender document as well as LOA, thereby changing the form and substance of this assignment, thereby resulting into breach of trust as well as breach of terms of contract by UHBVN.
- c. Further, they also ignored the Notification F.18/4/2020-PFO, dated 13th May 2020, of Ministry of Finance, thereby not considering this contract under force Majeure, clause 20, of tender bid document, thereby have wrongly forfeited the EMD of Rs 100,000/-
- d. Further, despite being L2 of this bidding process of tender no.: CA/RA/2020-21/01) being available at Rs 345,079/-. UHBVN has done re-bidding process vide NIT no.: CA/RA/2020-21/03) on 16th December 2020, thereby has allotted new work conditions to a different CA firm.
- e. Thereafter, UHBVN, has initiated unlawful and false recovery proceedings of Rs. 13, 11,528/- under clause 15 of Fall back, recovery proceedings, vide letter dated 6th July 2021, to cause not just harassment and mental torture and causing professional harm to the reputation of the Respondent.

B. COMPLAINANT:

5. The Complainant, inter-alia, made the following submissions to substantiate his case:
 - 5.1 The supporting documents of the complaint have already been submitted through various correspondence for taking necessary action against the said firm due to unprofessional behaviour, negligent attitude and non-performance of work allotted to them by UHBVNL in the light of NIT No.CA/RA/2020-21?01 dated 01.06.2020. The UHBVN had to face huge difficulty/Financial loss due to unprofessional behaviour, negligent attitude and non-performance of work allotted to them by UHBVNL.

OBSERVATIONS OF THE BOARD:

- 6.1 At the outset the Board noted that the Complainant Department had floated a tender for engagement of 12 Nos. of Chartered Accountants on contract basis for one year and the bids for the said tender were closed on 30.06.2020. It is also noted that the Respondent firm applied and were also awarded the said tender / assignment vide Letter of Award

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(LOA) dated 08.09.2020 by the Complainant Department. It is further noted that various communications were done between the Respondent firm and the Complainant Department wherein the Respondent firm sought certain clarifications from the Complainant Department. The following sequence of events /communications held between the Respondent firm and the Complainant Department merits consideration:

Sl. No.	Date of Communication	Name of Sender	Name of Receiver	Particulars
1.	08-09-2020	Complainant Department	Respondent firm	The Respondent firm was awarded the Tender / assignment vide Letter of Award (LOA)/Work Order dated 08.09.2020 by the Complainant Department.
2.	10-09-2020	Respondent firm	Complainant Department	The Respondent Firm made a request vide letter dated 10-09-2020 showing inability to start work within 10 days of issue of above Work Order due to Covid-19 pandemic situations and further asking for more time to commence the work.
3.	15-09-2020	Respondent firm	Complainant Department	The Respondent firm vide letter dated 15.09.2020 informed that most of the staff being held by the Respondent firm for this assignment has left for their hometown due to Covid-19

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				<p>pandemic situations. Further, informed the issues/observations raised by the staff, which needs to be addressed before making their appointment for this assignment.</p>
4.	17-09-2020	Complainant Department	Respondent firm	<p>The Complainant Department vide letter dated 17.09.2020 replied that putting so many conditions in violation of the terms of the NIT/Work Order before providing the CAs, clearly shows that the firm is making lame excuses for its inability to provide the necessary number of CAs. Complainant Department further informed that Nigam is taking all the necessary steps to ensure the safety of its employees and will also look after the safety of the CAs to be provided by the Firm.</p>
5.	21-09-2020	Respondent firm	Complainant Department	<p>The Respondent firm intimated that no satisfactory response has been received regarding the</p>

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				<p>issues raised by Complainant Department. It was further requested to provide detailed SOP i.e., related to leave, pay and deductions etc. and further, requested to provide predetermined audit manuals or detailed standard operating procedure.</p>
6.	24-09-2020	Complainant Department	Respondent firm	<p>The Complainant Department intimated that there is no procedure in the NIT for allowing inspection of UHBVNL where the CAs will be made to work. Further, regarding the leaves, pay and deductions clause 12 of Section III of (Terms and Conditions of Contract). Further, it mentioned that there is no requirement of audit manual or defined SOP in any manner, as the Dept. would be providing the required training and materials to CAs after joining the for effective performance.</p>

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7.	28-09-2020	Respondent firm	Complainant Department	<p>The Respondent firm vide letter dated 28.09.2020 mentioned:</p> <p><i>"Thus, it is evident from the above news clippings and statistics released by various organization that there is continuous surge in the number of Corona Virus cases in Chandigarh and its nearby regions and situation has worsened since the removal of lockdown/restrictions imposed by the Central/State Government in the month of June, 2020. In response to this regard it is humbly stated, the staff of Chartered Accountants to be employed by us will be working under the continuous supervision and guidance of the UHBVN staff and further in the absence of audit manual/SOP, how would any responsibility towards work or any loss of confidentiality, information or documents and moreover</i></p>
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				<p><i>the value of damages such loss, if any, caused by the working staff shall be established or quantified, henceforth para 10 & 11, read as under need to be deleted from contract agreement, if signed. Thus, without prejudice to the other mentioned conditions we would be in position to enter into this contract agreement with UHBVN only if ICAI allows us to do such manpower supply contract and provided further the other issues/queries as raised by us are resolved by the UHBVN, affirmatively".</i></p>
8.	08-10-2020	Complainant Department	Respondent firm	<p>The Complainant Department vide letter dated 08.10.2020 mentioned: <i>"In case of breach of contract committed by the CA Firm/company as explained in the above referred cases, UHBVNL can terminate the contract by giving 15 days' notice and</i></p>

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				<p>shall be within its right to resort to the Fall Back Arrangement which inter-alia includes award of contract to any other CA Firm at the risk and cost of the defaulting firm. In such case, any higher price to be paid by UHBVNL to the newly appointed CA firm shall be recoverable from the defaulting firm. Besides, the amount of BG/EMD deposited by the CA firm/company will be forfeited.</p> <p>From the perusal of above it is clear that all the references being made by you seems to be an attempt to defy the contractual obligation without any cogent & valid reasons. You have failed to adhere to terms and conditions of the contract. Non-submission of performance bank guarantee and non-initiation of work in terms of contractual provisions tantamount to breach of</p>
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				<p>contract.</p> <p><i>In view of above, notice of 15 days is hereby served upon you as to why following action are not taken against you.</i></p> <ol style="list-style-type: none"> 1. Termination of contract. 2. Forfeiture of EMD 3. Execution of work at the risk and cost of your firm <p><i>In case nothing is heard from your end within the stipulated period then it will be presumed that you have nothing to say and Nigam will be constrained to take the further action on the basis of facts in record and terms & conditions of Contract Agreement."</i></p>
9.	02-11-2020	Complainant Department	Respondent firm	<p>The Complainant Department vide letter dated 02.11.2020 informed regarding the termination of contract as stated hereunder:</p> <p><i>"From the perusal of above it is clear that all the references being made by you seem an attempt to</i></p>

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				<p><i>defy the contractual obligation without any cogent a valid reason. You have consistent and persistently failed to comply with the terms and conditions of the contract. Further, your firm also failed to deposit the bank guarantee within 45 days of issuance of LOA/Work Order. Thus, there is breach of contract on your part.</i></p> <p><i>A notice dated 08/10/2020 was served upon you whereby an opportunity was afforded to explain your position within 15 days as to why action proposed in the notice may not be taken against you but no response has been received from your side till date, which shows that you admit the contents of notice regarding the lapse in fulfilling the contractual obligations.</i></p> <p><i>In view of above, subject cited contract is hereby terminated and EMD of</i></p>
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				Rs.1,00,000/- (One Lac only) is forfeited. Further, work under contract will be executed at the risk and cost of your firm. This is without prejudice to the right of Nigam to take any other action in terms of contractual provisions."
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6.2 On perusal of the Letter of Award / Work Order dated 08-09-2020 issued by the Complainant Department to the Respondent, the Board noted that para 2 and 3 of the same read as under:

*"2. Commencement of Work: The commencement of the work shall take place immediately **after signing of contract agreement by both the parties** and a maximum of 10 days will be allowed for this from the date of issue of LOA. (emphasis provided)*

*3. Scope of work: 10 no. CAs shall Assist the Accounts Officer/ Sr. AO in pre-auditing the entries relating to revenue of Operation Sub- Division and to curb the tendency of allowing wrong refund/less charging. **Checking on the basis of Audit Manual as well as other points as assigned by the accounts Officer/ CBO from time to time.** The instructions of UHBVN may be modified any time. If required so, by UHBVN and in case instructions are modified the Chartered Accountants will have to audit the accounts as per modified instructions without any extra charges/remuneration of any type. 2 no. CAs will work in the office of Chief Auditor. UHBVN, Panchkula and perform the job of Revenue/ work audit. The job of Revenue audit involves checking all the related record of revenue i.e Cash book MCO, SCO, RCOs, billing record, meter reading record etc. as per the instructions of the Nigam issued from time to time. The job of work audit involves audit of expenditure in various operation division, M&P Divisions Constructions Division and head office etc." (emphasis provided)*

6.3 The Board noted that during the course of hearing both the parties to the case admitted that in pursuance of said LOA, no contract agreement had been executed between the Complainant Department and the Respondent.

6.4 The Board also noted that the Respondent vide communication dated 10th September 2020 informed the Complainant Department as under:

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"Since the above stated process of arrangement of required resources might take some reasonable time now. Hence, we can only commence this work with all the required resources in some reasonable time, which may take some additional time beyond 10 days as mentioned by your good self. So, considering the present situations and whole scenario as explained above we request you to please allow us at least 30 days from the date of issue of LOA to commence the work with full capacity as required, but still being positive we expect to start the work from 1 October, 2020 onwards."

6.5 The Board further noted that a response was filed by the Respondent on 21st September 2020, with the Complainant Department showing his inability to perform the assignment unless issues raised under letter dated 15th September 2020 is properly resolved and along with Audit Manual, as the same, was the basis of this assignment. However, in its letter dated 24th September 2020, the Complainant Department clarified that this assignment doesn't require an audit manual and accordingly, no audit manual was provided to the Respondent.

6.6 The Board also noted that a communication dated 28th September 2020 was done by the Respondent with Ethical Standard Board of ICAI wherein the ESB vide communication dated 30th September 2020 suggested that the firm should not engage in any kind of assignment mentioned in this trailing mail. The Board further noted that on 28th September 2020, the Respondent gave refusal to perform this assignment due to non-availability of any audit manual which was in contradiction of the scope of work provided in the Tender document as well as LOA, thereby changing the form and substance of this assignment to a manpower supply contract. The Board further took into view the following last para of the letter dated 28th September 2020 sent by the Respondent to the Complainant Department:

"Thus, without prejudice to the other mentioned conditions we would be in position to enter into this contract agreement with UHBVN only if ICAI allows us to do such manpower supply contract and provided further the other issues/queries as raised by us are resolved by the UHBVN, affirmatively."

6.7 Thus, considering the facts and circumstances of the case, the Board noted that the Respondent was transparent in his communication with the Complainant Department regarding the issues concerning the initiation of the assignment and also refused to execute the same within 20 days of the issue of Letter of Award to him by the Complainant Department. Further, no formal contract agreement had been executed

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between the Complainant Department and the Respondent subsequent to the issue of the Letter of Award so as to hold the Respondent liable for non-execution of the assignment. Thus, in view of the above explained circumstances, the Board held that no ground of misconduct as alleged has been made out against the Respondent so as to hold him liable for 'Other' Misconduct. Accordingly, the Board held the Respondent NOT GUILTY in respect of the charge alleged.

CONCLUSION:

7. 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 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.

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Sd/-

CA. Rajendra Kumar P
(Presiding Officer)

Sd/-

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

Sd/-

CA. Priti Savla
(Member)

DATE: 02-02-2024

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

Geetha

गीता अनिरुध क्यार / GEETHA ANIRUDHA KUMAR
कार्यकारी अधिकारी / Officer in Charge
अनुसंधान विभाग / Investigation Department
भारतीय प्रमाणित लेखाकारों का परिषद / ICAI
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आइसीए / ICAI
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