

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/689/2023]**

**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 Uma Kant Arora,**

Narain Vill, Sector 1-C, Ward No.15,

Vikas Nagar, Backside PSPCL Powerhouse,

**Mandi Gobindgarh,147301.**

.....Complainant

**Versus**

**CA. Yoginder Singh Joshi (M. No. 094461)**

M/S Yoginder Singh & Associates,

513, Sector-45A

**Chandigarh- 160047.**

.....Respondent

**DATE OF FINAL HEARING : 3<sup>rd</sup> July 2023**

**PARTIES PRESENT (in person):**

**Respondent : CA. Yoginder Singh**

**Counsel for the Respondent : Shri Baaghi Sandeep Pal Singh, Advocate**

**FINDINGS:**

**BRIEF FACTS OF THE CASE: -**

1. The Respondent was the auditor of Complainant's business firm i.e., M/s UK Arora & Co. (hereinafter referred to as "Firm"). The Respondent from the cheque book of the Firm had drawn a cheque of Rs. 5,50,000/- bearing no. 191126 on 08.11.2008 and deposited

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the same in his account with the Bank of Maharashtra, Mandi Gobindgarh without the knowledge of the Complainant. The cheque amount was debited from the Complainant account on 11.11.2008 and on reconciling the bank statement, the Complainant came to know of the fact of withdrawal of money. On questioning the Respondent of the same, he stated that he was in urgent need of money and promised to pay back the amount with upto date interest but till date he did not pay back the amount. Further, despite sending repeated reminders and telephone calls to the Respondent, he did not return the amount and also shifted his residence from Mandi Gobindgarh to Chandigarh.

**CHARGE ALLEGED:**

2. The Respondent misappropriated/stolen the amount of Rs. 5,50,000/- from the Firm under the garb of trust and has done professional misconduct under the provisions of the Chartered Accountants Act, 1949.

The Board considered the Prima Facie Opinion dated 24<sup>th</sup> January, 2023 of the Director (Discipline) along with the documents on record. The Board, on consideration of the same, noted that the Respondent had admittedly entered into financial transaction of purchasing plot of land belonging to the Complainant during the F.Y. 2007-08 for which he paid him Rs. 4 Lakh. However, the deal did not materialize. He also sold his Honda car to the Complainant for about Rs. 5 lakhs during the F.Y. 2008-09. The Board also noted that the Respondent and the Complainant had an auditor auditee relationship during the said period. In view of the same, the Board was of the view that the conduct of the Respondent needs further examination in respect of the allegations made against him. Thus, the Board did not concur with the reasons given against the charge(s) and accordingly, did not agree with the Prima Facie Opinion of the Director that the Respondent is Not Guilty of "Other Misconduct" falling within the meaning of Item (2) of Part IV of the First Schedule to the Chartered Accountants Act 1949 and decided to proceed further under Chapter IV of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

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**BRIEF OF PROCEEDINGS HELD:**

3.

| S. No. | Date of Hearing(s)        | Status of Hearing(s)                       |
|--------|---------------------------|--|
| 1      | 16 <sup>th</sup> May 2023 | Adjourned at the request of the Respondent |
| 2      | 3 <sup>rd</sup> July 2023 | Heard and concluded.                       |

**BRIEF SUBMISSIONS OF THE RESPONDENT:**

4. The Respondent in his defense while pleading not guilty, inter-alia, submitted as under: -

4.1 The charge alleged by the Complainant is that Respondent withdrew Rs 5,50,000/- through cheque from his bank account, for which he submitted his bank statement, but Complainant gave nothing to prove that the amount was credited to the Respondent's account.

4.2 The Complainant filed the complaint after more than 12 years. The Respondent submitted that he doesn't have such old records. The Respondent generally keeps records for up to seven years. Even Institute's guidelines also say this. The Respondent can only imagine what could have happened at that time and based on that he had furnished reply. The Respondent sold a car to the Complainant that time, agreement was also made for the purchase of a plot which was cancelled later, and the money was returned by the Complainant. May be this amount is related to that transaction. The Respondent is not sure, but it happened in the same period.

4.3 The Complainant is relying on the Annexure for the cheque amounting to Rs. 5,50,000/-, to show it came in Respondent's account. But this document is unsigned, it was not signed by Respondent. It was supposed to be signed by the Respondent. The Complainant has not provided the original document.

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- 4.4 The cheque which was withdrawn from his account was dated November 2008. During that period the Respondent was not his auditor, so there was no professional relation between the two.
- 4.5 The Respondent never admitted in writing or orally as to whether the Complainant returned him something in cash or otherwise.

**OBSERVATIONS OF THE BOARD:**

- 5.1 On perusal of the documents and submissions on record, the Board noted that the Respondent was the Tax Auditor of the Complainant's firm for the FY 2007-08 and 2009-10. The Board further noted that the Respondent on 30-10-2007 paid an advance amount of Rs. 4 lakhs to the Complainant to purchase his 8 Biswas plot, but the deal got cancelled and thus, the amount was returned to the Respondent with interest and penalty. The Board further noted that the Respondent sold his Honda city car to the Complainant for around Rs. 5 lakhs during the F.Y. 2008-09. The Board noted that the bone of contention in the instant case is the alleged withdrawal from the Complainant's firm account to the tune of Rs. 5,50,000/- on 11<sup>th</sup> November 2008 which had been credited to the Respondent firm's account when the Respondent was not the Tax auditor of the Complainant's firm. It is the case of the Complainant that Respondent misappropriated/stolen the amount of Rs. 5,50,000/- from the Firm under the garb of trust. However, the Complainant or his authorized representative was neither present before the Board nor was there any intimation as regards his non-appearance in the hearing held on 3<sup>rd</sup> July 2023 despite the due service of the notice for the hearing. Further, the Board noted that the Complainant had brought on record copy of the audited financial statement of his firm for the FY 2007-08 to 2009-10 wherein the Respondent firm's name was shown under the head 'loans and advances'. However, there was no evidence to indicate that the alleged withdrawal from the Complainant firm's account was on account of misappropriation by the Respondent.
- 5.2 The Board also noted that the cause of action arose in the year 2008 whereas the Complaint was filed with the Institute in 2020 i.e. approximately after 12 years without

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any reasonable cause for the delay. Also, there was no evidence to indicate that any criminal proceedings had been initiated by the Complainant against the Respondent for the alleged misappropriation.

- 5.3 Thus, on a detailed perusal of the submissions and documents on record, the Board was of the view that the Complainant has not been able to substantiate with corroborative and/or conclusive documentary evidence its claim that the Respondent has misappropriated/stolen the amount of Rs. 5,50,000/- from the Firm under the garb of trust and has done professional misconduct. In view of the same, 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 **NOT GUILTY** of Other Misconduct falling within the meaning of Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act. Accordingly, the Board passed Order for closure of the case in terms of the provisions of Rule 15 (2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

Sd/-

CA. Rajendra Kumar P  
(Presiding Officer)

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  
*Charan Singh*  
Charan Singh / Charan Singh  
कार्यकारी अधिकारी / Executive Officer  
अनुशासनात्मक निदेशालय / Disciplinary Directorate  
भारतीय सशुद्ध लेखाकार संस्थान  
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