

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2023-2024)]

[Constituted under Section 21B of the Chartered Accountants Act, 1949]

Findings under Rule 18(17) and Order under Rule 19(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

File No: PR/162/2018-DD/248/2018-DC/1493/2021

In the matter of:

Mr. Atul V. Borikar

11-A, Edward Villa,
Cuffe Parade Colaba,
Mumbai – 400005

.....Complainant

Versus

CA. Sudhan Dattatraya Yardi (M. No. 022887)

M/s. Yardi Prabhu & Associates

Chartered Accountants

2, Samadhan 1st Floor,

Agarkar Chowk.

Opp. Railway Station, Andheri – East

Mumbai - 400069

.....Respondent

Members Present:

CA. Ranjeet Kumar Agarwal, Presiding Officer (In person)

Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee (In person)

Mr. Arun Kumar, I.A.S. (Retd.), Government Nominee (In person)

CA. Sanjay Kumar Agrawal, Member (In person)

CA. Sridhar Muppala, Member (Through Video Conferencing mode)

DATE OF FINAL HEARING : 17th October 2023

DATE OF DECISION TAKEN : 23rd January 2024

Parties Present:

Complainant : Mr. Atul V. Borikar (Through VC).

Respondent : CA. Sudhan Dattatraya Yardi (Through VC)

Respondent Counsel : CA. Prasad Kshirsagar (Through VC)

BACKGROUND OF THE CASE:

1. The brief background of the case is as under:
 - a. That the Complainant was promoted as Manager in M/s The Provident Investment Company Limited (hereinafter referred to as the "Company/ PICL") w.e.f. 01st May, 2016.
 - b. In pursuance of the investigation done by the Government of Madhya Pradesh, Finance Department through several constituted teams for the inspection and audit of the Company and the reports submitted by those audit teams advised disciplinary action against the Complainant. He was suspended from his services of the Company vide order dated 19th December 2017.
 - c. The Respondent was appointed by Comptroller and Auditor General (CAG) of India for conducting Statutory Audit of the Company for the financial year(s) 2015-16, 2016-17 and 2017-18 vide its order dated 21st December 2017. However, the charge in which the Respondent was held guilty was relating to Financial Year 2015-16.

CHARGES IN BRIEF:

2. The Complainant vide his complaint in Form – 'I' dated 28th July 2018 has levelled 4 charges against the Respondent / Respondent firm which are as under: -

S. No.	Charges	View of Director (Discipline)
1.	Audit Report for the year ended 31.03.2016 of the Respondent is bogus as the Financial Accounts were adopted by illegally constituted Board.	Held Guilty
2.	The Audit Report was signed (i.e., on 18 th January) before the adoption of accounts (i.e., on 23 rd January, 2018).	Held Not Guilty
3.	The Audit Report is as per the wish, will and desire of the illegally constituted	Held Not Guilty

	Board and observation in Audit Report about the Complainant's Suspension is misrepresented by the Respondent	
4.	The observation in Audit Report about the change in the constitution of the Board is made without verifying the records.	Held Not Guilty

3. The Respondent in his reply dated 8th October 2018 at the stage of Prima Facie Opinion had, inter-alia, stated as under:

3.1 That he was appointed as the Statutory Auditor of the Company by the Office of the 'Comptroller and Auditor General of India' vide its letter dated 21st December 2017 for the financial year(s) 2015-16, 2016-17 and 2017-18 issued to the Company and not by the Board of Directors.

3.2 The Audit for the financial year 2015-16 was commenced in December, 2017 and was concluded in January, 2018. During the audit, various constraints were faced such as non-availability of competent staff, data/ records/ information and weak internal controls.

3.3 That due to suspension of most of the staff members before the commencement of audit, the top management of the Company was unable to provide necessary data/ records/ documents/ information required for the purpose of Statutory Audit of the Company.

3.4 That it is the duty of the auditor to verify whether duly constituted Board of Directors had signed the Financial Statements without going to the legality of the issues connected thereto. Legality or otherwise of the Board has been stated to be out of the purview of the Statutory Auditor. Moreover, as stated by the Complainant himself that the matter is sub-judice.

3.5 After finalization, statements of accounts were submitted to the Respondent for audit and he returned the same to the Company for signature of the Company's

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authorities i.e., the Managing Director and other two directors (duly approved in the Board Meeting).

- 3.6 They returned duly signed financial statements to the Respondent on 18th January, 2018. Accordingly, considering the statements of the Company in order, the financial statements for the period ended 31st March, 2016 were signed by the Respondent on 18th January, 2018. The Respondent has stated that he did not have the occasion to verify the Board meeting minutes in which the accounts were approved.
4. The Director (Discipline) had, in his Prima Facie Opinion dated 30th September 2020, noted the said allegation levelled against the Respondent and observed that:
- a. With regard to the service of proper notice and quorum for holding the AGM, it was not maintainable against the Respondent as the service of notice of AGM to all the shareholder is not in the purview of an auditor.
 - b. However, the Director (Discipline) noticed that though Mrs. Sumitra Mayur was appointed as Managing Director of a Company in an AGM in September 2017, however, some significant documents in the matter along with the financial statements for the period ending 31st March 2016 were signed by Mr. Aniruddhe Mukerjee and not by her.
 - c. It was also noted that there were documents on record which could substantiate that either Mr. Aniruddhe Mukerjee succeeded Mrs. Sumitra Mayur for the post of Managing Director of the Company or was also appointed as Managing Director of the Company along with Mrs. Sumitra Mayur.
 - d. Thereby, it was concluded that the Respondent, being the auditor, had not verified the authenticity of appointment of Mr. Aniruddhe Mukerjee as Managing Director, and this raised concerns about negligence in fulfilling duties by the Respondent as he failed to verify the authenticity of the persons signing the financial statements in the light of the provisions of Companies Act, 2013.

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5. Accordingly, the Director (Discipline) in terms of Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, held the Respondent Prima-facie **Guilty** of Professional Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949. The said items in the Schedule to the Act states as under:

Item (7) of Part I of the Second Schedule

“A chartered Accountant in practice shall be held guilty of Professional Misconduct if he –

(7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties”

SUBMISSION OF THE RESPONDENT ON PRIMA FACIE OPINION: -

6. The Committee noted that the Respondent in his submissions dated 05th August 2021, in response to the Prima Facie Opinion, inter-alia, had stated as under:
- a) That the audit was completed with various constraints such as non-availability of staff, weak internal control, data/ information and the same had been reported in the Audit Report.
 - b) The Company depended on an outside Chartered Accountant for preparation of the financial statements and due to non-cooperation from his end, the Respondent was not aware of the exact state of affairs of the Company for the financial year 2015-16. Thereby resulting in non-provisioning of reliable data and non-reconciliation of various statements and inadequate audit trail. Even the Respondent pointed out many errors and discrepancies in the financial statements prepared by another Chartered Accountant before finalization of audit process could commence.
 - c) The Company was in the process of shifting the registered office from Mumbai to Bhopal due to which there were practical difficulties in collecting information/ documents on time.

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- d) He had thereby pointed out the major un-rectified discrepancies of serious nature and had also given adverse opinion in view of intensity and gravity of serious irregularities.
- e) The resolution dated 29th September 2017 appointing Mrs. Sumitra Mayur, as Managing Director along with the appointment of following 6 persons as Director was filed with the MCA-
- Mr. Jayant Malaiya
 - Mr. A. P. Srivastava
 - Mrs. Smita Bhardwaj
 - Mr. Aniruddhe Mukherjee
 - Mr. Ashok Jain
 - Mr. Sandeep Patoria
- f) Further, it is observed that Mrs. Sumitra Mayur is missing in the director's list of Provident Investment Company Limited (PICL) and she does not have Director Identification Number (DIN) as Form No-DIR -12 and Form No-MR-1 in case of Mrs. Sumitra Mayur was not filed by the PICL. Hence, the appointment of Mrs. Sumitra Mayur as Managing Director is not regularised in ROC records. Hence, as per ROC records, Mrs. Sumitra Mayur is a non-entity as far as PICL is concerned.
- g) There was no consistency in the representation of Mr. Aniruddhe Mukherjee as sometimes he was representing himself as the Director and sometimes as Managing Director.
- h) The financial statements for the FY 2015-16 were signed on 18th January 2018 and signed by Mr. Aniruddhe Mukherjee & Mr. A.P. Srivastava as directors which are in compliance of provisions of Section 134(1) of the Companies Act, 2013 as the Company had no Managing Director as per ROC records on the date of signing i.e., 18th January 2018.
- i) Since the appointment of Mrs. Sumitra Mayur was not regularized in MCA as Managing Director and not even as a Director, thereby there was no question of her succession by Mr. Aniruddhe Mukherjee as Managing Director who was appointed as Director only. *Bis2*

- j) That he has Management Representation letter dated 13th January 2018 for the financial year 2015-16, which was signed by Mr. Aniruddhe Mukherjee as Director. Further, during his search of ROC records, he did not find prescribed form MR-1 filed with ROC by the company, which is required to be filed for appointment of Managing Director.
- k) As per the ROC records, Mr. Aniruddhe Mukherjee and Mr. A.P. Srivastava were appointed as Directors of the Company and continued as Directors since 29th September 2017 till 06th October 2018.
- l) That he had pointed out elaborately on the weaknesses in the Internal Control, which made the company susceptible to fraud, manipulations and misappropriation at various levels.

BRIEF FACTS OF THE PROCEEDINGS:

7. The committee noted that instant case was fixed for hearing on following dates:-

S. No.	Date	Status of hearing
1.	12.05.2023	Part heard and Adjourned.
2.	17.10.2023	Concluded and Judgement Reserved.

8. On the day of the first hearing held on 12th May 2023, the Committee noted that the Respondent along with his Counsel CA Prasad Kshirsagar, were present through video conferencing mode. The Committee noted that the Complainant was also present through video conferencing mode. Both the parties were administered on oath. Thereafter, the Committee enquired from the Respondent as to whether he was aware of the charges, to which the Respondent replied in the affirmative and pleaded Not Guilty to the charges levelled against him. Thereafter, looking into the fact that that this was the first hearing, the Committee decided to adjourn the hearing to a future date. With this, the hearing in the matter was partly heard & adjourned.

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9. The Committee noted that the Respondent had made further submissions dated 04th October 2021 wherein he had, inter-alia, stated as under:
- a) The Respondent has reiterated his earlier submissions and denied all the charges levied by the Complainant stating that due to non-compliance of ROC formalities, Mr. Aniruddhe Mukherjee was not the Managing Director and he remained Director on the date of signing of financial statements.
 - b) That he had procured data from MCA Portal just to show that Mrs. Sumitra Mayur is not a director and did not have a DIN, and to show that Mr. Aniruddhe Mukhrjee and Mr. Srivastava are directors of the Company.
 - c) That Mr. Aniruddhe Mukherjee has signed the financial statements along with Mr. A.P. Srivastava as Director of the Company when there was no Managing Director of the Company, thus the financial statements for the FY 2015-16 stood duly authenticated as it was required to be signed by two Directors (when the Company did not have a Managing Director on that particular date) in compliance with the provisions of section 134(1) of the Companies Act and thereby the Respondent had signed the financial statements duly authenticated by the Director(s) of the Company.
 - d) The Respondent being the auditor was required to maintain safe distance from the auditee and should not be a part of any administrative decisions or any internal matters of the Company.
 - e) There is no question of committing any breaches and violation of Standards of Auditing, Guidance Notes, Accounting Standards and guidelines of C & AG.
 - f) That the audit is to be conducted with the help of staff and key officers of the Company and not only with the help of key persons of the Company.
10. On the day of the final hearing held on 17th October 2023, the Committee noted that the Complainant was present through Video Conferencing Mode. The Committee noted that the Respondent along with his Counsel CA Prasad Kshirsagar were present through video conferencing mode.
- 10.1 Thereafter, the Committee asked the Complainant to explain his charges. The Committee noted that the Complainant reiterated his earlier submissions made

at the stage of PFO. He further stated that Mr. Aniruddhe Mukherjee was appointed as Director of the Company and not as Managing Director by the Board of Directors. However, he declared himself, as Managing Director and the Respondent had not objected the same. The Complainant had, inter-alia, made the further submissions which are as under:

- i. That since he was protecting the property of Union of India and in order to its interest, he had filed complaint in 2018.
- ii. That the illegally constituted Board wants to grab the government property due to which they had illegally suspended him from his duties.
- iii. As per the board meeting minutes, Mrs Sumitra Mayur was appointed on 26th August 2017. However, there have been no subsequent meetings after 1st September 2017 to validate this appointment.
- iv. That when the Complainant challenged the order of his suspension before the High Court, they transferred his service from Mumbai to Bhopal on December 12, 2017. He challenged this transfer order as well, which was still pending before the High court.
- v. The appointment of Mr. Aniruddhe Mukherjee was illegal because the meeting was not conducted as per the quorum.
- vi. That he challenged his termination before the Supreme Court of India wherein he was directed to challenge the order at the National Company Law Tribunal (NCLT). Thus, he challenged the same before NCLT. However, on the same date, his case was also listed before the High Court. Due to which, he did not attend the hearing before NCLT, hence, his petition was disposed off. Subsequently, he sought for the restoration of his petition at NCLT.

10.2 Thereafter, the Committee asked the Respondent to make his submissions. The Respondent in his submissions had, inter-alia, submitted as under: -

- i. That the Respondent was already held not guilty at the stage of PFO for the allegation that the financials were signed by him before approval by the Board.

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- ii. As per the provisions of Section 134(1) of the Companies Act, 2013, the financial statements were signed by Mr. Aniruddhe Mukherjee and Mr. A.P. Srivastava and the auditor had to confirm that whether they had valid DIN or not and the same had been confirmed by him.
- 10.3** The Committee posed certain questions to both the parties to know the issue involved and the role of the Respondent in the same. On a specific question of the Committee to the Complainant, as to whether he had any order of MCA/ROC/ High Court mentioning that financials were illegal/ incorrect, the Complainant replied that on this charge he had filed complaint only with ICAI.
- 10.4** The Committee further noted that the Complainant had approached the NCLT regarding the restoration of a stay petition related to the illegally constituted board of the Company. The Committee at the same informed the Complainant that since that matter was pending with NCLT, the Committee cannot take a position on the matter until the NCLT takes a decision. With the above, the Committee decided to conclude the hearing by reserving its judgment.
- 11.** Thereafter, this matter was placed in the meeting held on 23rd January 2024 for consideration of the facts and arriving at a decision by the Committee. 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 judgment.

FINDINGS OF THE COMMITTEE: -

- 12.** The Committee noted that the allegation of Complainant was levelled against the Respondent was based on the following facts:
- a. As per the Complainant, he was promoted as Manager in Company i.e., M/s The Provident Investment Company Limited w.e.f. 01st May, 2016 and was suspended from his services of the Company vide order dated 19th December 2017.
 - b. Meanwhile, the Company made the appointment of Mrs. Sumitra Mayur as Managing Director on 26th August 2017, wherein all powers of the Complainant were given to her. The said act of the Company was

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challenged by the Complainant by filing a writ in the Hon'ble High Court and the Hon'ble High Court vide its order dated 26th September 2017 ordered to maintain 'status quo'.

- c. However, despite the "Status Quo" Order, the Company on 29th September 2017 conducted the AGM wherein the appointment of Mrs. Sumitra Mayur as Managing Director was ratified. In the same meeting Mr. Anirudh Mukherjee (Principal Secretary, Government of Madhya Pradesh, finance) was also appointed as Director. According to the Complainant, the said AGM was held without complying with the proper notice and quorum.
- d. As regards the allegation of Complainant regarding non-service of proper notice and lack of quorum, it was found not maintainable by the Director (Discipline) because verifying of the service of notice of AGM to all shareholders is not in purview of the auditor. Further, on perusal of documents, it was found that there is no lack of quorum.
- e. It is seen that the financial statements of the Company for the FY 2015-16 had been signed by a director Mr. A.P. Srivastava and by Mr. Aniruddhe Mukherjee (as Managing Director), however, both were appointed in the AGM held on 29th September 2017 which was challenged by the Complainant in Bombay High Court.
- f. Further, on perusal of documents available on record, it is noted that Mrs. Sumitra Mayur was appointed as Managing Director of the Company and there is no documents available on record and on MCA which proves the appointment of Mr. Aniruddhe Mukherjee as Managing Director but the financial statements of the Company for the period ended 31st March 2016 was signed by Mr. Aniruddhe Mukherjee instead of Mrs. Sumitra Mayur which according to Director (Discipline) was in violation of Section 134 (1) of the Companies Act 2013.
- g. From the above observations, it was observed by the Director (Discipline) that signing of financial statements and other important documents by Mr. Aniruddhe Mukherjee in the capacity of Managing Director without any proof of being appointed as Managing Director, established that the Respondent being an auditor failed to verify the authenticity of the persons signing the financial statements in the light of the provisions of Companies Act, 2013.

13. The Committee, accordingly, noted that the original allegation in the complaint was that financial accounts of the company were adopted by illegally constituted Board and hence, Audit Report for the year ended 31.03.2016 of the Respondent is bogus. The Committee noted that on that allegation the Respondent was held not guilty. However, the Director (Discipline) held the Respondent prima-facie guilty on the grounds that the Respondent failed to check that designation of the signatories of the Balance Sheet as financial statements of the Company was signed by Mr. Aniruddhe Mukherjee in the capacity of Managing Director instead of Mrs. Sumitra Mayur who was appointed as Managing Director by the Company.
14. The Committee in this regard noted that, upon a thorough investigation into the details of Mrs. Sumitra Mayur with respect to her association with the Companies as Director/ Managing Director, the name of Mrs. Sumitra Mayur was conspicuously appearing in one Company namely M/s. The Madhya Pradesh Flying Club Limited as its Director. However, her status was deactivated due to non-filing of DIR-3 KYC. Further, it was found that her name did not appear in the list of Director(s) of the Company, and she does not have DIN. Even Form DIR-12 (for appointment of a person as Director) and MR-1 (for appointment of Managing Director) was not filed by the Company. Thereby, the appointment of Mrs. Sumitra Mayur as Managing Director was not regularized in ROC records. Thereby, the Committee observed that there is a lack of conclusive evidence to establish Mrs. Sumitra Mayur as the Managing Director of the Company.
15. The Committee observed that Section 134(1) of Companies Act, 2013 states as under:

"The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by the chairperson of the company where he is authorized by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company

secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon."

16. The Committee, on perusal of above the provisions, noted that the financial statements should be signed by the Chairperson of the Company or by two directors out of which one shall be managing director, if any i.e., if the Company does not have any managing director on Board then the financial statements can be signed by two directors.
17. The Committee noted that the financial statement of the Company was signed by Mr. Aniruddhe Mukherjee and Mr. A.P. Srivastava as Directors. Since, documents available on record shows that no Managing Director was appointed by the Company, hence, signing by directors is as per the provisions of the Act.
18. The Committee, with respect to the charge that Mr. Aniruddhe Mukherjee was director of the Company, however, he signed the Balance Sheet in the capacity of Managing Director and the Respondent failed to point out the same, noted that there was no consistency in the representation of Mr. Aniruddhe Mukherjee as sometimes he was representing himself as the Director and sometimes as Managing Director. The Respondent had also brought on record letters/communication wherein Mr. Aniruddhe Mukherjee had signed the documents in the capacity of Managing Director.
19. The Committee, accordingly, was of the opinion that Mr. Aniruddhe Mukherjee had declared himself as *de-jure* Managing Director of the Company and this fact was also accepted by other directors also as there is nothing on record which shows that other directors/board members had raised any objection to the same and hence, it will be difficult for the Respondent to assume himself that Mr. Aniruddhe Mukherjee was appointed as director not as managing director. Further, even if Mr. Aniruddhe Mukherjee signed the financial statements of the Company in the capacity of Managing Director despite of the fact that he was a director, the said financial statements cannot be said to be

signed in violation of section 134(1) of the Act as it was signed by two directors in absence of Managing Director which is allowed as per the Act.

20. The Committee further noted that on a specific question to the Complainant as to whether he had any Order of MCA/ ROC/ High Court mentioning that financials were illegal / incorrect, the Complainant replied that on this charge he had filed complaint only with ICAI. The Committee, hence, noted that even the Complainant is also accepting the truthfulness and fairness of the financials.
21. The Committee, after consideration of the facts of the case, was satisfied with the submissions of the Respondent and accordingly, decided to hold the Respondent Not Guilty.

CONCLUSION

22. In view of the above observations, considering the submissions of the Respondent and documents on record, the Committee holds the Respondent **NOT GUILTY** of Professional Misconduct falling within the meaning of Item (7) Part – I of the Second Schedule to the Chartered Accountants Act, 1949.

ORDER

23. Accordingly, in terms of Rule 19 (2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee passes Order for closure of this case against the Respondent.

SD/-
(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

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

SD/-
(MR. ARUN KUMAR, I.A.S., RETD.)
GOVERNMENT NOMINEE

SD/-
(CA. SANJAY KUMAR AGARWAL)
MEMBER

SD/-
(CA. SRIDHAR MUPPALA)
MEMBER

DATE: 07TH FEBRUARY, 2024
PLACE: NEW DELHI

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Certified to be true copy


बिष्वा 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