

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-150/2019-DD/151/2019/DC/1518/2021]

In the matter of:

**Shri Tusharbai B. Dalal and
Shri Ravi Tusharbai Dalal,
Shantikunj,
Behind Mehdi Nawab Jung Hall
Near Paldi Bus Stand, Paldi
Ahmedabad – 380006**

.... Complainant

Versus

**CA. Bimal Arvindbhai Shah (M. No. 042372)
Partner, M/s Bimal Shah and Associates (FRN 101505W)
Chartered Accountants,
412, Ashwamegh Avenue
Mayur Colony
Mithakhali
Ahmedabad – 380009**

.....Respondent

MEMBERS PRESENT:

**CA. Ranjeet Kumar Agarwal, Presiding Officer (In person)
Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee (In person)
Shri Arun Kumar, I.A.S. (Retd.), Government Nominee (In person)
CA. Sanjay Kumar Agarwal, Member (In person)
CA. Sridhar Muppala, Member (In person)**

**DATE OF FINAL HEARING : 04.10.2023
DATE OF JUDGEMENT : 31.10.2023**

PARTIES PRESENT

Complainant: Not Present.

Respondent: CA. Bimal Arvindbhai Shah (Through Video Conferencing Mode)

Counsel for Respondent: CA. Deepak R Shah (Through Video Conferencing Mode)

BACKGROUND OF THE CASE:

1. The brief background of the case is as under:
 - a. Matter relates to LLP viz. M/s Sanskrut Jewel Residency Limited Liability Partnership, an Ahmedabad (Gujarat) based firm which consists of 5 partners. The Partners were divided in two groups as under:
 - (i) The Complainants are the two partners (allegedly the 'Minority' partners)
 - (ii) Other three partners in this LLP are M/s Sanskrut Infrabuild LLP, Mr. Ankit Savla and Mr. Nilang Vaidya.
 - b. There was dispute between these two groups.
 - c. The Respondent was Auditor of the said LLP for the financial years 2015-16 and 2016-17.
 - d. However, the charges are based on Form 8 of LLP filed with MCA portal for the financial year 2015-16 and 2016-17.

CHARGES IN BRIEF: -

2. The Complainant vide his complaint dated 28th March 2019, has levelled following allegations against the Respondent:
 - a. Based on Form – 8 of LLP downloaded from MCA portal for financial year 2015-16 and 2016-17, it was observed that the audited accounts attached therewith the said Form 8 exhibits several shortcomings, which were as under:
 - (i) That the Audit Report(s) for the relevant financial years 2015-16 and 2016-17 were not attached alongside the audited accounts.

- (ii) That the Respondent had not signed all pages of the audited accounts instead, he affixed only his rubber stamp.
 - (iii) That the audited account(s) for both the financial year(s) were undated.
 - (iv) That the said audited accounts lack significant accounting policies including but not limited to the method of valuation of closing stock and depreciation.
- b. Besides, the above, the Complainants also alleged that the Respondent failed to report certain important facts in his audit report like
- (i) Non-signing of accounts by all the partners.
 - (ii) Failure of Respondent for not ensuring 'to give effect of such MOUs and agreements in the preparation of accounts' and 'reporting the fact of ongoing disputes among partners' was material enough that it could threaten 'going concern' of the LLP.
3. The Respondent in his reply at the stage of PFO vide his letter dated 24th June 2019 had, inter-alia, mentioned as under:
- a. That he had ensured the Audit Report along with audited accounts were duly signed, stamped and dated by him for both the years. He also submitted copy of financials statements for the financial Year 2015-16 and 2016-17 in his defence.
 - b. That he was not involved in filing of Form-8 with ROC / Ministry of Corporate Affairs rather this job was carried out by the LLP on its own.
 - c. That as an auditor he had carried out audit with utmost care and made disclosure without any bias and made required disclosure in his audit report and notes to accounts.
 - d. That he had concluded audit after following due process of law and after obtaining required papers and documents from the LLP.
4. The Director (Discipline) had, in his Prima Facie Opinion dated 02nd August 2021, observed that as regards the allegation mentioned in para 2 (b) above, though the Complainants had provided the copies of some MoUs and agreements, yet neither they specifically highlighted the clause(s) of such

agreements etc. which were not given effect to in the accounts nor the same is identifiable by the Directorate on an apparent perusal of the Accounts submitted on record. Hence, for this charge, as it lacks clarity by the Complainants, the Respondent was held prima facie not guilty by Director (Discipline).

- 4.1 As regards allegation mentioned in para 2(a) above, the Director (Discipline) opined as under:
- a. That Form-8 of LLP for FYs 2015-16 and 2016-17 contains the digital signatures of the Respondent.
 - b. The accounts attached to said Form 8 were only 'stamped' and were neither 'signed nor dated', besides the said accounts does not contain 'Notes to Accounts' as its essential part, apparently, which indicates the gross negligence on the part of the Respondent.
 - c. The Respondent has claimed that he resigned from the LLP vide his letter dated 18th September 2017, however the said Form-8 for FYs 2015-16 and 2016-17, were found to be digitally signed by the Respondent. Though the date in his digital signature is not clearly legible, yet it is observed that it must be in the month of March, 2018 as it ought to have been signed after the date of signature of Partners of LLP which is 08.03.2018 and on or before the date of signing by the Company Secretary of the LLP and Official of MCA which are 09.03.2018 and 16.03.2018 respectively.
 - d. The Respondent nowhere in his written statement has submitted that his signatures were either forged or were used without his authority but consequent to which he had not taken any action like filing an FIR to report forgery or unauthorised use of his digital signatures.
 - e. Hence, the Respondent had signed Form-8 for both such years in the capacity of Auditor while he was not actually holding the Office of Auditor for the said LLP.
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 item in the Schedule to the Act states as under:

Item (7) of Part I of Second Schedule:

"A chartered accountant in practice shall be deemed to be 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 13th December 2021, in response to the Prima Facie Opinion has, inter-alia, stated as under:

a. The Form 8 had to be certified by the auditor who had audited the accounts for the relevant financial years and the Respondent was the auditor for the financial year(s) 2015-16 and 2016-17, for which Form 8 was filed by the LLP. Thereby, being the statutory auditor of the LLP for the said period the Form had to be filed by the Respondent only.

b. In Form 8, certified by him, he certified as under-

"It is hereby certified that I have verified the particulars contained in the Statement of Account and Solvency including the statements of assets and liabilities as at 31.03.2016 and the income and expenditure for the period ending 31.03.2016 from the accounting records and other books and paper of LLP and found them to be true and fair."

c. Thereby the statement of account and the statement of income and expenditure referred to in the certificate forms part of the said Form-8. The part that the Respondent had certified was already the part of the said Form 8 and was not by way of attachment and that he had never certified that the figures certified were as per attached accounts.

d. Relevantly the later part of Form 8 was certified by a Company Secretary, who certified that "It is hereby certified that I have verified the above particulars including attachment(s)." Thereby the certification to be given

by the Auditor and the Company Secretary was different. Unlike the Company Secretary, the auditor was not required to certify the documents which were part of the attachments to Form 8.

- e. Furthermore, in the case of complaint against the said Company Secretary, with the ICSI (The Institute of Company Secretaries of India), the Company Secretary has accepted the mistake and the ICSI had made a reprimand as the token of penalty to the said Company Secretary.
- f. Lastly, since the Company Secretary had accepted the mistake and as an auditor the Respondent had certified what was required to be certified by the Auditor, which does not include the certification of attachments thereby the Respondent cannot be held responsible for the same especially when the unsigned accounts attached with the said Form 8 were exactly the same as that of the audited signed accounts.
- g. Concerning the certification of Form 8 despite the auditor's resignation, it's important to highlight that the auditor's responsibility doesn't conclude merely with signing audited accounts. It also encompasses certifying the figures to be submitted to the Ministry of Corporate Affairs (MCA). Therefore, when Form 8 mandated certification from the auditor for the specified years during which the Respondent served as the auditor, it became the duty of the Respondent to fulfill this certification obligation.

BRIEF FACTS OF THE PROCEEDINGS: -

7. The Committee noted that the instant case was fixed for hearing on following dates:

S. No.	Date	Status of Hearing
1.	12.05.2023	Adjourned in absence of both parties.
2.	22.06.2023	Adjourned in absence of both parties.
3.	10.07.2023	Adjourned at request of the Respondent and in absence of the Complainants.
4.	10.08.2023	Adjourned at the request of the Respondent and in absence of the Complainants.
5.	13.09.2023	Partly Heard and Adjourned.
6.	04.10.2023	Heard and concluded.
7.	31.10.2023	Final Decision taken on case.

8. On the day of the first hearing held on 12th May 2023, the Committee noted that neither the Complainant(s) nor the Respondent were present, and that no intimation was received from them. The Committee, looking into the absence of both parties and the fact that, this was the first hearing, decided to adjourn the hearing to a future date. Thus, the meeting was adjourned.
9. On the day of the second hearing held on 22nd June, 2023, the Committee noted that none of the parties were present before it nor any intimation was received from their end despite the fact that notices and emails had been duly served upon them. The Committee looking into grounds of natural justice decided to give final opportunity to both the parties to present their representations, if any. Accordingly, the Committee decided to adjourn the hearing to a future date.
10. On the day of the third hearing held on 10th July, 2023, the Committee noted that neither the Complainant(s) were present nor any intimation was received despite notice / email duly served upon them. The Committee further noted that the assistant of the Respondent's Counsel Mr. Deepak Shah was present through Video Conferencing Mode and had sought an adjournment on the ground that Mr. Deepak Shah had some medial emergency and hence would not be able to present the case. The Committee, looking into the grounds of natural justice, decided to give a final opportunity to both the parties. Thus, the Committee decided to adjourn the hearing to a future date.
11. On the day of the fourth hearing held on 10th August, 2023, the Committee noted that the Complainant(s) were not present despite due service of the notice(s) / e-mail(s) to them. The Committee further noted that the Respondent vide his email dated 10th August, 2023, sought an adjournment on grounds of the non-availability of his Counsel, CA Deepak R. Shah, due to a sudden death in his family. The Committee looking into the grounds of natural justice acceded to the adjournment request made by the Respondent, and accordingly, the case was adjourned in the absence of Complainant(s) and on the request of the Respondent.

12. On the day of the fifth hearing held on 13th September, 2023, the Committee noted that the Complainant(s) were not present despite due service of the notice(s) / e-mail(s) to them. The Committee also noted that the Respondent was present through Video Conferencing Mode. The Respondent was administered on Oath. Thereafter, the Committee enquired from the Respondent as to whether he was aware of the charges. On the same, the Respondent replied in the affirmative and pleaded Not Guilty to the charges levelled against him. Thereafter, looking into the fact 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 and adjourned.

13. On the day of the final hearing held on 04th October, 2023, the Committee noted that the Complainant(s) were not present and the Respondent along with his Counsel CA. Deepak R Shah were present through Video Conferencing mode.

- 13.1 The Committee posted questions to the Respondent to seek clarification with regards to the instant matter, to which the counsel of the Respondent, inter-alia, stated that:
 - a. That the Complainant(s) had withdrawn the instant case, vide their letter dated 2nd May 2022, which had already been submitted to the authorities (i.e., ICAI) and the copy of the same had been marked to the Respondent.
 - b. That there was disagreement amongst the partners of the LLP which led to the initiation of the present complaint against the Respondent. Subsequently, the parties reached a settlement agreement, prompting the withdrawal of the initial complaint.
 - c. The figures mentioned in Form 8 pertain to the period 1st April 2015-31st March 2016 i.e., when the Respondent was the statutory auditor of the said LLP, thereby the certification of the said Form 8 had to be done by the Respondent.

- d. Relevantly, considering the verification part of the certification, it is to be noted that the Respondent had only certified that "he had verified the particulars of the Form from the records of the LLP".
- e. Notably, there was no certification regarding the conformity of the particulars with the attached accounts. Furthermore, it is essential to highlight that there was no disparity in the data presented in Form 8, the attached accounts and the original LLP accounts.
- f. It is worth noting that the Respondent explicitly certified that the figures in Form 8 precisely matched the audited accounts.
- g. Notably, there was another certificate attached to the alleged Form 8, certified by a Company Secretary, wherein he certified that the attachments to the said Form were correct. Consequently, any responsibilities pertaining to deficiencies or inadequacies in the attachments can be attributed to that Company Secretary.

13.2 On consideration of the same, the Committee gave directions to the Office to check whether Form 8, which was filed with the ROC, was to be signed / certified by the auditor for the relevant period or can be signed by any Chartered Accountant / auditor.

With the above, the Committee decided to conclude the hearing and reserved the Judgment.

14. Thereafter, this matter was placed in meeting held on 31st October 2023 for consideration of the facts and arriving at a decision by the Committee. The Committee noted that pursuant to its direction given in the meeting held on 4th October 2023, the Office had provided the requisite details.

14.1 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 judgement.

FINDINGS OF THE COMMITTEE: -

15. The Committee noted that the charge against the Respondent was that the audited accounts attached with the Form 8 for the F.Y. 2015-16 and 2016-17 exhibits several shortcomings and another charge relates to the certification of Form 8 despite resigning from the LLP.

16. The Committee noted that as regards the shortcomings in Form 8, the Respondent has submitted that he had certified the figures which formed part of Form 8 and that he had never certified that the figures certified were as per attached accounts.

16.1 The Committee on perusal of Form 8 noted that the Respondent in both the forms at page no. 4 had certified as under:

"It is hereby certified that I have verified the particulars contained in the Statement of Account and Solvency including the statements of assets and liabilities as at DD/MM/YYYY and the income and expenditure for the period ending DD/MM/YYYY from the accounting records and other books and paper of LLP and found them to be true and fair."

16.2 The Committee noted that the particulars contained in Statement of Account and Solvency including the statement of assets and liabilities, and profit and loss account were coming on page no. 2 and 3 of those forms.

16.3 The Committee observed that during the certification of Form-8, the Respondent certified that the details within the alleged Form-8, specifically the figures already included in Form 8, were in consistent with the audited accounts of the LLP and not the certified figures which were in the attachment(s). In this regard, the Committee noted that no disparities between the figures certified in Form 8 and the audited statements of accounts or the statement of accounts as annexed to the said Form was noted and neither any allegation was alleged by the Complainant(s). Further, the accounts

attached therewith Form 8 and audited signed accounts of the LLP were exactly the same i.e., were identical.

- 16.4 The Committee further noted that after certification from the auditor, in page 5 of Form 8, there is certification which is as under:

"It is hereby certified that I have verified the above particulars (including attachment(s)) from the records of the (name of the LLP) and found them to be true and correct. I further certify that all the required attachment(s) have been completely attached to this form."

- 16.5 The Committee noted that in the present case the same was done by a Company Secretary.

- 16.6 The Committee noted that as regards present complaint is concerned the charge relates to shortcomings in the documents enclosed with Form 8. The Committee noted that for lacunas / shortcomings in the statements of accounts annexed therewith Form 8, there was a certification, duly certified by a Company Secretary wherein he had certified that he had verified the particulars of the said Form including the attachment(s) thereof. Thereby the Committee noted that the responsibility for any negligence in the attachments annexed thereto, with Form 8 will that be of the Company Secretary and no responsibility for the same can be attributed to the Respondent.

- 16.7 The Committee also noted that unlike Company Secretary the auditor was not required to certify the documents which were part of attachment of Form 8. Moreover, in the case of complaint against the said Company Secretary, with the ICSI (Institute of Company Secretary), the Company Secretary has accepted the mistake and the Institute had made a reprimand and the token of penalty to the said Company Secretary. Hence, the Committee concluded that the Respondent cannot be held responsible for any deficiencies in the statement of accounts attached with Form 8.

17. As regards charge relating to the certification of Form 8 despite resigning from the LLP, the Respondent submitted that the same pertained to the financial

year(s) 2015-16 and 2016-17, i.e., the period during which he was the auditor of the LLP.

- 17.1 The Committee noted that alleged Form 8 contained / encompassed the data pertaining to the FY 2015-16 and 2016-17, and during that relevant period the Respondent was the auditor of the LLP.
- 17.2 However, nevertheless the Committee faced ambiguity in determining whether the Respondent being the auditor for the respective financial year(s) was mandated to certify the said Form 8, or if certification by another Chartered Accountant was permissible.
- 17.3 To confirm, the same Committee gave directions to the office to check as to whether Form 8, filed with the ROC, was to be signed / certified by the auditor for the relevant period or can be signed by any Chartered Accountant / auditor?
- a. On perusal of response from the office the Committee noted that Form - 8 of LLP is applicable under two scenarios viz for filing details w.r.t "Annual" and "Interim" Statement of Accounts and Solvency (SAS).
 - b. The "Annual" SAS is **mandatorily** required to be filed as per the requirement of the LLP law, whereas the "Interim" SAS can be filed on the **discretion of LLP**. In case of "Annual" SAS, the information to be provided should be as on 31st March of the year for which the statement is being filed. Whereas, in the case of "Interim" SAS, the details w.r.t creation/modification/satisfaction of the charge as the case may be, has to be filed.
 - c. The Committee noted that the present case relates to filing of Annual SAS.
 - d. The certification criteria for filing Annual SAS is that in case total turnover of the LLP exceeds Rs. 40 lakhs or partner's obligation of contribution exceeds Rs. 25 lakhs then certification by Auditor of the LLP shall be required. However, in cases other than this, the form can be certified by the Designated partner(s) in case of LLP and shall additionally be certified

by the practicing professional(s) e.g., Chartered Accountants, Company Secretary / Cost Accountant.

- e. The Committee observed that in the current situation, given that the partner's contribution amounted to Rs. 1 crore, exceeding the prescribed limit of Rs. 40 lakhs, the filing of Form 8 was necessitated to be carried out by the Company's auditor and not by any other Chartered Accountant.

17.4 Further, in this regard the Committee additionally noted that the Respondent served as the auditor of the LLP and filed Form 8 for the financial year 2016-17 and according to LLP data, no Balance Sheet was uploaded post the 2016-17 period, and there is no documented evidence indicating the appointment of a new auditor by the entity.

17.5 Following a thorough assessment of these factors in relation to the case's facts and the documents / submissions on record, the Committee concluded that there was no discrepancy in the filing of Form 8 by the Respondent being retired auditor of the LLP.

18. The Committee also noted that there were certain disputes between the partners of the said LLP, thereby the instant complaint appears to be an offshoot of the same. Further, it is also noted that the Complainant(s) vide their letter dated 2nd May, 2022 have filed the withdrawal of the instant complaint pursuant to resolve of the dispute between the partners of the LLP.

CONCLUSION

19. In view of the above findings stated in above para's vis a vis material on record, the Committee in its considered opinion, holds the Respondent **NOT GUILTY** of Professional Misconduct falling within the meaning of Item (7) of Part – I of the Second Schedule to the Chartered Accountants Act, 1949.

ORDER

20. 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/-

(SHRI ARUN KUMAR, I.A.S, RETD.)

GOVERNMENT NOMINEE

Sd/-

(CA. SANJAY KUMAR AGARWAL)

MEMBER

Sd/-

(CA. SRIDHAR MUPPALA)

MEMBER

DATE:07/02/2024

PLACE:NEW DELHI

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy
सीए. चेतना गुप्ता / CA. Chetna Gupta
उप सचिव / Deputy Secretary
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute Chartered Accountants of India
आइसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032