

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/296/2018/DD/322/2018/DC/1524/2021]

In the matter of:

**Mrs. Radhika Madgulkar & Mr. Aditya Ratnaparkhi,
17, Kavan Amar Society,
Gulmohar Society, Law College Road,
Pune-411004**

.....Complainant

Versus

**CA. Anand Dilip Joshi (Membership. No. 113805)
Saad, Plot no. 354 Lane no. 4
Mahatma Co-op Hsg. Society
S. no. 62 and 65Kothrud
Pune-411038**

.....Respondent

MEMBERS PRESENT:

1. CA. Ranjeet Kumar Agarwal, Presiding Officer (In person)
2. Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee (In person)
3. Shri Arun Kumar, I.A.S. (Retd.), Government Nominee (in person)
4. CA. Sanjay Kumar Agarwal, Member (In person)
5. CA. Sridhar Muppala, Member (Present through VC mode)

DATE OF FINAL HEARING : 18.09.2023 (through physical/video conferencing mode)

PARTIES PRESENT

Complainant(s) : Not Present
Respondent : CA. Anand Dilip Joshi (Through VC)

Counsel for Respondent : CA. Sharad Vaze (Through VC)

BACKGROUND OF THE CASE:

1. The brief background of the case is that:
 - a. The Respondent firm i.e. M/s HMA & Associates was the Statutory Auditor of **M/s Electronica Mechatronic System(s) (India) Pvt. Ltd** (hereinafter referred to as "**Company**") till F.Y. 2017-18. Thereafter, the Respondent Firm resigned as auditors of the said Company.
 - b. The audit report of the Company for the Financial Year 2017-18 was signed by CA. Gauri Kaustubh Nigudkar on behalf of the Respondent's Firm.
 - c. However, the Complainants had filed a complaint in Form-I dated 16th October 2018 against **CA. Anand Dilip Joshi** (hereinafter referred to as "**Respondent**"). The reason for initiation of the case against the Respondent was that the Complainant in FORM I in column 2 (i.e. Name of the member/firm against whom the complaint is being made) apart from mentioning the name of the Respondent's firm had also specifically mentioned the name of Respondent. Hence, the present complaint was registered against the Respondent.
 - d. The Respondent and CA. Gauri Kaustubh Nigudkar were the partners in M/s HMA & Associates (i.e., Respondent's firm).
 - e. The Complainants in their individual capacity as well as being co-parcener of Prakash Ratnaparkhi HUF were holding 28.74% shares of the Company.
 - f. There was a family dispute among the family members wherein the head of the family Mr. Prakash K Ratnaparkhi (Father) and his daughter Ms. Shalaka Joshi are on one side, whereas his son Mr. Aditya Ratnaparkhi and second daughter Ms. Radhika Madgulkar (i.e., Complainants) are on the other side.
 - g. Ms. Shalaka Joshi is the wife of the Respondent. She is a shareholder of the Company in her individual capacity as well as a coparcener in HUF.

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CHARGES IN BRIEF:-

2. The Committee noted that the various instances of professional misconduct were highlighted by the Complainant which were as under:-

S. No.	Allegations	View of Director (Discipline)
1.	That the Respondent has violated Section 141 of the Companies Act, 2013.	Held Guilty
2.	Siphoning off fund taken on loan by Respondent's wife Shalaka Joshi in the name of Electronica Mechatronic Systems Pvt Ltd for which Respondent has given a guarantee.	Held Not Guilty

3. The Committee noted that the Respondent in his reply at the stage of PFO had, inter-alia, mentioned as under:
- That although he was a partner in M/s HMA & Associates which was appointed as the auditor of M/s Electronica Mechatronic System Pvt. Ltd till F.Y 2017-18 but the firm had resigned as Auditor of the said company after completing the audit for the year 2017-18.
 - That Mrs. Shalaka Joshi (Respondent's wife) was not promoter of the said company, the sole promoter of the company was her father i.e. Shri. Prakash Ratnaparkhi.
 - That Mrs. Radhika Madgulkar (one of the Complainants) was the Managing Director of the company, which means that she was the person primarily responsible for the state of affairs of the company and was the sole decision maker in the management of the day-to-day affairs of the company. She was given the opportunity to act as the director of the company by Mr. Prakash Ratnaparkhi due to his ill health and she was appointed on 26th August 2016.
 - That the Complainants mentioned that the Respondent had violated section 141 of the Companies Act, 2013 but the Respondent does not see any relevance of this section with this complaint.

4. The Director (Discipline) had, in his Prima Facie Opinion dated 27th September 2021 noticed as under:
- a. That Mrs. Shalaka Joshi (wife of the Respondent) was holding 3.43% shares of the Company in her individual capacity (with 3.43% holding) as well as 28.74% shares as a co-parcener in Prakash Rantnaparkhi HUF.
 - b. Further, Prakash Ratnaparkhi HUF was also a majority shareholder (holding 69.43%) in Elektra Data Systems Pvt. Ltd which in turn was a majority shareholder of Electronica Mechatronic Systems (India) Pvt. Ltd. Thus, Mrs. Shalaka Joshi (wife of Respondent) had directly or indirectly significant influence in the Company.
 - c. The Respondent Firm (M/s HMA & Associates) was appointed as the Statutory Auditor of the Company till financial year 2017-18 and Respondent who is one of the partners in the said firm is jointly and severally liable for the act of his firm and in view of Shalaka Joshi being his wife the principle of Independence being fundamental, needs to be followed. Thus, the contention of Respondent that there is no relevance of this section with this Complaint does not stand and hence violation of section 141 (3)(d)(i) of the Companies Act 2013 is attracted making the Respondent prima facie Guilty of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.
 - d. Further, considering the substance over form, it was observed by the Director (Discipline) that the independence of the audit firm was compromised because of non- compliance with the general guidelines. Accordingly, the Respondent is held prima facie **Guilty** of professional misconduct under item (4) of Part I & item (1) of part II of the Second schedule of the Chartered Accountant Act, 1949 also.
 - e. It was further observed by the Director (Discipline) that the Complainants had also brought on record a bank statement of CC account wherein an

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amount of Rs. 7,50,000/- was appearing as given to M/s. HMA & Associates on 3rd February 2017 by an RTGS entry. The Complainants in his submission mentioned that this amount of advance given to the firm was more than 3 times the audit fees of the firm. From the submissions of the Respondent, it was seen that he had not given any defence and/or clarification regarding this amount and in the absence of any clarification, it appears that the Respondent had nothing to state in his defence on this point. Thus, disqualification of Respondent's firm for being an auditor in terms of section 141 (3) (d) (ii) of the Companies Act, 2013 was evident.

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 (4) and (7) of Part I and Item (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949. The said items in the Schedule to the Act states as under:

Item (4) and (7) of Part I of the Second Schedule:

"A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he-

(4) *expresses his opinion on financial statements of any business or enterprise in which, he, his firm or a partner in his firm has a substantial interest"*

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

Item (1) of Part II of the Second Schedule:

"A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he-

(1): *contravenes any of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council"*

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SUBMISSIONS OF THE RESPONDENT ON THE PRIMA-FACIE OPINION

6. The Committee noted that the Respondent vide letter dated 4th March, 2022 had inter-alia mentioned as under:-

- a) Sec 141(3)(d)(i) of the Companies Act 2013 requires auditor not to hold any shares in the auditee-company. The Respondent as an Individual has never Audited the Books of Accounts of the Auditee Company. The same have been audited by his partners. The auditor as well as other partners of the Respondent do not hold any shares in the auditee company.
- b) That calculation of interest of Mrs. Shalaka Joshi was not correct as Director (Discipline) had considered indirect interest in HUF shareholding to determine the substantial interest. The Respondent never audited the books of accounts of the Company.
- c) That the transaction of Rs. 7.50 lakhs was never a part of the initial complaint and had been brought up by the Complainants in their rejoinder which was never shared with the Respondent and hence is invalid and should not have been considered in the prima facie opinion formed by the Director (Discipline).
- d) An amount of Rs. 7.50 lakhs was paid to M/s HMA & Associates as the payee was already registered with the bank of the Company. After the payment was received, it was credited against the current account balance of the Respondent as appearing in the books of the Respondent Firm.
- e) It was never considered as loan/advance in the books of the Respondent or its Firm as the same was in the form of reimbursement of expenses already incurred by the Respondent and his wife towards the common costs incurred by the Respondent's wife and her brother and sister and hence was recovered by the Respondent's wife.

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7. The Committee noted that the Respondent vide letter dated 19th April, 2022 had inter-alia submitted as under:-
- a) That clauses (1) and (3) of Section 141 of the Companies Act 2013 specifically mentions regarding the term "Persons", whereas Clause (2) of the section mentions regarding the term "Where a firm is appointed". This signifies that the intention of the law is to treat a "person" as in an individual separate from a "Firm", a group of persons in Partnership.
 - b) So, while reading Section 141 of the Act, a "person" should be construed as an Individual and cannot be extrapolated to include a "Firm" as well. Hence, in this case, "Person" should be taken to be the "Signing Partner" and not the Firm or any other partner of the Firm.
 - c) Sec 141(3)(d)(i) of the Companies Act 2013 requires the auditor ("Person" as in an Individual) not to hold any shares in the auditee-company. The Respondent as an Individual has never Audited the Books of Accounts of the Auditee Company.
 - d) That the Respondent never conducted the Audit or signed the Audit Report or even reviewed the Audit of the Complainant's Company. The Audit & the Review of the Audit was conducted by other partners of the Respondent Firm (HMA & Associates) in which the Respondent is a partner.
 - e) Provisions of Section 141 cannot be made applicable to the Respondent as he is never a "person" conducting the Audit or signing the Audit Report.

OTHER FACTS

8. The Committee noted that the Complainants vide letter dated 14th February 2022 has submitted a withdrawal letter of complaint against the Respondent

stating that the matter has been amicably settled between them and they do not wish to proceed further in the matter.

- 8.1 The Committee noted that the erstwhile Disciplinary Committee in its meeting held on 19th September 2022 considered the withdrawal request and decided not to accept the withdrawal and decided to continue with the proceedings of the case as it was of the view that there appears to be certain lapses and the conduct of the Respondent needs to be examined at hearing stage.

BRIEF FACTS OF THE PROCEEDINGS:

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

S.No.	Date	Status of Hearing
1.	07.11.2022	Part Heard and adjourned
2.	13.09.2023	Adjourned on the request of the Respondent
3.	18.09.2023	Concluded and Judgment Reserved
4.	04.10.2023	Final decision taken on the case

10. On the day of the first hearing held on 07th November, 2022 the Committee noted that the Respondent was present alongwith his Counsel CA. Sharad Vaze at ICAI Tower, BKC Mumbai. The Committee noted that the Complainants were not present. 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 & adjourned.
11. On the day of the second hearing held on 13th September 2023 the Committee noted that the Respondent alongwith his counsel was present through Video Conferencing Mode. The Committee noted that the Complainants were not present despite due delivery of notice. The Committee

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enquired from the Respondent that since, the composition of the Committee had changed further from the previous hearing, as to whether he wished to have a de-novo hearing. On the same, the Respondent's Counsel submitted that the Committee may continue its proceedings in this matter from the stage it was left at the last hearing. The Committee acceded to his request and continued the hearing. Thereafter, when the Committee asked the Respondent's Counsel to represent his case, he submitted that due to his pre-scheduled travel he requested a short adjournment and requested to place this case in the meeting scheduled on 18th September 2023. The Committee, on his request, with his concurrence, adjourned the current matter and fixed the next meeting on 18th September, 2023.

12. On the day of the third and final hearing held on 18th September 2023, the Committee noted that the Respondent along with his counsel was present through Video Conferencing Mode. The Committee noted that the Complainants were not present despite due communication of notice. The Committee further noted that the Respondent's Counsel presented his line of defense on the charge by, inter-alia, stating as under:

- a. That the Respondent was not part of the audit team and even the financial statements were signed by a different auditor.
- b. That since the present matter relates to a family dispute, hence the Complainant has filed a case against everyone.
- c. That the wife of the Respondent (Mrs. Shalaka Joshi) does not have a substantial interest as she does not hold any voting rights in the Company.

12.1 On consideration of the same, the Committee decided to conclude the hearing by reserving its judgment.

13. Thereafter, this matter was placed in meeting held on 4th October, 2023 for its final decision. The Committee noted that the above case was concluded on 18th September 2023. 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

14. The Committee noted that in the present case, the financial statements of the Company were audited by another partner of the Respondent Firm instead of the Respondent. The Committee noted the charge against the Respondent is that he has violated the provisions of Section 141 of the Companies Act, 2013.

a. In this regard relevant Section of 141 (3) (d) of the Companies Act, 2013 and Rule 10 of the Companies (Audit and Auditors) Rules, 2014 reads as under:-

Section 141:-Eligibility, Qualification and disqualifications of auditors:-

“(1) A person shall be eligible for appointment as an auditor of a company only if he is a chartered accountant:

Provided that a firm whereof majority of partners practising in India are qualified for appointment as aforesaid may be appointed by its firm name to be auditor of a company.

(2) Where a firm including a limited liability partnership is appointed as an auditor of a company, only the partners who are chartered accountants shall be authorised to act and sign on behalf of the firm.

(3) The following persons shall not be eligible for appointment as an auditor of a company, namely:-

...

(d) a person who, or his relative or partner-

(i) is holding any security of or interest in the company or its subsidiary, or of its holding or associate Company or a subsidiary of such holding company:

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(ii) **is indebted to the Company, or its subsidiary , or its holding or associate company or a subsidiary of such holding company, in excess of such amount as may be prescribed; or**

(iii) **has given a guarantee or provided any security in connection with the indebtedness of any third person to the Company, or its subsidiary or its holding or associate company or subsidiary of such holding Company or associate company of such nature as may be prescribed;**

...

(f) **a person who's relative is a director or is in employment of the company as director or key managerial personnel;"**

RULE 10:- DISQUALIFICATIONS OF AUDITOR:-

" (1) For the purpose of proviso to sub- clause (1) of clause (d) of sub-section (3) of section 141, a relative of an auditor may hold securities in the company of face value not exceeding rupees one lakh:

Provided that the condition under this sub-rule shall, wherever relevant, be also applicable in the case of a company not having share capital or other securities:

Provided further that in the event of acquiring any security or interest by a relative, above the threshold prescribed, the corrective action to maintain the limits as specified above shall be taken by the auditor within sixty days of such acquisition or interest.(emphasis supplied)"

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14.1 In view of the above, the Committee noted that a "Firm" and "person" are different as per Clause (1) and (2) of Section 141 of the Companies Act, 2013. Further, as per Section 141 (3) (d) of the Companies Act 2013 the term "person" should be construed to denote the "signing partner" and not the firm itself or any other partner within the firm.

- 14.2 The Committee further noted that the Audit Report alongwith the Financial Statements of the Company were signed by another partner of the Respondent Firm, namely CA. Gauri Kaustubh Nigudkar. Hence, as per the provision of Section 141(3) (d) (i) of the Companies Act, 2013, she was covered under the definition of "person".
- 14.3 The Committee noted that there is no evidence on record that CA. Gauri Kaustubh Nigudkar or her relatives and their partners have ever held any shares in the Auditee Company or its subsidiary or Holding or Associates.
- 14.4 The Committee also noted that an opinion has been brought on record by the Respondent from Advocate Madan Godse in the instant matter. As per the opinion given by him, the Respondent firm is not disqualified to be appointed as auditors of the Company because the Respondent had never been a signing partner and the shares were held by the wife of the Respondent. It was further opined that holding of shares by relative of a non-signing partner is not covered under section 141 of the Companies Act,2013 as a disqualification.
- 14.5 The Committee looking into the above, noted that since the Respondent has not signed the financial statement of the Company, provision of Section 141(3) (d) (i) of the Companies Act 2013 is not applicable to him. Further, on perusal of the list of share-holding of the company, the Committee noted that Mrs. Shalaka Joshi, spouse of the Respondent, a partner in the Respondent Firm, holds mere 3.43% shares in the auditee company in her individual capacity, which is not substantial. Further, there is no evidence on record that Mrs. Shalaka Joshi was in a key managerial position in the Company.
- 14.6 The Committee noted that on the contrary the managing director of the Company is one of the Complainant i.e. Ms. Radhika Madgulkar and which means that she was the person primarily responsible for the state of affairs of the company and was the sole decision maker in the management of the day-to-day affairs of the company.



14.7 The Committee looking into the above, was of the view that the charge regarding applicability of the provision of section 141(3)(d) is not maintainable and the Respondent was involved in the matter due to a family dispute.

15. Further, with regard to the observation of the Director (Discipline) that Rs. 7,50,000 is appearing as given to Respondent Firm on 03rd February, 2017 by an RTGS entry, the Committee noted that the Director (Discipline) in the prima-facie opinion held the Respondent guilty on the basis of bank statement of CC account provided by the Complainant at Rejoinder stage.

15.1 The Committee noted that Respondent in his submissions on prima-facie opinion had clarified that Rs. 7,50,000 was not a loan/advance in the books of the Respondent or the Respondent Firm as the same was in the form of reimbursement of expenses already incurred by the Respondent and his wife towards the common costs incurred by the Respondent's wife and her brother and sister and hence were recovered by Respondent's wife.

15.2 The Committee noted that the matter was related to reimbursement of expenses which were wrongly credited in account of the Respondent Firm for a particular interval of time and the amount was duly returned in 17 days. The Committee noted that the Respondent had brought on record copies of ledger accounts to establish his stand.

 15.3 The Committee further noted that Complainants had not submitted any counter on the submissions of the Respondent and infact had withdrawn the matter by stating that mater has been amicably settled between them and they do not wish to proceed further in the matter. From perusal of the above, it appears that the Complainants have no grievances against the Respondent. The Committee also note that the instant complaint was filed due to a family dispute and now it has been resolved.

 15.4 The Committee, looking into the above facts vis-a vis that this allegation was neither made by the Complainant in Form-I nor in details of the complaint as mentioned on the second page of the complaint, decided to drop the instant

charge levelled against the Respondent in view of circumstances and documents shown in the instant case.

CONCLUSION:

16. In view of the above observations, considering the arguments, submissions of the parties and documents on record, the Committee held that the Respondent is **NOT Guilty** of Professional Misconduct falling within the meaning of Item(s) (4) and (7) of Part I and Item (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

ORDER:

17. 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 passed order for closure of this case.

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

शिव 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