

CONFIDENTIAL

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

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

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

File No.: PR/236/16/DD/260/2016/DC/994/2019

In the matter of:

**Shri Khushal Chand,
C-744, C-Block,
2nd Floor, Vikaspuri,
New Delhi – 110 018**

.... Complainant

Versus

**CA. Vijay Kumar Sanghi (M.No.086094)
U-198, Bank of Baroda Building,
Vikas Marg Main Road,
Shakarpur,
New Delhi – 110 092**

.... Respondent

MEMBERS PRESENT:

**CA. Ranjeet Kumar Agarwal, Presiding Officer (In person)
Shri Jiweh Nandan, I.A.S (Retd.), Govt. Nominee (In person)
Ms. Dakshita Das, I.R.A.S (Retd.), Govt. Nominee (Through VC)
CA. Mangesh P Kinare, Member (In person)
CA. Cotha S Srinivas, Member (In person)**

DATE OF FINAL HEARING: 5th September 2023

PARTIES PRESENT:

**Respondent : CA. Vijay Kumar Sanghi (Through VC)
Counsel for Respondent : CA. C. V. Sajan (Through VC)**

1. Background of the case: -

The Respondent was auditor of M/s. Juhi Infrastructure Pvt. Ltd. (hereinafter referred to as the 'Company') wherein, he failed to disclose substantial interest as his wife was Director in that Company. Further, the Respondent was auditor of M/s. Umba Consulting Pvt. Ltd. (hereinafter referred to as **M/s. Umba**) which was controlled and managed by him as registered office address of M/s. Umba was residential address of the Respondent.

2. Charges in brief: -

2.1 The Respondent was Statutory Auditor of the Company, wherein his wife Ms. Kavita Sanghi was acting as a Director during the audit period i.e., financial year 2012-13.

2.2 The Respondent, as an auditor, was looking after the working and affairs of M/s. Umba from his residence and registered office of the Company was also mentioned by him at his residence.

3. The relevant issues discussed in the Prima facie opinion dated 24th October 2018 formulated by Director (Discipline) in the matter, in brief, are given below:

3.1 On perusal of Form 20B of the Company, it is noted that wife of the Respondent Ms. Kavita Sanghi has been shown as a Director having DIN 00411072 and the said Form has been certified by the Respondent. Further, the Respondent has issued the Audit Report of the Company for the F/Y 2012-13 dated 05.09.2013 and Form 23 relating to filling of Balance Sheet and other documents with the ROC has also been digitally certified by the Respondent. The documents available on record reveal that the Respondent's wife was the Director of the Company during the period i.e., 2012-13 when the Respondent carried out audit.

3.2 On perusal of documents available on record, it is not clear that she was having substantial interest in the said Company, yet the fact that she was the

Director of the Company indicates that she could have been a part of the key management of the Company, and thus, the existence of such an interest, direct or indirect affects the independent opinion of the Respondent as an auditor. The Respondent has also not provided relevant documentary evidence to show that his wife was holding less than 20 percent shares or was not involved in day-to-day affairs of the management of said Company. Considering the requirements of the Code of Ethics and lack of documentary evidence, the Respondent was held prima facie Guilty of professional misconduct falling within the meaning of Clause (4) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

3.3 The Respondent has issued the Audit Report of M/s. Umba for the Financial Years 2010-11 and 2011-12 dated 18.08.2011 and 07.09.2012 respectively. In view of Form 18 related to change of address of M/s. Umba (to the residence address of the Respondent) certified by the Respondent in the capacity of a professional, the same casts a shadow of doubt that he was involved in the activities or affairs of the Company. The Respondent has submitted that his residential address was used by Mr. Rohit Sodha (who was next door neighbour of the Respondent and was proxy owner of M/s. Umba) as the registered office address as stop gap arrangement on temporary basis and did not change the address despite of his repeated reminders to do so, however, there are no documentary evidence presented by the Respondent such as copy of correspondences exchanged between him and Mr. Rohit Sodha in respect of the same. Further, the Respondent has stated very casually that there is no conflict of his professional interest if his residence has been used by Mr. Rohit Sodha as registered office of the Company. However, the same is not acceptable because being an auditor of M/s. Umba, the relationship of the Respondent with said Mr. Rohit Sodha should have been in professional lines only which does not seem to have been complied with by the Respondent and thus, raises suspicion on him. The same is evident not only from the fact that the address of the Company is the same as residential address of the respondent but also from the fact that he had obtained cash loan from said Mr. Rohit Sodha. It is inferred that the Respondent also has financial relations with Mr. Rohit Sodha, who was managing the affairs of M/s. Umba. Hence, the matter need to be investigated further, and the Respondent is held prima facie Guilty of professional misconduct falling within the meaning of Clause (4) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

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3.4 In view of above, the Director (Discipline) in the Prima-Facie Opinion dated 24th October 2018 formed in terms of Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, had held the Respondent prima facie **GUILTY** of Professional Misconduct falling within the meaning of Clause (4) of Part I of the Second Schedule to the Chartered Accountants Act, 1949. The said Clause to the Schedule to the Act, states as under:

Clause (4) Part I of 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; ”

3.5 The Prima Facie Opinion formed by Director (Discipline) was considered by the Disciplinary Committee at its meeting held on 15th January 2019. The Committee considered the prima facie opinion dated 24th October, 2018 of the Director (Discipline) along with the Complaint, Written Statement and Rejoinder. The Committee on consideration of the same, concurred with the reasons given against the charge (s) and thus, agreed with the prima facie opinion of the Director that the Respondent is GUILTY of Professional Misconduct falling within the meaning of Clause (4) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 and accordingly, decided to proceed further under Chapter V of the Chartered Accountants Procedure of Investigations of professional and Other Misconduct and Conduct of cases) Rules 2007. The Committee, also directed the Directorate that in terms of the provisions of sub-rule (2) of Rule 18, the prima facie opinion formed by the Director be sent to the Respondent and the Complainant including particulars or documents relied upon by the Director, if any, during the course of formation of prima facie opinion and the Respondent be asked to submit his Written Statement in terms of the aforesaid Rules.

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4. Date(s) of written submissions/pleadings by parties:

The relevant details of filing of documents in the instant case by the parties are given below:

S.No.	Particulars	Dated
1.	Date of complaint	07 th September, 2016
2.	Written Statement filed by the Respondent	13 th December, 2016
3.	Rejoinder by the Complainant	07 th January, 2017
4.	Prima facie Opinion by Director (Discipline)	24 th October 2018
5.	Written Submissions by the Respondent after PFO	13 th July 2023

5. Written submissions filed by the Respondent:

The Respondent vide letter dated 13th July, 2023 made submissions, which are summarized as under:

5.1 The Respondent submitted that his wife was appointed as Additional Director in the Company on 01.05.2012, but was never involved in day-to-day affairs of the Company and did not receive any remuneration during her Directorship, and she resigned on 25.03.2014.

5.2 He was appointed statutory auditor of the Company for the Financial Year 2011-2012 and was re-appointed statutory auditor for Financial Year 2012-2013 in the AGM held on 28.09.2012 in accordance with the relevant provisions of the Companies Act, 1956.

5.3 The balance sheet of the Company as on 31st March 2013 shows that hundred percent of the shareholding of the Company was held by Shri Vinod Bansal and Smt. Preeti Bansal; and that Ms. Kavita Sanghi (wife of the Respondent/relative) has held no shares by her.

5.4 Form 23AC proves that Shri Vinod Bansal and Smt. Preeti Bansal were Directors of the Company who approved the report of Board of Directors and approved

financial statements for Financial Year 2012-13, and his wife was nowhere concerned with attestation/managerial functions of the Company.

5.5 Moreover, under Note 14 "Employee benefits expense" of the Company as at 31st March 2013, show that no remuneration was paid by the Company to any director. Ms. Kavita Sanghi was inducted as non-executive director in May 2012 and she never performed managerial functions of the Company.

5.6 The Respondent admitted that he had rendered professional services only as an auditor to M/s. Umba and had no role in the management and working of the said Company. His professional office is located at U-198, Bank of Baroda Building, Vikas Marg, Main Road, Shakarpur, Delhi-110092, and is independent of his residence and there is no conflict of professional interest if his residence has been used by Mr. Rohit Sodha as registered office of Company.

5.7 On perusal of Form 18, it is noted that the address of the Registered Office of M/s. Umba was changed from "31, Kailash Apartments, 45, IP Extension, Delhi – 110049" to "Flat No. 32, Kailash Apartments, Plot No. 45, Patparganj, Delhi – 110092" on 01/08/2012. This instance does not fall in violation of any norm laid down in Code of Ethics of the ICAI and does not attract professional misconduct.

6. **Brief facts of the Proceedings:**

6.1 The details of the hearing(s) fixed and held/adjourned in said mater is given as under:

Particulars	Date of Meeting	Status
1 st time	02.05.2023	Part heard and adjourned.
2 nd time	17.07.2023	Part heard and adjourned in the absence of the Complainant.
3 rd time	18.08.2023	Adjourned at the request of the Respondent and in absence of the Complainant.
4 th time	05.09.2023	Hearing concluded and decision taken.

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6.2 On the day of first hearing of the case on 2nd May 2023, the Committee noted that the Respondent along-with Counsel were present through video conferencing mode for the hearing. Thereafter, they gave declaration that there was nobody present except them in the respective room from where they were appearing and they would neither record nor store the proceedings of the Committee in any form. Being first hearing of the case, the Respondent was put on oath. The Committee enquired from the Respondent as to whether he was aware of the charges and charges against the Respondent were read out. On the same the Respondent replied in the affirmative and pleaded Not Guilty to the charges levelled against him. In the absence of the Complainant, the Committee decided to adjourn the matter to future date so as to provide one more opportunity to the Complainant to substantiate the charges.

6.3 On the day of second hearing of the case on 17th July 2023, the Committee noted that the Complainant was not present and notice of listing of the case sent to him has been returned back with postal remark 'No such person'. The Committee asked the Counsel for the Respondent to make his submissions. The Counsel submitted that the wife of the Respondent had no substantial interest in the Company; and as per balance sheet of the Company for the relevant year, there was no shareholding in name of wife of the Respondent and no remuneration was paid to her; for the reason that the wife of the Respondent was a non-executive Director in the Company. The Counsel for Respondent further submitted that the possibility of a threat to independence, as per Code of Ethics, cannot constitute a professional misconduct.

6.4 In regard to cash loan of Rs. 50 lakhs taken from Mr. Rohit Sodha (who was next door neighbour of the Respondent and was proxy owner of M/s. Umba), the Counsel replied that the receipt dated 18.12.2012 addressed by the Complainant was a forged document. The Respondent being neighbour of Mr. Rohit Sodha, acceded to his request and obliged in providing the residential address of the Respondent as registered office address of M/s. Umba Consulting Pvt. Ltd. Later when their relationship turned sour, Mr. Rohit Sodha arranged to file the instant complaint against the Respondent before ICAI by using a proxy Complainant. The Committee recorded the submissions of the Counsel for the Respondent and in the

absence of the Complainant, the Committee adjourned the case to later date with a view to extend final opportunity to the Complainant to substantiate the charges; and in case the Complainant do not make himself present in next meeting, the matter be decided ex-parte. The case was part heard and adjourned.

6.5 On third day of hearing of the matter on 18th August 2018, the Committee noted that the Respondent vide email dated 14/08/2023 has sought adjournment stating that he has personal hearing before Hon'ble Delhi High Court on 18/08/2023. The Committee noted that the Complainant was not present and notice of listing of the case sent to him had been received back. The Committee acceded to the request of Respondent and in the absence of the Complainant, adjourned the matter to a later date and directed the office to inform the Complainant that in case of his failure to appear before the Committee, the case would be decided ex-parte, Complainant.

6.6 On the day of final hearing of the matter dated 5th September 2023, the Committee noted that the Respondent along with the Counsel were present through Video conferencing mode. The office apprised the Committee that the Complainant was not present, nor any intimation was received from his end. The Committee noted that at last meeting, the Complainant was not present and subject case was adjourned in his absence, and he was specifically directed to appear before the Committee and in case of his failure, the case may be decided ex-parte, the Complainant. In view of repeated absence of the Complainant and no intimation from the Complainant having been received, the Committee decided to proceed ex-parte in the matter. The Committee noted that the case was part heard and asked the Counsel for the Respondent to make his final submissions. The Counsel for the Respondent submitted that there are two charges against the Respondent. First charge against the Respondent being his wife was the Director of the Company during the period i.e. 2012-13 when the Respondent carried out the statutory audit of the same Company. His wife was director but had no substantial interest in the Company as she did not hold any shareholding in said Company nor she was holding key managerial post or decision-making position in the Company. She was only director simpliciter without having any interest in the Company.

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6.7 The Counsel for the Respondent submitted that the Respondent was secondly charged that besides acting as an auditor, he was looking after the working and affairs of M/s. Umba from his residence. The Counsel for the Respondent admitted that said Company was running from residence of the Respondent. He submitted that the Respondent had addressed letters dated 10.02.2015 and 18.05.2016 to Registrar of Companies informing that said Company was running from his residence without his permissions much prior to making this complaint before ICAI. After that, Assistant, Registrar of Companies vide letter dated 02/10/2015 informed the Respondent that the Company on 18/07/2014 had made application for striking off the name and same was approved on 08/01/2015 and name of Company was struck off from the Register of Companies. The Committee noted that residential address of Respondent was given as registered office of company for short time before filing of complaint, and later when the Director of the Company did not change the said registered address, the Respondent had filed application/ complaint to Registrar of Companies for change of address. Further, the Company was defunct and small having size of balance sheet of Rs. 1.55 Crores for financial year 2011-2012.

6.8 After detailed deliberations, and on consideration of the facts of the case, various documents/material on record as well as oral and written submissions of Counsel for the Respondent before it, the Committee concluded the hearing in the instant case.

7. Findings of the Committee:

The Committee noted the background of the case as well as oral and written submissions made by the Respondent, documents/ material on record and gives its findings as under: -

7.1 The Committee noted that the Respondent was auditor of the Company, wherein his wife Ms. Kavita Sanghi was acting as a Director during the audit period i.e., financial year 2012-2013. The Committee further noted that the wife of the Respondent who is Director in the Company would tend to give an indication that

she could have been a part of key management of the Company having substantial interest in said Company, and whether the existence of such an interest, direct and indirect, would affect the independent opinion of the Respondent as an Auditor. In this connection, the Committee referred to relevant provisions of Code of Ethics of ICAI relating to substantial interest.

7.2 The Committee noted that as per Code of Ethics of the ICAI, 'substantial interest' has been defined as under:

"a member shall be deemed to have a "substantial interest" in a concern -

(i) in a case where the concern is a Company, if its shares (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than twenty per cent of voting power at any time, during the relevant years are owned beneficially by such member or by any one or more of the following persons or partly by such member and partly by one or more of the following persons:

(a) One or more relatives of the member;

(b) Any concerns in which any of the persons referred to above has a substantial Interest";

Further, as per Code of Ethics of the Institute, the expression "relative", in relation to a member means the husband, wife, brother or sister or any lineal ascendant or descendant of that member;

7.3. In view of above expression of relative, the Committee was of the view that as wife of the Respondent was director in the Company, hence she covers in the definition of relative. Thus, it is clearly evident that relative of the Respondent was director in the Company and the Respondent was the auditor of the Company and had audited the financial statements for financial years 2012-2013.

7.4 The Committee was further of the view that core issue of this allegation is whether, wife of the Respondent (relative) have substantial interest in the Company. After noting the submissions of the Respondent, the Committee was of the view that

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there is nothing on record except audited financial statements of the Company and on perusal of these financial statements, the Committee noted that the Company has 10,000 equity shares as on 31.03.2012 and 31.03.2023 and out of these 10,000 equity shares, 5000 equity shares were held by Shri Vinod Bansal and remaining 5000 equity shares were held by Smt. Preeti Bansal. There is no evidence on record provided by the Complainant to prove the fact that the wife of the Respondent held any share of the Company.

7.5 Moreover, in view of audited financial statements of the Company for financial year 2012-2013 audited by the Respondent, the Committee observed that these were signed by Shri Vinod Bansal and Smt. Preeti Bansal as directors of the Company. Further, Director's Report for financial year 2012-2013 has been signed by Shri Vinod Bansal and Smt. Preeti Bansal as directors of the Company. There is no single evidence on record, which proves that wife of the Respondent was having substantial interest in the Company i.e. 20 percent voting power in Company in view of definition given in Code of Ethics of the ICAI. There is nothing on record which proves that wife of the Respondent was involved in managerial functions or held key managerial post in the Company. The Committee noted that no disqualification attracted as per the provisions of Section 226 of the Companies Act, 1956 in case wife of auditor was holding the position as Director Simpliciter of the Company. In view of above, the Committee absolved the Respondent in this allegation and held him **NOT GUILTY** of Professional Misconduct falling within the meaning of Clause (4) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

7.6 In respect of **second allegation** that the Respondent as an auditor was looking after the working and affairs of M/s. Umba from his residence and registered office of the Company was also mentioned by him at his residence, the Committee observed that the Respondent had brought on record copies of letters dated 10/02/2015 and 18/05/2016 addressed by him to the Registrar of Companies, NCT Delhi, in which he had categorically mentioned to shift the registered office address of M/s. Umba from his residential address. In said letters, the Respondent had mentioned that Mr. Khushal Chand (the Complainant who became Director in said Company w.e.f. 04/11/2013) and other Director(s) of the Company were never allowed by him to enter his residence after June, 2013.

7.7 The Committee noted that the Counsel for the Respondent during the hearing held on 05/09/2023 had admitted that said Company was running from residence of the Respondent. He submitted that the Respondent had addressed letters dated 10/02/2015 and 18/05/2016 to Registrar of Companies informing that said Company was running from his residence without his permission, much prior to making this complaint before ICAI by the Complainant. After that, Assistant Registrar of Companies vide letter dated 02/10/2015 informed the Respondent that the Company on 18/07/2014 had made application for striking off the name and same was approved on 08/01/2015 and name of Company was struck off. In a query raised by the Committee, the Respondent submitted that the Complainant must have put strict proof of the genuineness of the alleged receipt of Rs. 50 lakhs cash loan submitted by him.

7.8 The Committee observed that the request of the Respondent to shift the registered office of Company from his residence was not given effect to. The Committee further observed that when the Director of the Company did not change the said registered address of M/s.Umba, the Respondent had filed application/complaint to Registrar of Companies for change of address of the Company. Further, the Company was defunct and having small size of balance sheet of Rs. 1.55 Crores for financial year 2011-2012.

7.9 Moreover, in respect of cash loan of Rs. 50 lakhs allegedly given to the Respondent, the Committee noted that it was not part of allegation, and it was also not dealt with in the prima facie opinion formulated by the Director (Discipline). However, the Committee noted the submissions of the Respondent in which he has stated that the receipt for cash loan is not genuine and the onus to prove the genuineness of the document is upon the Complainant who brought it on record. The Committee noted that except this one page receipt, there is nothing on record to prove the genuineness of the same. Further, the said receipt bears signatures of the Respondent and has no revenue stamp or name of witness(es) and signature of Mr. Rohit Sodha, who allegedly provided the said loan to the Respondent. In view of the

same, the Committee was of the view that the said receipt was not genuine, as its credentials could not be established.

7.10 The Committee expressed displeasure on the non-appearance of the Complainant even after extending ample opportunities to be present before it to substantiate the charges against the Respondent, however, he failed to appear. Furthermore, the Committee was of the opinion, that in absence of the Complainant and counter arguments/submissions/documents from the Complainant, the Committee have no option but to accept the statements/documents brought on record by the Respondent.

7.11 On an overall consideration of the submissions and facts of the case, the Committee was of the opinion that the Respondent has taken necessary action by representing the matter with the Registrar of Companies to shift the registered office of Company from his residence thereby taking appropriate measures in the given circumstances. Accordingly, the Committee held the Respondent **NOT GUILTY** of professional Misconduct falling within the meaning of Clause (4) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 in this charge also.

7.12 In view of the above, the Committee was of the opinion that the Respondent viz. CA. Vijay Kumar Sanghi (M. No. 086094), was **Not Guilty** of Professional Misconduct falling within the meaning of Clause (4) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 in respect of both the charges as above.

8. Conclusion:

In view of the findings arrived at in the above paras vis-à-vis material on record, the Committee gives its charge-wise findings as under:

Charges (as per PFO)	Findings	Decision of the Committee
Para 2.1	Para 7.1 to 7.5	Not Guilty- Clause (4) of Part I of Second Schedule
Para 2.2	Para 7.6 to 7.12	Not Guilty- Clause (4) of Part I of Second Schedule

9. In view of the above observations, considering the submissions of the Respondent and documents/material on record, the Committee held the Respondent **Not Guilty** of Professional Misconduct falling within the meaning of Clause (4) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

10. ORDER

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 an Order for closure of this case against the Respondent.

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

Sd/-
(SHRI JIWESH NANDAN, I.A.S {RETD.})
GOVERNMENT NOMINEE

Sd/-
(MS. DAKSHITA DAS, I.R.A.S {RETD.})
GOVERNMENT NOMINEE

Sd/-
(CA. MANGESH P KINARE)
MEMBER

Sd/-
(CA. COTHA S SRINIVAS),
MEMBER

DATE:05.02.2024

PLACE: New Delhi

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

मीनू गुप्ता / Meenu Gupta
पब्लिक कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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