



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA  
(Set up by an Act of Parliament)

[PR-248/2018-DD/260/2018/BOD/590/2021]

ORDER UNDER SECTION 21A(3) OF THE CHARTERED ACCOUNTANTS ACT, 1949 READ WITH RULE 15(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATIONS OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007

In the matter of:

Mr. Dayalan,  
Proprietor, Sri Ragavendra Agencies,  
Chennai-103.

..... Complainant

Versus

CA. Sanjay Kumar Ruia (M.No. 046453),  
M/s Sanjay Ruia & Associates,  
Chartered Accountants,  
Navi Mumbai- 400705.

..... Respondent

[PR-248/2018-DD/260/2018/BOD/590/2021]

MEMBERS PRESENT (In Person):

CA. Rajendra Kumar P., Presiding Officer  
Ms. Dolly Chakrabarty (IAAS, retd.), Government Nominee

Date of Final Hearing and passing Order: 22<sup>nd</sup> May 2023

1. The Board of Discipline vide Findings dated 3<sup>rd</sup> May 2023 was of the view that CA. Sanjay Kumar Ruia (M.No. 046453) is guilty of Other Misconduct falling within the meaning of Item (2) Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act.
2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against CA. Sanjay Kumar Ruia (M.No. 046453) and communication dated 11<sup>th</sup> May 2023 was addressed to him thereby granting him an opportunity of being heard on 22<sup>nd</sup> May 2023 which was exercised by him by being present in person before the Board. He confirmed receipt of the Findings of the Board and made his representation before the Board. He also made his written representation vide letter dated 21<sup>st</sup> May 2023.
3. Thus, upon consideration of the facts of the case, the consequent misconduct of CA. Sanjay Kumar Ruia (M.No. 046453) and keeping in view his oral and written representation before it, the Board decided to remove the name of CA. Sanjay Kumar Ruia (M.No.046453) from the Register of Members for a period of 03 (Three) months and also imposed a Fine of Rs.1,00,000/- (Rs. One Lakh only) upon him.

Sd/-

CA. Rajendra Kumar P  
(Presiding Officer)

निष्ठा शर्मा / Nisha Sharma  
Certified true copy

निष्ठा शर्मा / Nisha Sharma  
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer  
अनुसूचनांक विभाग / Grievance Directorate  
इस्टिंग्टन रोड, मार्टिन गार्डेंस, नवी मुंबई  
The Institute of Chartered Accountants of India  
आर्य समाज, विद्या नगर, माधवरा, सिवली रोड

Sd/-

Ms. Dolly Chakrabarty (IAAS, retd.)  
(Government Nominee)

CONFIDENTIAL

**BOARD OF DISCIPLINE**

**Constituted under Section 21A of the Chartered Accountants Act 1949**

**Findings under Rule 14(9) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007**

**File No. : [PR-248/2018-DD/260/2018/BOD/590/2021]**

**CORAM (present in person):**

**CA. Rajendra Kumar P, Presiding Officer  
Ms. Dolly Chakrabarty (IAAS, retd.), Government Nominee**

**In the matter of:**

**Mr. Dayalan,  
Proprietor,  
Sri Ragavendra Agencies,  
Chennai-103.**

.....Complainant

**Versus**

**CA. Sanjay Kumar Ruia (M.NO. 046453)  
M/s. Sanjay Ruia & Associates.,  
Chartered Accountants,  
Navi Mumbai-400705.**

.....Respondent

**DATE OF FINAL HEARING : 29<sup>th</sup> March, 2023  
PLACE OF FINAL HEARING : Mumbai / through video conferencing**

**PARTIES PRESENT:**

**Complainant : Shri Dayalan (through VC)  
Counsel for the Complainant : Shri Anoop Prakash Awasthi, Advocate (in person)  
Respondent : CA. Sanjay Kumar Ruia (through VC)  
Counsel for Respondent : Shri Satish J. Agarwal, Advocate (in person)**

**FINDINGS:**

**BRIEF FACTS OF THE CASE:**

1. The Complainant is a sole Proprietor of M/s Sri Ragavendra Agencies at Chennai. The said firm provided services to M/s Gangotri Enterprises Limited (hereinafter referred to as

'GEL') having registered office at Lucknow on account of which the Complainant had receivable amounting to Rs. 1.76 crores from GEL. It had issued a cheque dated 30th September 2013, for Rs.1.60 crores against the said outstanding dues which was returned uncleared for reasons of 'funds insufficient'. The Respondent is a practicing Chartered Accountant having office at Navi Mumbai and practice as a professional before various National Company Tribunals dealing with matters relating to Insolvency and Bankruptcy. On 22nd March 2018, the Complainant approached the Respondent for his case against GEL at Chennai where the Respondent used to visit frequently to appear before NCLT. The Complainant discussed his case of outstanding claim of Rs. 1.76 Crores from GEL which as per the Complainant was a non-Collectable debt. Both the Complainant and the Respondent entered into a Memorandum of Understanding (MoU) in relation to the matter. While the Complainant stated that it was the Respondent who had prepared the MoU and forced him to sign on all papers as he was not educated and did not know the contents of MoU and that the Respondent had informed him that MoU is a basic document to recover the amount from the Corporate Debtor. On the other hand, as per the Respondent since the Complainant was in a financial distress and showed his inability to pay professional fees, MoU was entered by them. In fact, it was the Respondent who got MoU printed on stamp paper issued in his name. In any case the Respondent, thereafter, looked into the matter and finally the matter was settled for an amount of Rs. 2.13 crores including litigation, legal cost and out of pocket expenses of Professional representative of Rs.36.43 lakhs as per the settlement document entered into between director of GEL and the Respondent due to which petition before NCLT was withdrawn on 10th July 2018 as per the Order of the authority brought on record. Subsequently, the Respondent raised invoice dated 10.07.2018 to the Complainant quoting a fee of Rs. 61,00,000/- including Professional Fees, reimbursement of travelling and out of pocket expenses and applicable taxes.

CHARGE ALLEGED:

2. Against the aforesaid background, the Complainant made following allegations against the Respondent:
  - 2.1 The Respondent had fixed the fees based on percentage of profit or outcome.



- 2.2 He withheld the cheques issued by GEL in favour of the Complainant's Firm.
- 2.3 The Respondent claimed reimbursement of expenses without providing sufficient evidence of the same.

The Board noted that the Director (Discipline) in his Prima Facie Opinion held the Respondent prima facie Guilty of "Other Misconduct" falling within the meaning of Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act in respect of the charge specified at Para 2.2 above and the said view had been accepted by the Board. Accordingly, the conduct of the Respondent was examined by the Board in respect of the charge specified at Para 2.2 above only.

**BRIEF OF PROCEEDINGS HELD:**

- 3.1 At the time of hearing held in the case on 29<sup>th</sup> March 2023, the Complainant and the Respondent along with their respective Counsels were present before the Board. Thereafter, the Complainant and the Respondent were put on oath, and they confirmed that they have read and understood the contents of the modalities and protocols of e-hearing and follow them. On being asked by the Board as to whether the Respondent pleaded guilty in respect of the charge alleged against him, he replied in negative and his Counsel made detailed oral submissions to defend on the charges alleged against the Respondent. The Counsel for the Complainant also made his submissions in support of the allegations alleged against the Respondent. The Counsel for the Respondent made a request for cross-examination of the Complainant which was not accepted by the Board as in its view the Board is concerned with the examination of the conduct of the Respondent and while discharging such function, the facts of the instant case do not merit such cross-examination. The Board also took into view the following observation made by the Apex Court in Union Of India Vs Orient Engg. & Commercial Co. Ltd. (1977 AIR 2445, 1978 SCR (1) 622) as under while coming to the said view:

*"It is not right that everyone who is included in the witness list is automatically summoned, but the true rule is that if grounds are made out for summoning a witness, he will be called" .*



Courts also deprecate the practice of summoning officers at the drop of a hat. Also, application for summoning such a witness should not be granted as a matter of course, as the proceedings before the Board are summary in nature. But at appropriate stage and in deserving cases, the Board can pass Orders for summoning the witness (es) keeping in view the facts of the case and conduct of the member alleged in mind.

Thus, on consideration of the documents and submissions on record, the Board concluded the proceedings in the case.

**BRIEF SUBMISSIONS OF THE PARTIES TO THE CASE:**

**A. COMPLAINANT**

The Complainant in his submissions, inter alia, stated as under:

- 4.1 The Complainant decided to file a Company Petition before the Hon'ble NCLT, Allahabad under Insolvency and Bankruptcy Code, 2016. The Respondent, who had camp at Chennai, was engaged to deal Company Petition. The Respondent had prepared one MOU and he forced the Complainant to make signatures in all the pages. As Complainant is not educated and didn't know the contents in that MOU, he signed it as per his instructions. The Respondent also conveyed that the MOU is the basic document to recover the amount from the Corporate Debtor. The Respondent knows well that the Complainant isn't aware of either Hindi or English, but he forced him to make signature in the MOU and got a copy of it.
- 4.2 When the Company Petition under IBC was pending for disposal, the said Corporate Debtor came for a settlement and agreed to issue three postdated cheques to clear the outstanding bills together with interest. The Hon'ble NCLT passed an Order in CP No.(IB)193/ALD/2018 dated 10-07-2018 with an observation that the Corporate Debtor has issued three postdated cheques towards settlement and therefore the Petition is dismissed as withdrawn. The Respondent collected all the post cheques from that Company, instead of handing over them to the Complainant .

- 4.3 When the Complainant requested for the Cheques issued by the Corporate Debtor, which was collected by the Respondent and offered fee and expenses of Rs.10.00 Lakhs, but to his surprise, the Respondent sent a bill through WhatsApp charging astronomical amount of Rs.65,16,612/- as his fees and expenses based on the percentage of outcome of the judgment and settlement amount of the Corporate Debtor. The Respondent also called over phone and informed that the fees and expenses are as per MOU made on 22-3-2018. After knowing his act of making MOU and threatened for civil action, if any failure to pay the amount based on MOU, the issue was discussed with other new CA at Chennai. The Complainant came to know that fees and expenses charged is against the ICAI norms and amounts to professional misconduct. Therefore, the Complainant sent a mail narrating that the bill raised based on percentage of outcome amounts to professional misconduct. For that mail, the Respondent replied that MOU was made because of Complainant's insistence, and he has modified the bill by charging fee of Rs.50,00,000/-, reimbursement of expenses of Rs.2,00,000/- and IGST of Rs.9,00,000/-, totaling to Rs.61,00,000/-. The bill was sent second time by changing the pattern was only after he came to know the provision of misconduct through his mail only. The Respondent has also sent mail asking to pay the bill amount and collect the three postdated cheques issued by the Corporate Debtor. Despite of Complainant's repeated request over phone and mail, Respondent is holding the said cheques.
- 4.4 The Respondent, as Professional Representative of the Complainant had received three postdated cheques drawn on Kotak Mahindra Bank issued by the Corporate Debtor M/s Gangotri Enterprises Ltd. He himself made a settlement dated 10.07.2018 with that Company, which was captioned as "To whom it may concern", without Complainant's consent and the same was drafted in such a manner that it did not burden M/s Gangotri Enterprises Ltd. (Operational Debtor) to part away any money except issuing the Cheque only for Rs.50.00 lakhs out of Rs.2.13 Crores.
- 4.5 Based on the said fraudulent settlement made with Corporate Debtor, the Complainant was forced to file one more Company Petition with the NCLT, Allahabad with additional expenses and fee to other advocates. The entire settlement dated 10.07.2018 on the



basis of which the Petition being Company Petition (IB) No. 193/ALD/2018 is permitted to be dismissed as withdrawn with liberty to file fresh petition is nothing but a fraud played by the Operational Debtor, Gangotri Enterprises Ltd. in connivance with the Respondent. It was written in the Settlement Deed dated 10.07.2018 amongst others as under:

*"It is further agreed that the Professional Representative Mr. Sanjay Kumar Ruia shall collect no claim certificate from Sri Ragavendra Agencies before handing over the settlement cheques along with his litigation cost due from Sri Ragavendra Agencies."*

It is a common knowledge that a 'no claim certificate' which is essentially a no dues certificate can be given and can be collected when the Operational Creditor (Sri Ragavendra Agencies) is fully paid in terms of the settlement and not before. The clause made in the alleged Settlement Deed makes it clear that there was a tacit understanding between Corporate Debtor M/s Gangotri Enterprises Ltd. and the Respondent to defraud, as no payment was received on the date of making settlement.

- 4.6 Even after dispute started with the Respondent and reporting his misconduct with the Institute, without Complainant's knowledge, the Respondent entered into the Settlement Agreement with the Corporate Creditor fraudulently. The payment of Rs. 50,00,000/- has been done with fraudulent intention to dishonor the settlement before the Hon'ble Tribunal. The Letter of Authority dated 26th April, 2018 issued in favour of the Respondent was a limited one and it was for the purpose *"to represent in connection with the matter relating to filing of Petition/Appeal/s other application/s and/or any paper/sat National Company Law Tribunal in matter against Gangotri Enterprises Limited. Their explanation, statement and decision will be binding on me"*.

This letter of authority was over, once unconditional settlement has happened before the Hon'ble National Company Law Tribunal on 10.07.2018. The Respondent was not a Power of Attorney Holder of the Operational Creditor. The concocted story of any settlement on 28.08.2018 is not binding upon the Operational Creditor. The Respondent has been involved in many fraudulent activities and because of which his wife and he himself are debarred from working as Insolvency Professionals. As such, the Complainant cannot be absolved of the payment obligation by seeking refuse in any subsequent settlement with the Respondent.

- 4.7 The Complainant wrote a letter to the Corporate Debtor to handover fresh cheques to him as existing cheques for Rs.2.13 Crores, which was handed over to the Respondent had not been reached. After knowing the dispute about the fees with the Respondent, the Corporate Debtor has called for a personal meeting at New Delhi and he met the Managing Director and agreed to release the payments of Rs.2.13 crores in due course and first installment of Rs.50.00 lakhs was transferred to his company's account. The Corporate Debtor had promised in oral to settle the balance amount in 3 months. After some days, the Complainant came to know that in a Corporate Debtor letter head i.e. Gangotri Enterprises Ltd dated 9th July- 2018, the Respondent has made a settlement letter by observing that Royalty Certificate of Complainant's firm will be produced to Corporate Debtor, in its absence the mode and manner of payment of dues to his firm will be subsequently decided, which was signed by the Respondent without his knowledge. The Respondent was appointed as Professional Representative to file case before the appropriate Court and not to make any settlement agreement.
- 4.8 The Respondent made a final settlement agreement on the stamp paper with the Corporate Creditor by dated 28th August,2018 by describing that he is the power of Attorney Holder for Complainant's firm and made an agreement for Rs.50.00 lakhs, leaving the balance due of Rs.1.63 Crores from the Corporate Creditor. The Respondent has made the above settlement agreement without Complainant's knowledge and any authorization in this regard.
- 4.9 In all respect and the above facts and act of Respondent, it clearly proves that he did not exercise due diligence and is grossly negligent in the conduct of his professional duties, made settlement deed without the consent of Complainant with Operational Creditor. Further he didn't establish the reasonable cause for retaining the cheques issued by the said company in favor of the Complainant. Because of his misconduct, the Complainant lost a sum of Rs. 1,63,00,000/-, by way of fraudulent settlement by fabricating records.

## **B. RESPONDENT**

The Respondent in his defence, inter alia submitted as under:





- 5.1 M/s Gangotri Enterprises Limited (GEL) had to pay Rs. 1,46,00,000/- against the settlement of principal amount as per the draft Settlement Agreement. Sri Ragavendra Agencies (SRA) had demanded Rs. 1,76,56,463/- towards the principal and also towards the bounced cheque bearing no. 844486 dated 30.09.2013 of Corporation Bank, plus a sum of Rs. 36,43,537/- towards the litigation, legal cost, and out of pocket expenses of professional representative (Respondent) before NCLT, Allahabad bench.
- 5.2 Therefore, GEL handed over 3 post-dated cheques (Kotak Mahindra Bank:- cheque no. 002168 dated 15/07/2018 amount Rs. 50,00,000/-, cheque no. 002166 dated 25/08/2018 amount Rs. 50,00,000/-, and cheque no. 002167 dated 25/09/2018 amount Rs. 1,13,00,000/-) amounting to Rs. 2,13,00,000/- to the Respondent.
- 5.3 In a letter dated 10.07.2018, duly signed by M/s Gangotri Enterprises Limited, it is stated as follows:

*"The Company (GEL) is now absolved from all its liability against Sri Ragavendra Agencies as on 10.07.2018 including the proceeding under Negotiable Instrument Act, 1881 after handing over all the above mentioned cheques. It is further agreed that Professional Representative Mr. Sanjay Kumar Ruia shall collect No Claim Certificate from Sri Ragavendra Agencies before handing over the settlement cheques along with his litigation cost from Sri Ragavendra Agencies."*

It is pertinent to note that GEL had specifically asked the Respondent to collect a No Claim Certificate from the Complainant before handing over the 3 settlement cheques along with his litigation cost. However, the Complainant did not issue a No Claim Certificate to GEL and the Respondent did not handover the settlement cheques to SRA.

- 5.4 The act of withholding the settlement cheques by the Respondent as substantiated above would have been a misconduct and violation of code of professional ethics, if the same would have been withheld without a reasonable cause. The Respondent was justified in retaining postdated cheques for the following reasons:

i. First and foremost, Complainant did not issue a No Claim Certificate to GEL.



- ii. Secondly, GEL had clearly told him to collect not only the No Claim Certificate but also his litigation costs from SRA.
- iii. Thirdly, when the Respondent had quoted a fee of Rs. 50,00,000/- (Rupees Fifty Lakh Only) not including out of pocket expenses and taxes, the Complainant had expressed his inability to pay the quoted fee due to financial distress.
- 5.5 Therefore, the Respondent had empathized with the Complainant and entered into an agreement (MOU) dated 22/03/2018, with the Complainant in which the Complainant consented and agreed to pay for the Professional Representation and legal cost of Appeal before the National Company Law Tribunal against the GEL in percentage sharing terms as follows:
- i. Rs. 50,000/- plus GST as initial signing amount towards legal vetting and drafting of the Demand Notice under Section 8 of the Insolvency and Bankruptcy Code, 2016,
  - ii. 20% of the amount recovered from GEL against the Principal Amount claimed by SRA plus taxes/GST as applicable,
  - iii. 50% of the interest amount claimed and received from GEL, and 100% reimbursement of professional and legal cost claimed and received from GEL.
- 5.6 The Complainant had agreed that the above payment would be made in percentage terms when the amount claimed is made good by GEL.
- 5.7 Due to the efforts of the Respondent, finally, the Complainant 's outstanding claim was settled by GEL for Rs. 2.13 Crore including the litigation, legal cost, and out of pocket expenses of the Respondent.
- 5.8 The Respondent rendered his professional services diligently and honestly towards recovery of the money from GEL by sending demand notice, filing of petition, and representing the Complainant before NCLT at Allahabad. He also arranged for settlement with GEL against which the 3 postdated cheques viz. cheque no. 002168, dated 15/07/2018, amount 50 Lakh; cheque no. 002166, dated 25/08/2018, amount 50 Lakh; and cheque no. 002167, dated 25/09/2018, Rs.1.13. Crore were received. The settlement was done between Mr. Ajeet Pandey, Director of GEL and the Respondent, Professional Representative of SRA.



- 5.9 Therefore, the Respondent sent an invoice dated 10/07/2018 as follows: The cost of legal vetting, fact finding and drafting of Notice u/s 8 of Insolvency and Bankruptcy Code, 2016 and for filing of Petition u/s 9 of the Insolvency and Bankruptcy Code, 2016 for complete litigation from NCLT, NCALT, and Supreme Court was quoted as Rs. 50,00,000/-, reimbursement of travelling and out of pocket expenses Rs.2,00,000/-, and with addition of IGST @18% i.e. Rs. 9,00,000/-. The Respondent is entitled to receive a total amount of Rs. 61,00,000/-.
- 5.10 However, subsequent to GEL agreeing to make the payment of Rs. 2.13 Crore, Complainant has reneged on the covenant in the MOU where SRA has agreed to pay Respondent in percentage terms thus breaching the contract and cheating (S.415 IPC) the Respondent.
- 5.11 Later, the Complainant issued a cheque with no. 892765, Indian Bank, not dated, amount: Rs.10,00,000/- (Rupees Ten Lakh Only) towards Respondent professional fees against the first of the three cheques i.e. cheque no. 002168, dated 15/07/2018, and amount Rs. 50,00,000/- (Rupees Fifty Lakh Only). The Complainant was going to come to Mumbai but cancelled his tickets and instead dispatched the cheque by post. He demanded that on receipt of cheque no. 892765, the Respondent should deposit first of the three cheques i.e. cheque no. 002168 into the Complainant account with Indian Bank for clearing. In return, Respondent had asked him to withdraw the case he had filed u/s 138 Negotiable Instrument Act, 1881 against GEL before collecting the other two cheques which Complainant never did. Also, Complainant was to submit copies of a Royalty Clearance Certificate, for the quantity and quality of sand and earth supplied by Sri Ragavendra Agencies from the sand quarries, within 15 days as per letter of GEL dated 09/07/2018 to GEL, which Complainant expressed his inability to provide.
- 5.12 It is beyond doubt that the Complainant utilized the services of Respondent for his benefit and then very conveniently is looking for excuses to blame Respondent in order to avoid paying his legitimate dues. The Complainant has not given a No Claim Certificate and has also not paid Respondent his professional fees.
- 5.13 It is the Respondent's moral responsibility to ensure that a No Claim Certificate is issued to GEL by SRA. Therefore, there is no case of professional misconduct on his part because

he has been instructed by GEL to hand over the 3 settlement cheques ONLY AFTER HE HAS BEEN GIVEN THE NO CLAIM CERTIFICATE AND HIS LITIGATION COSTS.

- 5.14 The Respondent has rightly exercised lien over the cheques for the No claim Certificate and not necessarily for non-payment of his professional fees, which is incidental.
- 5.15 Right to lien is defined in the section 171 of the Indian Contracts. Act. A right of lien is a right to retain possession of property belonging to someone else, pending payment of an outstanding debt. Although it was considered unethical earlier in the case of R. D. Saxena Balram Prasad, it was later confirmed by the section 240.4F of Code of Ethics of ICAI that in the case of nonpayment of fees, the CA can exercise his right to lien and refuse to pass on the information unless the dues are cleared.
- 5.16 Also, it is important to note that the MOU, dated 22/03/2018, is a Contingent Contract between the Complainant and the Respondent according to section 2 (h)[1] of the Indian Contracts Act, 1872. The said MOU is a valid contract because the Complainant and Respondent have entered into an agreement, and it is enforceable by law. In the said MOU, the parties have given their free consent, are competent to contract, and the object and the consideration of the contract is lawful. In the MOU, it is clearly stated as follows:

*"The Party of the First Part (Sri Ragavendra Agencies) has agreed that the above amount shall be paid in the same ratio of 20%, 50%, and /or 100% as and when the amount claimed is made good by the company, Gangotri Enterprises Limited.*

*And whereas, it is further agreed by the party of the First Part has authorized the Party of the Second Part (CA Sanjay Kumar Ruia) to proceed legally against all other clients to recover the dues."*

In conclusion, the fact of the matter is that Complainant has willfully not issued a No Claim Certificate, and also violated the contingent contract (MOU), breached the trust, and cheated the Respondent by not paying his professional fees till date.

#### **OBSERVATIONS OF THE BOARD:**

- 6.1 At the outset, the Board noted that the Complainant had provided certain services to M/s Gangotri Enterprises Ltd. on account of which the Complainant had outstanding payment amounting to Rs.1.76 Crores from Gangotri Enterprises. Accordingly, the Complainant



approached the Respondent for his case against M/s Gangotri Enterprises Ltd. at Chennai where the Respondent used to visit frequently to appear before NCLT. The Complainant discussed his case of outstanding claim of Rs. 1.76 Crores from M/s Gangotri Enterprises Ltd. which as per the Complainant was a non-collectable debt. Thereafter, a Memorandum of Understanding (MOU) was entered into between the Complainant and the Respondent on 22<sup>nd</sup> March, 2018 appointing the Respondent as the Professional Representative to represent the Complainant in the matters before the NCLT/NCLAT against Gangotri Enterprises Ltd. It also authorised the Respondent to proceed legally against all other clients to recover the dues. The said MOU also decided the fees to be paid to the Respondent for his professional representation and the manner in which it was to be paid. The relevant portion of the MOU is reproduced below:-

*"Whereas, the Party of the First Part has approached the Party of the Second Part and discussed the case with the Party of the Second Part. The Party of the First Part has appointed Mr. Sanjay Kumar Ruia as the Professional Representative to represent the matter before the National Company Law Tribunal/National Company Law Appellate Tribunal and others against Gangotri Enterprises Limited".*

*"And Whereas, it is further agreed by the Party of the First Part has authorized the Party of the Second Part to proceed legally against all other clients to recover the dues."*

6.2 The Board noted that M/s Gangotri Enterprises Ltd. addressed a letter dated 9.07.2018 to the Complainant firm stating that Gangotri Enterprises Ltd. shall pay an amount of Rs.2,13,00,000/- towards full and final settlement subject to submission of Royalty Clearance Certificate by the Complainant's firm which was duly acknowledged as having been received by the Respondent on the same day. Thereafter, on 10.07.2018 in terms of the settlement M/s Gangotri Enterprises Ltd. handed over three original cheques totalling to the amount mentioned above which was received by the Respondent as a professional representative of the Complainant's firm and duly acknowledged by him. The Board further noted that the Respondent directly entered into a Final Settlement Agreement dated 28<sup>th</sup> August, 2018 with M/s Gangotri Enterprises Limited on behalf of the Complainant's firm wherein the Respondent on behalf of the Complainant's firm agreed to settle the outstanding for an amount of Rs.50,00,000/- only towards full and final

settlement, instead of the actual amount which was to be paid to the Complainant i.e., Rs.2,13,00,000/- on account of the Complainant's inability to produce the Royalty Clearance Certificate.

- 6.3 The Board also noted that an undertaking dated 10<sup>th</sup> July, 2018 duly signed by one of the directors of M/s Gangotri Enterprises Ltd. and the Respondent on behalf of the Complainant's firm had been given with the following contents:-

*"It is to be stated that Gangotri Enterprises Limited ("the Company") has admitted its liability for the outstanding amount against Sri Ragavendra Agencies. The Company has agreed to pay an amount of Rs.1,46,00,000/- against settlement of the principal amount as per the Draft Settlement Agreement. Sri Ragavendra Agencies had demanded Rs.1,76,564,63/- towards Principal and also against the bounced cheque bearing no.844486 dated 30.09.2013 of Corporation Bank plus a sum of Rs.36,43,537/- towards the litigation. Legal cost and out of pocket expenses of the Professional representative before NCLT, Allahabad Bench.*

*Thus, the Company is now absolved from all its liability against Sri Ragavendra Agencies as on 10.07.2018 including the proceedings under Negotiable Instruments Act, 1881 after handing over all the above mentioned cheques. It is further agreed that the Professional Representative Mr. Sanjay Kumar Ruia shall collect no claim certificate from Sri Ragavendra Agencies before handing over the settlement cheques along with his litigation cost due from Sri Ragavendra Agencies."*

- 6.4 The Board observed that the MOU duly signed between the Respondent and the Complainant clearly defined the professional relationship between the two. It nowhere authorised the Respondent to enter into agreements/contracts on behalf of the Complainant or his firm or to settle his financial claims. The Respondent clearly exceeded the mandate given to him by the Complainant being his client.
- 6.5 The Board also noted that there was dispute between the Complainant and the Respondent regarding professional fees sought by the Respondent. The Board also noted that Memorandum of fees of Rs. 65.16 lakhs initially raised by the Respondent was as per

the terms laid in MoU. Further, the Respondent also withheld the three cheques issued by M/s Gangotri Enterprises Limited in favour of the Complainant's firm on the ground that he had not received his professional fees. The Board on perusal of the correspondence between the Respondent and the Complainant observed that while the Complainant kept on seeking the cheques from the Respondent, the Respondent required the Complainant to withdraw case against M/s Gangotri Enterprises Limited as well as furnishing the No Dues Certificate along with clearing his invoice. Thereafter, the Respondent also filed a Civil Recovery Suit before the appropriate Court of Law on dated 13th August 2018 for recovery of his professional fees. The Respondent also sent letter to M/s Gangotri Enterprises Limited with a request to hoard the payment of the Complainant as he has not cleared his professional fees for the aforesaid matter.

- 6.6. The Board was of the view that retention of books of accounts/documents of the client without a reasonable cause has clearly been a non-acceptable practice. Non-payment of fees cannot be regarded a reasonable cause because in extant case such retention has been stretched to the extent that the cheques had become stale considering the last date of communication with the parties vis-a-vis the cheque dates. The Board viewed that a chartered accountant cannot exercise lien over the client documents/records for non-payment of his fees. In case of non-payment of his fees, he has a right to take the legal course for the recovery of the same.
- 6.7. The Board was of the view that in common business parlance, a 'no claim certificate' which is essentially a no dues Certificate can be given and can be collected when the Operational Creditor is fully paid in terms of the settlement and not before. It is noted that the above clause made in the alleged Undertaking makes it clear that there was a malafide intention on the part of M/s Gangotri Enterprises Ltd. (Corporate Debtor) and the Respondent.
- 6.8. In view of the above observations, the Board was of the view that the conduct of the Respondent in dealing with his client was clearly unwarranted and unbecoming of a Chartered Accountant. Thus, the conduct of the Respondent clearly amounts to "Other Misconduct" falling within the meaning of Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with section 22 of the said Act.

**CONCLUSION:**

7. Thus, in conclusion, in the considered opinion of the Board, the Respondent is **GUILTY** of Other Misconduct falling within the meaning of Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with section 22 of the said Act.

Sd/-

CA. Rajendra Kumar P

(Presiding Officer)

Sd/-

Ms. Dolly Chakrabarty (IAAS, retd.)

(Government Nominee)

DATE:03-05-2023

सही प्रतिलिपि होने को लिए प्रमाणित  
Certified to be true copy

बिना नाथ शिवारी / Bishwa Nath Tiwari  
कार्यकारी अधिकारी / Executive Officer  
अनुपमसमानता निदेशालय / Disciplinary Directorate  
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया  
The Institute of Chartered Accountants of India  
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