

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. : [PPR/HPC/DD/112/INF/18/BOD/530/2019]

CORAM (present in person):

CA. Rajendra Kumar P, Presiding Officer
Ms. Dolly Chakrabarty (IAAS, ret'd.), Government Nominee
CA. Priti Savla, Member

In the matter of:

M/s. R M Ajgaonkar & Co. (FRN 100215W) in Re:
[Member Answerable - CA. Rajaram Ajgaonkar (M.No.031927)]Respondent

DATE OF FINAL HEARING : 28th March 2023
PLACE OF FINAL HEARING : Mumbai

PARTIES PRESENT (In person):

Respondent : CA. Rajaram Ajgaonkar
Counsel for the Respondent : Shri Aditya Ajgaonkar, Advocate

FINDINGS:

BACKGROUND OF THE CASE :

1.1 The attention of the Disciplinary Directorate was drawn to the Report on Operation of Multinational Network Accounting Firms in India, which was considered by the Council of ICAI in the year 2010 and finalised by a Group constituted by the Council in July 2011. Subsequently, while considering further course of action in respect of the recommendations as contained in Para 7 of the aforesaid report, the Council at its meeting held in January 2013 had authorized the Secretary, ICAI to take necessary action as considered appropriate by him. In accordance with the said decision of the Council, upon placing the matter before the Secretary, ICAI he had considered the issues relating to violations of provisions of the Chartered Accountants Act, 1949 by the various firms



and forwarded the same along with his recommendations for necessary action to the Director (Discipline).

- 1.2 On an overall examination of allegations together with the reference received from the Council of the Institute, the matter was treated as "Information" within the meaning of Rule 7 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

CHARGE ALLEGED:

- 2.1 The Respondent firm vide its letter dated 1st July 2009 mentioned that it paid membership fees and additional fees to M/s JHI Association during the years 2005 to 2009. It was further mentioned that it has not received any fees from M/s JHI Association, but the Respondent received reimbursement of travelling expenses as member of International Executive Committee during 2005-2007. Further, Clause 1(a) of Article VI of the Agreement provides as under:

"In January of each year, every Member Firm will be invoiced for annual international dues and shall pay such annual international dues within 60 days of invoice date as a contribution towards the expenses of the Association".

Clause 1(d) of the said Article provides for payment of entrance fee of such sum as shall be determined from time to time.

The Respondent firm has not disclosed as to what comprises annual international dues and what service has been received by it from M/s JHI Association or from its member firms in lieu of the fees paid. The purpose of this payment has not been disclosed by the firm. The information has been given till the year 2009. Presumably, remittances have been made by the firm in later years as well. The Respondent firm has not provided break-up/computation and whether the remittance is only towards marketing, publicity and advertising the products and services in India as well as abroad and any other payment cost which is not allowed as per the Chartered Accountants Act, 1949, Regulations framed thereunder and Code of Ethics. The Respondent firm has also not furnished any data in support of their claim that the money remitted by them to the multinational entity is in

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respect of above matters only and that the same in no way relates to the volume of business generated through the efforts of the multinational entity and through use of brand name. Such an act on the part of the Respondent firm is in violation of Item (2) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

- 2.2 The Hon'ble Apex Court vide its Order dated 23rd February 2018 in CIVIL APPEAL NO. 2422 / 2018 and W.P. NO. 991/2013 observed violation of Sections 25 and 29 of the Chartered Accountants Act, 1949 and also raised certain questions on the way and manner the fee is being shared by the Indian CA firms who are associates of multinational entities. In light of the said judgement and fact / submission on record, the Respondent firm has violated the provisions of Item (2) of Part I of First Schedule and Item (1) of Part II of Second Schedule to the Chartered Accountants Act, 1949 for alleged sharing of fee and for violation of Sections 25 and 29 of the Chartered Accountants Act 1949 respectively.

The Board noted that the Director(Discipline) in his Prima Facie Opinion held the Respondent prima facie Guilty of "Professional Misconduct" falling within the meaning of Item (2) of Part I of the First Schedule to the Chartered Accountants Act, 1949 only in respect of the charge specified at para 2.1 above and the said view had been accepted by the Board. Accordingly, the conduct of the Respondent was examined only in respect of the charge specified at para 2.1 above.

BRIEF OF PROCEEDINGS HELD:

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Date of Hearing(s)	Status
28 th March 2023	Heard and concluded.

BRIEF SUBMISSIONS OF THE RESPONDENT:

4. The Respondent, in his defence, inter alia, stated as under:

- 4.1 The Respondent has not paid any share, commission or brokerage in the fees or profits of his profession to be guilty of misconduct as envisaged by Item (2). The Respondent duly furnished his proof of payments on a sample basis of JHI Association (JHI) including a chart of his yearly payments to show that at no point of time have any referral fees been paid

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to the association or any of its members. The only fees paid were membership fees (inclusive of conference fees) through which he remained a part of JHI and took part in its knowledge exchange process.

4.2 Though in the entire correspondence, reference to payment is made as membership fees, in fact the payments were towards membership and conference fees. It is clarified that reference as additional fees is in respect of conference fees only. Whether the amounts are reasonable or huge (excessive) is a matter of individual perception, view and judgment. The amount is reasonable being in US Dollar terms and in the totality of the circumstances on record. Merely because there is other possible view on the reasonableness of amount, ipso-facto inference cannot be drawn that the payments to JHI from year to year were in the nature of sharing of fees, especially in the absence of any iota of evidence or material for such adverse inference.

4.3 Membership/Conference fees are justified in the light of activities of JHI, ensuing advantages to the Respondent are as under:-

(a) Attending conference makes him or his staff better exposed to global developments in the profession as well as global thinking in the profession. The conferences have allowed him to travel to various locations around the world, learn about economies of various countries and also understand global practices in the profession. The membership allows him to get his clients' work done in the major cities across the world. It enhances the confidence level of his firm and increases the comfort level of the clients about his firm. These benefits justify the cost of membership.

4.4 The clause (1) (b) of Article VI of the Agreement provides for mechanism of determining the fees at the AGM. It also provides for ceiling. This should dissolve the conceived "possibility" of membership fees being based on turnover of CA firm, which is the basis of the prima facie opinion. The agreement itself states that the annual fee shall be determined yearly in terms of Article VI 1(b) the agreement. The said clause states that the annual international dues shall be determined by the member firms at the previous annual general meeting. It also provides for an upper limit on the annual international dues of USD 10,000/-. In most years the annual dues paid have been less than half this upper cap. Thus, the method of determining the annual fee is democratic and is contained in the agreement. From 2011, the annual fees have been almost constant at USD 2,500/-

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except for the year 2017 in which it is lower at USD 2,000/-. The change if any is only due to change in conference fees. The difference in fees paid in rupee terms seems to be mainly due to difference in exchange rate.

The fact that the agreement itself does not lay out the annual international dues but provides that such dues shall be decided democratically shows the existence of membership and not a pure commercial arrangement.

- 4.5 The clause 3 of Article II does not provide for referral fees as considered in the Prima Facie Opinion. It indicates only possibility of introducing referral system. The Respondent had informed to the management of JHI that his firm will not be able to pay referral fees in the light of Item (2) of Part -1 First Schedule. Hence, contemplated "possibility" based on the said clause is ill-founded.
- 4.6 The Respondent neither allowed to pay or agreed to pay any share, commission or brokerage in the fees or profits of his professional activity to be guilty of misconduct, as envisaged by Item (2). The use of the word "when" shows that there could be a referral system put in place at a later date but the agreement itself did not put the referral system in place. Even if such a referral system was to be put in place in the future, the International Executive Committee 'may' determine a system of additional dues based on percentage of fee paid by a client. The use of the word 'may' clarifies that there was no agreement for payment of any additional dues based on a percentage of fees paid by the client. The association agreement relied upon in the *prima facie opinion* does not contemplate any allowance or agreement to pay by him of any share, commission, brokerage in the fees or profit of his profession.
- 4.7 The Respondent neither allowed directly or indirectly any share, commission or brokerage in the fees or profits of his professional activity to be guilty of misconduct as envisaged by Item (2). The use of the word 'may' clarifies that there was no agreement to pay any dues to any entity based on a percentage of fees paid by the client. This also clarifies that he has not allowed directly or indirectly any payment based on a percentage of fees paid by the client. The association agreement relied upon in the *prima facie opinion* does not contemplate that he has allowed either directly or indirectly any share, commission, brokerage in the fees or profit of his profession.

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- 4.8 Although there may be certain clause which may appear to be inconsistent with some of the provisions of the Act, the Respondent firm had specifically not acted upon the same with the consent of JHI. A letter dated 29th June 2018 from JHI has stated the fact that the Respondent had communicated that his firm will not pay any referral fees in view of ICAI regulation and JHI accepted his position. It is further confirmed in the said letter that he has not been charged or paid any referral fees. This letter was not available at the time of filing written statement dated 07/05/2018.
- 4.9 The subscription was remitted to JHI annually by complying with FEMA rules through an authorised dealer.
- 4.10 The Article II 6 (b) of the Agreement makes a specific reference to Article II paragraph 3 of the Agreement which makes it amply clear that the agreement did not contemplate any referral system and if any such referral system was to be introduced it would have to be done to by-laws that may have to be subscribed to or as an amendment to this agreement.
- 4.11 The Respondent furnished an analysis of the amounts paid as membership fees (inclusive of conference fees) to JHI and also furnished copies of his Income and Expenditure accounts to show that the fees of JHI were not in any way related to his professional income and that no profit sharing was involved.
- 4.12 The Respondent placed on record e-mail dated 24th March 2023 from Ms. Kristin Deo that JHI has ceased to exist in September 2020, but the association manager at that time still has access to the archives as on date. The office, phone numbers, e-mail address and website on the letterhead of the association are no longer available and Blair Davidson has since retired.
- 4.13 A finding that a member is guilty of professional or other misconduct has very serious repercussions for the member. It is a settled position that the allegation against a member is required to be proved by the test of "beyond reasonable doubt". Further, negative burden of proof cannot be cast on the member. In the instant case, there is no proof whatsoever that payments made to JHI by him are by way of sharing of fees in the name of membership fees. The allegation is made, only on basis of suspicion, surmises and conjectures, which are unfounded. Even the less strict test of proof being "preponderance of possibilities", cannot be said to have been satisfied.



OBSERVATIONS OF THE BOARD:

- 5.1 On perusal of the Association Agreement executed between the Respondent firm and JHI, the Board noted that the agreement, inter-alia, provided the following:

"Article I***3. Purpose of the Association***

The purpose of the Association is the exchange of professional information and assistance and the referral of clients among its members in the field of auditing as well as tax and business consultancy, advisory and accountancy and compliance services.

Article II***3. Referral of clients***

A Member firm shall not be precluded from rendering services to any new or existing clients.

6. Fees for Services

- b. When introducing a referral system (as per Article II paragraph 3) the International Executive Committee may determine a system of additional dues based on a percentage of the fees pay by the client.*

7(c) Each Member firm admitted shall subscribe to this Agreement by the Representative appending his signature thereby binding the Member Firm to all terms and conditions therein.

Article VI***Finance and Accounts******1. Entrance Fees and Annual Dues***

a. In January of each year, every Member firm will be invoiced for annual international dues and shall pay such annual international dues within 60 days of invoice date as a contribution towards the expenses of the Association. Such international dues shall be in addition to Regional dues payable by Member firms that may be members of a recognized Region.... "

- 5.2 The Board further noted that the Respondent brought on record copy of the following Invoices raised by JHI Association on the Respondent Firm for the Membership subscription fees/Annual dues and conference credits for the following year(s):

Date of Invoice	Invoice no.	Year	Amount (in \$)
21 st December 2009	2010-AP15	2010	\$4,350/-
1 st April 2011	003570	2011	\$4,500/-
17 th December 2011	001	2012	\$4,500/-

15 th March 2013	001	2013	\$4,500/-
1 st January 2015	79	2015	\$4,500/-
1 st January 2016	1028	2016	\$4,500/-
1 st Feb 2017	1148	2017	\$1,990.02/-

5.3 The Board also noted that the Respondent brought on record a comparative detail of his professional receipts vis-à-vis the payment made paid by the Respondent firm to JHI as membership/conference fees as stated hereunder:

Sr. No.	FY	Professional Receipts	Date	Amount (Rs.)	\$
1	2009-2010	83,49,189.00	09-03-2010	1,99,995.90	4350
2	2010-2011	69,01,593.00	14-03-2011	2,29,036.92	5000
3	2011-2012	88,38,095.00	27-03-2012	2,33,150.75	4500
4	2012-2013	1,19,54,775.00	15-02-2013	2,47,960.90	4500
5	2013-2014	1,17,66,363.00	19-03-2014	3,41,157.96	5500
6	2014-2015	1,46,16,740.00	31-03-2015	2,82,375.00	4500
7	2015-2016	1,32,84,308.00	22-03-2016	2,99,727.00	4500
8	2016-2017	1,41,55,563.00	27-03-2017	1,30,087.61	2000

5.4 The Board further noted that the Respondent also brought on record communication dated 29th June 2018 issued by Mr. Blair Davidson, International Chair, JHI to the Respondent firm which states as follows:

"Please accept this communication in reference to our faithful member R.M. Ajgaonkar & Co. in Mumbai, India.

This Firm has been a member since before 1st April 2011 and has always participated to the extent possible and remains in Good Standing with the Association.

As such, when Rajaram Ajgaonkar had communicated that his firm will not pay any referral fees to JHI because as a member of ICAI he is not allowed to share fee with non-members of ICAI. We accepted his position. In addition, he will not put JHI Logo on his letterheads and visiting cards. I can confirm that he has not been charged or paid any referral fees to JHI for

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the duration of his membership to date. He will remain an exception to our Association Agreement until ICAI alters its position on the same."

- 5.5 The Board also noted that the Respondent brought on record an e-mail dated 24th March 2023 from one Ms. Kristin Deo that JHI has ceased to exist in September 2020, but the Association Manager at that time still has access to the archives as on date. The office, phone numbers, e-mail address and website on the letterhead of the association are no longer available and Blair Davidson (the official who issued the earlier communication dated 29th June 2018 to the Respondent firm) has since retired.
- 5.6 Thus, in view of the above, the Board was of the view that in respect of the charge of sharing of professional fees with the non-member JHI, the position has been confirmed by M/s JHI that there was no sharing of fees by the Respondent firm. The documentary evidence on record clearly indicate that the payments made by the Respondent firm to M/s JHL were only on two counts i.e. membership fees and conference fees. There is no evidence to indicate any payment made by the Respondent firm to M/s JHI on any other count. Accordingly, the Board held the Respondent Not Guilty in respect of the charge alleged.

CONCLUSION:

6. Thus, in conclusion, in the considered opinion of the Board, the Respondent is **NOT GUILTY** of Professional Misconduct falling within the meaning of Item (2) of Part I of the First Schedule to the Chartered Accountants Act, 1949. Accordingly, the Board passed Order for closure of the case in terms of the provisions of Rule 15 (2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

Sd/-

CA. Rajendra Kumar P

(Presiding Officer)

Sd/-

Ms. Dolly Chakrabarty (IAAS, rettd.)

(Government Nominee)

DATE: 06-12-2023

Sd/-

CA. Priti Savla

(Member)

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