



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

[PPR/HPC/DD/147/INF/2016/BOD/529/2019]

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:

M/s R N Marwah & Co LLP (FRN 001211N/N500019)
(formerly known as M/s R N Marwah & Co. (FRN 001211N))
Member answerable CA. Upendra Nath Marwah (M.No. 013595),
New Delhi in Re:

.... Respondent

[PPR/HPC/DD/147/INF/2016/BOD/529/2019]

MEMBERS PRESENT (in person):

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

Date of Hearing and passing Order: 11th January 2024

1. The Board of Discipline vide its Findings dated 19th December 2023 was of the view that CA. Upendra Nath Marwah (M.No. 013595) is GUILTY of Professional Misconduct falling within the meaning of Item (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949.
2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against CA. Upendra Nath Marwah and communication dated 4th January 2024 was addressed to him thereby granting him an opportunity of being heard on 11th January 2024. The Respondent vide email dated 10th January 2024 expressed his inability to appear for the hearing as he is not keeping well and thus, sought for adjournment. Since no documentary evidence in support of the same was provided by the Respondent, his request was not acceded to by the Board. Accordingly, the Board decided to consider his case for award of punishment.
3. Thus, upon consideration of the facts of the case and the consequent misconduct of CA. Upendra Nath Marwah (M.No. 013595), the Board decided to Reprimand CA. Upendra Nath Marwah (M.No. 013595).

Sd/-

CA. Rajendra Kumar P
(Presiding Officer)


Sd/-

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

Sd/-

CA. Priti Savla
(Member)

सही प्रतिलिपि होने के लिए प्रमाणित/
Certified to be true copy


नीलम पुंडीर/Neelam Pundir
वरिष्ठ कार्यकारी अधिकारी/Sr. Executive Officer
अनुशासनालयक निदेशालय/Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्व नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwa Nagar, Shahdara, Delhi-110032

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/147/2016/BOD/529/2019]

CORAM: (Present in Person)

CA. Rajendra Kumar P, Presiding Officer

Ms. Dolly Chakrabarty (IAAS, ret'd.), Government Nominee

In the matter of M/s R N Marwah & Co LLP (FRN 001211N/N500019)

(formerly known as M/s R N Marwah & Co.(FRN 001211N))

**member answerable CA. U.N. Marwah (M.No. 013595), New Delhi in Re:
Respondent**

DATE OF FINAL HEARING : 22nd August 2023

PARTIES PRESENT (in person):

Authorized Representative of the Respondent :

Shri Manoj Gupta

Counsel for the Respondent:

Shri Sukhmeet Lamba, Advocate

FINDINGS: -

BACKGROUND OF 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 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, he considered the issues relating to violations of provisions of the Chartered Accountants Act, 1949 by the aforementioned



firm (hereinafter referred to as the '**Respondent Firm**') and forwarded the 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. The Respondent firm in its letterhead and in the visiting card used by its Senior Partner, CA. U.N. Marwah, has used the logo of Geneva Group International (GGI) and also the expression, "*A Member of Geneva Group International*".

BRIEF OF PROCEEDINGS HELD:

3.

S.No.	Date of Hearing(s)	Status
1	04 th November, 2019	Adjourned at the request of the Respondent.
2	17 th May, 2023	Adjourned at the request of the Respondent.
3	29 th June, 2023	Adjourned at the request of the Respondent.
4	22 nd August, 2023	Heard and concluded.

BRIEF SUBMISSIONS OF THE RESPONDENT:

4. The Respondent in his defence, inter-alia stated as under:
- 4.1 Item (7) of Part I of the First Schedule to the CA Act 1949 prohibits only the use of any designation or expression such as Income Tax Consultant, Cost Accountant, Company Secretary, Cost Consultant or a Management Consultant other than Chartered Accountant on the professional document. The word "expression" read with the word "designation" refers to any other designation or description to qualification or



profession or expertise. The mere mentioning of the fact that a CA Firm is a member of a professional organization cannot be equated with 'designation or expression' within the meaning of Item (7) of part I of First schedule of the Act. There is no bar under the Act for any CA Firm to become a member of any professional or business organization, chamber of commerce etc.

- 4.2 The allegation of the extant case relates to disclosure of international affiliation and the fact of the matter is that the provision as envisaged under Item (7) has nothing to do with disclosure of an international affiliation. It prohibits advertisement of professional attainment or services and the expression 'professional attainment' refers to professional accomplishment or achievement. Being a member of GGI cannot be as such termed as a professional achievement so as to attract prohibition as laid under clause (7) of Part I of the first Schedule to the Chartered Accountant Act 1949 as there is no specific criteria/ bench mark which was laid down to take its membership and depended totally upon the outlook of the CA Firm and their intend to grow and update itself professionally, through Practice Groups on International Taxation, Audit, M&A etc. where various knowledge sharing and global best practices takes place. Thus any Firm which has a global vision to upgrade its knowledge base so as to ultimately benefit the stakeholders of the profession at large could apply for membership of GGI and mere usage of the Logo of GGI or an expression may kindly not be understood as an advertisement of any professional attainment or any services as it was not a professional attainment in a strict sense but of course was a way forward to develop the intellectual base of the Firm.
- 4.3 Using the expression 'A Member of Geneva Group International' or its logo does not tantamount to an advertisement. The Respondent Firm is distinct, independent and totally different from GGI, a position which has already been disclosed to ICAI and acknowledged. Mere due to the fact that the Respondent Firm is a member of GGI does not mean that it is an achievements/accomplishment of the Firm of such a nature which if disclosed would tantamount to violation of Code of Ethics Guidelines. GGI is an independent alliance of professions, including Chartered Accountants, and Management consultant worldwide. There is no prohibition in the Act to disclose a relation with any



international entity, either in Item (7) or any other provision. Rather, a "network" relationship needs to be disclosed to the ICAI, which has been done.

- 4.4 In today's globalized world, domain knowledge and experience of different jurisdictions is required to enhance the capabilities of a professional and such alliances with fellow professionals abroad are helpful in attaining and updating the knowledge base which in turn help the professional to render their services in better way. It should be rather an endeavour of ICAI to encourage such alliances which enhances the knowledge and make its members globally competitive. Such restrictions do not serve any meaningful purpose and ought to be removed.
- 4.5 The allegation in question is based on a decision by the Council, which is based, in turn, on a recommendation by CESURA. The recommendation of CESURA was that use of expressions such as "in Association with...", "Association of...", "Correspondents of ...", is not permitted on stationery, letter heads, visiting cards and professional documents of the CA firms in view of Item 7. The view allegedly taken by the Council in 1995 was that it should not be permitted irrespective of whether the firm was Indian or foreign. Clearly, neither the alleged recommendation of CESURA nor the alleged decision taken by the Council address usage of a simple expression viz. "A member of". The expressions which are prohibited and the expression which is used by the Respondent Firm have different essence and usage and thus cannot be equated. Nor can usage logo amount to using the expressions prohibited by CESURA. Hence, the intent behind decision of Council and recommendation by CESURA should not be expanded to the detriment of the CA profession so as to include an expression which merely informed about the membership with a professional organization.
- 4.6 Use of logo and an expression about membership with GGI was a bonfide act and was never intended to violate any Guidelines laid down by ICAI. On being pointed out by ICAI, it was immediately removed in the year 2010 and thereafter, the Respondent Firm never used it on its letter head and visiting card. Thus, it was a bonafide act and there was no intent to retrieve any undue benefit through such printing.



OBSERVATIONS OF THE BOARD:

5.1 At the outset, the Board noted that there is on record a copy of the letterhead of the Respondent firm and the Respondent's visiting card with the logo of Geneva Group International (GGI) and also the expression, "A Member of Geneva Group International".

5.2 The Board further perused the copy of the Cooperation Agreement dated 24th Jan, 2005 entered into by the Respondent firm with Geneva Group International AG, Zurich wherein at Clause II(3) it is provided as under:

"The Trademarks are to be given a suffix in each case, from which it can clearly be seen that Partner is acting in the market independently and from which third parties do not gain the impression that Partner is merely acting as a representative of GGI. The additional marking is to be done in the form of 'A Member of Geneva Group International or in any other suitable form".

5.3 The Board also noted that the Council has permitted Network amongst the firms registered with the Institute. A Network is neither permitted to advertise nor to use logo. The firms constituting a Network are permitted to use the words " Affiliates Members of" (a Network of Indian CA firms) on their professional stationery. Once the relationship of network arises, whether registered or not with the Institute, it will be necessary for such a network to comply with all applicable ethical requirements prescribed by the Institute from time to time. (Source: Code of Ethics:-Edition-December 2010 - Page 158).

5.4 The Board also noted that the Council at its meeting held in December 1997, decided that the use of logo/monogram of any kind/form/style/design/colour etc. whatsoever on any display material or media e.g. paper stationery, documents, visiting cards, magnetic devices, internet, sign board, by the members in practice and/or the firm of Chartered Accountants, be prohibited. Use/printing of member/firm name in any other manner tantamounting to logo/monogram was also prohibited. (Source: Code of Ethics:-Edition-December 2010 - Page 159).



- 5.5 The Board also noted that a member of the Institute is prohibited from disclosing his affiliation with any international entity. In this regard, the Council, at its 172nd meeting held in January, 1995, while agreeing with the recommendation of the then Committee on Ethical Standards and Unjustified Removal of Auditors (CESURA) that the use of expression/words, "In Association with", "Associates of", "Correspondents of" etc. on the stationery, letter-heads, visiting cards and professional documents of the firm of C.As., is not permissible in view of the provisions of Item (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949, decided that it should not be permitted irrespective of whether the name sought to be used is the name of an Indian firm or a foreign firm.
- 5.6 Also, as per the Code of Ethics, Item (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949 prohibits advertising of professional attainments or services of a member. It also restrains a member from using any designation or expression other than that of a Chartered Accountant in documents through which the professional attainments of the member would come to the notice of the public.
- 5.7 Thus, in view of the above, the Board was of the view that the act on the part of the Respondent of using the logo of Geneva Group International (GGI) and also the expression, "*A Member of Geneva Group International*" is in contravention of Item (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949 and the remedial action on the part of the Respondent in ceasing to state in its Stationery / visiting cards the words "*A member of Geneva Group International*" cannot mitigate the efficacy of the alleged misconduct on the part of the Respondent as despite of being aware of the correspondences being made by the Institute since 2009 in respect of activities / functioning of Multinational Accounting Firms in contravention of the provisions of the Chartered Accountants Act, 1949 and the Rules and Regulations framed thereunder, the Respondent firm informed of taking the corrective step upon receipt of Information letter from the Institute without providing the specific period since when the use of the same had been discontinued by the Respondent firm which indicates that the Respondent firm was in continuous use of the said letterhead and visiting card for various purposes. Therefore, the Board held the Respondent guilty in respect of the charge alleged.



CONCLUSION:

6. Thus, in conclusion, in the considered opinion of the Board, the Respondent is **GUILTY** of Professional Misconduct falling within the meaning of Item (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

Sd/-


**CA. Rajendra Kumar P
(Presiding Officer)**

Sd/-

**Ms. Dolly Chakrabarty (IAAS, Retd.)
(Government Nominee)**

DATE: 19-12-2023

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नीलम पुंडीर / Neelam Pundir
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनशास्त्र विभाग / Disciplinary Directorate
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