

CONFIDENTIAL

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

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

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

File No. : [PPR-381/2017-DD/349/INF/2017/DC/1460/2021]

In the matter of CA. Deepak Soni (M. No. 424836), Chittorgarh in Re:

CA. Deepak Soni (M. No. 424836)

Bangdo Ki Gali,

Laddho Ka Mohalla,

Bassi, Chittorgarh – 312022

.....Respondent

MEMBERS PRESENT:

CA. Ranjeet Kumar Agarwal, Presiding Officer (Present in person)

Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee (Present in person)

Shri Arun Kumar, I.A.S. (Retd.), Government Nominee (Present in person)

CA. Sanjay Kumar Agarwal, Member (Present in person)

DATE OF FINAL HEARING: 10.07.2023 (through physical/video conferencing mode)

PARTIES PRESENT :

Respondent: CA. Deepak Soni (Through Video Conferencing Mode)

Counsel for Respondent: Advocate, Sahil Deshmukh (Through Video Conferencing Mode)

BACKGROUND OF THE CASE:

1. That a reference was received from the Examination Department of ICAI dated 18th September, 2017 (hereinafter referred to the "Informant") containing allegations against **CA. Deepak Soni (M.No.424836), Chittorgarh** (hereinafter

referred to as the "Respondent") that the Respondent has acted as an observer in Chartered Accountants examination held in November, 2016 at Birla Shiksha Kendra Mandhnagar, Chittorgarh, inspite of fact that he along with his partner Mr. Ankur Chechani was managing all the affairs of a CA Coaching Centre, namely M/s Nahata Professional Academy. Further, his aforesaid partner and the partner's younger brother also appeared at the Birla Shiksha Kendra Mandhnagar, Chittorgarh centre in November, 2016 examinations, pointing towards his direct relationship with students appearing at the same examination centre. This was in violation of the guidelines of 'Empanelment of Members to act as Observers' at the Examination centre for Chartered Accountants Examination. Further, the mobile number and name of the Respondent was used by the Coaching centre on social media.

CHARGES IN BRIEF:-

2. The Committee noted that the charge against the Respondent is that the Respondent has not abided by the guidelines laid down by the ICAI in respect of the eligibility criteria of Empanelment of Members to act as observers for the Chartered Accountants examinations and therefore contravened the guidelines issued by the ICAI.
3. The Committee noted that the Respondent in his reply at the stage of PFO had, inter-alia, mentioned as under:
 - a. That he was working with the coaching centre till August, 2013 only as an employee, not as a partner. He further stated that after successfully passing the exam in May 2013 attempt, he decided to go for practice and left the coaching centre from August, 2013.
 - b. He does not have any relationship with Mr. Ankur Chechani in respect of the coaching centre after August 2013 and also did not have any relationship with students who appeared for the CA examinations in November 2016.
 - c. It was his mistake that he had not updated his social profile on time and he apologized for the same.

- d. He stated that he is running his practice at the same address on first floor where coaching centre is in basement. Hence, there is similarity of address of the coaching centre and his office.
- e. He further submitted that after he became aware that coaching centre is using his mobile number till the date of the Institute's letter, he informed the coaching centre to remove his name and number from social media and any other advertisement, if any, published by the coaching centre as he was not associated with them anymore.
4. The Director (Discipline) had, in his Prima-facie opinion dated 1st April 2021, noted that it is also on record that Mr. Ankur Chechani and his brother Mr Saurabh Chechani had appeared for an examination held in November 2016 at centre where Respondent was assigned duty as an observer. He further noticed that the Respondent in his defence had produced an experience certificate issued by M/s Commerce Castle, but the allegations pertains to his association with M/s Nahata Professional Academy. It was also noted by Director (Discipline) that there is no rebuttal on record by the Respondent regarding his association with M/s Nahata Professional Academy. The Director (Discipline) also noted that the email dated 27th May 2016 written by M/s Commerce Castle to one Mr Ravi Somani (who submitted a complaint to the Examination Department) clearly mentions the name of the Respondent. Further, the linkedin profile of the Respondent shows him as the official incharge and head of M/s Nahata Professional Academy, Chittorgarh, the printout of which was taken on 19th September, 2017. Therefore, it can be inferred that he was actively involved with M/s Commerce castle and M/s Nahata Professional Academy at the time when he accepted the examination duty despite knowing the fact that the same is against the guidelines of ICAI.
5. Accordingly, the Director (Discipline) in terms of Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, held the Respondent Prima-facie Guilty of Professional Misconduct falling within the meaning of Item (1) of Part II of the

Second Schedule to the Chartered Accountants Act, 1949. The said item in the Schedule to the Act states as under:

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

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

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

SUBMISSIONS OF THE RESPONDENT ON PRIMA-FACIE OPINION

6. The Committee noted that the Respondent in written submissions dated 24th August 2021 had, inter-alia, mentioned as under:
- a. That the Director (Discipline) has sought clarification from the examination centre i.e. Birla Shiksha Kendra. The Birla Shiksha Kendra, vide its letter dated 5th October 2018, has clarified that it is not a coaching centre, but an academic institute and the Respondent had no connection with their institution.
 - b. That he is holding a certificate of Practice issued by the Institute from 16th November 2013.
 - c. That he was never a partner of Mr Ankur Chechani in M/s Commerce Castle and had no business relationship with M/s Commerce Castle after August, 2013.
 - d. That the present complaint is made by Mr. Ravi Kumar Somani, who was also operating a Satellite coaching class and was a business rival of M/s Commerce Castle and also a CA aspirant appearing for CA Final Examination in November, 2016.
 - e. Mr Ravi Kumar Somani had a wrong presumption that the Respondent and Mr Ankur Chechani were the partners contrary to the fact for the reasons best known to him.
 - f. That the communication dated 5th December 2017 received from the Director (Discipline) informing him that an information had been received

against him under section 21 of the Chartered Accountant Act, 1949 did not contain any specific allegation with respect to association with M/s Nahata Professional Academy. Hence he has not submitted any response in this regard.

- g. That he was associated with M/s Commerce castle for a limited period and did not have any connection with M/s Nahata Professional Academy.
- h. That he had not received any calls from the students and the students had directly approached the centre/proprietor and got admission.
- i. That Mr. Ankur Chechani, proprietor of M/s Commerce Castle, has informed him that the last batch of Nahata Professional Academy run by its satellite coaching centre was in January, 2016 and thereafter, the franchisee agreement was discontinued in the mid of 2016.
- j. That the Respondent was not involved in coaching students in any manner and therefore, has given the declaration to the best of his knowledge.
- k. That he has not given any benefit to any CA student during the period of observer and therefore, has not contravened any guidelines laid down by ICAI in respect of eligibility criteria of empanelment of members to act as an observer for the CA examination.

BRIEF FACTS OF THE PROCEEDINGS:

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

S.No.	Date	Status of Hearing
1.	07.12.2022	Adjourned on the request of the Respondent
2.	22.06.2023	Part heard & Adjourned
3.	10.07.2023	Heard & Concluded

BRIEF FACTS OF THE PROCEEDINGS:

8. On the day of the first hearing, held on 7th December 2022, the Committee noted that the Respondent vide email dated 2nd December 2022 had sought an

adjournment on grounds of marriage in his family. The Committee looking into the same granted the adjournment to provide one more opportunity to the Respondent.

9. On the day of second hearing, held on 22nd June 2023, the Committee noted that the Respondent along with his Counsel CA. Santosh Deshmukh were present through Video Conferencing Mode. The Respondent was administered on Oath. Thereafter, the Committee enquired from the Respondent as to whether he was aware of the charges. On the same, the Respondent replied in the affirmative and pleaded Not Guilty to the charges levelled against him. Thereafter, looking into the fact that this was the first hearing in the matter wherein the Respondent was present, the Committee decided to adjourn the hearing to a future date. With this, the hearing in the matter was part heard & adjourned.
10. On the day of the final hearing held on 10th July 2023, the Committee noted that the Respondent along with his Counsel CA. Santosh Deshmukh were present through Video Conferencing mode. Since, the Respondent had already taken oath in the previous hearing held on 22nd June 2023 and hence, the Committee asked the Respondent to submit his defence.
 - 10.1 The Respondent/ his Counsel in his submissions had, inter-alia, submitted as under:
 - a. That the proceeding against the Respondent is based on the information received from the Examination Committee.
 - b. That his connection with the said institution was limited for two months only i.e. July and August, 2013, while the examination in which he acted as an observer was held in November, 2016.
 - c. That the person who appeared in the exam was so called partner of the coaching institution, but at the time when he acted as an observer, he had no connection with them.
 - d. That he has not continued in the coaching institution after becoming a Chartered Accountant.

- e. That Mr Ankur Chechani was his employer at the time he was in the institution and he has already enclosed a declaration from Mr Ankur Chechani with his written statement dated 24th August 2021 wherein it is mentioned that Mr Ankur Chechani was the proprietor of M/s Commerce Castle.
- f. That the Respondent was an employee of M/s Commerce castle for 2 months. M/s Commerce castle had the franchisee of M/s Nahata Professional Academy and was running a satellite display unit of M/s Nahata Professional Academy at Chittorgarh wherein only the recorded classes are displayed.
- g. That Mr. Ravi Somani, (who made a complaint to the Informant) had rivalry with the Commerce Castle and as soon as the former found that the Respondent is an observer, he made an immediate complaint.
- h. That the examination time was from 2:00 pm to 5:00 pm and the complaint was lodged by Mr. Ravi Somani at 3:59 p.m. which is within the duration of the examination period.
- i. That the examinee himself has said that there is no connection and even in support he has made an affidavit declaration which the Respondent has already filed.
- j. That the coaching institution does not provide the coaching, it only displays the pre-recorded or recorded classes of the M/s Nahata Professional Academy at a satellite centre at Chittorgarh.
- k. That the only mistake made by him is that he has not updated his linked in profile.

10.2 Thereafter, the Committee, looking into the Respondent's submissions against the charges leveled, recorded his plea and considering the documents available on record, the Committee decided to conclude the hearing.

FINDINGS OF THE COMMITTEE

11. The Committee noted that the charge in the present matter is that the Respondent had not abided by the guidelines laid down by the ICAI in respect of the eligibility criteria of Empanelment of Members to act as observers for the

Chartered Accountants examinations and therefore contravened the guidelines issued by the ICAI.

12. The Committee in this regard observed that the guidelines for 'Empanelment of Members to act as Observers at the Examination Centres for the Chartered Accountants Examinations' states as under:

- (i) *He / she should not be more than 65 years of age as on the date of empanelment.*
- (ii) *His / Her name should have been borne on the Register of Members.*
- (iii) *Neither he/ she nor his / her relatives or dependent is /will be appearing in the ensuing Chartered Accountants Examinations for students / Post – Qualification Course Examinations in any examination centres in India or Abroad.*
- (iv) ***He /She is not coaching students for any of the examinations / test conducted by the Council of the Institute in any Institutions / Organisation including Regional Councils / Branches of the Institute and also private coaching.***
- (v) *He / She has not been convicted by any Court of Law and no disciplinary proceedings are pending against him /her, either by the ICAI / Disciplinary Directorate or by any other organization, both in India or abroad.*
- (vi) *He / she is not associated with the Institute as an elected / co-opted member of the Council /Regional Council /Managing Committee of any Branch of the ICAI.*
- (vii) *He / She shall abide by the Guidelines for Observer and / or any other Instructions*

13. The Committee on perusal of the above guidelines noted that if a person is coaching students for any of the examinations / test conducted by the Council of the Institute in any Institutions / Organisation including Regional Councils / Branches of the Institute and also private coaching, then that person is not eligible for empanelment as an observer at the Examination Centres for the Chartered Accountants Examinations.

14. As regards the charge, the Committee noted that the Respondent has mentioned that the present complaint is filed on the basis of information received from a CA student, Mr. Ravi Kumar Somani who also appeared in CA examination held in November 2016 and who was a business rival of M/s Commerce Castle. The Committee noted that Mr. Ravi Kumar Somani sent an

email on 13th November, 2016 at 3.59 P.M. The Committee noted that on that day the examination of Direct Tax Law of CA Final was held. The Committee on perusal of the said email noted that Mr. Ravi Kumar Somani had sent an email in the middle of the exam timings and vide email he stated that:

- a. He appeared in CA Final Examination from Chittorgarh Centre.
- b. That in today's examination the Respondent visited as an examiner (sic observer) in his room.
- c. That the Respondent is associated with coaching classes in Chittorgarh and is running CA satellite classes in Chittorgarh.
- d. The Respondent is having partnership with Mr. Ankur Chechani.
- e. Mr. Ankur Chechani and Mr. Surabh Chechani (younger brother of Ankur Chechani) appeared from the same centre for CA final examinations.
- f. He accordingly requested to investigate the matter.

15. The Committee noted that the whole case depends upon the fact as to whether the Respondent was associated with Mr. Ankur Chechani, M/s Commerce castle and M/s Nahata Professional Academy at the time when he was appointed as observer.

16. The Committee noted that the Respondent in his defence had submitted a notarized affidavit dated 17th June, 2023 given by Mr. Ankur Chechani, proprietor of M/s Commerce Castle, wherein he gave following deposition:

- a. That he is proprietor of M/s Commerce Castle and started business in July 2013.
- b. That he had franchise of M/s Nahata Professional Academy to provide facility of a satellite coaching for CA. Final and CA. Inter students.
- c. That he was acting as franchisee (booking agent).
- d. That under the franchise agreement, only pre-recorded lectures were projected at M/s Commerce Castle and there was no physical classes/ tuition/ coaching of the students.

CONCLUSION

20. In view of the above findings stated in the above para's vis-a-vis material on record, the Committee, in its considered opinion, holds the Respondent is **NOT GUILTY** of Professional Misconduct falling within the meaning of Item (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

ORDER

21. 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/-

(MRS. RANI NAIR, I.R.S. RETD.)
GOVERNMENT NOMINEE

SD/-

(SHRI ARUN KUMAR, I.A.S. RETD.)
GOVERNMENT NOMINEE

SD/-

(CA. SANJAY KUMAR AGARWAL)
MEMBER

DATE: 14TH DECEMBER, 2023

PLACE: DELHI

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


नीलम पुंडीर / Neelam Pundir
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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