

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.: [PR-319/2018-DD/13/2019/DC/1529/2021]

In the matter of:

**CA. Dinesh S. Chaudhary(M. No. 044741),**  
M/s Dinesh Chaudhary & Co.,  
Chartered Accountants  
1002,Hubtown Solaris,  
N.S. Phadke Marg, Andheri(East)  
Mumbai-400069

.... Complainant

Versus

**CA. Chirag P. Patel (M. No. 128407)**  
M/s C.P. Patel & Associates  
Chartered Accountants  
A-702, JVM Olive,  
Bhayanderpada,  
Near Lodha Splendor,  
G.B. Road, Thane(W)-400615

.....Respondent

MEMBERS PRESENT:

**CA. Ranjeet Kumar Agarwal, Presiding Officer** (Present in person)  
**Smt. Rani Nair, I.R.S. (Retd.), Government Nominee** (Present in person)  
**Shri. Arun Kumar, I.A.S. (Retd.), Government Nominee** (Present through VC)  
**CA. Sanjay Kumar Agarwal, Member** (Present in person)  
**CA. Sridhar Muppala, Member** (Present in person)

**DATE OF FINAL HEARING : 30.05.2023 (Through Physical/ Video Conferencing mode)**

PARTIES PRESENT

**Complainant : CA. Dinesh S. Chaudhary(Through VC)**  
**Respondent : CA. Chirag P. Patel (BKC Office, Mumbai)**  
**Counsel for Respondent : Mr. S. G. Gokhale(BKC Office, Mumbai)**

## BACKGROUND OF THE CASE:

1. The brief background of the case is that **CA. Dinesh S. Chaudhary (M. No.044741)** of M/s Dinesh S. Chaudhary & Co., Chartered Accountants, Mumbai, (hereinafter referred to as the "**Complainant**" & "**Complainant Firm**" respectively) has filed complaint in Form 'I' dated 30<sup>th</sup> November, 2018 against **CA. Chirag P. Patel (M.No.128407)** of M/s C.P. Patel & Associates Chartered Accountants, Thane (West) (hereinafter referred to as the "**Respondent**" and "**Respondent Firm**" respectively).
2. The Complainant's Firm was Tax Auditor of M/s Supreme Tractor Services (Karta: Kamal Agarwal HUF) (hereinafter referred to as the "**Firm**") prior to the financial year 2017-18. Further, the Complainant stated that the Respondent accepted the appointment as a **Tax Auditor** of the Firm for the financial year 2017-18 without prior communication with the Complainant. The Complainant further stated that the Respondent ignoring his written objection and continued to conduct Tax Audit of the Firm and filed ITR for the said year also.

## CHARGES IN BRIEF: -

3. The Committee noted that there were two charges against the Respondent as under:
  - a. Non- communication with previous auditor before accepting the audit.
  - b. Acceptance of audit despite dues of previous auditor were pending.

 The Charge mentioned in 3(a) was dropped by the Director (Discipline) at Prima-facie stage. As regards charge mentioned at 3(b), the Respondent was held he was held guilty by Director (Discipline).

4. The Committee noted that the Director (Discipline) had in his Prima-facie opinion observed that the Respondent in his written statement specifically

stated that "the client has given a very specific appointment letter saying any liability arising out of the non-issue of NOC by the Complainant will be borne by it" (Page W-3 of the Prima-facie opinion). From the above statement of the Respondent, the Director (Discipline) opined that the Respondent chose to ignore the provisions of the Chartered Accountant Act and Code of Ethics - 2009 over the assurance of the Client that any liability arising out of the non-issue of NOC by the Complainant will be borne by the Firm.

5. Accordingly, the Director (Discipline) 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 to the Schedule to the Act, states as under:

***Item (1) of Part II of 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;."*

**BRIEF FACTS OF THE PROCEEDINGS:**

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

S.No.	Date	Status of Hearing
1.	12.05.2023	Part- Heard and Adjourned.
2.	30.05.2023	Heard and concluded

7. The Committee noted that in the first hearing held on 12<sup>th</sup> May 2023, the Respondent was present through Video Conferencing mode from the Mumbai

Office of ICAI. The Complainant was also present through Video Conferencing Mode. Both parties were administered on Oath. Thereafter, the Committee enquired from the Respondent as to whether he is aware of the charges and the Respondent replied in affirmative and pleaded Not Guilty to the charges levelled against him. Thereafter, looking into the fact that this being the first hearing, the Committee decided to adjourn the hearing. With this, the hearing in the matter was part heard & adjourned.

8. On the day of the final hearing held on 30<sup>th</sup> May 2023, the Committee noted that the Respondent along with his Counsel Shri S.G. Gokhale, Advocate, was present through Video Conferencing mode from the Mumbai Office of ICAI. The Complainant was also present through Video Conferencing Mode.

8.1 Thereafter, the Complainant was asked to submit his charges. The Complainant in his submissions had, inter-alia, submitted as under:

- a. That his complaint is for non-communication and pending fees.
- b. That his pending fee was Rs. 85,000/- + GST and out of which Rs. 37,500 related to audit fees.
- c. That the payment of the fee is still pending.

8.2 Thereafter, the Respondent/ his Counsel was asked to give their submissions. The Respondent/ his Counsel on the same, in the submissions had, inter-alia, submitted as under:

- a. That there was dispute between the Firm and the Complainant and that both the parties had filed police complaints against each other.
- b. That as per the Balance Sheet of the Firm for the F.Y. 2016-17 there was no provision for audit fee payable. Though the audit fee of Rs. 43,125/- was debited in Profit and Loss Account but no provision for audit fee payable was made.
- c. That the Complainant in the audit report mentioned that the method of accounting employed by the Firm in the previous year was mercantile. Since no provision of payable was made it means that audit fee was paid during the year.

- d. That as per Code of Ethics, if provision for audit fees payable in the accounts is signed by both the auditee and the auditor only then the same can be considered as undisputed audit fees.
- e. That if the Respondent had checked the above compliance at the time of filing of the written statement at Prima-facie stage, the matter would have ended at the prima-facie opinion stage itself.

8.3 Thereafter, the Committee asked the Complainant to make his submissions on the same. The Complainant in this regard submitted as under:

- a. That he in reply to the communication letter of the Respondent had specifically raised his objection about non-payment of fee.
- b. The Respondent, despite his objection, accepted the audit on the assurance of the client.
- c. He still has not received the complete amount of the audit fee for the audit(s) conducted by him and whatever amount is received by him relates to the fee of preceding year(s).

8.4 After considering all papers available on record and after detailed deliberations and recording the submissions, the Committee decided to conclude the hearing in the instant case.

### **FINDINGS OF THE COMMITTEE**

9. The Committee noted that the Respondent in his reply at the stage of PFO had, inter-alia, mentioned as under:

- a. That regarding the pending fee of the Complainant with the Proprietor of the Firm, he was informed by Shri Kamal Agarwal Karta of HUF and his son Shri Ammeet Agarwal that the Complainant had misguided them regarding trading of penny stock and due to which Income tax Department had slapped a notice in excess of Rs. 2 crores for concealment of profits from capital gains and the same is still pending in Income tax. 

- b. That the Complainant was not able to sort out the Income tax demand and is also not providing any documents pertaining to the case to Shri Kamal Agarwal and Shri Ammeet Agarwal.
- c. Hence, a police complaint was filed by Shri Kamal Aggarwal against the Complainant for possession of income tax papers and entire accounting records with him.
- d. That the client had given a very specific appointment letter stating that any liability arising out of non-issue of communication relating to no objection by the Complainant would be borne by them.
10. The Committee noted that the Respondent in written submissions dated 19<sup>th</sup> January 2023 had, inter-alia, mentioned as under:
- a. That as per financial statements of the Company for the F.Y. 2016-17 audited and signed by the Complainant, there was no provision of audit fees.
- b. That in reply to his communication letter, the Complainant mentioned about overdue "Professional fee".
- c. That in the legal notice sent by the lawyer, the wordings is "Professional fee/ charge".
- d. That Complainant never mentioned that the outstanding amount pertains to audit fees.
- e. That Chapter VII of Council General Guidelines, 2008 speaks about undisputed audit fees.
- f. That outstanding dues of the Complainant are not of the nature of undisputed audit fees.
11. The Committee noted that the Complainant in written submissions dated 24<sup>th</sup> May 2023 had, inter-alia, mentioned as under:
- a. That NOC was not obtained by the Respondent.
- b. That his fee of F.Y. 2016-17 is unpaid.
- c. That the Respondent accepted the appointment because the client had taken responsibility of any financial losses of the Respondent arising out of non-issue of NOC.

d. That the client had to prove that the fee of 2016-17 is paid to the Complainant. The fact of non-payment was also accepted by the Respondent.

12. The Committee, as regards the submission of the Complainant that the Respondent was aware of the fact that fee of the Complainant had not been paid, noted that the Counsel of the Respondent in his submissions before it in the hearing dated 30<sup>th</sup> May 2023 had submitted that the said acceptance is mistake of the Respondent at the time of submission of written statement at prima-facie stage because the Respondent did not look into the Balance Sheet for the financial year 2016-17. He further submitted that had the Respondent checked the same at the time of filing of written statement at Prima-facie stage, the matter would have ended at prima-facie opinion stage itself.
13. The Committee noted that the only charge is regarding acceptance of audit without ensuring that outstanding audit fee of previous auditor has not been paid. The Committee on the merits of the case observed that in this regard Chapter VII of Council Guidelines No. 1-CA (7)/02/2008, dated 8<sup>th</sup> August, 2008 states as under:

*“A member of the Institute in practice shall not accept the appointment as auditor of an entity in case the undisputed audit fee of another Chartered Accountant for carrying out the statutory audit under the Companies Act, 1956 or various other statutes has not been paid:*

***Provided** that in the case of sick unit, the above prohibition of acceptance shall not apply.*

**Explanation 1:**

*For this purpose, the provision for audit fee in accounts signed by both - the auditee and the auditor shall be considered as “undisputed” audit fee.*

**Explanation 2:**

*For this purpose, “sick unit” shall mean where the net worth is negative.”*

14. The Committee observed that Explanation 1 states that the provision of audit fee in accounts signed by both the auditee and the auditor shall be considered as "undisputed" audit fee. The Committee on perusal of the financial statements for the FY 2016-17 signed by the Complainant noted that no provision regarding pending audit fee was disclosed on the face of the Balance Sheet. The Committee noted that the liability side of the Balance Sheet consists of four items as under:

15.

Liabilities as on 31.03.2017		Amount
Capital	(A)	1,01,56,046.00
Unsecured loans	(B)	4,51,68,000.00
Current Liabilities	(C)	60,61,030.00
Provisions	(D)	2,61,200.00
<b>TOTAL</b>		<b>6,16,46,276.00</b>

16. The Committee noted that bifurcation of Annexures (C) and (D) relating to current liabilities and provisions respectively are as under:

<b>Sundry Creditors - Others</b>	
Balance Lorry Hire Payable	5,258,755
Diesel Expenses Payable	468,500
Loading & Unloading Expenses Payable	166,250
Salary Payable	167,525
	<u>6,061,030</u>
<b>Other Provisions</b>	
Tds on Interest Payable	252,000
Tds on Legal & Professional Payable	9,200
	<u>261,200</u>

17. From the above the Committee noted that no amount was provided by the Complainant regarding provision of audit fee payable in the financial statements signed by him.

18. The Committee further noted that though an amount of R. 43,125/- was shown as audit fee in the Profit and Loss Account, but in the tax audit report

of the Firm signed by the Complainant in reply to question no. 13 (a) related to method of accounting employed by the Firm in the previous year it has clearly been stated that the method of accounting is "Mercantile". Further, in the same audit report in reply to question no. 13 (b) related to any change in the method of account during the previous year, it has clearly been stated as "NO".

19. The Committee from the above noted that in absence of provision for pending audit fee, the incoming auditor did not have any reason to assume that the fee of the previous auditor is pending.
20. The Committee further observed that though the Complainant in reply to letter of NOC vide his letter dated 28<sup>th</sup> September 2018 objected to such appointment of the Respondent in the Firm due to pending fee of the Complainant due from the firm amounting to Rs.85,000/- plus GST and delayed interest thereon for the F.Y. 2016-17, but the fact is that Chapter VII of Council Guidelines No. 1-CA (7)/02/2008, dated 8th August, 2008 speaks about payment of undisputed audit fee and the same is reflected through a provision for audit fee in accounts which are signed by both - the auditee and the auditor.
21. The Committee opined that the charge levelled against the Respondent is that he had audited the books of the Firm when the audit fee was outstanding. The Respondent has clearly brought on record evidence which shows that no outstanding fee was payable.
22. It is also observed that the Director (Discipline) had made the Respondent prima facie guilty because at the time of formation of Prime-facie opinion the Director (Discipline) was not having financial statement of F.Y. 2016-17. Subsequently, the same has been produced by the Respondent and the same substantiates the stand of the Respondent that no audit fee of Complainant was pending at the time of acceptance of the audit by the Respondent.

23. In view of the same, the Committee decided to absolve the Respondent, viz., CA. Chirag P. Patel, of the charge levelled against him.

### CONCLUSION

24. In view of the above observations, considering the submissions of the Respondent and documents on record, the Committee held the Respondent **NOT GUILTY** of Professional Misconduct falling within the meaning of Item (1) Part – II of Second Schedule to the Chartered Accountants Act, 1949.
25. 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 passed order for closure of this case.

sd/-

**(CA. RANJEET KUMAR AGARWAL)**  
**PRESIDING OFFICER**

sd/-

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

sd/-

**(SHRI. ARUN KUMAR, IAS, RETD.)**  
**GOVERNMENT NOMINEE**

sd/-

**(CA. SANJAY KUMAR AGARWAL)**  
**MEMBER**

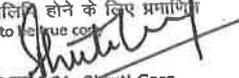
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**(CA. SRIDHAR MUPPALA)**  
**MEMBER**

**DATE : 14<sup>TH</sup> DECEMBER, 2023**

**PLACE: NEW DELHI**

सही प्रतिलिपि होने के लिए प्रमाणित  
Certified to be true copy

  
सीए श्रुति गर्ग / CA. Shrutl Garg  
सहायक निदेशक / Assistant Director  
अनुशासनात्मक निदेशालय / Disciplinary Directorate  
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया  
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