

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-39/2021-DD/46/2021/DC/1584/2022]

In the matter of:

**CA. Krishan Kumar Gupta (M.No.098005)**  
Chartered Accountants  
EA-54, Inderpuri,  
**NEW DELHI – 110012**

**.....Complainant**

**Versus**

**CA. Hari Om Sharma (M.No.097085)**  
Chartered Accountants  
Ram Kishore Garg,  
Gali Police Station, Bulandshahr,  
**Gulaothi (Uttar Pradesh) – 203408**

**.....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)**  
**CA. Sridhar Muppala, Member (Present in person)**

**DATE OF FINAL HEARING:** 20.06.2023 (through physical/video conferencing mode)

**PARTIES PRESENT** :

**Complainant:** CA. Krishan Kumar Gupta (Through Video Conferencing Mode)

**Counsel for the Respondent:** CA. Sushma Tiwari (Through Video Conferencing Mode)

### BACKGROUND OF THE CASE:

1. The brief background of the case is that the Complainant vide his complaint dated 18<sup>th</sup> January 2021 in the instant case submitted that he was the tax auditor of M/s Green Fog International and M/s A & A fabrics (hereinafter referred to as "firms") for the previous financial year 2018-19 and was reappointed for financial year 2019-20. The Complainant while finalizing the tax audit report of the firms for FY 2019-20 came to know that the Respondent had filed the tax audit report of M/s Green Fog International on 31<sup>st</sup> December 2020 without previously informing or communicating with him.

### CHARGES IN BRIEF:-

2. The Committee noted that the Complainant made following allegations against the Respondent which were as under:
  - a. That the Respondent has accepted the position of tax auditor of the Firms for F.Y. 2019-20 without communicating with the previous auditor (i.e., the complainant) in writing.
  - b. That the Respondent has completed tax audit of the firms without having the books of the Firms as the same were with the Complainant only being a previous auditor and was returned by the Complainant to the client on 11<sup>th</sup> March 2021.
3. The Committee noted that the Respondent in his reply at the stage of PFO had, inter-alia, mentioned as under:
  - a. That he had a telephonic conversation with the Complainant, and the Complainant at that time confirmed that the Respondent could conduct the audit subject to payment of his dues.

- b. He has sent letter dated 30<sup>th</sup> December, 2020 and an email dated 05<sup>th</sup> January, 2021 which was replied by the Complainant on the same day.
- c. That the firm has paid all the pending dues of the Complainant on 11<sup>th</sup> March, 2021 through NEFT.
- d. He has completed the audit only based on audit evidence and working notes.
- e. The Complainant is not an authorized person to comment on the quality of the tax audit report.
4. The Director (Discipline) had, in his Prima-facie opinion dated 18<sup>th</sup> April, 2022, noticed that with respect to first allegation, the Respondent had failed to submit the copy of letter of previous communication done with the Complainant, as claimed by him in his Written Statement. However, on the basis of documents brought on record by the Complainant, it is seen that the Income Tax Return of M/s Green Fog International along with tax audit report was signed by the Respondent on 30<sup>th</sup> December 2020 and form 3CD of that firm in this regard was filed by him on 31<sup>st</sup> December 2020 at 2:52 pm and the Respondent has communicated with the Complainant only on 5<sup>th</sup> January 2021 as evident from the email sent by the Respondent to the Complainant. Thus, the Respondent is prima facie guilty of professional misconduct falling within the meaning of Item (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949.
- 4.1 While examining the charge of non-communication with the previous auditor, it was also observed by Director (Discipline) that the Respondent in his written statement has admitted that all the dues of previous auditor were settled by the firms on 11<sup>th</sup> March 2021 while the Respondent not only accepted the audit but also completed the same in December 2020 which is also a clear violation of Council's guidelines. Thus, the Respondent is also 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.

4.2 With respect to the second allegation it is observed by the Director (Discipline) that the Complainant has completely failed to provide any documentary evidence to prove his allegations against the Respondent as the bills of the firms brought on record by the Complainant, does not mean that the Respondent has conducted the Tax Audit without the books of the Firms. Thus, in the absence of any documentary evidence in support of allegations, the instant allegations raised by the Complainant are not maintainable against the Respondent. Hence, the Respondent was held prima-facie not guilty of that allegation.

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 (8) of Part I of the First Schedule and Item (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949. The said items in the Schedule to the Act states as under:

**Clause (8) of Part I of the First Schedule:**

"A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he-

*(8) accepts a position as auditor previously held by another chartered accountant or a certified auditor who has been issued certificate under the Restricted Certificate Rules, 1932 without first communicating with him in writing"*

*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"*

6. The Committee noted that the Respondent in his submissions dated 20<sup>th</sup> December 2022 after Prima Facie Opinion had, inter-alia, mentioned as under:

- a. That the auditee(s) were firm and are not governed by the provisions of the Companies Act, 2013.
- b. That the previous auditor had not issued any qualified report for the audit conducted by it for F.Y. 2018-19 and also not brought any other ground for qualification for F.Y. 2019-20 vide email dated 6<sup>th</sup> January 2021.
- c. That the undisputed audit fee for the audit of F.Y. 2018-19 was not pending as on the date of acceptance of audit assignment for F.Y. 2019-20 on 21<sup>st</sup> December 2020.
- d. That the client had clearly denied having appointed or continued the Complainant as tax auditor or having forwarded any books of accounts to the Complainant for F.Y. 2019-20.
- e. That the communication exchanged between the Complainant and the client with respect to the conducting of audit for F.Y. 2019-20 have not been, wilfully and purposefully, brought on record by the Complainant.
- f. That the Complainant cannot exercise a lien on books for non-payment of his dues as this amounts to professional misconduct on his part.
- g. That the Respondent has never admitted that the fee paid to the Complainant on 11<sup>th</sup> March 2021 was an undisputed audit fees.
- h. That the Respondent has sent the letter dated 30<sup>th</sup> December 2020 to the Complainant vide courier for obtaining NOC from him.

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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.	20.04.2023	Part- Heard and Adjourned.
2.	30.05.2023	Part- Heard and Adjourned
3.	20.06.2023	Heard and concluded

8. On the day of the first hearing held on 20<sup>th</sup> April, 2023, the Committee noted that the Respondent alongwith his Counsel CA. Ankur Tayal were present through Video Conferencing Mode. The Complainant vide email dated 20<sup>th</sup> April, 2023 sought adjournment on ground of family emergency. 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, the Committee decided to adjourn the hearing to a future date. With this, the hearing in the matter was partly heard & adjourned.
9. On the day of the second hearing held on 30<sup>th</sup> May, 2023, the Committee noted that the Complainant was present through Video Conferencing Mode. The Committee further noted that the Respondent, vide email dated 29<sup>th</sup> May, 2023 sought adjournment on medical grounds. The Complainant was administered on Oath. Thereafter, the Committee on account of natural justice decided to provide one more opportunity to the Respondent and accordingly adjourned the case to a future date. With this, the hearing in the matter was partly heard and adjourned.
10. On the day of the final hearing held on 20<sup>th</sup> June 2023, the Committee noted that the Respondent along with his Counsel CA. Sushma Tiwari was present through Video Conferencing mode. The Complainant was also present

through Video Conferencing mode. The Committee asked the Complainant to submit his charges. On the same, the Complainant has stated that he has already submitted all the facts and has no new facts to submit. He further submitted that he had received his undisputed fees.

10.1 Thereafter, the Respondent counsel was asked to make his submissions. The Respondent counsel submitted as under:

- a. That as per the auditee, all the legitimate dues of the complainant for the F.Y. 2018-19 had been paid on 8<sup>th</sup> October 2019 and 7<sup>th</sup> November 2019 i.e. well before the acceptance of the audit assignment by the Respondent.
- b. The fee claim by the Complainant includes disputed fee which was not recorded in the financials of the auditee for the FY 2018-19. This disputed fee was for the FY 2019-20 and for that period services of the Complainant were not availed by the Firms.
- c. Further, before accepting this audit assignment, the Respondent has duly communicated with the Complainant by sending a written communication letter dt. 30<sup>th</sup> December 2020 by courier. (He further enclosed copy of the same in page 21 of his submission dated 20<sup>th</sup> December 2022).
- d. Further, after getting an email ID of the Complainant over call, the Respondent immediately sent the email and communicated to the complainant regarding his assignment and got his disputed fees also settled with and the Complainant also agreed on same.
- e. That the Respondent has signed the Tax Audit Report on 30<sup>th</sup> December 2020 and made the communication on 30<sup>th</sup> December 2020 and uploaded the tax audit report on portal on 31<sup>st</sup> December 2020. He sent the courier on the same day on which the Tax Audit Report was signed by him but, at that time he was suffering from Covid and was working from home, and due date was already in peak.

10.2 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:

11. As regards to the charge of acceptance of the audit without ensuring that outstanding audit fees of previous auditor had not been paid, the Committee on perusal of the Balance sheet of the Firms M/s Green Fog International & M/s A & A Fabric for the Financial year ended 31<sup>st</sup> March 2019 observed that an amount of Rs. 15,000/- and Rs. 16,500/- has been shown as payable to the Complainant under the head 'Audit fees Payable'. The Committee noted that apart from this nothing was disclosed in the Balance Sheet pending amount due to the Complainant.

11.1 The Committee noted that the Firms have already paid the undisputed fees of the Complainant by two entries, one from Andhra Bank on 8<sup>th</sup> October 2019 and other from Indusind Bank on 7<sup>th</sup> November 2019 and the same is duly reflected in the ledger account of both the firms. The Committee noted that the Respondent had also brought on record copies of concerned ledger accounts of the firms.

11.2 The Committee noted that the Complainant also did not dispute the amount received.

11.3 The Committee in this regard observed that 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."*

- 11.4 The Committee on perusal of the above guidelines noted that a member in practice shall be deemed to be guilty of professional misconduct, if he accepts the appointment as an auditor of an entity in case the **undisputed audit fee** of another Chartered Accountant for carrying out the Statutory audit under the Companies Act or various other statues has not been paid as the Council guidelines are very categorical regarding the payment restricted to "undisputed audit fee" only and not any other compliance fee or disputed fee.
- 11.5 Further Explanation 1 of the said Guidelines specifically clarifies that the maximum undisputed amount due to the Complainant is based on the balance sheet signed by the auditee and the previous auditor.
- 11.6 As regards the plea of the Complainant that the bill of audit fee for the financial year 2019-20 was settled after filing the instant complaint with the ICAI and after accepting the audit assignment by the Respondent, the Committee noted that this bill pertains to financial year 2019-20 and there is no evidence that the complaint had completed the audit for the said period. Accordingly, this bill of audit fee cannot be considered as undisputed fee.
- 11.7 The Committee accordingly concluded that undisputed fee of the Complainant was paid by the auditee before acceptance of the audit by the Respondent. Further, the dues of the Complainant with respect to disputed fee was also cleared later. Hence, the Respondent has accepted the audit after ensuring that undisputed outstanding fees of the previous auditor i.e. the Complainant has been paid.

11.8 Accordingly, the Committee held the Respondent **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.

12. As regards the charge relating to non-communication, the Committee noted that the Respondent had submitted the courier receipt of the communication dated 30<sup>th</sup> December, 2020 sent to the Complainant. The Committee on perusal of the communication between the Complainant and the Respondent and the proof of delivery of the courier dated 30<sup>th</sup> December, 2020 noted that the Respondent has communicated with the Complainant on the same day he signed the Tax Audit Report.

12.1 The Committee noted that though there were lapses in communicating with previous auditor as the Respondent did not give reasonable time to the Complainant for responding and the Respondent failed to communicate in modes prescribed under Code of Ethics, but looking into following factors the Committee decided to pass benefit in favour of the Respondent:

- a. That the Respondent was appointed on 21<sup>st</sup> December 2020 as auditor and the last date for tax audit is 31<sup>st</sup> December 2020 and hence there was very little time for communication and completion of audit.
- b. That the intention of the Respondent was not malafide as such a scenario happened during the Covid period.
- c. The Committee noted that as per the Code of Ethics, the main objective of communicating with the previous auditor is that the member may have an opportunity to know the reasons for the change in order to be able to safeguard his own interest, the legitimate interest of the public and the independence of the existing accountant.
- d. The submission of the Respondent, that the Complainant has not made any qualification in his audit report for the financial year 2018-19, was not rebutted by the Complainant. The Committee noted that hence there is no reason for the Respondent to not accept the audit assignment.

12.2 Accordingly, the Committee held the Respondent NOT GUILTY of Professional Misconduct falling within the meaning of Item (8) of Part I of First Schedule to the Chartered Accountants Act, 1949. At the same time, the Committee also cautions the Respondent to be careful in future.

## CONCLUSION

13. In view of the above findings stated in 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 (8) of Part 1 of First Schedule and Item (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

## ORDER

14. 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 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/-

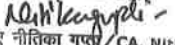
**(CA. SANJAY KUMAR AGARWAL)**  
MEMBER

SD/-

**(CA. SRIDHAR MUPPALA)**  
MEMBER

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

PLACE: NEW DELHI

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सहायक निदेशक / Assistant Director  
अनुशासनमालक निदेशालय / Disciplinary Directorate  
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