

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – IV (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/140/16/DD/145/INF/18/DC/1551/2022]

In the matter of:

CA. Sunil Kalra (M. No- 524543), Delhi in Re:
315, Four Storey,
Tagore garden Extn.,
Near Shiv Mandir,
New Delhi-110 027

.....Respondent

MEMBERS PRESENT: (In person)

CA. Ranjeet Kumar Agarwal, Presiding Officer
Ms. Dakshita Das, I.R.A.S. (Retd.), Government Nominee
CA. Mangesh P Kinare, Member
CA. Cotha S Srinivas, Member

DATE OF FINAL HEARING : 25.08.2023

PARTIES PRESENT

Respondent : CA. Sunil Kalra (In person)
Counsel For the Respondent : Mr. Upvan Gupta, Advocate (in person)

1. Background of the case:

The Respondent was the auditor of 'M/s. Awasthi Medi Equipments Pvt Ltd' (hereinafter referred to as '**Company**').

2. Charges in brief:-

2.1 In the Balance sheet of the Company for the year ending on 31st March 2015, the amount of loan provided to and outstanding against M/s. Team Media and Hospitality Pvt Ltd' was disclosed as Rs. 85 lakhs, however, in the Balance sheet of M/s. Team Media and Hospitality Pvt Ltd. for the same period, the amount received from and



outstanding against the Company was disclosed under 'Short Term Borrowings' Rs. 1.00 crore.

3. The relevant issues discussed in the Prima facie opinion dated 14th September, 2020 formulated by Director (Discipline) in the matter in brief is given below:-

3.1 In the audited financial statements of the Company for the FY 2014-15, under 'Note-11 – Short Term Loans and Advances', an amount of Rs. 85 lakhs have been shown against M/s. Team Media and Hospitality Pvt Ltd. In notes to audited financial statements of 'M/s Team Media & Hospitality Pvt Ltd' for the FY 2014-15, under Note-3 – 'Short Term Borrowings', an amount of Rs. 1.00 crore has been shown against the Company.

3.2 In the absence of Written Statement by the Respondent, the amount of loan / advance has been wrongly disclosed by the Respondent who has audited the financial statements of the Company for the FY 2014-15. In absence of any written statement by the Respondent despite ample opportunity being provided to him, it is viewed that the Respondent did not exercise due diligence while performing his professional duties and auditing the financial statements of the Company for the FY 2014-15.

3.3 In the Prima Facie Opinion formed by Director (Discipline), the Respondent had been held guilty of Professional Misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act. The said clause to the Schedule to the Act, states as under:

Clause (7) of Part I of Second Schedule:

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

(7) does not exercise due diligence or is grossly negligent in the conduct of his professional duties."

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3.4 The Prima Facie Opinion formed by Director (Discipline) was considered by the Disciplinary Committee at its meeting held in 8th April 2022. The Committee on consideration of the same, concurred with the reasons given against the charges and thus, agreed with the prima facie opinion of the Director (Discipline) that the Respondent is prima facie **GUILTY** of Professional Misconduct falling within the meaning of Item (7) of Part – I of the Second Schedule to the Chartered Accountants Act, 1949 and accordingly, decided to proceed further under Chapter V of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. The Committee also directed the Directorate that in terms of the provisions of sub-rule (2) of Rule 18, the prima facie opinion formed by the Director (Discipline) be sent to the Complainant and the Respondent including particulars or documents relied upon by the Director (Discipline), if any, during the course of formation of prima facie opinion and the Respondent be asked to submit his Written Statement in terms of the provisions of the aforesaid Rules, 2007.

4. Date(s) of written submissions/pleadings by parties:

The relevant details of filing of documents in the instant case by the parties are given below:

S.No.	Particulars	Dated
1.	Complaint in Form 'I' filed by the Informant	17 th February, 2017
2.	Matter referred to BOD under Rule 5(6)	2 nd December 2017
3.	BOD advised Director(Discipline) to further investigate under Rule 5(7)(b)	2 nd December 2017
4.	Written Statement filed by the Respondent	31 st August, 2018 & 19 th November 2018
5.	Prima facie Opinion by Director (Discipline)	14 th September 2020
6.	Written Submissions by the Respondent after PFO	13 th July 2022

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5. Brief facts of the Proceedings.

5.1 The details of the hearing(s) fixed and held/adjourned in said matter is given as under.

Particulars	Date of Meeting(s)	Status
1 st time	22 nd May, 2023	Part heard and adjourned
2 nd time	20 th June, 2023	Adjourned at the request of the Respondent
3 rd time	25 th August, 2023	Hearing concluded & decision taken

5.2. On the day of hearing held on 22nd May 2023 the Committee noted that the Respondent along-with counsel was present physically and appeared before it. The Respondent was put on oath. The Committee enquired from the Respondent as to whether he was aware of the charges and charges against the Respondent were read out. On the same, the Respondent replied in the affirmative and pleaded Not Guilty to the charges levelled against him. The case was part heard and adjourned.

5.3. On the day of final hearing dated 25th August 2023, the Committee noted that the Respondent alongwith his Counsel Mr. Upvan Gupta, Advocate were present and appeared before it.

5.4 The Committee asked the Respondent to make his submissions on the merits of the matter. The Respondent made written submissions dated 16th May 2023 consisting of his written submissions dated 13.07.2022 and 31.08.2018 before the Committee. After detailed deliberations, and on consideration of facts of the case, various documents on record as well as oral submissions of by the Respondent's Counsel before it, the Committee decided to conclude hearing in the instant case.

6. Findings of the Committee

The Committee noted the background of the case as given hereunder: -

6.1 The Director (Discipline) observed as regards to charge that it is amply clear that the amount of loan / advance has been wrongly disclosed either by the

Respondent who has audited the financial statements of the Company for the FY 2014-15 or by CA Ramakrushna Patra, who has audited the financial statements of "M/s Team Media & Hospitality Pvt Ltd" for the same period. In this regard, it is noted that the Informant has also raised the similar allegation against CA. Ramakrushna Patra in another case, which has been dealt with separately under file Reference no. DD/144/INF/2018.

6.2 In the extant case, in the absence of Written Statement submitted by the Respondent on record, it is pertinent to mention that CA. Ramakrushna Patra (i.e., the Respondent in another related case) had submitted the copy of bank statement of 'M/s Team Media & Hospitality Pvt Ltd' from 1st April 2014 to 31st March 2015 as an evidence against the similar allegation raised by the Informant against him in another case DD/144/INF/2018 which shows that the total amount of Rs. 1 crore was paid by the Company to 'M/s Team Media & Hospitality Pvt Ltd' in total 5 transactions from 16th March 2015 to 26th March 2015 which makes it clearly evident that the amount of Rs. 85 lakhs were wrongly disclosed in the audited financial statements of the Company.

6.3 The Director (Discipline) observed, by looking to the above facts and in absence of any written statement by the Respondent despite ample opportunity being provided to him, it noted that the Respondent did not exercise due diligence while performing his professional duties and auditing the financial statements of the Company for the FY 2014-15 and accordingly, he is held prima facie Guilty of Professional Misconduct falling within the meaning of Item (7) of Part - I of the Second Schedule to the Chartered Accountants Act, 1949.

6.4. While discussing the matter, the Counsel for the Respondent submitted before the Committee on the maintainability of the instant case in terms of Rule 8 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules 2007. The Counsel for the Respondent submitted that the aforesaid notice issued by the Disciplinary Directorate was time barred, beyond limitation and unsustainable as the letter was required to be intimated to the Respondent within a period of 60 days of receipt of the Information which was initially received by the Directorate on 02nd May 2016 from the Complainant. The

Counsel stated that 60 days have started from 17th February 2017, which expired somewhere in the month of April 2017 and the Respondent had received the first communication in August 2018 after lapse of more than a year. Therefore, the Counsel for the Respondent claims that while considering Rule 8 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, this matter itself is legally not maintainable.

6.5 The Counsel for the Respondent in his submissions before the Committee on merits of the case, as regard to the charge is concerned drew the attention of the Committee to Prima facie Opinion wherein it is mentioned that Unsecured loan from M/s Awasthi Medi Equipments (P) Ltd. (wrongly written as M/s Awasthi Media (P) Ltd.) was shown as Rs.1,00,00,000/- (Rupees one crore) and the annual accounts filed by the said Company shows Rs.85,00,000/- (Rupees eighty five lakhs) as Unsecured Loan to M/s. Team Media and Hospitality Pvt Ltd. With reference to this, the Counsel mentioned that on the other hand Team Media & Hospitality have disclosed the loan received from M/s Awasthi Media at One Crore Rupees. The Counsel for the Respondent mentioned that while disclosing the amount of Rs. 85 lakh the Respondent had shown the financial statement based on conservative number which was confirmed by the Directors of the Company.

6.6 The Counsel for the Respondent added that the Respondent in his Independent Audit report had made disclaimer that he is not expressing any opinion on financial statements. The Counsel for the Respondent had categorically mentioned the disclaimer opinion para in his Audit report regarding non-receipt of documents regarding short term loans and advances and therefore the Respondent could not express his opinion on financial statements.

The relevant paragraph had been reproduced below:

“Opinion

“We have asked the documents relating to Current Investments, Short term Borrowings and Short-term loans and advances made by the company. We have not received the same and Accordingly we can't express our opinion on the financial statements.”



6.7 The Counsel further mentioned in his submissions that loan and advances amounting to Rs. 18,95,40,372 in the books of M/s Awasthi Medi Equipments Pvt. Ltd. and the amount of Rs.15,00,000/- was not even 1% of the total loan and advances and is not that much material. The Counsel further added that the Respondent is practicing chartered accountant since year 2012 and serving the Institute for past 11 years. He further added that the difference amount of Rs.15,00,000/- was on conservative basis following the principle of prudence.

6.8. The Committee observed that the technical grounds raised by the Respondent regarding maintainability of the present complaint was already dealt with by the Director (Discipline) at Prima facie Stage and the relevant paragraph has been reproduced below:

"8.3 Before giving observations on merit of the case, it is felt that the above issue raised by the Respondent needs to be dealt with. Accordingly, the same is being dealt with as under:- (i) It is pertinent to note that Rule 8 (1) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules 2007 reads as under: Procedure to be followed by Director on a complaint.- (1) The Director or an officer or officers authorized by the Director, within sixty days of the receipt of a complaint under rule 3, shall, - (a) if the complaint is against an individual member, send particulars of the acts of commission or omission alleged or a copy of the complaint, as the case may be, to that member at his professional address; (b) if the complaint is against a firm, send particulars of the acts of commission or omission alleged or a copy of the complaint, as the case may be, to the firm at the address of its head office, as entered last in the Register of Offices and Firms maintained by the Institute, with a notice calling upon the firm to disclose the name or names of the member or members concerned and to send particulars of acts of commission or Omission or a copy of the complaint, as the case may be, to such members: Provided that(emphasis added) (ii) In the given case, after the Board of Discipline advised the Director (Discipline) to further investigate the matter in terms of Rule 5(7)(b) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules 2007, the extant case was treated

as "Information" vide letter dated 23rd June 2018. Accordingly, an Information letter dated 07th August 2018 (B-3 to B-4) was sent to the Respondent within the prescribed time limit of 60 days. However, the Respondent did not submit his Written Statement. The Respondent was once again requested to submit his Written Statement vide Directorate's letter dated 03rd October 2018 (B-7) followed by reminder dated 13th November 2018 (B-8) and was also informed that the necessary compliances in terms of the Rule referred above, had been done. He was also advised that in case he desired, he could make the contentions / objections raised by him vide letter dated 31st August 2018 (B-3 to B-4) as part of his Written Statement. However, the Respondent failed to submit his Written Statement in the matter. Thus, the objection raised by the Respondent is not maintainable."

6.9. The Committee noted that the only charge against the Respondent was that that in the audited financial statements of the Company for the FY 2014-15, under 'Note-11 – Short Term Loans and Advances', an amount of Rs. 85 lakhs (Rs. Eighty five lakhs) have been shown against M/s. Team Media & Hospitality Pvt. Ltd. It is also noted that in notes to audited financial statements of 'M/s Team Media & Hospitality Pvt Ltd' for the FY 2014-15, under Note-3 – 'Short Term Borrowings', an amount of Rs. 1 crore (Rs. One crore) has been shown against the Company. The Committee observed that the Respondent had duly reflected the disclosure opinion in independent auditor report.

6.10. The Respondent in his written statement had further mentioned that he was not having the books of the Company in his possession and he issued the audit report on the basis of books of account and records produced before him by Company staff and on the basis of trial balance and bank statement produced before him and information given by the Complainant on the nature of transaction, loans and advances and current assets and current liabilities. He further mentioned that he was presently not having any records or vouchers except photocopy of Bank statement and copies of Audit report balance sheet and Profit and loss Accounts audited by him.

6.11. The Committee noted the defence of the Respondent wherein he submitted that the amount of Rs.15,00,000/- was not even 1% as compared to the size of short term loans and advances shown in balance sheet amounting to Rs. 18,95,40,372/-.

The Committee was of the view that the Respondent was prudent enough to discharge his duties related to the professional assessment. In view of the same, the Committee decided that the Respondent, viz. CA. Sunil Kalra, be given benefit of doubt and absolved of the charge levelled against him.

7. Conclusion

In view of the above findings stated in above paras, vis-a-vis material on record, the Committee gives its charge-wise findings as under:

Charges (as per PFO)	Findings	Decision of the Committee
Para 2.1 as given above	Paras 6.4 to 6.11 as given above	Not Guilty- Clause (7) of Part II of Second Schedule

8. 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 Clause (7) Part – I of Second Schedule to the Chartered Accountants Act, 1949.

9. Order

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

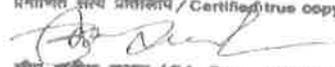
Sd/-
(MS. DAKSHITA DAS, I.R.A.S {RETD.})
GOVERNMENT NOMINEE

Sd/-
(CA. MANGESH P KINARE)
MEMBER

Sd/-
(CA. COTHA S SRINIVAS)
MEMBER

DATE: 04.01.2024
PLACE: New Delhi

CA. Sunil Kalra (M. No- 524543), Delhi in Re:

प्रमाणित सत्य प्रतिलिपि / Certified true copy

सीए सुनील कुमार / CA. Suneel Kumar
उप सचिव / Deputy Secretary
अनुशासनात्मक निर्देशालय / Disciplinary Directorate
भारतीय स्वतंत्र लेखाकार संस्थान
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