

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. : [PR/157/2019/DD/181/2019/BOD/612/2022]

CORAM:

CA. Rajendra Kumar P, Presiding Officer (in person)
Ms. Dolly Chakrabarty (IAAS, ret'd.), Government Nominee (in person)
CA. PrItI Savla, Member (through videoconferencing)

In the matter of:

CA. Rajesh Kumar Sabharwal (M. No. 089328)
G-76, First Floor,
Naraina Vihar,
New Delhi – 110028.

.....Complainant

-vs-

CA. Praveen Sharma (M. No. 514513)
IX/1624,
Gandhi Nagar,
New Delhi – 110031.

.....Respondent

DATE OF FINAL HEARING : 29th June, 2023

PARTIES PRESENT:

Respondent : CA. Praveen Sharma (through video conferencing)
Counsel for the Respondent : CA. Sandeep Manaktala (in person)

FINDINGS:

BRIEF BACKGROUND OF THE CASE:

1. The Complainant was appointed as the Statutory Auditor of 'M/s Acetel Technologies Pvt. Ltd.' (hereinafter referred to as 'Company') in the AGM of the Company held on 29.09.2010 to audit its financial statements for the FY 2010-11. The Complainant provided

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the details of various instances of communications held between him and the management of the Company in respect of conducting the audit of Company's financial statements wherein such communications were continued till the year 2015. The Complainant stated that though on multiple instances, he asked for the Company's approved financial statements but he was not provided with those financial statements for conducting the audit. The Complainant also stated that during the year 2015, the management of the Company asked him to sign the Company's financial statements backdated but he never did the same. During the year 2019, on inspection from MCA website, it came to his notice that the annual accounts of the Company for the FY 2010-11 were audited and signed by the Respondent.

CHARGE ALLEGED:

The Complainant has made following allegation against the Respondent:

- 2.1 The Respondent accepted the Statutory Audit of the Company for the FY 2010-11 and also conducted its audit without getting NOC from him and without clearing his dues.
- 2.2 The Respondent signed the financial statements of the Company backdated (i.e., on 02.09.2011) in connivance with the management.

The Board noted that the Director(Discipline) in his Prima Facie Opinion held the Respondent **GUILTY** of Professional and 'Other' Misconduct falling within the meaning of Item (8) of Part-I and Item (2) of Part-IV of First Schedule to the Chartered Accountants Act, 1949 and NOT GUILTY of Professional Misconduct falling within the meaning of Item (1) of Part-II of Second Schedule to the Chartered Accountants Act, 1949 and the said Prima Facie Opinion had been accepted by the Board. Accordingly, the conduct of the Respondent was examined in respect of the said two charges only.

BRIEF OF PROCEEDINGS HELD:

3.

S.no.	Date of Hearing(s)	Status of Hearing(s)
1.	17 th May, 2023	Adjourned at the request of the Respondent.
2.	29 th June, 2023	Heard and Concluded on the basis of documents and submissions on record as the Complainant vide his e-mail dated 29 th June 2023 informed that he has already submitted documents related to the case and thus,

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		requested the Board to proceed further.
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BRIEF SUBMISSIONS OF THE PARTIES TO THE CASE:

A. RESPONDENT:

4. The Respondent in his defence, inter alia, submitted as under:-

4.1 The reply against Point No. 6.3 (Prima Facie Opinion): The Respondent duly signed the financials without harming repute of the profession. He provided the copy of the following documents:

- Appointment Letter and Resolutions signed by the company (dated 11.04.2011).
- Letter taken from the company (dated 23.08.2011) for acknowledging the non-receipt of communication with the previous auditor for further process due to non-response from previous auditor.
- Financials signed (dated 02.09.2011).
- Form 23B Late Filed with late fees (filed dated 19.01.2016). All other annual Forms also filed in 2016 itself.
- Mail sent to one of the company's directors (dated 22.07.2019) about the correct facts.
- Reply filed by Company against Demand-cum-SCN against the Complainant for irregularities in transferring of funds in the company from outside India.

There is no truth in the allegation that the financials were signed on back date.

4.2 Reply against Point No. 6.4 (Prima Facie Opinion): He has not been able to locate the office copy of the communication that was sent to the previous auditor. However, there have been telephonic communications also with him. An email was also sent to one of the company's directors (attached) about the correct facts. The Respondent hasn't received any reply from the previous auditor. Its eight years old case. Meanwhile, the Respondent had shifted his office two times (First Office Address: 1/7348, East Gorakh Park, Shahdara, Delhi-110032, Second Office Address (in the year 2015-16): IX/1624, Gandhi Nagar, Delhi-110031, Third Office Address (in the year 2020-21): 9/70, Geeta Colony, Delhi-110031).

4.3 Further, the Delhi High Court in the case of Ssay & Associates Vs Institute of Chartered Accountants of India (W.P. NO. 7674 C.M. No. 31881 of 2019) July 22, 2019 held that there is no requirement for an auditor to secure a no objection from the previous auditor. The only requirement is that the Chartered Accountant, who accepts the position as an auditor, must communicate with the previous auditor about the same. Similar reference case cited in the ABCAUS 3134 (2019) (09) HC.

4.4 The Council of the Institute of Chartered Accountants of India had in August 2009, pursuant to the provisions of Rule 12 of the Chartered Accountants (Procedures of Investigations of Professional and Other Misconduct and Cases) Rules, 2007 had amended the audit documentation retention period appearing as ten years in paragraph 83 of Standard on Quality Control one to seven years. As a consequence of the above decision

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of the Council, with the issuance of this announcement by the Auditing and Assurance Standards Board, the audit documentation retention period appearing as ten years in paragraph A23 of the Standard on Auditing (SA) 230, Audit Documentation, issued in January 2009, shall also stand amended to seven years.

- 4.5 The Respondent signed the financials of the said company for the FY 2010-11 dated 02.09.2011. However, he received the complaint letter from the esteemed Institute dated 19.06.2019 (complaint filed on 31.05.2019) which is eight years old matter. The Respondent had already communicated in his reply dated 02.11.2020 that based on such long years, documentary evidences are not traceable for now. Unusual delay in filing such a complaint must be viewed critically. It is a motivated complaint.
- 4.6 Please also consider the case of Ashish Agarwal Vs The Institute of Chartered Accountants of India (Delhi High Court) Date-01/09/2022 wherein The Court, while rejecting the contention of the petitioner that the Disciplinary committee was obliged to reject all complaints the moment it found that it was related to an issue which was 7 years old. Similar is his case.
- 4.7 The Complainant was Statutory Auditor of the Company for the year ending 31st March, 2010. The Form 23AC filed on 27th December, 2010 is deficient as:-
- The Audit Report was not on the letter head of the Complainant.
 - The Audit Report was deficient.
 - full financial statements were not uploaded.
- 4.8 The Complainant has not come to the Hon'ble ICAI with complete and true facts. The Complainant was not having power to file the complaint as it was barred by Rule 12 of the Rules, 2007. The Complainant has not enclosed any documents which shows the involvement of the Respondent.
- 4.9 The Respondent aged about 37 Years is member of the Hon'ble ICAI since 2009 with an unblemished record, not even a single instance that the Respondent have committed any professional and/or other misconduct during his entire professional journey of 14 years. Nowhere there is allegation or finding that there was wilful default, malafide intentions or any compromise with principles in conducting the Statutory Audit. The reply to the present case is deficient due to non-availability of documents/working papers. The Respondent have earlier furnished / is furnishing reply based upon financial statements and Hon'ble High Court Orders wherever available. It is humbly prayed that considering the above submissions, kindly consider sympathetically.

B. COMPLAINANT:

5. The Complainant in his submissions, inter-alia, submitted as under:-
- 5.1 The appointment letter and resolution dated 11/04/2011 on the letter head of the company submitted by the Respondent are not proper as the letter head has no email id, no website address, no telephone number and no CIN.

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- 5.2 Letter dated 23.08.2011 on letter head of the company is also not proper and what was the purpose of obtaining such letter. Moreover, in his reply, the Respondent has stated that the letter dated 23.08.2011 taken from the company was for acknowledging the non-receipt of communication with the previous auditor for further process due to non response from previous auditor whereas the content of letter does not contain any such matter.
- 5.3 With reference to mail dated 22.07.2019, no evidence for communication with previous auditor has been submitted by him and he never communicated with him. Moreover he neither obtained resignation letter from the previous auditor nor removal order for the previous auditor from the management. Form 23B filed within the year 2016 should have been filed in the year 2011 itself.
- 5.4 The allegations made by the management against him were found baseless, false, frivolous, fabricated, concocted and against the facts of the case. The allegations made against Complainant were based on the whims and fancies of the management to harass the Complainant and to deprive him from discharging his duties and responsibilities as an Independent Auditor. The matter has already been closed vide ICAI letter no. PPR/23/16/DD/14/INF/16/NG dated 27.07.2021.

OBSERVATIONS OF THE BOARD:

- 6.1 The Board noted that the Respondent at PFO stage did not submit his Written Statement. In response to the communication from the Disciplinary Directorate seeking certain additional documents from him in terms of the provisions of Rule 8(5) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules 2007, the Respondent vide his letter dated 02nd November, 2020 informed that it is a 10 years old matter and documentary evidence are not traceable for now and that he has not been able to locate the office copy of the communication that was sent to previous auditor. The copies of Minutes of Shareholders' meeting, etc. are company's internal documents. Although he has requested the company to share these documents, they have not yet cooperated. Further, during the course of hearing and in his written submissions made during the hearing stage, the Respondent requested to consider his case in terms of the provisions of Rule 12 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.
- 6.2 In this regard, the following provisions of Rule 12 of the Chartered Accountants (Procedures of Investigations of Professional and Other Misconduct and Cases) Rules, 2007' were taken into view by the Board:-

"12. Time limit on entertaining complaint or information - Where the Director is satisfied that there would be difficulty in securing proper evidence of the alleged

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misconduct, or that the member or firm against whom the information has been received or the complaint has been filed, would find it difficult to lead evidence to defend himself or itself, as the case may be, on account of the time lag, or that changes have taken place rendering the inquiry procedurally inconvenient or difficult, he may refuse to entertain a complaint or information in respect of any misconduct made more than seven years after the same was alleged to have been committed and submit the same to the Board of Discipline for taking decision on it under sub-section (4) of section 21A of the Act."

The Board further noted that the Respondent specifically expressed his difficulty in securing proper evidence of the alleged misconduct which pertained to the period 2010-11 on account of the time lag as well as change in his office address twice during this period.

Looking into the facts and circumstances of the case along with the documents and submissions on record and the principle of natural justice, the Board accepted the plea of the Respondent in terms of Rule 12 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 and decided to close the case. Hence, without going into the merits of the case, the Board held the Respondent Not Guilty in respect of the Charge(s) alleged.

CONCLUSION:

7. Thus, in conclusion, in the considered opinion of the Board, the Respondent is **NOT GUILTY** of Professional and 'Other' Misconduct falling within the meaning of Item (8) of Part-I and Item (2) of Part-IV of the First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act. Accordingly, the Board passed Order for closure of the case in terms of the provisions of Rule 15 (2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

Sd/-

CA. Rajendra Kumar P
(Presiding Officer)

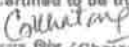
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Ms. Dolly Chakrabarty (IAAS, retd.)
(Government Nominee)

Sd/-

CA. Priti Savla
Member

DATE: 23-01-2024

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

वरुण सिंह / Charan Singh
कार्यकारी अधिकारी / Executive Officer
अनुशासनमयक विभाग / Disciplinary Directorate
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