



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)

[PPR/HPC/DD/156/INF/2018/BOD/531/2019 HPC]

ORDER UNDER SECTION 21A (3) OF THE CHARTERED ACCOUNTANTS ACT, 1949 READ WITH RULE 15(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATIONS OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007

In the matter of:

M/s. V.P. Mehta & Co. (FRN 106326W)

Member Answerable - CA. Vipul Pranlal Mehta (M.No. 035722)

[PPR/HPC/DD/156/INF/2018/BOD/531/2019]

MEMBERS PRESENT (in person):

CA. Rajendra Kumar P, Presiding Officer

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

CA. Priti Savla, Member

Date of Hearing and passing Order: 11th January 2024

1. The Board of Discipline vide its Findings dated **18th December 2023** was of the view that **CA. Vipul Pranlal Mehta (M.No. 035722)** is **GUILTY** of Professional Misconduct falling within the meaning of Item (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949.
2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against **CA. Vipul Pranlal Mehta** and communication dated **4th January 2024** was addressed to him thereby granting him an opportunity of being heard on **11th January 2024** which was exercised by him by being present before the Board through video conferencing. He confirmed receipt of the Findings of the Board. He vide email dated **10th January 2024** made a written representation, inter-alia, requesting the Board to consider his submissions made vide letter dated **28th March 2023**. He in his oral representation tendered an unconditional apology and requested the Board to take a lenient view in the case.
3. Thus, upon consideration of the facts of the case, the consequent misconduct of **CA. Vipul Pranlal Mehta (M.No. 035722)** and keeping in view his representation before it, **the Board decided to impose a Fine of Rs.25,000/- (Rs. Twenty-Five Thousand only) upon him.**

92

Sd/-

CA. Rajendra Kumar P
(Presiding Officer)

Sd/-

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

Sd/-

CA. Priti Savla
(Member)

सर्वीय विवरणों को देख प्रमाणित
Certified to be true copy

CA. Rajendra Kumar P
(Presiding Officer)

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.: [PPR/HPC/DD/156/INF/18/BOD/531/2019]

CORAM: (Present in Person)

CA. Rajendra Kumar P, Presiding Officer

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

CA. Priti Savla, Member

In Re:

In the matter of M/s. V.P. Mehta & Co. (FRN 106326W)

Member Answerable -CA. Vipul Pranal Mehta (M. No. 035722)

DATE OF FINAL HEARING : 28th March, 2023

PARTIES PRESENT (in person):

Respondent : CA. Vipul Pranal Mehta

Counsel for Respondent : Shri C N Vaze, Advocate

FINDINGS:

BACKGROUND OF CASE:

1.1 The attention of the Disciplinary Directorate was drawn to the Report on Operation of Multinational Network Accounting Firms in India, which was considered by the Council of ICAI in the year 2010 and finalized by a Group constituted by the Council in July 2011. Subsequently, while considering further course of action in respect of the recommendations as contained in Para 7 of the aforesaid report, the Council at its meeting held in January 2013 authorized the Secretary, ICAI to take necessary action as considered appropriate by him. In accordance with the said decision of the Council, upon placing the matter before the Secretary, he considered the issues relating to violations of provisions of the Chartered Accountants Act, 1949 by the various firms and forwarded the same alongwith his recommendations for necessary action to the Director (Discipline).

- 1.2 On an overall examination of allegations together with the reference received from the Council of the Institute, the matter was treated as "Information" within the meaning of Rule 7 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

CHARGE ALLEGED:

2. On the website of the Respondent firm "www.vpmehta.com/resource/home.aspx", it is mentioned that "The firm is the member firm of world wide networks by the name MJF International Network (USA) having its presence in various countries of the world". A member of the Institute is prohibited from disclosing his affiliation with any international entity.

BRIEF OF PROCEEDINGS HELD:

3.

S.No.	Date of Hearing	Status
1.	28 th March, 2023	Heard and concluded

BRIEF SUBMISSIONS OF THE RESPONDENT:

4. The Respondent in his defence, inter-alia stated as under:
- 4.1 There is no provision under the CA Act and no Rule prescribed under the law by which "any Respondent firm" may be held to be guilty in accordance with the charges contained in the two schedules. The conclusion drawn in the Para 14 of the PFO is thus infructuous and the instant inquiry needs to be closed forthwith. Since the Director (Discipline) has held the Respondent firm, and not the Respondent, to be guilty, proceeding to the next stage against the Respondent would be bad in law.
- 4.2 The Information letter has been issued and the formal inquiry for professional misconduct has been initiated based on recommendations of the Secretary of ICAI. Such a process for initiating an enquiry for professional or other misconduct against a member of ICAI on Information is not contemplated under the law.
- 4.3 The allegation relating to the contents of the website of the firm of the Respondent had been raised for the first time in 2018. It was never raised by ICAI in its communications in 2010 and 2016. The issue would thus become time barred in view of the contents of Rule 12.
- 4.4 The Director (Discipline) believes that the issue relating to the alleged contravention by the Respondent in respect of a specific sentence appearing on the website of the firm was intentionally corrected only after receipt of the Information since 2010. The DD has

grievously erred by omitting the basic fact that the issue relating to the website of the firm was raised by ICAI for the first time only in 2018. There is no question of any delayed corrective action by the Respondent in this case.

- 4.5 The DD has held the Respondent to be prima facie guilty basically on the grounds that the corrective steps had been undertaken only after issuance of the Information letter, and that the Respondent firm must have benefitted by showing its association with MJF. The issue relating to website was never raised by ICAI before 2018. Accordingly, the decision of the Respondent for removal of the particular sentence from his firm's website upon receipt of the information letter needs to be appreciated. Furthermore, the DD has relied upon his own assumptions, conjectures and surmises while concluding that the Respondent must have benefitted from his association with MJF. This is not a maintainable proposition, and no professional can be held guilty based on such presumptive logic.
- 4.6 He cannot be held guilty based on decision in meeting of Council that had revolved on an issue in 1995, whereas the Rules and Guidelines issued in 2005 and 2009 had permitted the announcement of networking relationship on professional stationary. It is the DD's logic that if an announcement is not permitted on professional stationary, then it cannot be taken to be permissible on the website. By the same logic, since the announcement was permissible on professional stationary, no professional misconduct can be implied if such announcement appeared on the website.
- 4.7 As far as the BOD is concerned, the law states that only 'a' BOD would be constituted. The Council constituted two Benches of the BOD. Such constitution of multiple benches is ultra vires the provision contained in the Chartered Accountants Act, as law provides only for one BOD to be constituted.
- 4.8 The MNAF Report dealt with much larger issues, wherein provisions of law appeared to have been contravened through certain unethical strategies by certain forms. The details of the MNAF Report are not dealt with here for reasons of brevity alone. This matter ultimately reached the Apex Court, and a landmark decision was delivered by the Hon'ble Supreme Court in S. Sukumar vs The Secretary, ICAI. However, the issues relating to the professional misconduct by members of ICAI raised in the MNAF Report and dealt in the Order of the Hon'ble Supreme Court do not apply to the instant case.

OBSERVATIONS OF THE BOARD:

5. On perusal of the documents and submissions on record, the Board observed that the Respondent raised certain technical objections with regard to the admissibility of the case and decided to deal with them before arriving at its Findings.
- 5.1 As far as the objection of the Respondent as to constitution of two Benches of the Board is concerned, the Board viewed that two Benches of the Board of Discipline were constituted with an avowed object to accelerate the disposal of disciplinary cases and

the administrative Ministry i.e. Ministry of Corporate Affairs had also nominated the members as required under Section 21A (1)(b) to the Board of Discipline. On a conjoint reading of the provisions of the General Clauses Act, 1897 (which explicitly states that the words in singular shall include the plural, and vice versa) with the provisions of the Section 21A (1) of the Chartered Accountants Act, 1949(as amended) it is clear that the Council is empowered to constitute more than one Board of Discipline. The Benches so constituted carried out its functions inter-alia by conducting hearings and awarding punishments in disciplinary cases falling within their respective jurisdictions during the relevant period. Besides, the Respondent failed to place any material to show that the constitution of two benches caused any prejudice to him. Also, the Board of Discipline was of the view that it is not the appropriate forum to challenge the constitution of its two Benches.

- 5.2 With respect to the objection of the Respondent against suo-motu initiation of an enquiry against its member, the Board perused the decision of the Hon'ble Appellate Authority in the matter of P. Siva Prasad versus ICAI (Appeal No. 1/ICAI/2012) and Chintapatla Ravindernath –Vs- ICAI (Appeal No. 2/ICAI/2012), which provides as under:-

“.....It is not necessary that there has to be an informant to invoke Section 21 and that the Director (Discipline) cannot suo moto take action after coming to know of a serious professional mis-conduct of a CA through news report or media..... The Director (Discipline) has to send its prima facie opinion even in respect of information received through media to the Board of Discipline or the Disciplinary Committee as the case may be. The action on the basis of information includes and means the information received from any source, including media.” (emphasis added).

The Board also noted that the said decision of the Hon'ble Appellate Authority has not been challenged and no Order has been passed against it till date. In view of the above, it is clear that the Director (Discipline) can initiate action on the basis of Information received from any source. Thus, the preliminary objection of the Respondent is not maintainable.

- 5.3 As far as the objection of the Respondent is concerned with respect to non-compliance of Rule 12, the Board noted that the plea of Rule 12 was not taken by the Respondent before the Director(Discipline) at the prima facie stage.He did not express any difficulty to lead evidence to defend himself and submitted documentary evidence as well as his submissions to defend the charges alleged against him. Accordingly, the Board was of the view that taking the plea of Rule 12 before it was an after thought and thus, not acceptable.
- 5.4 As regard the objection of the Respondent of holding the Respondent firm prima facie guilty, the Board noted that in accordance with the provision of clause (b) of sub-rule (1) of Rule (8) read with Rule 11 of the aforesaid Rules, an Information letter dated 25th May, 2018 was sent to the Respondent firm asking them to declare the member/s answerable and arrange to submit his/ their Written Statement alongwith declaration. In reply, CA. Vipul P. Mehta (M.No.035722) (i.e. the “Respondent”) vide his letter dated

13th June, 2018 stated that he is practicing as a proprietor and also made his written submissions. through his aforesaid letter dated 13th June, 2018. Thus, the Board held that since a proprietor represents his proprietorship firm, the terminology 'Respondent firm' used in the concluding para of the Prima Facie Opinion referred to the Respondent only.

- 5.5 As regard the charge alleged, the Board noted that that the Respondent firm had mentioned on its website "www.vpmehta.com/resource/home.aspx", as under:

"The firm is the member firm of worldwide networks by the name MJF International Network (USA) having its presence in various countries of the world".

- 5.6 The Board also noted that as per Item (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949, a Chartered in practice shall be deemed to be guilty if he:-

"(7)advertises his professional attainments or services, or uses any designation or expressions other than chartered accountant on professional documents, visiting cards, letter heads or sign boards, unless it be a degree of a University established by law in India or recognised by the Central Government or a title indicating membership of the Institute of Chartered Accountants of India or of any other institution that has been recognised by the Central Government or may be recognised by the Council:

Provided that a member in practice may advertise through a write up setting out the services provided by him or his firm and particulars of his firm subject to such guidelines as may be issued by the Council;"

- 5.7 The Board further noted that the Council, at its 172nd meeting held in January, 1995, while agreeing with the recommendation of the then Committee on Ethical Standards and Unjustified Removal of Auditors (CESURA) that the use of expression/words, "In Association with", "Associates of", Correspondents of" etc. on the stationery, letter-heads, visiting cards and professional documents of the firm of C.As., was not permissible in view of the provisions of Item (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949, decided that it should not be permitted irrespective of whether the name sought to be used is the name of an Indian firm or a foreign firm.
- 5.8 On combined reading of the above paras, the Board was of the view that it is clear that the use of expression / word "In Association with or Associates of" etc. on the stationery, letter heads, visiting cards and professional documents of the Chartered Accountancy firm is not allowed whereas the Respondent firm on its website has shown its association with MJF network by describing itself as a member firm of world wide networks of MJF International.

- 5.9 The Board was also of the view that though the Respondent took remedial steps by removing the expression from the firm's website showing its association with MJF in 2018, yet the said remedial action does not mitigate the efficacy of the alleged misconduct on the part of the Respondent as despite of being aware of the correspondences being made by the Institute since 2010 in respect of activities / functioning of Multinational Accounting Firms in contravention of the provisions of the Chartered Accountants Act, 1949 and the Rules and Regulations framed thereunder, the Respondent firm took corrective step only after receipt of Information letter from the Institute which indicates that the Respondent firm was in continuous use of the said website for various purposes.
- 5.10 Therefore, the Board was of the view that the use of the expression "*The firm is the member firm of worldwide networks by the name MJF International Network (USA) having its presence in various countries of the world*" on the Respondent firm's website amounted to advertising their professional attainments and accordingly, the Respondent is held guilty in respect of the charge alleged.

CONCLUSION:

6. Thus, in conclusion, in the considered opinion of the Board, the Respondent is **GUILTY** of Professional Misconduct falling within the meaning of Item (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

Sd/-

CA. Rajendra Kumar P

(Presiding Officer)

Sd/-

Ms. Dolly Chakrabarty (IAAS Retd.)

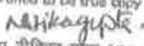
(Government Nominee)

Sd/-

CA. Priti Savla

(Member)

DATE: 18-12-2023

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

सीए नीतिका गुप्ता / CA. Nitika Gupta
सहायक निदेशक / Assistant Director
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahdara, Delhi-110032