



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

Date of Pronouncement – 23.01.2024

PR-105/20-DD/131/2020-DC/1670/2022

ORDER UNDER SECTION 218(3) OF THE CHARTERED ACCOUNTANTS ACT, 1949 READ WITH RULE 19(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATION OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007 WITH REGARD TO PUNISHMENT.

[PR-105/20-DD/131/2020-DC/1670/2022]

In the matter of:

CA. Sachin Miniyar (M.No. 108664)

M/s Charkha Miniyar & Co.

301, Vini Apartment, 2093 Sadashiv Peth

Near Neelayam Theatre Signal,

Pune – 411030

.....Complainant

Versus

CA. Nimesh Haresh Thakkar (M.No. 155905)

C-2/19, Triveni CHSL,

Opp. IDBI Bank, 60ft Road,

Vasai,

Maharashtra – 401202

.....Respondent

MEMBERS PRESENT:

1. CA. Ranjeet Kumar Agarwal, Presiding Officer (Present in person)
2. Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee (Present in person)
3. Shri Arun Kumar, I.A.S. (Retd.), Government Nominee (Present in person)
4. CA. Sanjay Kumar Agarwal, Member (Present in person)

1. The Committee noted that the Respondent has been held guilty vide findings dated 14.12.2023 (Ref no.PR-105/20-DD/131/2020-DC/1670/2022). The said findings holding him guilty were duly communicated to the Respondent. **The matter pertains to M/s. Tejimandi Analytics Private Limited.** The findings of the Committee whereby the Respondent had been held guilty are as below:-

"FINDINGS OF THE COMMITTEE"



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11. As regards the first charge, the Committee noted that the Respondent admitted his mistake that he did not communicate with the previous auditor due to work pressure, making it evident that the Respondent had failed to ensure compliance of the requirement of Item (8) of Part I of First Schedule to the Chartered Accountants Act, 1949.

11.1 The Committee noted that the objective of communicating with the previous auditor is that the incoming auditor may have an opportunity to know the reasons for the change in auditor to safeguard his own interest. Further there is a specific requirement in the Code of Ethics regarding communication with the previous auditor. Therefore, the plea of heavy work pressure cannot be treated as valid excuse for non-compliance of this requirement.

11.2 The Committee noted that the Respondent on this charge had already accepted his guilt. Accordingly, the Committee held the Respondent **GUILTY** of Professional Misconduct falling within the meaning of Item (8) of Part I of First Schedule to the Chartered Accountants Act, 1949.

12. As regards to the second charge of acceptance of audit without ensuring that outstanding audit fees of previous auditor has not been paid, the Committee observed that in this regard Chapter VII of Council Guidelines No. 1-CA (7)/02/2008, dated 8th 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."

12.1 The Committee observed that Explanation 1 states that 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 F.Y. 2017-18 signed by the Complainant noted that no provision regarding pending audit of fee was disclosed on the face of the Balance Sheet. The Annexures relating to current liabilities are reflected as under:



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Note - 5 Trade Payables

Sr. No.	Particulars	Figures as at 31.03.2018	Figures as at 31.03.2017
		₹	₹
a	Micro Small & Medium Enterprises	-	-
b	Others	1,26,36,412	3,57,217
	Total	1,26,36,412	3,57,217

Note - 6 Other Current Liabilities

Sr. No.	Particulars	Figures as at 31.03.2018	Figures as at 31.03.2017
		₹	₹
a	Other Payables		
	TDS Payable	36,957	33,502
	GST Payable	1,52,360	-
	Total	1,89,317	33,502

Note - 7 Short Term Provisions

Sr. No.	Particulars	Figures as at 31.03.2018	Figures as at 31.03.2017
		₹	₹
a	Provision for Employee Benefits		
	Salary and Reimbursements	1,64,000	-
b	Others		
	Provision for Income Tax	4,52,652	8,10,362
	Total	6,16,652	8,10,362

12.2 The Committee noted that the Complainant in this regard had submitted that his pending fee was reflected under the head of sundry creditors. The Committee noted that since the pending fee was not reflected on the face of the Balance Sheet, hence the Respondent as incoming auditor was not in a position to identify whether the undisputed audit fee of previous auditor is pending or not.

12.3 The Committee further noted that while performing his statutory audit of the Books of Accounts for the F.Y. 2018-2019, the Respondent had come across the ledger of the previous auditor showing outstanding payable and hence, he compelled the management to clear the outstanding payable immediately.

12.4 The Committee on perusal of the Ledger account noted that, as per books of accounts, the pending audit fee of the Complainant on the date of acceptance of the audit (29th September 2018) by the Respondent was Rs. 67,501/-. The Committee noted that the pending fee was paid to the Complainant on two dates, i.e. Rs. 20,000/- (on 19th January 2019) and Rs. 50,000/- (on 27th September 2019). This fact was duly accepted by the Complainant also.



12.5 The Committee noted that the Respondent accepted that the amount of the undisputed audit fee was paid to the outgoing auditor by the auditee after acceptance of the audit by him and it was due to his constant follow-up with the management of the Company.

12.6 The Committee on perusal of the above guidelines vis-a-vis reasonings as discussed in above paras noted that the Respondent has accepted the audit without ensuring that undisputed outstanding fees of the previous auditor was not paid by the auditee. The Committee noted that the same is clear violation of Chapter VII of Council Guidelines No. 1-CA (7)/02/2008, dated 8th August, 2008.

12.7 The Committee noted that the Respondent on this charge also had accepted his guilt. Accordingly, the Committee held the Respondent **GUILTY** of Professional Misconduct falling within the meaning of Item (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949 also.

CONCLUSION

13. In view of the above findings stated in the above para's vis-a-vis material on record, the Committee, in its considered opinion, holds the Respondent is **GUILTY** of Professional Misconduct falling within the meaning of Item (8) of Part 1 of the First Schedule and Item (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949."

2. After communication of the aforesaid findings of the Committee dated 14.12.2023, the Respondent was called by the Committee to appear before it on 09.01.2024 and to make his submissions / representations under Rule 19(1) of the Chartered Accountants (Procedures of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 on quantum of punishment. The Respondent appeared on 09.01.2024 and submitted his representations with regard to quantum of punishment as under:

- 8
- He took full responsibility for his actions and the consequences.
 - He understands the high standards of professional conduct expected by the Institute and he deeply regret deviation from these standards on his part.
 - He conveyed his sincere remorse and requested the Committee to take lenient view in the matter.
 - He ensured that such lapses would not recur in the future.
 - He fully respects the disciplinary process and is prepared to accept any fair and just consequence for his actions. ~~✗~~



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3. After careful consideration of the facts and circumstances, material on record and submissions of the Respondent before it as well his submissions made on 09.1.2024, the Committee decided to **reprimand 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

DATE: 23.01.2024

PLACE: New Delhi

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

सीए श्रुति गर्ग / CA. Shreeta Garg
साहायक निदेशक / Assistant Director
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट 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

DISCIPLINARY COMMITTEE [BENCH – II (2023-2024)]

[Constituted under Section 21B of the Chartered Accountants Act, 1949]

Findings under Rule 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

File No. : [PR-105/2020-DD/131/2020/DC/1670/2022]

In the matter of:

CA. Sachin Miniyar (M.No. 108664)
M/s Charkha Miniyar & Co.
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.....Complainant

Versus

CA. Nimesh Haresh Thakkar (M.No. 155905)
C-2/19, Triveni CHSL,
Opp. IDBI Bank, 60ft Road,
Vasai,
Maharashtra – 401202

.....Respondent

MEMBERS PRESENT:

CA. Ranjeet Kumar Agarwal, Presiding Officer (Present in person)
Shri. Arun Kumar, I.A.S. (Retd.), Government Nominee (Through VC)
Mrs. Rani Nair, I.R.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: 30.05.2023 (through physical/video conferencing mode)

PARTIES PRESENT :

Complainant: CA. Sachin Ramanujdas Miniyar (Through Video Conferencing Mode)
Respondent: CA. Nimesh Haresh Thakkar (Through Video Conferencing Mode)

BACKGROUND OF THE CASE:

1. The brief background of the case is that the Complainant in the instant case alleged that he was appointed as the Statutory Auditor of the company named M/s Tejimandi Analytics Private Limited (hereinafter referred to as the "Company") till the conclusion of Annual General Meeting (hereinafter referred to as the "AGM") for the FY 31.03.2018. The Complainant has audited the balance sheet for the FY 2017-18 and thereafter, the Company changed the auditor for the FY 2018-19 without informing or issuing the valid notice to the Complainant. He also stated that his undisputed audit fee for the previous year was also outstanding.

CHARGES IN BRIEF:-

2. The Committee noted that the charges against the Respondent were as under:
 - a. The Respondent has accepted the position as Statutory Auditor of the Company for the FY 2018-19 without prior communication to the Complainant (i.e., the outgoing auditor) and without obtaining "No Objection Certificate" as per Item (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949.
 - b. That the Respondent accepted the audit despite the fact that audit fees of the Complainant are pending and outstanding with the Company which shall be considered as "undisputed" audit fee in accordance with the Council Guidelines No. 1-CA/(7)/02/2008 dated 08.08.2008.
3. The Committee noted that the Respondent in his reply at the stage of PFO had, inter-alia, mentioned as under:
 - a. As regards the first charge, he mentioned that due to the heavy workload during the tax season, he forgot to obtain the No Objection Certificate from the Complainant.

- b. As regards second charge, he submitted that he accepted the audit on 29th September 2018. He further admitted that the outstanding fee pertaining to the Complainant Firm was paid on 19th January 2019 and 27th September 2019.
- c. He further submitted that he carried out the practice with the utmost due diligence, fairness and in accordance with the provisions of the law.
4. The Director (Discipline) had, in his Prima-facie opinion, noticed that the Respondent had admitted his mistake regarding non-communication with the previous auditor. As regards payment of undisputed fees the Director (Discipline) noticed that the Respondent accepted the statutory audit even though the undisputed fee of the Complainant was unpaid which is clear violation of Council Guidelines No. 1-CA/(7)/02/2008 dated 08.08.2008, which states that a member of the institute in practice shall not accept the appointment as auditor of an entity in case the undisputed audit fees of another Chartered Accountant for carrying out the statutory audit under the Companies Act, 1956 or various other statutes has not been paid.
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 after Prima Facie Opinion dated 19th January 2023 had, inter-alia, mentioned as under:
- i. In response to the charge related to non-obtaining No Objection Certificate (NOC), he submitted that he had personally visited the office of the Complainant on 14th January 2023 and 18th January 2023.
 - ii. During their meeting he had explained to him the relevant facts and circumstances in relation to the request for NOC, which was prevailing at the time of accepting the audit.
 - iii. Further, to the best of his knowledge and belief, a respected senior colleague i.e. the Complainant has taken cognizance of the explanation and expressed his satisfaction with the same.
 - iv. With respect to uncleared dues, he would like to draw kind attention that while accepting the audit, he had gone through the Annual Report pertaining to F.Y. 2017-2018 wherein the list of outstanding sundry creditors was not available as annexure to the financial statement and also the provision for audit fees was not appearing in Note 7 to the financial statement and therefore he, presumed that there were no outstanding fees payable to the previous auditor.
 - v. However, while performing a statutory audit of the Books of Accounts for the F.Y. 2018-2019, he had come across the ledger of the previous auditor showing outstanding payable and the same was communicated

and compelled the management to clear the outstanding payable immediately.

- vi. The proof of payment towards outstanding dues was provided to the ICAI on 26th November 2020.

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	Heard and concluded

8. On the day of the first hearing, held on 20th April 2023, the Committee noted that the Respondent was present through Video Conferencing mode. The Respondent was administered on Oath. Thereafter, the Committee enquired from the Respondent as to whether he is aware of the charges and the Respondent replied in the affirmative and pleaded Guilty with respect to the first charge. As regards the second charge, he pleaded Not Guilty.

- 8.1 Thereafter, looking into the fact that this being the first hearing and the Complainant was not present, the Committee decided to adjourn the hearing. With this, the hearing in the matter was part heard & adjourned.

9. On the day of the final hearing held on 30th May 2023, the Committee noted that the Complainant and the Respondent were both present through Video Conferencing mode. Since, the Respondent had already taken oath in the previous hearing held on 20th April 2023 and hence the Complainant was administered on Oath.

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

- i. That after filing the complaint by him, the Respondent followed the matter with the Company and also visited his office twice.
- ii. The Respondent also submitted an apology that the said mistake had been made inadvertently.
- iii. That he has received his pending fees from the Company.
- iv. Since he had received his pending fee, hence he requested the Committee to take most lenient action against the Respondent.

9.2 When the Respondent was asked to make his submissions, he accepted his mistake by mentioning that he failed to communicate with the Complainant prior to accepting the audit. He further mentioned that the fee of the Complainant had already been paid and requested to take a lenient view in the present matter.

9.3 Thereafter, the Committee, looking into the Respondent's submissions and his acceptance of guilt against the charges levelled, recorded his plea and proceeded in accordance with the provisions of Rule 18(8) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

9.4 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.

10. The Committee further noted that the Respondent with his submission had also enclosed a copy of apology letter sent by him on 18th January 2023 through email and Courier to the Complainant.

FINDINGS OF THE COMMITTEE

11. As regards the first charge, the Committee noted that the Respondent admitted his mistake that he did not communicate with the previous auditor

due to work pressure, making it evident that the Respondent had failed to ensure compliance of the requirement of Item (8) of Part I of First Schedule to the Chartered Accountants Act, 1949.

- 11.1 The Committee noted that the objective of communicating with the previous auditor is that the incoming auditor may have an opportunity to know the reasons for the change in auditor to safeguard his own interest. Further there is a specific requirement in the Code of Ethics regarding communication with the previous auditor. Therefore, the plea of heavy work pressure cannot be treated as valid excuse for non-compliance of this requirement.
- 11.2 The Committee noted that the Respondent on this charge had already accepted his guilt. Accordingly, the Committee held the Respondent **GUILTY** of Professional Misconduct falling within the meaning of Item (8) of Part I of First Schedule to the Chartered Accountants Act, 1949.
12. As regards to the second charge of acceptance of audit without ensuring that outstanding audit fees of previous auditor has not been paid, the Committee observed that in this regard Chapter VII of Council Guidelines No. 1-CA (7)/02/2008, dated 8th 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."

12.1 The Committee observed that Explanation 1 states that 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 F.Y. 2017-18 signed by the Complainant noted that no provision regarding pending audit of fee was disclosed on the face of the Balance Sheet. The Annexures relating to current liabilities are reflected as under:

Note - 5 Trade Payables

Sr. No.	Particulars	Figures as at 31.03.2018	Figures as at 31.03.2017
		₹	₹
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b	Others	1,26,36,412	3,57,217
	Total	1,26,36,412	3,57,217

Note - 6 Other Current Liabilities

Sr. No.	Particulars	Figures as at 31.03.2018	Figures as at 31.03.2017
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	Total	1,89,317	33,502

Note - 7 Short Term Provisions

Sr. No.	Particulars	Figures as at 31.03.2018	Figures as at 31.03.2017
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a	Provision for Employee Benefits		
	Salary and Reimbursements	1,64,000	-
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	Provision for Income Tax	4,52,652	8,10,362
	Total	6,16,652	8,10,362

12.2 The Committee noted that the Complainant in this regard had submitted that his pending fee was reflected under the head of sundry creditors. The Committee noted that since the pending fee was not reflected on the face of the Balance Sheet, hence the Respondent as incoming auditor was not in a position to identify whether the undisputed audit fee of previous auditor is pending or not.

- 12.3 The Committee further noted that while performing his statutory audit of the Books of Accounts for the F.Y. 2018-2019, the Respondent had come across the ledger of the previous auditor showing outstanding payable and hence, he compelled the management to clear the outstanding payable immediately.
- 12.4 The Committee on perusal of the Ledger account noted that, as per books of accounts, the pending audit fee of the Complainant on the date of acceptance of the audit (29th September 2018) by the Respondent was Rs. 67,501/-. The Committee noted that the pending fee was paid to the Complainant on two dates, i.e. Rs. 20,000/- (on 19th January 2019) and Rs. 50,000/- (on 27th September 2019). This fact was duly accepted by the Complainant also.
- 12.5 The Committee noted that the Respondent accepted that the amount of the undisputed audit fee was paid to the outgoing auditor by the auditee after acceptance of the audit by him and it was due to his constant follow-up with the management of the Company.
- 12.6 The Committee on perusal of the above guidelines vis-a-vis reasonings as discussed in above paras noted that the Respondent has accepted the audit without ensuring that undisputed outstanding fees of the previous auditor was not paid by the auditee. The Committee noted that the same is clear violation of Chapter VII of Council Guidelines No. 1-CA (7)/02/2008, dated 8th August, 2008.
- 12.7 The Committee noted that the Respondent on this charge also had accepted his guilt. Accordingly, the Committee held the Respondent **GUILTY** of Professional Misconduct falling within the meaning of Item (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949 also.

CONCLUSION

- 13 In view of the above findings stated in the above para's vis-a-vis material on record, the Committee, in its considered opinion, holds the Respondent is

GUILTY of Professional Misconduct falling within the meaning of Item (8) of Part 1 of the First Schedule and Item (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

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

SD/-

(CA. SRIDHAR MUPPALA)

MEMBER

DATE: 14TH DECEMBER, 2023

PLACE: DELHI

सही प्रतिलिपि होने के लिए प्रमाणित
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मीनू गुप्ता / Meenu Gupta
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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