



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

Date of Pronouncement – 23.01.2024

PR-64/21-DD/91/2021-DC/1704/2022

ORDER UNDER SECTION 21B(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-64/21-DD/91/2021-DC/1704/2022]

In the matter of:

Shri Girdhar Viramgama,
Plot No. 390 to 393, Unity Industrial State,
Surat Navsari Road, Bhestan,
Surat – 359023

.... Complainant

Versus

CA. Shivalal Ghanshyam Dhoot (M. No. 126047)
309, 3rd Floor,
The Lenora Business Hub,
Opp. St. Thomas School, New CityLight,
Surat – 395007

.....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-64/21-DD/91/2021-DC/1704/2022). The said findings holding him guilty were duly communicated to the Respondent. **The matter pertains to M/s. Pranjal Retail (India) Private Limited.** The findings of the Committee whereby the Respondent had been held guilty are as below:-

“FINDINGS OF THE COMMITTEE:-

12. The Committee noted that the Respondent in written submissions dated 6th March, 2023 had, inter-alia, mentioned as under:



- i. That the Complainant has not yet disclosed his relationship with the Company despite being asked multiple times.
- ii. That as per his knowledge, the Complainant is not concerned with the Company in any manner so the motive behind the complaint after more than 8 years is yet to be disclosed.
- iii. That the Complainant had intentionally, with mala-fide intention, had filed the complaint after the expiry of retention period of 7 years for maintaining working papers so that there is no substantial evidence left with the Respondent other than public documents available on MCA.
- iv. That after May, 2022 there is no further correspondence on the aforesaid complaint, therefore the Complainant also raised the matter before the High Court.
- v. That the Director Discipline has not taken into consideration the time limit as per Rule 12 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 wherein the cut off period for entertaining the complaint is 7 years. He has also given the reference of case of Mr. Ashish Agarwal, wherein Delhi High Court has taken the note of said rule.
- vi. That share transfer form and confirmation of transfer of the shares of Arvind Soni was taken before accepting appointment of the Audit.
- vii. That the Complainant has filed the complaint merely from some extracts of records from MCA without having evidence other than Form 32.
- viii. That as per the best of his knowledge and belief, he has come to know the facts that the said Company was a newly incorporated company in the mid of FY 2011-12 and due to lack of proper knowledge and governing compliances of MCA, had failed to file the resignation of CA. Arvind Soni and his transfer of shareholding to others with MCA.
- ix. The Company has unknowingly and unintentionally failed to file Form 32 and the same was filed on later date with taking fresh resignation letter in current date.
- x. That proof of resignation and transfer of shares of CA. Arvind Soni were taken from the Company and was also kept in record till the retention period of the working papers.
- xi. That after having knowledge of the above delay in compliances by the weak administrative staff of the Company, the firm has decided to discontinue their audit services with the Company, despite being reappointed by the Company as their statutory auditors for the next financial year 2012-13.

13. The Committee noted that the charge against the Respondent was the signing of financials of the Company for the financial year ended 31st March 2012 even though one of the partners of the Respondent firm was a director in the Company. The Respondent has submitted that he has obtained, the eligibility certificate from his partner, CA Arvind Soni, but he does not have the same at present due to time lag. The Committee in this regard noted that relevant documents relating to the



case such as financial statements, e-forms etc are on record and hence the stand of the Respondent regarding non-availability of documents is not tenable.

14. The Respondent on merits submitted that his partner CA Arvind Soni has resigned on 20th April 2012 and has also transferred 4000 shares to his wife on 4th October 2012 and the Company might have not filed the same at that time and filed it a later date.

15. The Committee as regards directorship of CA. Arvind Soni noted that

Form 32	Date of Form	Reference
Appointment of CA. Arvind Soni as director. Consent letter	11 th May 2011	Prima-facie opinion
Cessation of CA. Arvind Soni as director. Resignation Letter	25 th September 2012 25 th September 2012	Prima-facie opinion

The Committee on perusal of both forms noted that CA. Arvind Soni was director in the Company from 11th May 2011 to 25th September 2012.

16. As regards the shareholdings of CA. Arvind Soni is concerned, the Committee noted as under:

Document	Reference	Contents
Memorandum of Association dated 9 th May 2011	As per prima-facie opinion	Arvind Soni 5000 shares (50%) Kusum Soni 1000 shares (10%) (Kusum Soni is wife of CA. Arvind Soni)
Share Capital Note/Schedule of the Balance Sheet for the period ended 31 st March 2012	As per prima-facie opinion	Arvind Soni 5000 shares (50%) Kusum Soni 1000 shares (10%) (Financials signed by the Respondent on 3 rd September 2012)

Hence, the Committee noted that CA Arvind Soni along with his wife have continued with the same shareholding in the company, i.e. 60% (50% and 10% respectively).



17. The Committee on the same noted the fact on records that resignation letter of CA. Arvind Soni dated 25th September 2012 wherein it is clearly mentioned that he had resigned from the Company w.e.f. 25th September 2012.

18. As regards shareholdings is concerned, the fact is that CA Arvind Soni along with his wife have continued with the same shareholding in the company i.e. 60% (50% and 10% respectively) on the date of signing of financials of the Company by the Respondent.

19. The Committee on perusal of member record available with ICAI noted both CA Arvind Soni and the Respondent have been partners since 1st July 2010 and the partnership was in existence on the date of signing of financials by the Respondent.

20. Thus, from the documents on record, it is clear that one partner of the Respondent firm i.e. the Respondent has audited the financials of the Company for the period during which another partner of the Respondent firm i.e. CA Arvind Soni was the Director cum substantial shareholder in the company i.e. for the period 2011-12.

21. The Committee observed that section 226(3)(c) of the Companies Act, 1956 in this regard states as under:

226. QUALIFICATIONS AND DISQUALIFICATIONS OF AUDITORS

(3) None of the following persons shall be qualified for appointment as auditor of a company –

(c) a person who is a partner, or who is in the employment, of an officer or employee of the company;

Further, Section 2(30) defines "Officer" as below:

"officer" includes any director, manager or secretary or any person in accordance with whose directions or instructions the Board of directors or any one or more of the directors is or are accustomed to act"

22. On perusal of above provisions, the Committee noted that a person who is partner of an officer (which includes director) of the Company is disqualified to be appointed as auditor of the Company. However in the extant case the Respondent firm has accepted the audit assignment of the Company despite the fact that CA. Arvind Soni was the director of the Company and even holding the position on the date of signing of financial statement.

23. The Committee further observed that Code of Ethics - 2009 states as under:-

280.1 A professional accountant in public practice should consider when providing any professional service whether there are threats to compliance with the fundamental principle of objectivity resulting from having interests in, or relationships with, a client or directors, officers or employees.



For example, a familiarity threat to objectivity may be created from a personal or business relationship.

280.2 A professional accountant in public practice who provides an assurance service is required to be independent of the assurance client. Independence of mind and in appearance is necessary to enable the professional accountant in public practice to express a conclusion, and be seen to express a conclusion, without bias, conflict of interest or undue influence of others.”

290.8 Independence* requires:

Independence of Mind

The state of mind that permits the expression of a conclusion without being affected by influences that compromise professional judgment, allowing an individual to act with integrity, and exercise objectivity and professional skepticism.

Independence in Appearance

The avoidance of facts and circumstances that are so significant that a reasonable and informed third party, having knowledge of all relevant information, including safeguards applied, would reasonably conclude a firm's, or a member of the assurance team's, integrity, objectivity or professional skepticism had been compromised.”

Further, the Guidance Note on “Independence of Auditor” towards this term “Independence” in its para 3.3 has specifically recognized Section 226 of the Companies Act, 1956 as discussed above as below:

“In order to ensure independence, the law has made certain provisions which either prohibit the appointment of a person as auditor in certain circumstances or place certain restrictions on his appointment as auditor or put third parties on guard against the possibility of an abridgement of independence by requiring certain disclosures to be made.”

24. In the light of above provisions of Code of Ethics – 2009 and Guidance Note, in the extant case since the partner of the Director of the Company i.e. the Respondent had performed the audit and signed its audit report, the independence of the Respondent while performing its audit is clearly threatened.

25. Hence, it is apparent that the Respondent firm, by accepting the appointment as statutory auditor of the Company and the Respondent as signing partner by expressing his opinion on the financials of the company and signing an audit report thereon for the period (2011-12) during which the other partner of the Respondent firm had been holding the position as director and also holding 50%
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shares of the Company, has violated the provision of Section 226 of the Companies Act, 1956, the Code of Ethics – 2009, Guidance Note on 'Independence of Auditor'.

CONCLUSION

26. In view of the above observations, considering the submissions of the Respondent and documents on record, the Committee held the Respondent **GUILTY** of Professional Misconduct falling within the meaning of Item (4) and (7) Part – I 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:-

- There is not a single finding as how he was grossly negligent or did not exercise due diligence in reporting and to what extent.
- During the conduct of the audit there was no misreporting or not taking due care. Thus, he may not be held guilty under the said clause.
- He further submitted that it has been more than 9 years since signing of audit report and hence he was not possessing enough documents to demonstrate his appointment.
- Further the complaint is barred by limitation as per Rule 12 of the Chartered Accountants (Procedure of investigation of professional and Other Misconduct and conduct of Cases) Rules 2007.

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

CONFIDENTIAL

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-64/2021-DD/91/2021/DC/1704/2022]

In the matter of:

Shri Girdhar Viramgama,

Plot No. 390 to 393, Unity Industrial State,
Surat Navsari Road, Bhestan,
Surat - 359023

.... Complainant

Versus

CA. Shivlal Dhoot (M. No. 126047)

Partner, M/s Sharp & Associates
Chartered Accountants,
B-810, International Commerce Centre,
Near Civil Char Rasta, Ring Road,
Surat - 395002

.....Respondent

MEMBERS PRESENT:

CA. Ranjeet Kumar Agarwal, Presiding Officer (In person)
Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee (In person)
Shri Arun Kumar, I.A.S. (Retd.), Government Nominee (In person)
CA. Sanjay Kumar Agarwal, Member (In person)
CA. Sridhar Muppala, Member (In person)

DATE OF FINAL HEARING: 24.07.2023 (through physical/video conferencing mode)

PARTIES PRESENT

Complainant: Shri Girdhar Viramgama (Through Video Conferencing Mode)
Counsel for Complainant: Mrs. Pinal K. Shukla (Through Video Conferencing Mode)
Respondent: CA. Shivlal Doot (Physically present at Delhi Office)
Counsel for Respondent: CA. Deepak Shah (Physically present at Delhi Office)

BACKGROUND OF THE CASE:

1. The brief background of the case is as under:
 - a. Complaint in Form I dated 15th March 2021 is filed against the Respondent firm who was the auditor of M/s Pranjal Retail (India) Private Limited (hereinafter referred to as the '**Company**') and the allegations have been made specifically against **CA. Arvind Soni**, one of the partners in the Respondent firm.
 - b. In accordance with provisions of Rule 8(1)(b) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, a copy of complaint in Form I was forwarded to the Respondent firm vide Directorate's letter dated 25th March 2021 asking them to disclose the name(s) of member(s) answerable who was/were answerable to the instant complaint and to send a declaration form signed by the said member(s). The Respondent firm has made **CA. Shivlal Dhoot (M. No. 126047)** (hereinafter referred to as the '**Respondent**') as member answerable to the instant Complaint instead of CA. Arvind Soni.
 - c. Further, when specifically asked by the Directorate the reason for not making CA. Arvind Soni as member answerable, the Respondent submitted that, since a separate case is already filed against CA Arvind Soni for his personal dispute with the Complainant, hence, he being the Head Office In- charge of the Respondent firm, had made himself member answerable in the instant matter.
2. The Committee further noted that the Complainant had alleged that the Respondent firm had committed professional misconduct by signing financial statements/Audit Report of the Company, i.e. M/s Pranjal Retail (India) Pvt. Ltd., in which Respondent firm's partner CA Arvind Soni is one of the Promoters, Directors and Shareholders. It is also alleged that CA. Arvind Soni has been doing various businesses but is not doing any practice and has just lent his name to the Respondent firm. It is further alleged that he proved himself guilty for various offences including contempt of court order (sub

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judice now) and also done criminal offenses and a FIR dated 24-01-2021 (as per Prima Facie Opinion) has been filed against him for grave offense and his anticipatory bail has been rejected by the Court dated 08/02/2021 (as mentioned in Prima Facie Opinion). The Committee noted that a separate complaint in this regard has already been filed against CA. Arvind Soni vide file no. PR/147/2020/DD-156/2020 which is pending with separate disciplinary bench.

CHARGES IN BRIEF: -

3. The Committee noted that the charge against the Respondent Firm is that the Respondent has signed the financial statements/Audit report of the Company even though one of the partners of the Respondent firm (CA. Arvind Soni) was director, promoter and shareholder in the Company. Hence, there was a violation of section 226 of the Companies Act, 1956.
4. The Committee was informed that the Respondent in his reply at the stage of PFO had, inter-alia, mentioned as under:
 - i. The Complaint has been made to harass other partners and to malign the reputation of the firm.
 - ii. That, a similar complaint has already been filed against CA Arvind Soni.
 - iii. That there are no documents to establish that his partner is involved in other business.
 - iv. That there is no locus of the Complainant in the Company.
 - v. His partner is not a director in the Company.
5. The Director (Discipline) had, in his Prima Facie Opinion dated 8th December 2022, noticed that the Respondent firm had accepted the audit of the Company and the Respondent had audited and signed the financials for the F.Y. 2011-12 of the Company, despite the fact that another partner of the Respondent firm i.e. CA Arvind Soni was the Director as well as a substantial shareholder in the Company during that period, i.e. 2011-12. Hence the Respondent not only failed to exercise due diligence but also had violated the

provision of Section 226 of the Companies Act, 1956, the Code of Ethics — 2009, Guidance Note on “Independence of Auditor” and Item (4) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

6. 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 Items (4) & (7) of Part I 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:

Item (4) of Part I of Second Schedule:

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

(4) expresses his opinion on financial statements of any business or enterprise in which he, his firm or a partner in his firm has a substantial interest.”

Item (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.”

Item (1) of Part II of 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.”

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.	11.07.2023	Part- Heard and Adjourned.
3.	24.07.2023	Concluded. Judgement Reserved.
4.	25.08.2023	Final decision taken on the case.

8. On the day of the first hearing, held on 20th April 2023, the Committee noted that the Respondent vide email dated 17th April 2023 had sought an adjournment on grounds of collecting papers/documents in the case. The Committee noted that the Complainant along with his Counsel Mr. Dhiren Dave, Advocate was present through Video Conferencing Mode. The Complainant was administered on Oath. Thereafter, looking into the fact that this was the first hearing and the request of the Respondent, 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 11th July, 2023, the Committee noted that the Respondent was present through video conferencing mode. The Committee noted that the Complainant Counsel, Mr. Dhiren Dave, Advocate was also present through video conferencing mode. 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. The Committee looking into grounds of natural justice decided to give one more opportunity to the Complainant to present his representations, if any. Thereafter, the Committee decided to adjourn the hearing 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 24th July, 2023, the Committee noted that the Respondent along with his counsel CA Deepak Shah in person was present and appeared before it. The Committee further noted that the Complainant along with her counsel, Mrs Pinal K. Shukla was present through Video Conferencing Mode.

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

- i. That they agree with the decision made in Prima Facie Opinion.
- ii. That CA. Arvind Soni, partner of the Respondent, has removed the Complainant illegally from directorship of another Company, namely M/s Balaji Embroidery for which he has filed a case with NCLT which is pending.

10.2 When the Respondent was asked to make his submissions, he/ his Counsel inter-alia, submitted as under:

- i. That the present complaint is filed in 2021. However, there is no embargo in 2011 when the audit was accepted.
- ii. That he does not have any record for the said period.
- iii. That as per Rule 12 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, if a complaint is filed after 7 years and due to which the Respondent is unable to defend himself the Director (Discipline) may refuse to entertain a complaint or information.

- 13-03-2018
- iv. That the Complainant has no locus standi to file the complaint.
 - v. That the Complainant has also filed the case against ICAI before Gujarat High Court stating that ICAI is not doing anything.
 - vi. That CA. Arvind Soni has already given his resignation and gave his consent that he (the Respondent) can do the audit of the Company.
 - vii. That the aforesaid documents are not with him at the present due to time lag.
 - viii. That as per his knowledge, Mrs. Kusum Soni and Mr. Sushil Maheshwari are the only two directors in the Company.
 - ix. That there is no bar on CA to become Director and shareholder in the Company. Further when the firm was appointed as auditor of the said Company, CA. Arvind Soni has resigned and his shareholding was also transferred.
 - x. That the Company delayed in filing Form 32 for the resignation of CA. Arvind Soni.

10.3 The Committee posed certain questions to both the Complainant and the Respondent to understand the issue involved and the role of the Respondent in the case. On consideration of the same, the Committee gave directions to the Complainant to submit the reason(s) for disciplinary action taken against Shri Dhiren R. Dave (Complainant's Counsel) by the Institute of Company Secretaries of India within next 10 days.

The Respondent was also directed to submit the copy of the resignation letter of CA. Arvind Soni given by him to the Company and any other relevant papers, such as minutes, board resolutions, etc. to establish that CA. Arvind Soni had resigned prior to the date mentioned in Form 32 within next 10 days.

10.4 Thereafter, the Committee, looking into the Respondent's submissions against the charges levelled, recorded his plea and accordingly concluded the hearing by reserving its judgement.

11. Thereafter, this matter was placed in hearing held on 25th August 2023 wherein the same members, who heard the case earlier, were present for consideration of the facts and arriving at a decision by the Committee. The Committee noted pursuant to its direction given in the meeting held on 24th July, 2023, the Respondent has failed to submit the required documents on the grounds that the documents pertain to FY 2011-12 i.e. more than 10 years old due to which they are unable to provide the same and requested to consider the matter under Rule 12 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

11.1 The Committee noted that the Complainant had submitted the required documents. On perusal of the same, the Committee noted that the reason for disciplinary action by ICSI against CS Dhiren Dave relates to

- Mismatch in the date of the Board report vis-à-vis mentioned in Form 23AC relating to FY 2008-09.
- Certain shares were issued through private placement during 2008-09 which were not mentioned in 23AC certified by the Respondent.

The Committee noted that the ICSI, accordingly, vide order dated 21st December 2022, reprimanded him with a fine Rs. 10,000/-. However, CS Dhiren Dave had filed appeal against the same.

11.2 Accordingly, keeping in view the facts and circumstances of the case, the material on record and the submissions of the parties, the Committee passed its judgement.

FINDINGS OF THE COMMITTEE:-

12 The Committee noted that the Respondent in written submissions dated 6th March, 2023 had, inter-alia, mentioned as under:

- i. That the Complainant has not yet disclosed his relationship with the Company despite being asked multiple times.

- ii. That as per his knowledge, the Complainant is not concerned with the Company in any manner so the motive behind the complaint after more than 8 years is yet to be disclosed.
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- x. That proof of resignation and transfer of shares of CA. Arvind Soni were taken from the Company and was also kept in record till the retention period of the working papers.

xi. That after having knowledge of the above delay in compliances by the weak administrative staff of the Company, the firm has decided to discontinue their audit services with the Company, despite being reappointed by the Company as their statutory auditors for the next financial year 2012-13.

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21 The Committee observed that section 226(3)(c) of the Companies Act, 1956 in this regard states as under:

226. QUALIFICATIONS AND DISQUALIFICATIONS OF AUDITORS

(3) None of the following persons shall be qualified for appointment as auditor of a company –

(c) a person who is a partner, or who is in the employment, of an officer or employee of the company;

Further, Section 2(30) defines "Officer" as below:

"officer" includes any director, manager or secretary or any person in accordance with whose directions or instructions the Board of directors or any one or more of the directors is or are accustomed to act"

22 On perusal of above provisions, the Committee noted that a person who is partner of an officer (which includes director) of the Company is disqualified to be appointed as auditor of the Company. However in the extant case the Respondent firm has accepted the audit assignment of the Company despite the fact that CA. Arvind Soni was the director of the Company and even holding the position on the date of signing of financial statement.

23 The Committee further observed that Code of Ethics - 2009 states as under:-

280.1 *A professional accountant in public practice should consider when providing any professional service whether there are threats to compliance with the fundamental principle of objectivity resulting from having interests in, or relationships with, a client or directors, officers or employees. For example, a familiarity threat to objectivity may be created from a personal or*

business relationship.

280.2 A professional accountant in public practice who provides an assurance service is required to be independent of the assurance client. Independence of mind and in appearance is necessary to enable the professional accountant in public practice to express a conclusion, and be seen to express a conclusion, without bias, conflict of interest or undue influence of others.”

290.8 Independence* requires:

Independence of Mind

The state of mind that permits the expression of a conclusion without being affected by influences that compromise professional judgment, allowing an individual to act with integrity, and exercise objectivity and professional skepticism.

Independence in Appearance

The avoidance of facts and circumstances that are so significant that a reasonable and informed third party, having knowledge of all relevant information, including safeguards applied, would reasonably conclude a firm’s, or a member of the assurance team’s, integrity, objectivity or professional skepticism had been compromised.”

Further, the Guidance Note on “Independence of Auditor” towards this term “Independence” in its para 3.3 has specifically recognized Section 226 of the Companies Act, 1956 as discussed above as below:

“In order to ensure independence, the law has made certain provisions which either prohibit the appointment of a person as auditor in certain circumstances or place certain restrictions on his appointment as auditor or put third parties on guard against the possibility of an abridgement of independence by requiring certain disclosures to be made.”

24

In the light of above provisions of Code of Ethics – 2009 and Guidance Note, in the extant case since the partner of the Director of the Company i.e. the

Respondent had performed the audit and signed its audit report. The independence of the Respondent while performing its audit is clearly threatened.

- 25 Hence, it is apparent that the Respondent firm, by accepting the appointment as statutory auditor of the Company and the Respondent as signing partner by expressing his opinion on the financials of the company and signing an audit report thereon for the period (2011-12) during which the other partner of the Respondent firm had been holding the position as director and also holding 50% shares of the Company, has violated the provision of Section 226 of the Companies Act, 1956, the Code of Ethics – 2009, Guidance Note on 'Independence of Auditor'.

CONCLUSION

- 26 In view of the above observations, considering the submissions of the Respondent and documents on record, the Committee held the Respondent **GUILTY** of Professional Misconduct falling within the meaning of Item (4) and (7) Part – I 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, I.A.S, 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 /
Certified to be true copy

नीलम पुंडीर / Neelam Pundir
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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