



# भारतीय सनदी लेखाकार संस्थान

(संसदीय अधिनियम द्वारा स्थापित)

## THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

### DISCIPLINARY COMMITTEE [BENCH-V (2024-2025)]

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

### ORDER UNDER SECTION 21B(3) OF THE CHARTERED ACCOUNTANTS ACT, 1949 READ WITH RULE 19(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATIONS OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007

PPR/HPC/DD/79/INF/18-DC/898/2018

#### In the matter of:

M/s S. V. Ghatalia & Associates, LLP (FRN: 103162W/E300006) formerly known as M/s S. V. Ghatalia & Associates (FRN: 103162W) in Re: **...Respondent 1**

#### **CA. Tridibes Basu (M. No.017401)**

A 304, The Crest Park Drive,

DLF5, Sector 54

**GURGAON-122011**

#### MEMBERS PRESENT:

**Smt. Anita Kapur, Presiding Officer (Government Nominee) (Present through Video Conferencing Mode)**

**CA. Piyush S. Chhajed, Member (Present in person)**

**CA. Gyan Chandra Misra, Member (Present in Person)**

**Date of Final Hearing: 2<sup>nd</sup> April 2024**

**Date of Order : 25<sup>th</sup> April 2024**

1. That vide findings under Rule 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 dated 22<sup>nd</sup> January 2024, the Disciplinary Committee was, inter-alia, of the opinion that **CA. Tridibes Basu (M. No.017401)** (hereinafter referred to as the "**Respondent**", who was identified as 'member answerable' by **Respondent No. 1**) was **GUILTY** of Professional Misconduct falling within the meaning of Items (2), (5) and (7) of Part-I of First Schedule and Item (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

2. That pursuant to the said findings, an action under Section 21B(3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and a communication was addressed to him thereby granting an opportunity of being heard in person/through video conferencing and to make representation before the Committee on 2<sup>nd</sup> April 2024.

3. The Committee noted that on the date of hearing held on 2<sup>nd</sup> April 2024, the Respondent was present through Video Conferencing Mode and made his verbal submissions on the findings of the Disciplinary Committee. The Committee also noted that the Respondent apart from reiterating his earlier submissions during the course of hearing, relied on his written representation dated 26<sup>th</sup> March 2024, wherein, he had, inter-alia, submitted as under:



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- a) The Respondent approached the Hon'ble High Court of Delhi vide Writ Petition [WP(C) 11665/ 2023] and stated that in similar matter bearing WP(C) 10998/ 2023, the Hon'ble Court has granted interim protection. Since, the Writ Petition is currently pending adjudication before Hon'ble High Court, the Respondent requested to defer the proceedings till such time the Writ Petition is pending.
- b) Findings are, inter alia, erroneous and suffer from the violation of principles of natural justice as having been issued in the absence of (i) access to relevant and relied upon documents. (ii) opportunity to cross examine witnesses, and (iii) opportunity to inspect the ICAI's records pertaining to present matters.
- c) In the absence of any specific information or complaint within the ambit of the Chartered Accountants Act, 1949 and the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 (pertaining to the subject matter of the present matters), it is unclear as to how the Sukumar Judgment and/or the MNAF Report could form the basis of the present matters.
- d) The findings of the Committee of Experts ("COE") Report is in favor of the Respondent and MNAFs in general ought to have been dealt with by the Hon'ble DC in its Findings.
- e) The composition of the Hon'ble DC for the purposes of issuance of order under Section 21(B)(3) of the Chartered Accountants Act, 1949 ought to remain the same as at the time of issuance of the findings.
- f) The Section 21C of the Chartered Accountants Act, 1949 does not empower the Hon'ble DC to ask for additional documents from the Respondent at a belated stage in the matter and the Hon'ble DC is required to follow the procedure as is specified under the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 as per Section 21B (2) of the Chartered Accountants Act, 1949.
- g) The present matters have been carried out in an arbitrary manner and in violation of the procedure prescribed under the Chartered Accountants Act, 1949 and the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 as well as principles of natural justice.
- h) Regarding the Item (7) of Part I of the First Schedule, the Hon'ble DC has incorrectly interpreted the usage of email IDs to be covered with the items which are prohibited under CESURA recommendations or the Chartered Accountants Act, 1949, despite the fact the domain name has not been mentioned as prohibited item therein. Furthermore, disclosing affiliations with international entities on professional stationery is permissible and does not constitute advertising prohibited under the Chartered Accountants Act, 1949. Furthermore, the Respondent firm had updated its email addresses and office locations well before the Prima Facie Opinion was issued, showcasing a proactive commitment to cooperate and adhere to ICAI regulations.
- i) Regarding the Item (5) of Part I of the First Schedule, it is stated that EYG operates as a non-profit organization and transactions under the Information on Services Arrangement for EMEIA are conducted strictly on a cost basis. The objective of the arrangement with EYG is to achieve excellence in audit service delivery by aligning with international standards and adopting global best practices. This arrangement ensures full compliance with local laws. The arrangement is focused on enhancing client service capabilities, quality standards, and operational efficiency, which are in no way prohibited under the applicable law including the Chartered Accountants Act, Chartered Accountants Regulations and the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct



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of Cases) Rules, 2007 etc. The suggestion that the concerned firms might have withheld information is unfounded, considering that all relevant documentation had been duly and timely submitted.

- j) Regarding the Item (2) of Part I of the First Schedule, it is stated that merely because certain remittances have been made to an international entity, does not mean that such remittances were made for any marketing, publicity or advertising of products or services in India or outside India.
- k) Regarding the Item (1) of Part II of the Second Schedule, it is stated that reliance was placed on certain selective clauses of the arrangement/agreement to incorrectly allege control by EYG or Ernst & Young Private Limited over the concerned firms. Additionally, there has been no evidence provided to substantiate any loss of professional autonomy by the concerned firms or any consideration received in exchange for such autonomy. The expertise and opinions offered by the COE warrant due consideration and cannot be dismissed by the Hon'ble Disciplinary Committee.
- l) The Appellate Authority under Section 22A of the Chartered Accountants Act, 1949 is currently not functional and, as result the Respondent does not have the ability to pursue the statutory right of appeal provided in the Chartered Accountants Act, 1949. It is therefore prayed that these proceedings be adjourned till the Appellate Authority is functional.
- m) The proceedings pursuant to which the sanctions that are passed are in continuation of the proceedings and therefore the right to legal counsel at the hearings should also continue.
- n) The Respondent highlighted his long and distinguished career and also his contributions to the profession and involvement in various committees, arguing that his track record should be considered in mitigating any sanctions.

4. The Committee, with respect to objections raised by the Respondent, considered the reasoning as contained in the findings holding the Respondent Guilty of professional misconduct vis-à-vis written and verbal representation of the Respondent made before it. As regards other submissions of the Respondent, the Committee held that due consideration to the submissions and documents on record had been given by the Committee before arriving at its Findings and that no fresh ground can be adduced at this stage.

5. Further, the Committee observed that at the hearing stage a proper opportunity was provided to the Respondent to defend his case and the submissions were heard at length. Further it arrived at the finding after evaluating all the evidence produced before it and after adhering to the due procedure as enshrined in the Chartered Accountants Act, 1949 and the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

6. As regards plea of the Respondent that composition of Disciplinary Committee has been changed, the Committee noted that the Honorable Appellate Authority, in Appeal no. OS/ICAI/2020 in the matter of Devki Nandan Gupta –vs- ICAI and others, in para 8 of its Order dated 14th June 2021 had observed as under:

*“We find no substance in the appellant’s plea that due to change in the composition of DC who had passed the order dated 08.02.2018 the new DC with changed members could not have passed the final order dated 07.11.2019.....”*



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*We are of the view that no prejudice whatsoever was caused to the appellant due to change in the composition of the DC who had held him guilty of 'professional misconduct' under Clause 7 of Part – I of the Second Schedule and the one who had finally awarded punishment vide order dated 07.11.2019. In fact, the changed DC was not expected or required to hear arguments afresh on merits to find if the appellant was guilty of 'professional misconduct'. The said findings had already been recorded by the previous DC in its order dated 08.02.2019 and attained finality qua the changed DC. The changed DC was required only to hear the appellant on the quantum of punishment/penalty and for that, the appellant was afforded reasonable opportunity of being heard."*

The Committee, hence, viewed that due procedure was followed with respect to its constitution and change of composition does not impair the right of the Respondent and further proper opportunity was given to him to make his submissions before it. Accordingly, the Committee is of the view that there is no merit in the contention of the Respondent.

7. As regards the plea of the Respondent that the Appellate Authority is presently not functional, the Committee viewed that it cannot withhold its further proceedings as provided under the Chartered Accountant Act and Rules framed thereunder when various other legal recourses are available with the Respondent.

8. As regards the plea of the Respondent for representation through legal representative the Committee noted that the Respondent had not produced any valid ground in support of his claim. Further, Section 21B(3) of the Chartered Accountants Act, 1949 read with Rule 19(1) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 provides for the Committee to give an opportunity of hearing to the Respondent and that there is no provision in the said Rules that your appearance could be done with appearance of any authorized representative as available in the hearing stage under Rule 18(6) of the said Rules. Accordingly, the Committee decided not to accept the plea of the Respondent regarding representation through legal representative at this stage.

9. Keeping in view the facts and circumstances of the case, material on record, including verbal and written representations on the findings, the Committee is of the view that joining the international entity and agreeing to its contents, which as extracted in its findings, provided for referral work and payment of fee for such referral, constituted Professional Misconduct. Further, in the absence of concrete evidence produced regarding the nature of fees paid, the Committee took adverse inference against the Respondent / Respondent firm. Accordingly, it was viewed that by entering into such an arrangement(s)/ agreement(s) the Respondent firm had indeed secured professional work through means which were prohibited under the Chartered Accountants Act, 1949 and its act had constituted Professional Misconduct in terms of Item (2) and (5) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

10. Further, the Committee is of the view that visiting cards contains information which signify virtual address relating to Ernst & Young (international entity) and further email id used by the Respondent Firm depicted its close association and/ or linkage with the international entity. The Respondent firm/ Respondent have failed to point out as to how they were able to maintain their



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independence when the domain that was being used belonged to the third party i.e. multinational entity. Hence, the Committee viewed that that said practice was adopted by the Respondent firm to reap benefits of affiliation with EYG for influencing the prospective clients/public at large, which was a Professional Misconduct in terms of Item (7) of Part I of First Schedule to the Chartered Accountants Act, 1949.

11. In addition, it is already dealt with in detail in its findings that there was apparent sharing of human resources, infrastructure, brand name and contact details which signifies that in substance E&Y was controlling the Respondent firm. Further, the Respondent failed to give a satisfactory response on the observation that he besides being the partner in the Respondent firm was also holding the position of Director of Ernst & Young Pvt. Ltd. during the period 2005 to 2011. Hence, the conduct of the Respondent Firm was falling within the ambit of parameters defined in the Judgment of Hon'ble Supreme Court in the matter of S. Sukumar -vs- ICAI. Accordingly, it was a Professional Misconduct within the meaning of Item (1) of Part II of Second Schedule read with Section 25 and Section 29 of the Chartered Accountants Act, 1949.

12. Hence the professional misconduct on the part of the Respondent is clearly established as spelt out in the Committee's Findings dated 22<sup>nd</sup> January 2024 which is to be read in conjunction with the instant Order being passed in the case.

13. Accordingly, the Committee was of the view that ends of justice will be met if appropriate punishment commensurate with his professional misconduct is given to him.

14. Upon consideration of the facts and circumstances of the case and after due deliberations on the Report, the Committee ordered that the name of the Respondent i.e. **CA. Tridibes Basu, (M. No.017401)** be removed from Register of Members for a period of 03 (three) years, and a fine of Rs.5,00,000/- (Rupees Five Lakhs only) be imposed upon him, to be paid within 90 days of the receipt of the order. In case of failure in payment of fine as stipulated, the name of the Respondent be removed for a further period of 01 (one) year from the Register of Members.

15. The Committee further directed that the Respondent and the Respondent Firm shall immediately stop existing arrangements with the Multinational entities, as the same is circumventing the provisions of the Chartered Accountants Act 1949. The Hon'ble Supreme Court in the matter of S. Sukumar vs The Secretary, ICAI also found that the CA firms were trying to bypass the provisions of Section 25 and Section 29 of the Chartered Accountants Act 1949. The same is dealt with in detail in the findings of the Committee issued in the instant matters. The Committee further directed that a compliance report regarding adherence to the above directions be submitted by the Respondent and the Respondent Firm(s) within 90 days of receipt of the order.

Sd/-

(SMT. ANITA KAPUR)  
PRESIDING OFFICER

Sd/-

(CA. PIYUSH S CHHAJED)  
MEMBER

Sd/-

(CA. GYAN CHANDRA MISRA)  
MEMBER

Place : New Delhi

Date: 25<sup>th</sup> April, 2024