



भारतीय सनदी लेखाकार संस्थान
(संसदीय अधिनियम द्वारा स्थापित)

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

PR/112/16/DD/152/2016/DC/1312/2020

[DISCIPLINARY COMMITTEE [BENCH-II (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**

[PR/112/16/DD/152/2016/DC/1312/2020]

In the matter of:

Shri Susheel Kumar Puri
Flat No. 143C, Kalapataru Gardens
Ashok Nagar, Kandivali (East)
Mumbai - 400 101.

.... Complainant

Versus

CA. Akash Gajanan Jadhav (M. No.135319)
Partner, M/s V J Shah & Co (FRN No. 109823W)
Chartered Accountants,
FB-125, 1st Floor,
High Street Cum Highland Corporate Centre,
Kapurbawadi Junction,
Thane – 400 607.

....Respondent

Members Present:-

Mrs. Rani S. Nair, IRS (Retd.), (Government Nominee), Presiding Officer (through VC)
Shri Arun Kumar, IAS (Retd.), (Government Nominee) (in person)
CA. Sanjay Kumar Agarwal, Member (in person)
CA. Cotha S Srinivas, Member (in person)

Date of Hearing: 19th March, 2024

Date of Order: 7th May, 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, the Disciplinary Committee was, inter-alia, of the opinion that **CA. Akash Gajanan Jadhav (M. No.135319)** (hereinafter referred to as the '**Respondent**') is **GUILTY** of Professional Misconduct falling within the meaning of Item (7) of Part I 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 (Amendment) Act, 2006 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 19th March 2024.

3. The Committee noted that on the date of the hearing held on 19th March 2024, the Respondent was present through video conferencing and made his verbal representation on the Findings of the Disciplinary Committee, inter-alia, requesting not to classify his act as gross negligence. The Committee also noted that the Respondent in his written representation on the Findings of the Committee, inter-alia, stated as under:

Shri Susheel Kumar Puri -vs- CA. Akash Gajanan Jadhav (M.No.135319)



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- (a) As a Chartered Accountant, he affirmed only the solvency and the financial statements and referred to them as true and fair. The duty to verify accuracy of persons verifying the Form is not cast on the auditors.
- (b) The LLP can submit Form 4 at any time after paying the necessary ROC fees.
- (c) He had already submitted the consent of incoming partner to become a partner and other relevant documents by his letter dated 04th December 2023.
- (d) The Respondent had not received any letter/ notice from ROC till today on the withdrawal of his Audit Report. There are no ongoing proceedings against him under Service Tax.
- (e) The LLP has discharged its liability towards Service tax.
- (f) He requested the Disciplinary Committee not to classify his act as gross negligence under the provision of the CA Act, 1949.
- (g) Neither he nor his wife has control or significant influence over the LLP.

4. The Committee 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. The Committee also held that due consideration to the submissions and documents on record had been given by the Committee before arriving at its Findings.

5. Keeping in view the facts and circumstances of the case, material on record including verbal and written representations on the Findings, the Committee was of the view that Respondent's duty was limited to certification of Form 8 based on the verification of relevant record / documents. However, the Respondent did not appear to have taken sufficient steps to check as to who were the partners of the LLP at the time of certification of Form 8. Thus, the Respondent did not exercise due diligence while certifying Form '8'. Further, the Respondent not only failed to qualify his audit report for non-payment of Service Tax by the LLP but also failed to report the transaction relating to payment of professional fees to his wife in his audit report. Hence, professional misconduct on the part of the Respondent is clearly established as spelt out in the Committee's Findings dated 7th February 2024 which is to be read in consonance with the instant Order being passed in the case.

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

7. Thus, the Committee ordered that CA. Akash Gajanan Jadhav (M.No.135319), Mumbai be reprimanded and also a Fine of Rs. 25,000/- (Rupees Twenty-Five thousand only) be imposed upon him payable within a period of 60 days from the date of receipt of the Order.

sd/-
(MRS. RANI S. NAIR, IRS RETD.)
GOVERNMENT NOMINEE CUM PRESIDING OFFICER

sd/-
(SHRI ARUN KUMAR, IAS RETD.)
GOVERNMENT NOMINEE

sd/-
(CA. SANJAY KUMAR AGARWAL)
MEMBER

sd/-
(CA. COTHA S SRINIVAS)
MEMBER

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/112/16/DD/152/2016/DC/1312/2020

In the matter of:

Shri Susheel Kumar Puri

Flat No. 143C, Kalapataru Gardens

Ashok Nagar, Kandivali (East)

Mumbai - 400 101

.... Complainant

Versus

CA. Akash Gajanan Jadhav (M. No.135319)

Partner, M/s V J Shah & Co (FRN No. 109823W)

Chartered Accountants,

FB-125, 1st Floor,

High Street Cum Highland Corporate Centre,

Kapurbawadi Junction,

Thane – 400 607

.....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: 13.12.2023 (through physical/video conferencing mode)

PARTIES PRESENT

Complainant: Shri Susheel Kumar Puri (Through Video Conferencing Mode)

Counsel for the Complainant : Shri U.A. Patel, Advocate (Through Video Conferencing Mode)

Respondent : CA. Akash Gajanan Jadhav (Through Video Conferencing Mode)

BACKGROUND OF THE CASE:

1. The brief background of the case is that the Respondent was the auditor of M/s. Biscoot Records LLP (Earlier known as M/s. Bombay Track LLP) (hereinafter referred to as the “LLP”) and the Complainant is a partner in the LLP. According to the Respondent, he signed financial statements for financial year 2013-14 and 2014-15 of the said LLP.

CHARGES IN BRIEF: -

2. The Committee noted that the charges against the Respondent were as under:-

Sl. No.	Charge	View of Director (Discipline)
i).	The Respondent was hiding and not giving the Complainant the account statements of the LLP since its inception.	Held Not Guilty
ii).	That the Respondent had illegally expelled the Complainant as a partner without resignation and added Mr. Virendra Shah as partner in the balance sheet of financial year 2014-15.	Held Guilty
iii).	That the Respondent had stood as witness in forged document i.e. opening Bank account at ICICI Bank by submitting Deed of Reconstitution dated 21 st December 2012.	Held Not Guilty*
iv).	That the Respondent failed to find factual errors and wrong entries in the balance sheet and helped in subverting service tax and TDS payments by LLP thus causing a huge loss to the revenue.	Held Not Guilty*
v).	That the Respondent was involved in money laundering and he was receiving illegal gratification.	Held Not Guilty*

(* However, while considering the Prima-facie of Director (Discipline), the Disciplinary Committee held the Respondent guilty of these charges also.)

3. The Committee noted that the Respondent in his reply at the stage of PFO had, inter-alia, mentioned as under:
- i. That the Complainant had dispute with other partners of LLP for their certain acts of commission and omission including forgery as mentioned in the complaint.
 - ii. That the Complainant had founded his complaint on the basis of papers received by him from ICICI Bank which are forged as stated in the complaint.
 - iii. That there is not even a shred or iota of evidence against the Respondent with the said alleged acts of other partners of LLP or linking the Respondent with the papers submitted by them (partners) for opening of account in ICICI bank.
 - iv. That in the capacity of auditors of LLP, his responsibility was limited to express the opinion on the financial statements based on his audit.
 - v. That he as an auditor was not in a position to expel anyone from an LLP. It was a decision of the partners amongst themselves to reconstitute the LLP. That an auditor had no say in the internal affairs of the LLP, and cannot be held accountable for acts of a partner which causes detriment to other partners.
 - vi. By virtue of Deed of Reconstitution dated 13th November 2014, the Complainant retired from the LLP. During the course of audit, the said deed had been produced before him. He accepted the same in good faith and was not aware of any dispute amongst the partners at that time. Further, he has no reason to believe that there was anything suspicious or amiss with the deed.
 - vii. The Complainant had not produced any concrete evidence to substantiate that the deed was not genuine.
 - viii. That it appears that the mismatch in dates of resignation of Mr. Hyder was a mere typographical error in drafting the deed having no significant impact.
 - ix. That after receiving the letter from the Complainant's advocate, he had written to the LLP on 21st April, 2016, requesting them to provide clarifications regarding the contents of the said letter.

- x. That he also warned the LLP that if satisfactory clarification is not received, he would withdraw his report.
 - xi. That on 9th June 2016, he withdrew his audit report since he did not receive any clarification from the LLP.
 - xii. That it is not a duty of auditor to update the master data/record on the ROC website. Therefore, the Complainant cannot allege that the Respondent, as auditor had not informed about the change to the ROC.
 - xiii. That as auditors of LLP, he had carried out audit in professional manner and expressed the opinion accordingly. Subsequently, when it came to light that there were some possible misstatements in the financial statements, he took requisite action and accordingly, withdrew his audit report. He also directed the LLP to ensure no one relies on his audit report.
 - xiv. That the allegation seems to be made as an afterthought and out of malafide intentions.
4. The Director (Discipline), in his Prima Facie Opinion dated 25th November 2019, regarding the second allegation mentioned in Para 2 (ii) above, observed that the Complainant had submitted the copy of Form 8, a statement of account & solvency, for financial year ending on 31st March 2015. This form was digitally signed by the Complainant as a partner, and it was also signed by the Respondent on 02nd December 2015. According to the Complainant, when he was not partner in the LLP then why has the Respondent signed this form. In this regard, it is observed that audit report was signed on 4th September 2015, whereas form 8 was signed on 2nd December 2015. Hence, digital signature by the Respondent proves that he was grossly negligent in certifying form 8.
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, with respect to second allegation mentioned in paragraph 2 above, held the Respondent Prima-facie

Guilty of Professional Misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

6. However, the Committee at the time of consideration of Prima Facie Opinion in the above matter observed that the allegations no. 3, 4 & 5 as mentioned in paragraph 2 (iii), (iv) & (v) above had been dropped by the Director (Discipline) due to lack of corroborated documents at the end of the Complainant. In respect of these charges, the Committee was of the view that these charges would be investigated in details at the time of hearing with the available documents with the Complainant and the Respondent. Accordingly, the Committee held the Respondent **Guilty** of Professional Misconduct for these allegations also falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949. The said clause in the Second Schedule to the Act states as under:-

Clause (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.”

SUBMISSION OF THE RESPONDENT ON PRIMA FACIE OPINION:-

7. The Respondent in his written submissions dated 11th August, 2020 had, inter-alia, submitted as under:-
- a. That the Complainant had filed a FIR at Kurar Police Station, Mumbai on 26th May 2016 against Mrs. Chandra V Shah, Mr. Virendra Shah, Mr. Hilmen Mehta and the Respondent accusing all of forgery and cheating in relation to his retirement from the LLP.
 - b. On 30th October 2018, Mr. Ravindra Ranshevare, Sr. Inspector, Samta Nagar Police Station, Mumbai had submitted a 55 page “C” Summary Report. In the detailed investigation, (in which as many as 20 witnesses and related parties were examined and their statements were recorded);

Sr. Inspector had given the clean chit to the Respondent and all other accused.

- c. That the Complainant had also filed writ petition in the High Court of Judicature at Bombay, Criminal Appellate Jurisdiction to transfer the case out from Kurar police station to another police station. Simultaneously, other partners of M/s. Biscoot Records LLP had filed a Criminal Application (774 of 2016) for quashing the FIR. In a combined Order for both these petitions the Bombay High Court took cognizance of the handwriting expert's negative report (i.e., absence of forgery) and disposed both the petitions.
- d. That the Complainant is currently booked by the Police under Section 384, 385, 406, 408 read with 34 of the Indian Penal Code, 1860 (mainly for extortion and criminal breach of trust in relation to group Company of M/s. Biscoot Records LLP, Short formats Digital Works Pvt Ltd). The matter is sub-judice and pending before Hon'ble Chief Metropolitan Magistrate, Esplanade Court, Mumbai.
- e. It can be observed that duty to verify the accuracy of persons verifying the Form 8 is not cast on the auditors.
- f. The entire charge framed against the Respondent for having been grossly negligent in carrying out the necessary verification in Form 8, is entirely misplaced and not based on the verification signed by him.
- g. The Complainant cannot claim that the deed of reconstitution was forged, since he was party to handing over this document and affirming its genuineness to a bank officer.
- h. That the Complainant should be put to strict proof to produce any other document which evidences his having 25 % share in the LLP.
- i. It is primary responsibility of the partners of the LLP to comply with all the laws and regulations. In case of any issue where the partners need clarity on the legal position, they should obtain proper legal advice and act accordingly.
- j. That provisions relating to NOCLAR (Non-compliance with other Laws and regulations) are still under implementation and not applicable to members

in practice as per Council decision given in 393rd meeting 30 June to 1st July 2020.

- k. That payment to vendors was investigated by the Police and they concluded that no money laundering was involved in the same.
- l. That Mrs. Smita Jadhav is a professional accountant who has already passed CA-Inter examination conducted by the ICAI before rendering these services. She has extensive experience in field of tax compliances and accounting.
- m. That Mrs. Smita Jadhav had provided services of filing TDS returns for the LLP. Filing of TDS returns in professional capacity does not affect Independence of the auditor. The professional fee charged by Mrs. Smita Jadhav, amounting to Rs. 25,000/-, was not exorbitant and was commensurate with the services provided by her.

BRIEF FACTS OF THE PROCEEDINGS:-

8. The Committee noted that the instant case was fixed for hearing on following dates:

S.No.	Date	Status of Hearing
1.	09.09.2020	Adjourned at the request of the Respondent.
2.	18.10.2021	Part-Heard and Adjourned in absence of Complainant.
3.	06.04.2023	Part-Heard and Adjourned.
4.	23.06.2023	Part-Heard and Adjourned.
5.	28.07.2023	Part-Heard and Adjourned.
6.	23.08.2023	Part-Heard and Adjourned.
7.	13.09.2023	Part-Heard and Adjourned.
8.	16.10.2023	Part- Heard and Adjourned.
9.	13.12.2023	Heard and concluded.

9. The Committee noted that the first hearing fixed in the above matter on 9th September, 2020 was adjourned at the request of the Respondent.
10. On the day of the second hearing held on 18th October 2021, the Committee noted that the Respondent, along with his Counsel Mr. Devendra H Jain, Advocate, was present from his place through Video Conferencing Mode. The Committee noted that the Complainant was not present despite due delivery of notice to him. 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 the absence of Complainant and the fact that this was the first hearing before the present bench, decided to adjourn the hearing to a future date. With this, the hearing in the matter was partly heard and adjourned.
11. On the day of third hearing held on 6th April 2023, the Committee noted that the Complainant was present through Video Conferencing with his counsel, Mr. U.A. Patel, Advocate. The Respondent, along with his Counsel Mr. Devendra Jain, Advocate, was present from their respective places through Video Conferencing. At the outset, considering the change in the composition of the Committee since the previous hearing, the Committee enquired from the Respondent as to whether he wished to have a de-novo hearing. On the same, the Respondent opted for a de-novo hearing. The same was also not objected by the Complainant. Accordingly, the Committee started a fresh hearing in the matter. The Complainant and Respondent were administered on Oath. On being asked from the Respondent as to whether he is aware of the charges levelled against him, the Respondent replied in the affirmative and pleaded not guilty to the same. Thereafter, the Committee decided to adjourn the hearing. With this, the hearing in the matter was partly heard & adjourned.
12. On the day of fourth hearing held on 23rd June, 2023, the Committee noted that the Complainant alongwith Counsel, Mr. U.A. Patel, Advocate were present through Video Conferencing mode. The Respondent was also present

through Video Conferencing Mode. At the commencement of hearing, the Respondent sought time to file his reply to the documents filed by the Complainant which was running in more than 100 pages, Further, as per the Respondent, he has not received a copy of Complainant's submission dated 03.04.2023. Keeping in view the principle of natural justice, the Committee decided to adjourn the hearing and also directed both the parties to exchange the documents / submissions with a copy to the office. With this, the hearing in the matter was partly heard & adjourned.

- 13.** On the day of fifth hearing held on 28th July, 2023, the Committee noted that the Complainant alongwith his Counsel Mr. U.A. Patel, Advocate were present through Video Conferencing mode. The Respondent was also present through Video Conferencing Mode. Thereafter, the Complainant was asked to make his submissions to substantiate the allegation. The Complainant in his submissions had, inter-alia, mentioned as under:-
- a.** That the LLP had sent an e-mail to the service tax department on 13th November 2017 wherein the LLP had made written submission stating that the financial statements from F.Y. 2013-14 to F.Y. 2015-16 were not yet prepared, however the Respondent had submitted his audit reports and audited the accounts for the F.Y. 2013-14 and 2014-15. Accordingly, the Complainant challenged the basis issuing audit report in September 2014 and September, 2015 (for the FY 2013-14 and 2014-15 respectively) by the Respondent when the books of accounts of the LLP were not prepared.
 - b.** That the signatures of the partner on the said financials are forged. That he had filed an FIR for the same.
 - c.** That the Respondent had not given any explanation for withdrawing the report for financial year 2013-14 dated 4th September 2014.
 - d.** That he had gone to NCLT against the erstwhile partners.
 - e.** That he was not allowed to attend the office, not provided with any information and documents due to which he requested the Respondent to provide the same however, instead of providing the same, the

Respondent made dubious document showing that the Complainant had retired from LLP.

- f. That the wife of the Respondent was being appointed as a tax consultant in the LLP which is against the ethics of the profession.
- g. That the Respondent had not highlighted the service tax liability of LLP which was pending since 2012.
- h. That the books of accounts were not maintained as per applicable laws however, the Respondent had not qualified the same in his report.
- i. That he was shown as retired from the LLP however, he had not signed any resignation letter/form/documents.
- j. That his digital signature was in the possession of the Respondent.
- k. That the handwriting expert report was negative because the handwriting expert could not say that it is complainant's signature on the document.

13.1 When the Respondent was asked to make his submissions in his defence, he had, inter-alia, submitted as under:-

- a. That the in-charge of police station had given a clean chit to the Respondent in the matter while stating that there is no forgery and no fabrication of documents.
- b. That Hon'ble Bombay High Court had also quashed the petition of the Complainant on the same grounds.
- c. That there is no role of Chartered Accountant in admitting or expelling any partner. The Complainant failed to provide any documentary evidence that his signatures are forged on the said resignation letter/document; hence, the said allegation is baseless without any supporting evidence.
- d. That as per the deed of constitution dated 21st December 2012; the Complainant's shareholding in the LLP was increased to 25%. The Complainant was saying that there is no such document as the signatures on the said documents are forged, however, he had not provided any other documentary evidence to prove that how his shareholding was increased.

- e. That after 21st December 2012, another deed was constituted and as per the said deed, Mrs. Chandra Shah and Mr. V. Shah were new partners and the Complainant had resigned from this partnership firm.
- f. That the name of the Complainant was still showing as partner of LLP in the records of ROC. The responsibility of an auditor is to verify the statements and contents of Form 8. Further, the said form is again verified by Company Secretary also. Hence, the Respondent consulted the Company Secretary and also from the LLP, from where he got the information that form for retirement of the Complainant had not yet filed and therefore, the said form had to be uploaded with signatures of the Complainant.
- g. That there is no ongoing proceeding against the Respondent under service tax. Further, it is the sole responsibility of LLP to collect service tax and pay it, and not of the auditor.
- h. That the fourth allegation is that there is huge entry under utility charges and TDS had not been deducted on the same. The Respondent stated that the utility charges were paid to the Company wherein the wife of Complainant is a director and the LLP had correctly deducted the TDS and filed the return to the Government as well. Accordingly, there is no professional misconduct on his part.
- i. That for filing of tax returns, the LLP had approached his wife, Mrs. Smita Akash Jadhav. The Respondent stated that his wife has completed CA final and is running her own advisory firm. His wife filed tax returns and charged a fee of Rs.25000/- as professional fee. As per the Respondent, TDS was properly deducted and deposited with the Government.
- j. That when he had received the notice from the Complainant's advocate, he had cross verified and asked the LLP as well whether there is any dispute among the partners. However, they had not replied, so it seemed to him that there was something messy and further, the extant complaint was filed by the Complainant, hence, he withdrew his audit report and accordingly, informed to the ROC about the same.

- 13.2** The Committee posed certain questions to both parties 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 and the Respondent to submit the following documents / information within next 10 days:-
- a. Copy of all the cases/complaints/ court cases filed and their present status,
 - b. Copy of the report of the handwriting expert from the Complainant,
 - c. Synopsis of their submissions.
- 13.3** With this, the hearing in the matter was part heard and adjourned.
- 14.** On the day of sixth hearing held on 23rd August, 2023, the Committee noted that the Complainant alongwith Counsel Mr. U.A. Patel, Advocate were present through Video Conferencing mode. The Respondent was also present through Video Conferencing Mode. The Committee noted that pursuant to its directions given in the previous hearing, the Respondent had, inter-alia, submitted as under:-
- a. That when he noticed that Form 8 is signed by the Complainant even though he had retired as a partner, he consulted the Company Secretary (who was also supposed to certify the form) and learnt that the portal would not accept the form if it is signed by any person other than the Complainant because the LLP had not uploaded the reconstitution deed to the MCA portal (maybe due to subsequent non-cooperation by the Complainant). Therefore, as per MCA's master data, the Complainant is still a partner of the LLP.
 - b. That he requested the LLP to update the details of resignation and new incoming partner as soon as possible. However, even till today, the Complainant's name is appearing in the master data of MCA portal as partner.
 - c. The Deed of Reconstitution was signed by him as a witness to Mr. Hyder Kazmi, not the Complainant. The same issue was investigated by the

Police, and they have issued a clean chit to all the accused (per their Investigation Report) by filing a Summary – C report which means that there is no criminal offence that has been committed

- d. That the Complainant has not provided any evidence to substantiate his allegations and he is misusing the disciplinary mechanism forum of ICAI for a fishing expedition.
- e. That the LLP was unable to obtain service tax number due to some pending documentation from the Complainant who failed to provide adequate documents.
- f. That responsibility to deduct TDS is on the Deductor i.e., the person making payment and not on the Deductee i.e., person receiving payment. The LLP deducted TDS on the payment made to M/s. Short formats Digital Works Private Limited.
- g. That the Complainant is currently booked by the Police under Section of 384, 385, 406, 408 read with 34 of Indian Penal Code, 1860 (mainly for extortion and criminal breach of trust in relation to the Group entity of LLP, Short Format Digital Works Pvt. Ltd). The matter is sub-judice and pending before Hon'ble Chief Metropolitan Magistrate, Esplanade Court, Mumbai.

14.1 Thereafter, The Committee posed certain questions to both the parties to understand the issues involved and the role of the Respondent in the case. On consideration of the same, the Committee gave directions to the Complainant to submit his response on the submissions dated 4th August 2023 of the Respondent. With the above, the matter was partly heard and adjourned.

15. On the day of the seventh hearing held on 13th September 2023, the Committee noted that the Complainant's Counsel, Mr. U.A. Patel, Advocate, was present through Video Conferencing mode. The Respondent was also present through Video Conferencing Mode. The Committee noted that the present complaint pertains to signing of Form 8 by misusing the digital signature of the Complainant after his retirement. The Committee further noted that the resignation of the Complainant was not uploaded on MCA portal till date whereas the Complainant resigned in 2015.

15.1 The Committee posed certain questions to both the parties to understand the issues 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 following:-

- a) Status of the Company/LLP as on date.
- b) IP address from where the alleged forms were uploaded.

The Committee also gave directions to the Respondent to submit the following:-

- a) IP address from where the said form was uploaded.
- b) Any other submissions he wants to submit in the matter.

With the above, the matter was partly heard and adjourned.

16. On the day of eighth hearing held on 16th October, 2023, the Committee noted that the Complainant along with his Counsel, Mr U.A. Patel, Advocate, was present through Video Conferencing mode. The Respondent was also present through Video Conferencing Mode. The Committee noted that in the previous hearing, both parties were directed to inform the IP address from where the alleged e-form 8 was uploaded. The Respondent in this regard submitted that the said e-form was uploaded by the Company Secretary and also submitted short summary of arguments on Form 8 by mentioning that the Company Secretary had sent e-mail regarding filing of FORM 8 and payment action. Further, the alleged Form 8 was signed on 02nd December 2015 and the Complainant signed 'Form 11' (filed on 11th May 2015) as designated partner and the payment for filing of the Form 11 was made by the Company Secretary. That there is no provision in e-forms whereby the Respondent can put his observations.

16.1 The Committee further observed that there were certain more charges on which the Respondent was held prima-facie not-guilty but the same were not accepted by the then Disciplinary Committee. The parties were asked to make their submissions on the same. The Committee posed certain questions to

both the parties to understand the issue involved and the role of the Respondent in the case. The Committee also noted that both the parties made their detailed submissions by referring to documents. On the same, the Committee noted that these documents were not properly indexed. Hence, the Committee gave directions to both the parties to submit the documents they intended to submit with a proper index with copy to each other. With this, the hearing in the matter was partly heard and adjourned.

17. On the day of final hearing held on 13th December 2023, the Committee noted that the Complainant along with his Counsel Mr. U.A. Patel, Advocate were present through Video Conferencing mode. The Respondent was also present through Video Conferencing Mode.

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

- i.** That the whole dispute started when the Complainant asked for the details of accounts from his partners and they did not submit the same. Further, he came to know that the LLP had submitted to the service tax department that it had not maintained any books of accounts after F.Y. 2012-13, then how the auditor audited the books of accounts when it was not prepared.
- ii.** The Complainant reiterated his earlier submissions with respect to charges.
- iii.** That the capital of the Complainant in LLP was transferred to unsecured loans account for which no confirmation had been sought from him.

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

- i.** That the Complainant had not provided any evidence till date with respect to his allegation of standing witness to the forged document.
- ii.** Regarding the issue of money laundering, it is asserted by the Respondent that 90% of the revenue had been transferred to a Company wherein the Complainant' wife is one of the directors. Hence, the same is eliminating any possibility of money laundering.

- iii. That the new allegation made by the Complainant that the Respondent had misused his digital signature while the Complainant had already confirmed that his digital signatures was kept in LLP office. Further, Form 8 was uploaded by the Company Secretary.
- iv. That the LLP was not registered under service tax and hence, the service tax was not paid.
- v. That there was no head provided in audit report to report about the same. Further, NOCLAR (Non-Compliance with Laws and Regulations) is also not applicable for that period.
- vi. That the Complainant had already uploaded the Form 11 before uploading of Form 8 with ROC, so after discussion and to maintain the continuation, Form 8 was also uploaded with digital signature of the Complainant.

17.3 The Committee further noted that the Respondent in his Written Submissions dated 4th December, 2023 had, inter-alia, mentioned as under:-

- a. That e-mails exchanged between the Respondent and the partners of the LLP proves that the LLP had maintained the books of accounts since its inception.
- b. That the authorized representative of Mrs. Chandra V. Shah, one of the designated partners of LLP had given the statement before the Senior Intelligence Officer of Directorate General of GST Intelligence that the financial statements of the LLP for the FY 2015-16 had not been prepared and the Respondent had audited the books till FY 2014-15, hence the contention of the Complainant that the books of LLP were not maintained after 2012 was wrong.
- c. The Complainant was actively involved in day to day working activities of LLP. He had given his consent to partners to change the name of LLP on 15th September 2014 and had signed the financial statements for F.Y. 2013-14 on 4th September 2014.
- d. That after considering LLP's business operations/modus operandi, the Respondent had incorporated management's comments regarding revenue recognition, in his Audit Report under "Emphasis of Matter" paragraph.

e. That the Complainant had presumed that the Respondent had expelled him. However, an auditor is in no position to expel anyone from an LLP. It is a decision of the partners amongst themselves to reconstitute the LLP.

17.4 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. Thereafter, keeping in view the facts and circumstances of the case, the material on record and the submissions of the parties, the Committee concluded the hearing and passed its judgment.

FINDINGS OF THE COMMITTEE:-

18. The Committee noted that the **first charge** against the Respondent was that he had illegally expelled the Complainant as a partner without the complainant's resignation and added Mr. Virendra Shah as partner in the Balance Sheet of financial year 2014-15.

18.1 In respect of above allegation, on perusal of the deed of reconstitution dated 13.11.2014, it is noted that the Complainant was shown as retired from the LLP w.e.f. 13.11.2014 and Mr. Virendra Shah was admitted as new partner from the same date. As per the Complainant, he had received the said reconstitution deed from the ICICI Bank and the said deed was used by other partner as one of the documents for opening the bank account with the ICICI Bank. The said reconstitution deed was signed by the Complainant and the other two existing partners including new partner, Mr. Virendra Shah. However, the Respondent was not the party to the same even as a witness. It is also noted that the Respondent has not disputed the said reconstitution deed.

18.2 Further, on perusal of financial statement for the FY. 2014-15, it is observed that the Respondent signed the financial statement on 04.09.2015 and the said financial statement was also signed by new partner, Mr. Virendra Shah as partner of the LLP. In the said financial statements, the balance of capital account for the Complainant was shown as zero. Hence, it was clear that the

Respondent relied upon the Deed of Reconstitution dated 13.11.2014 at the time of audit and accordingly, it cannot be stated that he was not aware of the changes made in the LLP. However, on perusal of the Form 8 filed by the LLP with ROC, it is observed that the same was digitally signed by Complainant as partner of LLP and verified by the Respondent. Form 8 is a statement of account and solvency which is to be filed as per Rule 24 of Limited Liability partnership Rules, 2008. This form is to be prepared by the LLP and verified by professionals.

- 18.3** The Committee noted that as per Form 8, the Respondent was supposed to verify the particulars contained in the Statement of Account and Solvency including the Statement of Assets and Liabilities for the year end and the Income and Expenditure for the said period from the accounting records and other books and papers of the LLP.
- 18.4** It is noted that as per the deed of reconstitution, the Complainant had retired from the LLP and the Form 8 was digitally signed by the Complainant as partner of LLP, however, the Respondent certified the said Form without raising any objection. In this regard, the Respondent took plea that since the Complainant had already signed the Form 11, which was filed with ROC on 11.05.2015, and the ROC records were not updated regarding the Complainant's retirement, Form 8 cannot be uploaded without the complainant's signature. Accordingly, he certified the Form 8 showing the Complainant as partner of the LLP. It is viewed that the said contention of the Respondent was not tenable as he was duly aware about the changes took places in the LLP.
- 18.5** The Committee also observed that if there was any change in the LLP subsequent to the deed of reconstitution, the Respondent was required to confirm from the same from the relevant documents. The Committee also noted that for the purposes of sub-section (2) of section 25 of LLP Act, 2008, where a person becomes or ceases to be a partner or where there is any change in the name or address of a partner, the limited liability partnership shall file with the Registrar, a notice in Form 4 regarding changes in partners.

Further, for the purposes of sub-section (3) of section 25 of LLP Act, 2008, in respect of notice of a person becoming a partner, the Form 4 shall include a statement signed by the incoming partner that he consents to become a partner. However, the Respondent has not provided any evidence that he had verified the said forms before certifying Form 8.

- 18.6** The Committee also observed that the Complainant could not produce any documentary evidence with regard to his contention that it was the Respondent who has illegally expelled him from the LLP. The Respondent cannot be made responsible for an act which is an internal matter of the LLP. The Respondent's duty was limited to certification of Form 8 based on the verification of relevant record / documents. However, the Respondent does not appear to have taken sufficient steps to check as to who were the partners of the LLP at the time of certification of Form 8. Hence, it is viewed that the Respondent has not exercised due diligence while certifying Form '8'. Thus, the Respondent is held **Guilty** of professional misconduct falling within meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.
- 19.** The Committee noted that the **second charge** against the Respondent was that he had stood as witness in forged document i.e., opening Bank account at ICICI Bank by submitting the Deed of Reconstitution dated 21st December 2012.
- 19.1** In respect of above allegation, the Respondent stated that he had signed the Deed of Reconstitution dated 21.12.2012 as a witness to Mr. Hyder Kazmi and not the Complainant. On perusal of the said reconstitution deed, the Committee observed that the Respondent has signed the said reconstitution deed as a witness to Mr. Hyder Kazmi. The Committee also observed that the said deed was submitted by the LLP with the ICICI Bank for opening the bank account along with other documents. The Committee observed that in the said allegation, the role of the Respondent was limited to witnessing the deed of reconstitution dated 21.12.2012 and there was no documentary evidence on record to show that this deed was forged document.

- 19.2** The Committee also noted that the Respondent brought on record a copy of police closure report in FIR no.167/2016 dated 26.05.2016 wherein the criminal charge of forgery was found to be false. In addition to above, the Committee also observed that the Hon'ble High Court of Judicature at Bombay vide its Order dated 16.10.2018 had dismissed the writ petition filed by the Complainant in respect of forgery done by the partners & others. Therefore, in view of the above facts and documents on record, the Committee noted that there was nothing on record to show that the Deed of Reconstitution dated 21.12.2012 was a forged document. Moreover, the Respondent has signed the financial statement on 04.09.2015 whereas the ICICI Bank account was opened on 29.10.2015, i.e., after completion of audit for FY 2014-15. Therefore, there does not appear to be any role of the Respondent in opening of the bank account. Accordingly, the Committee is of the view that the Respondent is **Not Guilty** of Professional Misconduct falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.
- 20.** The Committee noted that the **third charge** against the Respondent was that he failed to find factual errors and wrong entries in the balance sheet and helped in subverting service tax and TDS payments by LLP thus, causing a huge loss to the revenue / Government.
- 20.1** The Committee noted that the Respondent was the statutory auditor of the LLP for the financial years 2013-14 & 2014-15. The financial statements of FY 2013-14 were signed on 04.09.2014 and the financial statements of FY 2014-15 were signed on 04.09.2015.
- 20.2** The Committee noted that the Respondent had issued the qualified report for both the financial years only in respect of balance confirmations from debtors and creditors of the LLP. It is also noted that the Respondent sought clarification from the partners of the LLP regarding service tax payment for FY 2013-14 & 2014-15 and received a reply on 22.07.2016. However, the Respondent did not request this information during the audit finalization, and furthermore, did not qualify his report, indicating a lack of due diligence on the

part of the Respondent. Further, due to this, the government had to suffer huge loss of revenue.

20.3 Further, on perusal of the show cause notice issued by the Director General of GST Intelligence dated 27.04.2018, the Committee noted that the said notice was issued for non-payment of due amount of service tax to the Government on the entire value of taxable service rendered by the LLP during the period from July, 2012 to March, 2017. In view of the above facts, the contention of the Respondent that he had later withdrawn his reports for both the FYs i.e. 2013-14 & 2014-15 on the grounds of ongoing dispute between the partners of LLP is not tenable. Hence, it is observed that the Respondent was required to qualify his audit report for non-payment of service tax by the LLP but he failed to do so. Thus, the Committee decided to hold the Respondent **Guilty** of professional misconduct falling within meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949 for the said allegation.

21. The Committee noted that the **fourth charge** against the Respondent was that he was involved in money laundering and was receiving illegal gratification.

21.1 In respect of above charge, the Committee noted that the Complainant's contention was that the amount was paid to the Respondent's wife in name of professional fees. In this regard, the Respondent stated that the amount of Rs.25000/- was paid to his wife for filing tax returns of the LLP. The Respondent also provided copy of Income Tax returns of his wife for the Assessment Years 2016-17 to 2018-19. However, he could not bring on record documentary evidence such as copy of bills raised by her wife on LLP for filing of tax returns or the documents to show that the services was actually provided by her wife to the LLP. Accordingly, the Respondent was required to report the transaction relating to payment of professional fees to his wife in his audit report but it appears that he failed to do so. Except this failure on the part of the Respondent, no evidence has been found against the Respondent to show that he was involved in money laundering or receiving

illegal gratification. Accordingly, the Respondent is held **Guilty** of professional misconduct falling within meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949 for the said allegation.

22. The brief summary of the decision taken in respect of the charges leveled against the Respondent is as under:-

S. No.	Charge	Finding (Para ref.)	Decision of the Committee
1.	Illegally expelled the Complainant as a partner without resignation and added Mr. Virendra Shah as partner in the balance sheet of financial year 2014-15.	18 to 18.6	Guilty- Clause (7) of Part I of Second Schedule
2.	Stood as witness in forged document i.e. opening Bank account at ICICI Bank by submitting Deed of Reconstitution dated 21 st December 2012.	19 to 19.2	Not Guilty- Clause (7) of Part I of Second Schedule
3.	Failed to find factual errors and wrong entries in the balance sheet and helped in subverting service tax and TDS payments by LLP thus causing a huge loss to the revenue.	20 to 20.3	Guilty- Clause (7) of Part I of Second Schedule
4.	Involved in money laundering and was receiving illegal gratification.	21 to 21.1	Guilty- Clause (7) of Part I of Second Schedule

CONCLUSION

23. In view of the above observations, considering the submissions of the Respondent and documents on record, the Committee holds the Respondent **GUILTY** of Professional Misconduct falling within the meaning of Clause (7) of Part I 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: 07/02/2024
PLACE:NEW DELHI