



भारतीय सनदी लेखाकार संस्थान

(संसदीय अधिनियम द्वारा स्थापित)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

PR/152/2019/DD/175/2019/DC/1478/2021

[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/152/2019/DD/175/2019/DC/1478/2021]

In the matter of:

Shri. Vasanth Kini

Managing Director,
M/s Titanium Industries India Pvt. Ltd,
1099/A, 5th B Main, 10th Cross,
HBR Layout, 1st Stage, 2nd Block
Bangalore-560043.

...Complainant

Versus

CA. Ashutosh Arvind Pednekar (M. No. 041037)

1st Floor, Hamam House
Ambalal Doshi Marg
Fort
Mumbai-400001.

...Respondent

Members Present:-

CA. Ranjeet Kumar Agarwal, Presiding Officer (in person)

Mrs. Rani S. Nair, IRS (Retd.), Government Nominee (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: 9th 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. Ashutosh Arvind Pednekar (M. No. 041037)** (hereinafter referred to as the '**Respondent**') is **GUILTY** of Professional and Other Misconduct falling within the meaning of Item (2) of Part IV of the First Schedule and 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 hearing held on 19th March 2024, the Respondent was present in person and made his verbal representation on the Findings of the Disciplinary Committee, inter-alia, stating that he was caught in the crossfire between the Complainant and the Company. The strike off of the date below the signature of the Complainant looked like a genuine error. The Committee also noted that the Respondent in his written representation, inter-alia, stated that when he received the financial statements for signatures, they were duly signed by both directors of the Company who were duly Shri. Vasanth Kini -vs- CA. Ashutosh Arvind Pednekar



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authorized to sign the same and the date of 12th November, 2016 below the Complainant's signature was struck off. Since the Complainant has passed away, there is no opportunity to cross-examine him. Whether a DIN is active or otherwise can be considered to be a technical procedure in nature and does not have a direct bearing on the relevance and reliability of the financial statements.

4. The Committee considered the reasoning as contained in the Findings holding the Respondent Guilty of Professional and Other Misconduct vis-à-vis written and verbal representation of the Respondent.

5. 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 it has been accepted by the Respondent that he did not sign the financial statements on 21st September 2016. The Committee also noted that the Complainant in his Affidavit dated 31st August, 2019 affirmed that at the time of his signing the financial statements on 12th November, 2016, none of the other signatories to financial statements had signed and that the authentication of the financial statements is considered only after the same is certified by the management of the Company. The other Director, Sh. Lalit Surajmal Kanodia DIN 00008050 had not signed prior to his signing. DIR 12, the 'Appointment Form' of Director Sh. Lalit Surajmal Kanodia DIN-00008050 was certified on 11th November 2016 and uploaded on MCA-21 portal on 12th November 2016. The Committee further noted that, month and year i.e., September 2016 was preprinted on the Balance Sheet as the date of Balance Sheet of Indo-American Chamber of Commerce for the FY 2015-16 and the date mentioned on the same was written by hand as 21st.

Thus, the Committee was of the view that if the other signatories had mentioned the current date while signing then it was expected of the Respondent to either clarify regarding the same or mention the same date which was used by the others, but he signed the same on a back date. The Respondent cannot be excused for his mistakes as his conduct was in contravention of the provisions of law as well as ethical standards of the Institute. The Respondent was negligent and did not take proper measures while performing his professional duties. 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 and Other misconduct.

7. Thus, the Committee ordered that CA. Ashutosh Arvind Pednekar (M. No.041037), Mumbai be reprimanded under Section 21B(3)(a) of the Chartered Accountants Act 1949.

sd/-
(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

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

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

sd/-
(CA. SANJAY KUMAR AGARWAL)
MEMBER

sd/-
(CA. COTHA S. SRINIVAS)
MEMBER

Shri. Vasanth Kini -vs- CA. Ashutosh Arvind Pednekar

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/152/2019/DD/175/2019/DC/1478/2021]

In the matter of:

Shri. Vasanth Kini

Managing Director, M/s Titanium Industries India Pvt. Ltd,
1099/A, 5th B Main, 10th Cross,
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Bangalore-560043

...Complainant

Versus

CA. Ashutosh Arvind Pednekar (Membership. No. 041037)

1st Floor, Hamam House
Ambalal Doshi Marg
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...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)
- 5. CA. Sridhar Muppala, Member** (Present through VC mode)

DATE OF FINAL HEARING : 17.10.2023

DATE OF JUDGEMENT : 14.12.2023

PARTIES PRESENT:

Respondent : CA. Ashutosh Arvind Pednekar (Through VC)
Counsel for Respondent : Adv. S.G. Gokhale (Through VC)
Complainant : Not Present

BACKGROUND OF THE CASE:

1. The brief background of the case is as under –
 - a. That Shri Vasanth Kini, Managing Director, M/s Titanium Industries India Pvt Ltd., Bangalore (hereinafter referred to as the “**Complainant**”) has filed complaint in Form ‘I’ dated 02nd April 2019 against **CA. Ashutosh Arvind Pednekar** (M. No. 041037), Partner, M/s. M P Chitale & Company, Mumbai (hereinafter referred to as the “**Respondent**” and “**Respondent Firm**” respectively).
 - b. The Complainant had signed audited financial statements of M/s Indo-American Chamber of Commerce (hereinafter referred to as the “**Company/IACC**”) as Executive Vice-President for financial year 2015-16 on 12th November 2016 and accordingly the Respondent should have signed the same on or after 12th November 2016 but the Respondent has signed the financial statements back dated on 21st September 2016.

CHARGES IN BRIEF:

2. The Committee noted that the allegation against the Respondent is that the Complainant had signed audited financial statements of **IACC** as Executive Vice-President for financial year 2015-16 on 12th November 2016 and accordingly the Respondent should have signed the same on or after 12th November 2016 but the Respondent had signed the financial statements back dated on 21st September 2016 and all the signatures of the Complainant had been struck off on all 3 pages of audited financial statements and also on Report to Executive Council (EC) (Director’s Report) filed at MCA.

3. The Committee noted that the Respondent, in his reply at the stage of PFO, inter-alia, had mentioned as under:
- (i) That audited financial statements had been signed by him on due adoption of the same by the Executive Council (Board of Directors) of IACC. He stated that item no. 9 of the minutes records the consideration and approval of audited accounts for the year ended 31st March 2016. The Complainant, who was the Executive Vice President of the Company was present at the meeting and he had not raised any objections to this resolution of adoption of accounts.
 - (ii) He also enclosed photocopy of the minutes of the 47th Annual General Meeting of the Company held on 22nd October 2016. Agenda item no. 1 of the said minutes mentioned unanimous passing of resolution to receive, consider and adopt the reports of the Executive Council and the Audited Statement of accounts for the financial year ended 31st March 2016.
 - (iii) That he was also present at the Executive Council meeting held on 21st September 2016, for the agenda item of adoption of accounts.
4. The Director (Discipline), in his Prima Facie Opinion dated 25th January 2021, had made the following observations:
- a. That in financial statements of the Company the date mentioned by the Complainant i.e., 12th November 2016 had been struck off.
 - b. In pursuance of the requirements of Section 134(1) of the Companies Act, 2013 and Standard on Auditing (SA) 700 (Revised), the Respondent should have signed only after both the managerial signatories had signed financial statements.
 - c. It was further noted that the Complainant had signed on 12th November 2016 and accordingly, the Respondent should have signed the audited financial statements after such date. It was very surprising as to how the Respondent signed the said financial statements before signing of the management of the organisation. Therefore, the allegations of the

Complainant against the Respondent about signing the financial statements of the Company in back date prima facie stands established.

5. Accordingly, the Director (Discipline) in terms of Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, held the Respondent Prima-facie **Guilty** of Professional and Other Misconduct falling within the meaning of Item (2) of Part IV of First Schedule and Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949. The said items in the Schedule to the Act states as under:

Item (2) of Part IV of the First Schedule:

“A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he–

(2) in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work.”

Item (7) of Part I of the 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”

SUBMISSIONS OF THE RESPONDENT ON THE PRIMA-FACIE OPINION:

6. The Committee noted that the Respondent, in response to the PFO vide letter dated 25th August 2021, inter-alia, had made further submissions which are as under –
- a. The financial statements of IACC were adopted by the Board of Directors (nomenclated the Executive Council) on 21st September 2016. These

financial statements were approved by the members of the Company in the Annual General Meeting held on 22nd October 2016. The Complainant, Vasanth Kini was a member of the Board of Directors of IACC. He carried the designation of Executive Vice President and was in charge of the function of preparation of financial statements. The Complainant alleges that he signed the financial statements on 12th November 2016 and no other signatory had signed the documents by then. He handed over the signed document to the Company's representative and on subsequent extraction of AOC-4 e-form from MCA portal noticed that he had signed the financial statements dated 21st September 2016. He further states that the date under Complainant's signature had been defaced with ulterior motives.

- b. He stated that he had not back dated the signing of these financial statements. The financial statements were audited and duly attested in line with the requirements of the Companies Act, 2013 as well as the relevant Standards on Auditing, including SA 700. This attestation was done on due adoption of the financial statements in the meeting of the Board of Directors (the Executive Council) held on 21st September 2016. The financial statements sent to him for signatures after they were signed by the authorized signatories of IACC. The date on the financial statements is the date of its adoption by the Board of Directors i.e., 21st September 2016.
- c. It is well accepted practice that once a certain set of accounts or documents is completed and approved by the concerned persons on a particular date, then even if it is physically signed at a later date, the date of signing can be put as of the date of approval.
- d. He also submitted that the practical reality is that an auditor may not be necessarily present in the Board Meeting in which the accounts are approved. One should appreciate the substance and principles that the date of approval is relevant, and the signing is only a consequence.

- e. The complainant was a member of the Board of Directors and held designation of Executive Vice President while looking after Finance and Accounts. He was actively involved in the process of finalization of accounts for the financial year 2015-16.
- f. He is relying upon the emails annexed with his submissions which prove that the complainant was not only involved in the task of finalising the accounts, but also actually completed the task.
- g. That the Complainant was present and never raised any objection during the Board Meeting held on 21st September 2016 and Annual General Meeting held on 22nd October 2016.
- h. As per the Respondent, it appears that the Complainant deliberately put the date of signing as 12th November 2016 and then struck it off. He apparently had intentions to cause trouble by making an issue out of the date of signing.
- i. Section 134(1) of the Companies Act, 2013 requires approval of the Board of Directors before they are signed by the authorized signatories on behalf of the Board for submission to the auditor for his report thereon. This requirement has been duly complied with as the financial statements were approved by the Board of Directors (the EC) in its meeting held on 21st September 2016, thereafter, signed by the authorized signatories, the President and the Executive Vice President (the Complainant) and then forwarded to us to issue our final audit report thereon.
- j. That the Complainant is also a signatory to the Directors Report dated 21st September 2016. As required by the Companies Act, 2013, the Directors Report refers to the qualifications that his audit report carried and informs the members that appropriate steps have been initiated to improve processes on the items that were qualified. This is due

acknowledgement of the Complainant of the completion of process of audit as on 21st September 2016.

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.	07.11.2022	Part Heard & Adjourned
2.	23.06.2023	Adjourned on the request of Respondent and in the absence of Complainant
3.	18.08.2023	Part Heard & Adjourned
4.	13.09.2023	Part Heard & Adjourned
5.	17.10.2023	Concluded and Judgment Reserved
6.	14.12.2023	Final decision taken

8. On the day of first hearing held on 07th November 2022, the Committee noted that the Respondent vide email dated 31st October 2022 had sought an adjournment on the ground of collecting documents in the case. The Committee noted that the Complainant 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 second hearing held on 23rd June 2023, the Committee noted that the Respondent vide email dated 19th June 2023 sought adjournment on account of travelling overseas on the date of hearing. The Committee noted that neither the Complainant was present, nor any intimation was received from his end despite notice/email duly served upon him. The Committee looking into the grounds of natural justice acceded to the adjournment request made by the Respondent, and accordingly, the case was adjourned.

10. On the day of third hearing held on 18th August 2023, the Committee noted that neither the Complainant was present, nor any intimation had been received from him. The Committee noted that the letter sent through Speed Post was received back with the remark "Addressee left without instruction".
- 10.1 In the absence of the Complainant, the Respondent was administered on Oath. Thereafter, the Committee enquired from the Respondent as to whether he pleaded guilty to the charges alleged. On the same, the Respondent replied that he pleaded Not Guilty to the charges levelled against him.
- 10.2 As regards the whereabouts of the Complainant, the Respondent mentioned that as per his knowledge, the Complainant had passed away.
- 10.3 The Committee, looking into the fact that this was the first hearing, 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 fourth hearing held on 13th September 2023, the Committee noted that the Complainant was not present and the Respondent along with his counsel was present through video conferencing. The Committee noted that the Respondent's Counsel presented his line of defence stating that the case is not of backdating but is of dating back. He further submitted that it is not possible to sign the balance sheet on the date of approval and the Balance Sheet in the present case was duly signed accordingly.
- 11.1 The Committee posed certain questions to 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 Respondent to submit the following within next 15 days: -
- a. Documents filed with ROC for the period 2014-15 and 2015-16 such as DIR- 12, AOC-4.
 - b. Balance Sheet of the Company for the year 2014-15 & 2015-16 along with date of filing of these documents on ROC.
 - c. Documentary evidence such as board minutes/resolution relating to appointment of director(s)/ signatories of the Balance Sheet.
- With this, the hearing in the matter was partly heard and adjourned.

12. On the day of final hearing held on 17th October 2023, the Committee noted that the Complainant was not present and the Respondent along with his counsel was present through video conferencing. The Committee noted that the Counsel for Respondent reiterated his earlier submissions stating that the instant matter is not about back dating but is about dating back. He further stated that the dates on financial statements were already struck off when he received the same.
 - 12.1 The Committee further noted that one of the directors of the Company, Mr. Lalit Kanodia has signed the financial statements without having a DIN. Thereafter, the Committee posed certain questions to the Respondent to understand the issue involved and the role of the Respondent in the case.
 - 12.2 On consideration of the same, the Committee gave directions to the office to take views from the Legal Directorate of the ICAI on the instant matter i.e., whether a person without having a DIN can legally be a director.
 - 12.3 With the above, the Committee decided to conclude the hearing by reserving its judgment.
13. Thereafter, this matter was placed in a meeting on 14th December 2023 for consideration of the facts and arriving at a decision by the Committee. The Committee noted that the above case was concluded on 17th October 2023 and the Committee had given directions to the office to take views from the Legal Directorate of the ICAI on the instant matter as to whether a person without having a DIN can legally be a director.
 - 13.1 While referring to the same, the Office apprised the Committee that it is a condition precedent that a person should have a valid DIN before he is appointed as a Director in the Company.

14. 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 judgment.

FINDINGS OF THE COMMITTEE:

15. The Committee noted the charge against the Respondent, which state that he signed the financial statements backdated to 21st September 2016, with regard to IACC, and that all of the Complainant's signatures, which he had signed on 12th November, 2016, had been removed from all three pages of the audited financial statements as well as the Report to Executive Council (EC) (Director's Report), which was filed at MCA.
16. The Committee noted that in financial statements of the Company, the date mentioned by the Complainant i.e., 12th November 2016 had been struck off and the Respondent had signed the same as dated 21st September 2016.
17. The Committee noted the following requirements of the Companies Act, 2013 while considering the present matter –

“Section 134 (Financial statement, Board’s report, etc.)

*“(1) The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board **at least by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director and the Chief Executive Officer, if he is a director in the company, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of a One Person Company, only by one director, for submission to the auditor for his report thereon.(emphasis added)**”*

- 17.1 As per the above mentioned requirements, the Respondent should have signed only after both managerial signatories had signed financial

statements and it is noted that Complainant had signed on 12th November, 2016 and accordingly, the Respondent should have signed the audited financial statements after such date.

Section 152 (Appointment of directors)

“(3). No person shall be appointed as a director of a company unless he has been allotted the Director Identification Number under section 154.”

Section 164 (Disqualifications for appointment of director)

*“(1) A person shall not be eligible for appointment as a director of a company, if —
(h) he has not complied with sub-section (3) of section 152.”*

18. From the above mentioned requirements, it is a condition precedent that a person should have a valid Director Identification Number (DIN) before he is appointed as a Director in the Company. However, in the extant case, the financial statements of IACC for financial year 2015-16 were signed by Dr. Lalit Kanodia as President and the Complainant as Executive Vice-President. The Committee noted that Dr. Lalit Kanodia was holding a DIN on date of signing the financial statements, but his DIN was not activated hence, he cannot sign the financial statements of the Company.
19. The Committee observed that even if it is presumed that the Respondent had signed the financial statements only after signing by both the Directors then it was his duty to check whether they were authorized to do so or not. In other words, he neglected the fact that Dr Lalit Kanodia was not holding a Director Identification Number (DIN) and did not even mention about the same in his Audit Report.
20. The Committee noted that the above observations are in consonance with the views received from the Legal Directorate of the ICAI as received by the office

on 17th November 2023. It is noted that apart from the contraventions of the above-mentioned provisions, the Respondent has also failed to substantiate his other submissions.

21. The Committee noted the Respondent's contention that once a certain set of accounts or documents is completed and approved by the concerned persons on a particular date then even if it is physically signed later, the date of signing can be put as of the date of approval. In relation to this, the Committee noted that such statement further establishes the undesired conduct by the Respondent and observed that even if the date on which a certain document is signed differs from the date of its approval, one should not make personal assumptions regarding such delicate matters involving legal consequences and the same shall be performed under the domain of law with due caution.
22. The Committee noted that it has been accepted by the Respondent that he did not sign the financial statements on 21st September 2016, then the question arises that why he signed the financial statements by mentioning 21st September 2016 instead of 12th November 2016. It is noted that if the other signatories had mentioned the current date while signing then it was expected of the Respondent to either clarify regarding the same or mention the same date which was used by the others, but he signed the same on a back date which is in contravention of the legal standards. Hence, the Respondent should have signed the same on or after 12th November 2016.
23. The Committee further noted the Respondent's contention that the dates on financial statements were already struck off when he received them. However, it is noted that the Respondent has failed to substantiate his claim and it seems to be an afterthought merely to avoid sanctions.
24. Accordingly, the Respondent cannot be excused for his mistakes as his conduct was in contravention of the provisions of law as well as ethical standards of the Institute. The Respondent was negligent and did not take proper measures while performing his professional duties.

CONCLUSION:

25. In view of the above observations, considering the arguments, submissions of the parties and documents on record, the Committee held that the Respondent is **Guilty** of Professional and Other Misconduct falling within the meaning of Item (2) of Part IV of First Schedule and Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

SD/-

**(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER**

SD/-

**(SMT. 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: 07TH FEBRUARY, 2024

PLACE: NEW DELHI