



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-IV (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-429/2019-DD/48/2020/DC/1536/2022]

In the matter of:

CA. Sushil Kumar Sharma (M. No. 074380),
215, II Floor,
NEO Corporate Plaza,
Kanchpada,
Ramchandra Lane Extension,
Mumbai- 400064

.... Complainant

Versus

CA. Kumar Jee Kandroo (M. No. 510313)
M/s SK Dudha & Co.,
Chartered Accountants
C/o Ganearns, 3rd Floor,
Baba Building,
SRINAGAR- 190001

.....Respondent

MEMBERS PRESENT:

1. CA. Ranjeet Kumar Agarwal, Presiding Officer (In person)
2. Shri Jiweish Nandan, I.A.S (Retd.), Government Nominee (In person)
3. Ms. Dakshita Das, I.R.A.S. (Retd.), Government Nominee (Through VC)
4. CA. Mangesh P Kinare, Member (In person)
5. CA. Abhay Chhajed, Member (In person)

DATE OF HEARING : 28th MARCH, 2024

DATE OF ORDER : 16th May, 2024

1. That vide Findings dated 04.01.2024 under Rule 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules,



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2007, the Disciplinary Committee was inter-alia of the opinion that **CA. Kumar Jee Kandroo (M. No. 510313)** (hereinafter referred to as the **Respondent**) is **GUILTY** of Professional and Other Misconduct falling within the meaning of Items (8) and (9) of Part- I and Item (2) of Part-IV of the First Schedule and Item (3) 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 (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 28th March 2024.

3. The Committee noted that on the date of hearing on 28th March 2024, the Respondent was present through video conferencing and he stated that he has submitted his written representation dated 11th January 2024 on the Findings of the Disciplinary Committee, which, inter-alia, are given as under:

(a) The Respondent admitted during hearing(s), that it was his mistake not to communicate with the previous auditor before accepting his appointment as statutory auditor of the Company.

(b) The Respondent requested to frame charges against him on the mistake admitted by him and requested to drop all other charges against him.

(c) The Respondent requested the Committee to take a lenient view in the matter.

4. The Committee considered the reasoning as contained in Findings holding the Respondent 'Guilty' of Professional and Other Misconduct vis-à-vis written and verbal representation of the Respondent. The Committee held that due consideration to the submissions of the Respondent had been given by the Committee before arriving at its Findings and that no fresh grounds can be adduced at this stage.

5. Thus, keeping in view the facts and circumstances of the case and material on record including written and verbal representation of the Respondent on the Findings, the Committee



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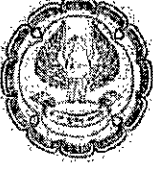
(Set up by an Act of Parliament)

noted that the Respondent has admitted that he had not communicated with previous auditor (Complainant) in a manner prescribed in Code of Ethics prior to acceptance of audit assignment. As the Respondent could not produce any documentary evidence of communication made by him with the Complainant and in view of admissions of said charge, the Committee held that the Respondent failed to ascertain the provisions of Code of Ethics. The Committee also noted that the Respondent before his acceptance as an auditor of the Company did not ensure that whether the provisions of Section 139 and Section 140 of the Companies Act, 2013 were complied with.

6. The Committee observed that the date of sending of consent letter to the Company by the Respondent and also the date of signing the audited financials of the Company by the Respondent are 5th September, 2019 and 30th September, 2019 i.e. before the date of 12th October, 2019 when it is on record that the directors of the Company were in continuous dialogues with the Complainant regarding the finalization of accounts of the Company for the F.Y. 2018-19. The assignment of the audit for the Financial Year 2018-19 was in process till 14th October 2019 by the Complainant. The Respondent has nowhere clarified as to how his appointment was made and audited financials were signed prior to 12th October, 2019. The Respondent rather has been completely silent on this allegation of giving his consent letter to the Company and signing the audit report and financials of the Company for the F.Y. 2018-19 in back date of 5th September, 2019 and 30th September, 2019 respectively.

7. The Committee also noted that the Respondent vide his letter 10th August 2020 has submitted some of the documents to the Disciplinary Directorate viz.: (i) Extract of resolution passed in AGM of the Company dated 30th September, 2019 for his appointment and (ii) Letter dated 17th August, 2019 seeking no objection from the Complainant, which he has claimed to have sent to previous auditor (Complainant). The Committee was of the view that these concocted and false documents created by the Respondent are backdated. Hence, the Professional and Other Misconduct on the part of the Respondent is clearly established as spelt out in the Committee's Findings dated 04th January 2024, which is to be read in consonance with the instant Order being passed in the case.

8. Accordingly, the Committee was of the view that the ends of justice would be met if punishment is given to him in commensurate with his Professional and Other Misconduct.



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9. Thus, the Committee ordered that the Respondent i.e. CA. Kumar Jee Kandroo (M. No. 510313), be REPRIMANDED and also imposed a fine of Rs. 35,000/- (Rupees Thirty five thousand) upon him, which shall be paid within a period of 60 (sixty) days from the date of receipt of the Order.

Sd/-

(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

Sd/-

(SHRI JIWESH NANDAN, I.A.S. {RETD.})
GOVERNMENT NOMINEE

Sd/-

(MS. DAKSHITA DAS, I.R.A.S. {RETD.})
GOVERNMENT NOMINEE

Sd/-

(CA. MANGESH P KINARE)
MEMBER

Sd/-

(CA. ABHAY CHHAJED)
MEMBER

सही प्रतिलिपि होने के लिए प्रमाणित /
Certified to be true copy

नीलम पंडित / Neelam Pundir
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासन/शास्त्र विभाग / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आइसीएआई भवन, विश्वास नगर, शहदौरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahdara, Delhi-110032

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – IV (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-429/2019-DD/48/2020/DC/1536/2022]

In the matter of:

CA. Sushil Kumar Sharma (M. No. 074380),
M/s Grandmark & Associates,
Chartered Accountants
118, Navjeevan Vihar,
Malviya Nagar,
DELHI- 110017

.... Complainant

Versus

CA. Kumar Jee Kandaroo (M. No. 510313)
M/s SK Dudha & Co.,
Chartered Accountants
C/o Ganearns, 3rd Floor,
Baba Building,
SRINAGAR- 190001

.....Respondent

MEMBERS PRESENT: (In person)

CA. Ranjeet Kumar Agarwal, Presiding Officer
Ms. Dakshita Das, I.R.A.S. (Retd.), Government Nominee
CA. Mangesh P Kinare, Member
CA. Cotha S Srinivas, Member

DATE OF FINAL HEARING : 25.08.2023

PARTIES PRESENT

Respondent : CA. Kumar Jee Kandaroo (through VC)

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1. Background of the case: -

1.1 The Complainant was appointed as a Statutory Auditor of M/s Divas Offshore Software Technologies Private Limited (hereinafter referred to as the "Company") for the financial year 2017-18.

1.2 While auditing the Balance Sheet, the Complainant raised certain issues with respect to large sums of personal expenses booked by the Directors of the Company and therefore expressed his intention to the Directors on 12.10.2019 that after completion of audit for the financial year 2018-19 he would not be able to handle the audit assignment and requested to appoint another auditor for next financial years.

1.3 The Complainant did not resign from the post of Statutory Auditor of the Company for the financial year 2018-19. The Complainant submitted that on 14.10.2019, when the Complainant raised an issue of non-payment of his dues amounting to Rs. 35,440/- for certain work already done by him, the Directors of the Company abruptly stopped communicating with him and later, it came to the knowledge of the Complainant that the Directors of the Company without informing the Complainant has appointed the Respondent as their new auditor by passing a back-dated resolution on 30.09.2019 and filed an ADT-1 on 02.11.2019 in this regard.

2. Charges in brief: -

2.1 The Respondent accepted the appointment of Statutory Auditor of the Company without giving any prior intimation to the Complainant.

2.2 The Company failed to comply with the provisions of Section 139 and Section 140 of the Companies Act 2013 and Respondent did not ascertain whether the Complainant has resigned from the Company.

2.3 The Respondent accepted the back-dated appointment as statutory audit of the Company and signed the back-dated financial statements of the Company as alleged by the Complainant.

2.4 The Respondent submitted the false documents to the Disciplinary Directorate (extended charge at PFO stage).

3. The relevant issues discussed in the Prima facie opinion dated 26th July, 2021 formulated by Director (Discipline) in the matter in brief is given below:-

3.1 The Director (Discipline), when specifically asked vide letter dated 15th July, 2020 at Rule 8(5) stage, the Respondent has brought on record a letter dated 17th August, 2019 to show that before accepting his appointment, he communicated with the Complainant being the previous auditor of the Company and also stated that he did not receive any reply from the Complainant of this communication. From the perusal of said letter, it is noticed that there is no evidence of delivery of such letter to the Complainant. It is responsibility of the incoming auditor not only to communicate with the previous auditor but also to have clear-cut evidence of the delivery of such communication in hand. Mere sending of a letter to the previous auditor without having any evidence on hand that the communication was duly received by him, is not sufficient. The Respondent in the extant matter, has failed to comply with such requirement of the provision of Code of Ethics – 2009 as he in his letter dated 10th August, 2020 has been silent on this issue that whether his communication letter was received by the Complainant or not and just mentioned that he never received any reply from the Complainant for such communication. Hence, the Respondent is prima facie held **GUILTY** of Professional Misconduct falling within the meaning of Item (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949 for this allegation.

3.2 As regards the second allegation, the Code of Ethics – 2009 read with Item (9) of Part I of First Schedule to the Chartered Accountants Act, 1949 imposes a responsibility on the incoming auditor of the company before giving his acceptance to act as auditor, to ensure the compliance of the provisions of Section 224 and 225 of the Companies Act, 1956 (corresponding sections 139 and 140 of Companies Act, 2013). Section 139 of Companies Act, 2013 deals with the appointment of auditor while Section 140 of Companies Act, 2013 deals with Removal and Resignation of auditors. It is noticed that the Complainant was appointed as Statutory auditor of the Company for the financial years 2018-19 to 2022-23 as evidenced from ADT- 1 filed by the Company for appointing the Complainant firm as its auditor for the period 01-04-2018 to 31st March, 2023. Further, it is also noticed that there has been no evidence on record to show that he ever resigned as an auditor of the Company for the year

2018-19 however, the Complainant vide his email dated 12th October, 2019 expressed his unwillingness to continue with the Company after the financial year 2018-19 and not for the financial year 2018-19. The Company and the Respondent appear to have taken advantage of the said communication to justify their action. The Respondent has failed to bring on record any such compliance at the end of Company. Further, when the Respondent was specifically asked vide this office letter dated 15th July, 2020 at Rule 8(5) stage to provide copy of resignation letter of the Complainant and letter from the Complainant showing his unwillingness to continue as statutory auditor of the Company w.r.t. his appointment for the financial year 2018-19, he did not provide any evidences to substantiate his claim that his appointment was as per the provisions of Companies Act, 2013. Thus, the Respondent is prima facie held **GUILTY** of Professional Misconduct falling within the meaning of Item (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949 for this allegation also.

3.3 As regards third allegation, the appointment of the Complainant was made on 28th June, 2018 to fill the casual vacancy caused by the previous auditor on 01st May, 2018 as evidenced from the ADT-1 filed in this regard for the period 1st April, 2017 to 31st March, 2018. A Resolution dated 29th September, 2018 in this regard was also brought on record by the Complainant to show that the appointment of his firm M/s Grand Mark & Associate was then approved by the Board of Directors to hold the office from the conclusion of that year's AGM till the conclusion of AGM of the F.Y. 2022-23 and consequently an ADT -1 was also filed for his appointment wherein it is mentioned that the Complainant's firm was so appointed in its AGM held on 29th September, 2018 for the period 1st April, 2018 to 31st March, 2023.

3.4 Further, the Complainant in support of his statement that he had already started his audit process for the year 2018-19 and was in conversation with the directors of the company regarding the audit in the month of October, 2019, has brought on record some email conversations held between the Complainant and the directors of the Company. Such emails were regarding the queries raised by the directors to Complainant firm and their reply thereto however, such queries were not only related to audit rather the accounting of the Company which also appears to be taken care of by the Complainant's firm. Further, the matters of professional fee to be charged by the Complainant towards Accounting, Auditing, Income Tax Returns and

MCA filing compliance have also been discussed in such emails. Thus, it is abundantly clear that the appointment of Respondent as Statutory Auditor of the Company for FY 2018-19 cannot be before this date i.e., 12th October, 2019. However, the Communication letter claimed to have sent to the Complainant by the Respondent and brought on record by the Respondent is noted to be of dated 17th August, 2019 wherein the Directors of the Company have been stated to appoint the Respondent firm as statutory auditor of their Company for the year 2018-19 on 17th August, 2019. Further, the consent letter of the Respondent given to the Company for being appointed as auditor of the company, brought on record by the Complainant is of dated 5th September, 2019 and the audited financials of the Company too have been signed and approved in the AGM held on 30th September, 2019. The date of sending of consent letter to the Company by the Respondent and also the date of signing of the audited financial of the company by the Respondent are 5th September and 30th September, 2019 i.e. before the date of 12th October, 2019 when it is on record that the directors of the Company were in continuous dialogues with the Complainant regarding the finalization of accounts of the Company for the F.Y. 2018-2019. In view of this, the Respondent is prima facie **GUILTY** of Professional Misconduct falling within the meaning of Item (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949

3.5 Further act of the Respondent submitting false documents to the Directorate has made him liable for the professional misconduct falling within the meaning of Item (3) of Part II of Second Schedule to the Chartered Accountant Act, 1949.

3.6 The Director (Discipline) in Prima Facie Opinion dated 28th July 2021 has held the Respondent GUILTY of Professional and Other Misconduct falling within the meaning of Items (8) & (9) of Part I and Item (2) of Part IV of the First Schedule and also Item (3) of Part-II of the Second Schedule to the Chartered Accountants Act, 1949. The said items to the Schedule to the Act, states as under:

Item (8) of Part I of First Schedule:

A chartered accountant in practice shall be deemed to be guilty of professional misconduct if he-



(8) accepts a position as auditor previously held by another chartered accountant or a certified auditor who has been issued certificate under the Restricted Certificate Rules, 1932 without first communicating with him in writing;

Item (9) of Part I of First Schedule:

A chartered accountant in practice shall be deemed to be guilty of professional misconduct if he-

(9) accepts an appointment as auditor of a company without first ascertaining from it whether the requirements of Section 225 the Companies Act, 1956* in respect of such appointment have been duly complied with;

Item (2) of Part IV of 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 (3) of Part-II of the Second Schedule:

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he-

(3) includes in any information, statement, return or form to be submitted to the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority any particulars knowing them to be false;

3.7 The Prima Facie Opinion formed by Director (Discipline) was considered by the Disciplinary Committee at its meeting held in January 2022, New Delhi. The Committee on consideration of the same, concurred with the reasons given against the charges and thus, agreed with the prima facie opinion of the Director (Discipline) that the Respondent is prima facie **GUILTY** of Professional Misconduct falling within the meaning of Items (8) & (9) of Part – I and Item (2) of Part-IV of the First Schedule and Item (3) of Part-II of the Second Schedule to the Chartered Accountants Act, 1949 and accordingly, decided to proceed further under Chapter V of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and

Conduct of Cases) Rules, 2007. The Committee, also directed the Directorate that in terms of the provisions of sub-rule (2) of Rule 18, the prima facie opinion formed by the Director (Discipline) be sent to the Complainant and the Respondent including particulars or documents relied upon by the Director (Discipline), if any, during the course of formation of prima facie opinion and the Respondent be asked to submit his Written Statement in terms of the provisions of the aforesaid Rules, 2007.

4. Date(s) of written submissions/pleadings by parties:

The Relevant details of filing of documents in the instant case by the parties are given below:

S.No.	Particulars	Dated
1.	Complaint in Form 'I' filed by the Complainant	28th January, 2020
2.	Written Statement filed by the Respondent	14th April 2020 received on 27th May 2020
3.	Rejoinder if any	24th June 2020
4.	Prima facie Opinion by Director (Discipline)	28th July 2021
5.	Written Submissions by the Respondent after PFO	Not filed
6.	Further Rejoinder by the Complainant before the Committee	----

5. Brief facts of the Proceedings:

5.1 The details of the hearing(s) fixed and held/adjourned in said mater is given as under:

Particulars	Date of Meeting	Status
1 st time	18 th May, 2023	Part heard and adjourned
2 nd time	25 th July, 2023	Part heard and adjourned
3 rd time	25 th August, 2023	Hearing concluded and decision taken

5.2 At the first hearing of the case dated 18th May 2023, the Respondent was present in ~~person~~ person and was put on oath. Thereafter, the Committee enquired from the


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Respondent as to whether he was aware of the charges as mentioned in paras 2.1,2.2,2.3 & 2.4 above and on the same he replied in the affirmative and pleaded Not Guilty to the charges levelled against him. The office apprised the Committee that the Complainant was not present and notice of listing of the case has been served upon him. In the absence of the Complainant and in view of Rule 18 (9) of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee adjourned the case to later date.

5.3 Subsequently, at the next hearing of the case dated 25th July 2023, the Complainant was present through video-conferencing mode and was put on oath. The Committee asked the Complainant to make his submissions in the present matter. The Complainant stated that the Respondent had accepted the position as Statutory Auditor in the Company without first communicating in writing with him and did not even try to find out whether the Complainant has resigned from the Company. The Committee noted the submissions of the parties and adjourned the case.

5.4 On the day of final hearing dated 25.08.2023, the Committee noted that the Respondent was present through Video conferencing mode. Thereafter, he gave a declaration that there was nobody present except him from where he was appearing and that he would neither record nor store the proceedings of the Committee in any form.

5.5 The Committee noted that the Respondent vide e-mail dated 23rd August, 2023 had filed apology to the Complainant stating that *"I had inadvertently accepted the appointment of Divas Offshore Software Technology Pvt Ltd for FY 2018-19. It was never my intention to harm you in any manner, so request you to forgive my mistake. It is a lesson for the future and this kind of mistake will not happen again. I once again request you to please pardon me and forgive me as a younger brother"* and had accepted his mistake by accepting all the charges levelled against him and had sought leniency from the Committee in this matter.

5.6 On other side the Complainant in response to apology e-mail of the Respondent dated 23/08/2023 had submitted that *"While I accept your apology, I am pained to see that the Client has a habit of changing CAs and he has done all this in the past as well. He must be having a last laugh over whatever he has done. He got the work done according to his wishes. My professional fee is still not paid and it is your moral and*

professional duty to make sure that my dues are duly paid off. I hope that you will be careful in the future in accepting such assignments without first taking an NOC from the previous Auditor”.

5.7 The Committee noted that the Complainant was not present in the final hearing held on 25/08/2023 and vide e-mail dated 24/08/2023 he had stated that *“Due to some urgent assignment, I had to rush to Chennai. At the scheduled time of the hearing, I will be at Chennai Airport. CA Kumar Kandaroo has tendered a Written Apology, and as a Senior Professional of the fraternity, I have accepted his apology. You may, therefore, kindly drop this case with a warning to the errant professional”.*

With a view to confirm the contents of e-mail dated 24/08/2023 and to have clarity on the views of the Complainant as mentioned therein, the Committee contacted the Complainant over phone and the Complainant confirmed that he has accepted the apology of the Respondent and has no grievance against the Respondent, however, the Committee may consider and take decision in the matter on merits as per applicable laws. In view of this statement of the Complainant, the Committee decided to proceed with hearing in the matter on merits.

5.8 The Committee asked the Respondent to make his submissions on merits of the case. The Respondent accepted his mistake and requested the Committee to take lenient view in the case.

5.9 After detailed deliberations, and on consideration of facts of the case, various documents on record as well as oral submissions of Respondent and Complainant before it, the Committee concluded hearing in the instant case.

6. Findings of the Committee:

The Committee noted the background of the case and gave its findings as under:

6.1 As regards first allegation of non-communication with the previous auditor, the Committee noted that the Respondent had accepted this allegation and had filed apology to the Complainant during the hearing and requested the Committee to take lenient view in this respect.



6.1.2 In view of apology of the Respondent, the Committee was of the view that the Respondent has admitted that he had not communicated with previous auditor (Complainant) in a manner prescribed in Code of Ethics prior to acceptance of audit assignment.

6.1.3 Further, the Committee was of the view, as per Code of Ethics, "the object of the incoming auditor, in communicating with the retiring auditor is to ascertain from him whether there are any circumstances which warrant him not to accept the appointment. Further, The Council has taken the view that a mere posting of a letter under certificate of posting is not sufficient to establish communication with the retiring auditor unless there is some evidence to show that the letter has in fact reached the person communicated with".

6.1.4 As the Respondent could not produce any documentary evidence of communication made by him with the Complainant and in view of admissions of said charge, the Committee was of the view that the Respondent failed to ascertain the provisions of Code of Ethics and held the Respondent **GUILTY** on this charge within meaning of Item (8) of Part I of First Schedule to the Chartered Accountants Act, 1949.

6.2 As regards, second allegation that the Company failed to comply with the provisions of Section 139 and Section 140 of the Companies Act 2013 and Respondent did not ascertain whether the Complainant has resigned from the Company, the Committee noted that the Respondent had accepted this allegation and requested the Committee to take lenient view in this respect.

6.2.1 The Committee observed that the Complainant was appointed as Statutory Auditor of the Company for the financial years 2018-19 to 2022-23 as evident from ADT-1. It is further observed by the Committee that there was no evidence on record to show that the Complainant ever resigned as an auditor from the Company for the year 2018-19 and has only expressed his unwillingness to continue with the Company after the financial year 2018-19 and not for the financial year 2018-19.

6.2.2 The Committee noted the provisions of Section 139 and 140 of the Companies Act, 2013, which are as under:



"According to Section 139(8)(i) of the Companies Act, 2013, any casual vacancy in the office of an auditor shall in the case of a company other than a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Board of Directors within thirty days, but if such casual vacancy is as a result of the resignation of an auditor, such appointment shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting"

Further as per section 139(9) of The Companies Act, 2013: -

Subject to the provisions of sub-section (1) and the rules made thereunder, a retiring auditor may be re-appointed at an annual general meeting, if—

- (a) he is not disqualified for re-appointment;*
- (b) he has not given the company a notice in writing of his unwillingness to be re-appointed;*
- (c) a special resolution has not been passed at that meeting appointing some other auditor or providing expressly that he shall not be re-appointed.*

Removal, Resignation of Auditor and Giving of Special Notice

140 (1) The auditor appointed under section 139 may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner:

Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard.

(2) The auditor who has resigned from the company shall file within a period of thirty days from the date of resignation, a statement in the prescribed form with the company and the Registrar, and in case of

companies referred to in sub-section (5) of section 139, the auditor shall also file such statement with the Comptroller and Auditor-General of India, indicating the reasons and other facts as may be relevant with regard to his resignation

(3) If the auditor does not comply with the provisions of sub-section (2), he or it shall be liable to a penalty of fifty thousand rupees or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees.

(4) (i) Special notice shall be required for a resolution at an annual general meeting appointing as auditor a person other than a retiring auditor, or providing expressly that a retiring auditor shall not be re-appointed, except where the retiring auditor has completed a consecutive tenure of five years or, as the case may be, ten years, as provided under sub-section (2) of section 139.

(ii) On receipt of notice of such a resolution, the company shall forthwith send a copy thereof to the retiring auditor.

(iii) Where notice is given of such a resolution and the retiring auditor makes with respect thereto representation in writing to the company (not exceeding a reasonable length) and requests its notification to members of the company, the company shall, unless the representation is received by it too late for it to do so, —

(a) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and

(b) send a copy of the representation to every member of the company to whom notice of the meeting is sent, whether before or after the receipt of the representation by the company,

and if a copy of the representation is not sent as aforesaid because it was received too late or because of the company's default, the auditor

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may (without prejudice to his right to be heard orally) require that the representation shall be read out at the meeting:

Provided that if a copy of representation is not sent as aforesaid, a copy thereof shall be filed with the Registrar:

*Provided further that if the Tribunal is satisfied on an application either of the company or of any other aggrieved person that the rights conferred by this sub-section are being abused by the auditor, then, the copy of the representation may not be sent, and the representation need not be read out at the meeting.

*(5) Without prejudice to any action under the provisions of this Act or any other law for the time being in force, the Tribunal either suo moto or on an application made to it by the Central Government or by any person concerned, if it is satisfied that the auditor of a company has, whether directly or indirectly, acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers, it may, by order, direct the company to change its auditors:

Provided that if the application is made by the Central Government and the Tribunal is satisfied that any change of the auditor is required, it shall within fifteen days of receipt of such application, make an order that he shall not function as an auditor and the Central Government may appoint another auditor in his place:

Provided further that an auditor, whether individual or firm, against whom final order has been passed by the Tribunal under this section shall not be eligible to be appointed as an auditor of any company for a period of five years from the date of passing of the order and the auditor shall also be liable for action under section 447."

From the above provisions, if a company wants to remove any auditor before the expiry of his term or in case the auditor himself resigns or expresses his unwillingness to continue as auditor then the Company as well as auditors are required to follow procedures as defined in the Companies Act, 2013.



6.2.3 In the extant case, the Committee noted that the Complainant was appointed as Statutory auditor of the Company for the financial years 2018-19 to 2022-23 as evidenced from ADT- 1 filed by the Company for appointing the Complainant firm as its auditor for the period 01-04-2018 to 31st March,2023. There has been no evidence on record to show that he ever resigned as an auditor of the Company for the year 2018-19. The Complainant vide email dated 12th October,2019 expressed his unwillingness to continue with the Company after the financial year 2018-19 and not for the financial year 2018-19. The appointment of the Respondent was actually made on 19th August, 2019 and there must have been some resignation letter on record before such date from the Complainant which, the Respondent has failed to bring on record. The Respondent had failed to bring on record any such compliance at the end of Company. The Respondent was specifically asked vide this office letter dated 15th July,2020 at Rule 8(5) stage to provide copy of resignation letter of the Complainant and letter from the Complainant showing his unwillingness to continue as statutory auditor of the Company w.r.t. his appointment for the financial year 2018-19, he did not provide any evidences to substantiate his claim that his appointment was as per the provisions of Companies Act,2013. In view of this, the Committee was of the view that the Respondent before his acceptance as an auditor of the Company did not ensure that whether the provisions of Section 139 and Section 140 of the Companies Act,2013 were complied with regarding his appointment making him **Guilty** of Professional Misconduct falling within the meaning of Item (9) of Part I of First Schedule to the Chartered Accountants Act, 1949.

6.3 As regards the third allegation, the Committee noted that the appointment of the Complainant was made on 28th June,2018 to fill the casual vacancy caused by the previous auditor on 01st May,2018 as evidenced from the ADT-1 filed for the period 1st April,2017 to 31st March,2018. A resolution dated 29th September,2018 was also brought on record by the Complainant to show that the appointment of his firm M/s Grand Mark & Associate was approved by the Board of Directors to hold the office from the conclusion of that year's AGM till the conclusion of AGM of the F.Y.2022-23 and consequently an ADT -1 was also filed for his appointment wherein it was mentioned that the Complainant's firm was appointed in its AGM held on 29th September,2018 for the period 1st April,2018 to 31st March,2023. The date of sending

of consent letter to the Company by the Respondent and also the date of signing the audited financials of the Company by the Respondent are 5th September and 30th September, 2019 i.e. before the date of 12th October, 2019 when it is on record that the directors of the Company were in continuous dialogues with the Complainant regarding the finalization of accounts of the Company for the F.Y. 2018-19. The Committee observed that the genuineness of emails between the Complainant and the Directors of the Company dated 12th October, 2019 and 14th October, 2019 was not disputed by the Respondent in written statement which means indirectly that the Respondent has accepted the facts mentioned in such emails that the finalization and audit of the accounts was being discussed by the Complainant with the directors of the company till 12th October, 2019. The assignment of the audit for the Financial Year 2018-19 was in process till 14th October 2019 by the Complainant. Further, it was observed by the Committee that the Respondent in written statement had mentioned that due to unwillingness of the Complainant to continue as statutory auditor of the Company, the directors of the Company filled such casual vacancy by appointing new auditor for the F.Y. 2018-19 and such unwillingness to which he has referred here, is being revealed from the email dated 12th October, 2019. However, he has nowhere clarified as to how his appointment was made and audited financials were signed prior to 12th October, 2019. The Respondent rather has been completely silent on this allegation of giving his consent letter to the Company and signing the audit report and financials of the Company for the F.Y. 2018-19 in back date of 5th September, 2019 and 30th September, 2019 respectively and held the Respondent **GUILTY** within meaning of Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949.

6.4 In respect of last charge, the Committee noted that the Respondent vide his letter 10th August 2020 has submitted some of the documents to the Disciplinary Directorate viz: (i) Extract of resolution passed in AGM of the Company dated 30th September, 2019 for his appointment and (ii) A dated 17th August, 2019 seeking no objection from the Complainant, which he has claimed to have sent to previous auditor. The Committee noted that these concocted and false documents created by the Respondent in backdated. In view of these documents filed by the Respondent, the Committee held Respondent **guilty** within meaning of Item (3) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

7. Conclusion

In view of the above findings stated in above paras, vis-a-vis material on record, the Committee gives its charge-wise findings as under:

Charge(s) (as per PFO.)	Findings	Decision of the Committee
Para 2.1 as given above	Paras 6.1 to 6.1.4 as given above	Guilty- Item (8) of Part I of First Schedule
Para 2.2 as given above	Paras 6.2 to 6.2.3 as given above	Guilty- Item (9) of Part I of First Schedule
Para 2.3 as given above	Para 6.3 as given above	Guilty- Item (2) of Part IV of the First Schedule
Para 2.4 as given above	Para 6.4 as given above	Guilty- Item (3) of Part II of the Second Schedule

8. In view of the above observations, considering the submissions of the Respondent and the Complainant, documents on record, the Committee held the Respondent **GUILTY** of Professional and Other Misconduct falling within the meaning of Items (8) & (9) of Part – I and Item (2) of Part-IV of the First Schedule and Item (3) of Part-II of the Second Schedule to the Chartered Accountants Act, 1949.

Sd/-

(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

Sd/-

(MS. DAKSHITA DAS, I.R.A.S. {RETD.})
GOVERNMENT NOMINEE

Sd/-

(CA. MANGESH P KINARE)
MEMBER

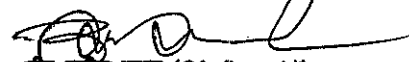
Sd/-

(CA. COTHA S SRINIVAS)
MEMBER

DATE: 04.01.2024

PLACE: New Delhi

प्रमाणित सच्य प्रतिस्तिपि / Certified true copy


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