



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

[PR/283/2016/DD/14/2017/BOD/468/2018]

ORDER UNDER SECTION 21 A (3) OF THE CHARTERED ACCOUNTANTS ACT,
1949 READ WITH RULE 15(1) OF THE CHARTERED ACCOUNTANTS
(PROCEDURE OF INVESTIGATIONS OF PROFESSIONAL AND OTHER
MISCONDUCT AND CONDUCT OF CASES) RULES, 2007.

In the matter of:-

Shri Rishi Goel,
Additional Director (Investigation),
Ministry of Corporate Affairs,
Govt. of India 100 Everest,
6th Floor, Netaji Subhash Marg,
Marine Drive,
Mumbai – 400 002

....Complainant

-Vs-

CA. R. Vinod Kumar (M.No.206820),
G 2,RSR Plaza,
No 50 & 51 Arcot Road,
Opp. Barani Hospital Saligramam,
Chennai-600 093
[PR/283/2016/DD/14/2017/BOD/468/2018]

.....Respondent

MEMBERS PRESENT(through video conferencing):

CA. Prasanna Kumar D, Presiding Officer
Mrs. Rani Nair, (IRS, Retd.), Government Nominee

Date of Final Hearing: 18th September, 2020

Date of Order: 20-MAY-2024

1. The Board of Discipline vide Report dated 6th January, 2020 was of the opinion that **CA. R. Vinod Kumar** is guilty of "Other Misconduct" falling within the meaning of Clause (2) of Part-IV of the First Schedule of the Chartered Accountants Act, 1949 read with Section 22 of the said Act.

2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against **CA. R. Vinod Kumar** and communication dated 10th September 2020 was addressed to him thereby granting him an opportunity of being heard in person and/or to make written representation before the Board on 18th September, 2020.

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3. **CA. R. Vinod Kumar** appeared personally before the Board and made his oral representation. The Board also noted that the Respondent made his written representation vide letter dated 15/07/2020 and 15/09/2020 wherein he, inter-alia, stated as under :

- (i) The opinion of the Board of Discipline substituted the opinion of the Council as far as disrepute clause is concerned. The powers are conferred with the Council and the Board of Discipline or the Disciplinary Committee cannot exercise such powers.
- (ii) The findings of the Board of Discipline dated 06/01/2020 rendered by two persons have no legal force as Section 21A of the Chartered Accountants Act, 1949 contemplates that the Board of Discipline should consist of three persons.
- (iii) The statements of the Respondent recorded during proceedings are nullity as even SFIO does not have power to record statement of the Respondent in terms of Section 240 of the Companies Act, 1956. Further, the Respondent has not derived any benefit nor avoided any danger by making false statement before SFIO.
- (iv) The findings specified in Para 6 of findings dated 06/01/2020 are vague.
- (v) The para 7 of findings dated 06/01/2020 are contrary to Para 1 of the said findings i.e. charges alleged against the Respondent. Further, when there is a finding that Respondent was not the statutory auditor, it will impact the charge alleged against him and referred the matter of Hon'ble Supreme Court of India in case titled "Dhirajlal Girdharilal Vs. CIT Bombay [(1954) 26 ITR 736]". The Respondent further differed with the proposition that "Further changing of statement proves that a person is hiding facts and trying to mislead the Government Authorities".
- (vi) The present complaint is the first complaint made against him in the past 20 years of his practice.
- (vii) None of the acts as alleged by the Complainant had caused prejudice to the investigation and the Respondent had not gained anything by the alleged acts.
- (viii) The source of income of the Respondent is from the profession of Chartered Accountancy and the punishment would not only impact his professional standing but also his livelihood.
- (ix) The Respondent is sole bread winner for his family which includes his wife, a daughter studying in 8th Standard and twin sons studying in 6th Standard.

4. The Board has carefully gone through the facts of the case and also the written and oral representation of **CA. R. Vinod Kumar**. Considering the same, the Board was of the following view:

- (a) As regards the submission of the Respondent regarding the opinion of the Council as referred to in Clause (2) of Part IV of the First Schedule, the Board relies

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on para 17 of the Order dated 18th October, 2018 passed by the Hon'ble Appellate Authority in Appeal no.14/ICAI/2017 and 12/ICAI/2017 as under:

"17. It is pertinent to note here that this Authority has already dealt with and decided this issue in the Appeals earlier namely Gyan Prakash Agarwal (Appeal No. 08/ICAI/2014), Rajiv Maheshwari (Appeal No. 05/ICAI/2014) and Sameer Kumar Singh Vs. ICAI (Appeal No. 07/ICAI/2014) and has held as under:- "15. Based on the above and by taking note of the written submissions made on behalf of the Institute of Company Secretaries of India, the Institute of Cost Accountants of India and the Institute of Chartered Accountants of India containing the detailed Page 9 of 14 analysis of the issue in question, we are of the considered view that the proper and correct interpretation which can be given to Clause (2) of Part-IV of the First Schedule to the respective Acts, in the light of the principles laid down and having regard to the case laws of various courts and further considering the basic objects, reasons and purpose of the amendment brought in the statutes as quoted above is that, 'Prima facie Opinion (PFO)' formed by the Director (Discipline) in all such complaints / information cases serves the purpose for proceeding further for taking disciplinary action against the errant members as in terms of the amended mechanism for conduct of cases, it is the Director (Discipline) who has to form the first Prima Facie Opinion for the disciplinary proceedings to be initiated. Therefore, the opinion of council as is mentioned in the clause (2) of Part-IV of the First Schedule to the Act has to be given a purposive meaning and has to be read in consonance with the letter and scheme of the enactment".

Hence, the issue has already been decided by the Hon'ble Appellate Authority, and therefore, there is no merit in the argument of the Respondent in this regard.

(b) As regards the submission of the Respondent that the findings of the Board do not have any legal force as the same are rendered by 2 persons, the Board took into view the provisions of Rule 13(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 which provides as under:

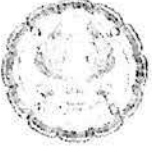
"13. Functioning of Board of Discipline

(2) The quorum for any meeting of the Board of Discipline shall be two members."

Thus, the Board held that there was no infirmity in the same and the case was duly considered by the members of the Board as per the requirements of Section 21A(1) of the Chartered Accountants Act 1949 read with Rule 13(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

(c) Further, as per the findings of the Board as contained in its report, the Complainant has basically pointed out that the Respondent assisted in incorporation of M/s Unigateway2U Trading P Limited, M/s Unipay2u Production Pvt. Limited, M/s Unipay Creative Business P Ltd. and M/s GODINDEX Tours and Travels Pvt. Ltd

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with ROC, Chennai and there is no evidence to show that he was the statutory auditor of the company namely Unigateway2U' Trading Pvt. Ltd. for the F.Y.2009-10. However, the said fact does not in any way mitigate the misconduct on the part of the Respondent in respect of the charge alleged. The Respondent being a professional was expected to come clean before making any statement on oath to Government Authorities. Further changing of statement proves that a person is hiding facts and trying to mislead the Government authorities. The statement on oath made by an individual especially a chartered accountant carries a lot of weightage and making contradiction in the statement given on oath puts a question on the credibility of the chartered accountants and is clearly unbecoming of a chartered accountant. Thus, it has already been conclusively proved that **CA. R. Vinod Kumar** is Guilty of Other Misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule of the Chartered Accountants Act, 1949 read with Section 22 of the said Act.

5. Upon consideration of the facts of the case, the consequent misconduct of **CA. R. Vinod Kumar** and keeping in view his oral and written representation before it, the Board decided to reprimand **CA. R. Vinod Kumar (M.No.206820)** and also imposed a fine of **Rs.25,000/- (Rs. Twenty five thousand only)** upon him payable within a period of 60 days from the date of receipt of the Order.

This is issued pursuant to the Order dated 29th April 2024 passed by Hon'ble High Court of Delhi in W.P.(C) 5247/2024 namely ICAI Vs R. Vinod Kumar & others.

Sd/-
CA. PRASANNA KUMAR D
(PRESIDING OFFICER)

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

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy
Charan Singh
नाम सिंह / Charan Singh
कार्यकारी अधिकारी / Executive Officer
अनुशासनपरक निदेशालय / Disciplinary Directorate
भारतीय सनची लेखाकार संस्थान
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