



भारतीय सनदी लेखाकार संस्थान
(संसदीय अधिनियम द्वारा स्थापित)
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)

PR/114/18-DD/187/18-DC/1366/2020

[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/114/18-DD/187/18-DC/1366/2020]

In the matter of:

Mr. Jacobus Martinson

M.D of Flowtools Offshore Ltd.,
Flowtools Offshore Ltd., FZC
Lease Office Building 2, Office no. 2G-21
Hamriyah Free Zone, Phase 1,
Sharjah, UAE-52665.

.....Complainant

Versus

CA. Atish Omprakashji Kabra (M. No. 125409)

A/P Mantri Lane,
Manwath
District Parbhani – 431505 (MS).

.....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 (through VC)
CA. Sanjay Kumar Agarwal, Member (in person)
CA. Cotha S Srinivas, Member (in person)

Date of Hearing : 28th March, 2024

Date of Order : 17th 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. Atish Omprakashji Kabra (M. No. 125409)** (hereinafter referred to as the **Respondent**) is **GUILTY** of Professional and Other Misconduct falling within the meaning of Item (4) of Part II of Second Schedule and Item (2) of Part IV of First 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

Mr. Jacobus Martinson -Vs- CA. Atish Omprakashji Kabra (M. No. 125409)



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communication was addressed to him thereby granting 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 the hearing held on 28th March 2024, the Respondent was present through video conferencing and made his verbal representation on the Findings of the Disciplinary Committee, inter-alia, stating that he could not defend his case properly as he did not had access to the documents which were in the office of the Company. The Committee also noted that the Respondent in his written representation on the Findings of the Committee, inter-alia, stated as under:

a. Item 4 of Part 2 of the Second Schedule of the Chartered Accountants Act, 1949 states that a member of the Institute is guilty of misconduct if they are found guilty by any civil or criminal court for an offense punishable by more than six months in prison. The misconduct includes embezzling or defalcating money received in their professional capacity.

The above provision does not apply to the case in hand as he was never found guilty.

b. Item (2) of Part 4 of the First Schedule of the Chartered Accountants Act of 1949 states that an individual is considered an associate member of the Institute of Chartered Accountants if their name is entered in the Register of Members. Associate members can use the letters A.C.A. after their name to signify their status.

The above provision is not applicable as it is unrelated to any punishment.

4. The Committee considered the reasoning as contained in the Findings holding the Respondent Guilty of Professional and Other Misconduct vis-à-vis verbal and written representation of the Respondent. The Committee noted that the Respondent in his written representation referred to incorrect stipulation of Item 4 of Part 2 of the Second Schedule of the Chartered Accountants Act 1949 and Item (2) of Part 4 of the First Schedule of the Chartered Accountants Act of 1949. The Committee referred to the following correct stipulation of the clauses in which the Respondent had been held Guilty by the Committee: -

Item 4 of Part 2 of the Second Schedule: -

"Defalcates or embezzles moneys received in his professional capacity."

Item 2 of Part 4 of the First Schedule: -

"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."

4.1 The Committee noted that both the above provisions, i.e., Item 4 of Part 2 of the Second Schedule to the Chartered Accountants Act 1949 (Professional Misconduct) and Item 2 of Part 4 of the First Schedule to the Chartered Accountants Act 1949 (Other Misconduct) are applicable to the Members of the Institute generally i.e. both in respect of the Members who are in practice



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and those who are not. Thus, the Committee is of the view that the case of the Respondent squarely falls in it and the Respondent has accordingly been held Guilty in respect of them.

5. Keeping in view the facts and circumstances of the case, material on record including verbal and written representation on the Findings, the Committee noted that the Respondent on the VISA application, submitted before Hamriyah Free Zone Authority, mentioned his profession as a Chartered Accountant. The appointment of the Respondent with the Company M/s Flowtools Offshore Ltd., Sharjah, UAE as the Finance Manager was based on his qualification as a Chartered Accountant. In both civil and criminal case filed by the Complainant against the Respondent, he was held guilty for the embezzlement. As regards civil case, the Hon'ble Sharjah Court of UAE in its Order dated 28th February 2018 directed the Respondent to pay back the Company an amount of USD 12,818/- with respect to embezzlement along with interest @ 5% from the date of judicial claim until full payment without exceeding the original debt.

5.1 Hence, professional and other 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 the name of CA. Atish Omprakashji Kabra (M. No.125409), Parbhani (Maharashtra) be removed from the Register of Members for a period of 03 (three) months.

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

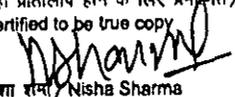
sd/-
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MEMBER

sd/-
(CA. COTHA S SRINIVAS)
MEMBER

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


निशा शर्मा / Nisha Sharma
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आइसीएआई भवन, विद्या नगर, शाहदरा, दिल्ली-110032

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/114/18-DD/187/18-DC/1366/2020]

In the matter of:

**Mr. Jacobus Martinson
M.D of Flowtools Offshore Ltd.
Flowtools Offshore Ltd., FZC
Lease Office Building 2, Office no. 2G-21
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.....Complainant

Versus

**CA. Atish Omprakashji Kabra (M.No. 125409)
A/P Mantri Lane,
Manwath
District Parbhani – 431505 (MS)**

.....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 (Through Video Conferencing)
CA. Sanjay Kumar Agarwal, Member (In person)
CA. Sridhar Muppala, Member (In person)**

DATE OF FINAL HEARING: 30.05.2023 (through physical/video conferencing mode)

PARTIES PRESENT

Complainant: Mr. Jijo Geo James, Accounts Manager cum authorized representative (Through Video Conferencing Mode)

Respondent: CA. Atish Omprakashji Kabra (Through Video Conferencing Mode)

Counsel for Respondent: Mr. Satish Aggarwal, Advocate (Through Video Conferencing Mode)

BACKGROUND OF THE CASE:

1. The brief background of the case is that a complaint in form I was filed by the Complainant on 18th June 2018. The Respondent was appointed Finance Manager of Flowtools Offshore Ltd. Sharjah, UAE., (hereinafter referred to as the "**Company**") during the year 2013. The main objective of the Company was Offshore Oil Rig Management, Operation & Ship Chartering and was also handling the manning and management of Alvand Oil Rig situated in the Siri Islands, Persian Gulf region.
 - a. The salary paid to the Respondent till 2014 was USD 7500/- per month and thereafter his salary was increased to USD 10,000/- per month. Further, in addition to the salary, yearly bonus amounting to 2% of the annual profits of the Company was also paid to him.
 - b. The Respondent was handling all finance related work of the company, and he was also responsible for the distribution of salaries to the crew members of the Company who were working in the offshore oil rig.
 - c. As per the Complainant before distribution of the salaries to the crew members, the Respondent being the Finance Manager was required to submit salary statement and pay slips to the Rig Manager / MD for approval and, subsequently, after getting their approval and signatures on the salary statement and pay slips, the Finance Manager would withdraw equivalent amount from the Company bank account and accordingly distribute the salary to the crew members.

CHARGES IN BRIEF: -

2. The Committee noted that the charge levelled against the Respondent is that he embezzled a portion of salary amount payable to the crew members, which

amounted to USD 91,224.13/- by manipulating the payment of salary to crew members by paying them at rate less than the rate fixed by the management for them. For this purpose, he forged the signatures of the Rig Manager in the pay slips before giving them to the crew members.

3. The Committee noted that the Respondent in his reply at the stage of PFO had, inter-alia, mentioned as under:

- a. That neither he represented himself as a Chartered Accountant nor used his ICAI qualification for any work permit at any point of time.
- b. That he never applied for any job in the Company as a Chartered Accountant and there was no written employment confirmation/appointment from the Company referring to any of his qualifications.
- c. That to obtain any employment visa other than labour visa in the UAE, one has to provide qualification certificates duly attested from embassies and ministries of respective countries. However, he did not use his CA certificate for the purpose of the same and had not attested it till date from any ministerial offices of respective countries.
- d. That he did not sign any paper or representation with the Company as a Chartered Accountant.

4. The Director (Discipline) had, in his Prima Facie Opinion dated 24th July 2020 observed that

- a. The contention of the Respondent that neither he represented himself as a Chartered Accountant nor used his ICAI qualification for any work permit at any point of time does not hold any ground as his appointment with the Company as the Finance Manager was based on his qualification as a Chartered Accountant, otherwise on what other basis/qualification/criteria he would have become eligible to apply and get selected by the Company for this post of Finance Manager. Further, as per the Complainant, he had mentioned his profession as Chartered Accountant on the VISA application submitted before Hamriyah Free Zone Authority.

- b. That the Respondent not only failed to reply on merits of the case but has also adopted a casual approach in giving his defence. Further, the Respondent has denied all these allegations as false, null and void.
- c. That in both the civil case and criminal case filed against the Respondent for the recovery of embezzled money, he was held guilty for the embezzlement of company cash.
5. Thus, the Director (Discipline) viewed that alleged misconduct on the part of the Respondent that he embezzled the cash of the Company by manipulating the payment of salary to crew members by paying them at a rate less than the rate fixed by the management for them and also by forging the signatures of the Rig Manager of the Company on payslips has been established by the Sharjah Court of UAE (as per Prima Facie Opinion) which was not expected of a Chartered Accountant as he was required to maintain high standards of conduct in his profession and whom society looks upon with dignity and trust.
6. 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/ or Misconduct falling within the meaning of Item (4) of Part II of the Second Schedule and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949. The said items in the Schedule to the Act states as under:

Item (4) of Part II of Second Schedule:

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

(4) defalcates or embezzles moneys received in his professional capacity."

Item (2) of Part IV of Second 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."

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.	25.04.2022	Adjourned at the request of the Respondent.
2.	11.04.2023	Part- Heard and Adjourned.
3.	30.05.2023	Heard and concluded.

8. On the day of the hearing, held on 25th April 2022, the Committee noted that the Respondent vide email dated 23rd April 2022 had sought an adjournment in the matter due to death of his grandmother. The Committee looking into the same acceded to his request and granted the adjournment.
9. On the day of the second hearing held on 11th April 2023, the Committee noted that the Complainant, vide his letter dated 6th April 2023 had sought an adjournment on the ground of the non-availability of his authorized representative. The Committee noted that the Respondent and his Counsel Shri Satish Agarwal Advocate were present through Video Conferencing. The Respondent was administered an 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. Thereafter, looking into the adjournment request by the Complainant and the fact that this was the first hearing before the present bench, the Committee decided to adjourn the hearing to a future date. With this, the hearing in the matter was partly heard and adjourned.

10. On the day of the final hearing, held on 30th May 2023, the Committee noted that the Respondent and his Counsel, Mr. Satish Aggarwal, Advocate, were present through Video Conferencing Mode. The Committee noted that Mr. Jijo Geo James, Accounts Manager cum authorized representative on behalf of the Complainant was also present through Video Conferencing Mode.
- 10.1 Thereafter, the Complainant was asked to submit his charges. The Complainant representative in his submissions had, inter-alia, submitted as under:
 - a. That he relied upon the Form-I filed by them in the year 2018 regarding two misconducts by the Respondent falling under Item (4) of Part II of the Second Schedule and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949.
 - b. That copy of the employment contract, Copy of Visa of the Respondent was attached with the Form I
 - c. That in supporting Form I he has submitted the judgement order passed by Hon'ble Sharjah Court wherein, in the criminal case, the Respondent was held guilty of embezzlement and in the order given in the Civil case the Respondent was ordered to refund USD 12818 along with 5% interest.
- 10.2 Thereafter, the Respondent was asked to make his submissions. He/ his Counsel in their submissions, inter-alia, mentioned as under:
 - a. That his entire submission was based on legal principles. Admittedly, the Respondent had been convicted and in the Civil Court of Sharjah he had been fined for the allegations made against him.
 - b. That instant case was hit by the principle of res judicata. Section 11 of Civil Procedure Code is very clear, on this that once a person is convicted or punished, then on the same set of facts he cannot be punished again.

- c. As per the principle of res judicata, if there are some allegations against any person and there are various/multiple forums to file a complaint against such person, then one cannot use all the forum available and punish him several times.
- d. That he relied on several judgements of Hon'ble Supreme Court to this effect in his written statement which is already on record.
- e. Considering his written statement vis-a-vis principle of Res-judicata, the present complaint is liable to be dismissed.

10.3 The Committee, after considering all papers available on record and after detailed deliberations and recording the submissions, decided to conclude the matter.

FINDINGS OF THE COMMITTEE: -

11. The Committee noted that the charge against the Respondent was that he embezzled a portion of salary amount payable to the crew members by manipulating the payment of salary to crew members at a rate less than the rate fixed by the management for them and forged the signatures of the Rig Manager in the pay slips before giving them to the crew members.
12. The Committee noted that the Respondent accepted and did not dispute the fact that the Respondent had been convicted by the court and a fine was imposed by the civil court. He, however, challenged the same on the principle of Res-judicata. The Committee noted the principle of doctrine of Res Judicata which is defined in Section 11 of the Civil Procedure Code. It is a doctrine that prohibits a court from re-examining a case that has already been conclusively decided by the same court, involving the same parties, subject matter, and under the same title.
13. The Committee in this regard noted that the present matter pertains to a complaint by the Complainant regarding professional misconduct of the Respondent as a Chartered Accountant. The ICAI as a statutory body

regulating the profession of Chartered Accountancy in India through this Committee is duty bound to act against its erring members, found guilty of professional misconduct through its well-defined disciplinary mechanism as provided under the Chartered Accountants Act, 1949 and the Rules framed thereunder.

14. The Committee noted the Respondent counsel did not dispute the fact and failed to reply on merits of the case rather than taking the case on legal grounds.
15. The Committee further noted that one of defence adopted by the Respondent was that he neither represented himself as a Chartered Accountant nor used his ICAI qualification for any work permit. The Committee on the same noted that Complainant has produced the copies of the Employment contract dated 26th April 2016 and copy of VISA of the Respondent issued on 23rd April 2013. The Committee noted that the Respondent on the VISA application submitted before Hamriyah Free Zone Authority had mentioned his profession as a Chartered Accountant.
16. On perusal of various documents on record, it was observed by the Committee that the appointment of the Respondent with the Company as the Finance Manager was based on his qualification as a Chartered Accountant. The Respondent failed to provide any contra evidence on record to prove other basis/qualification/criteria for the eligibility to apply and get selected by the Company for this post of Finance Manager. Hence, the defense made by the Respondent that neither he represented himself as a Chartered Accountant nor used his ICAI qualification for any work permit at any point of time does not hold any ground.
17. Furthermore, the Committee noted that the Complainant had filed a civil as well as criminal case against the Respondent. The Committee noted that in both the civil case and the criminal case the Respondent was held guilty for the embezzlement. As regards civil case, Hon'ble Sharjah Court of UAE in its order

dated 28th February 2018 directed the Respondent to pay back the Company an amount of USD 12,818/- along with interest @ 5% from the date of judicial claim until full payment without exceeding the original debt. Further as per the judgment in the criminal case filed against the Respondent, the Hon'ble Sharjah Court ordered to imprison the Respondent for 3 months and to deport him after execution of the punishment. However, in appeal filed against the said Order, the Court again found the Respondent guilty of embezzlement of the Company's cash amounting to USD 12,818/- and also imposed a penalty of AED 6,000/- along with judicial fees.

18. The Committee found that the alleged misconduct on the part of the Respondent that he embezzled the cash of the Company and forging the signatures of the Rig Manager of the Company on payslips has been established by the Sharjah Court of UAE and the same is not refuted by the Respondent/ his Counsel.

19. The Committee further noted that the ethical requirements of any accountancy body should be based on integrity, objectivity, independence, confidentiality, high technical standards, professional competence and, above all, on ethical behaviour. The Committee found that as a Chartered Accountant, the Respondent was required to maintain these high standards of conduct in his professional capacity. A professional has to also live upto the expectation of trust and dignity as reposed in the Chartered Accountant by the Society at large. The Respondent was duty bound to follow the Professional ethics encompassing the personal and corporate standards of behaviour expected from a Chartered Accountant. But his acts prove that he failed to maintain the high standards of conduct in his profession and had consequently brought disrepute to the profession.

CONCLUSION

20. In view of the above observations, considering the submissions of the Respondent and documents on record, the Committee held the Respondent

GUILTY of Professional and Other Misconduct falling within the meaning of item (4) of Part II of Second Schedule and Item (2) of Part IV of First Schedule to the Chartered Accountant 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: 7TH FEBRUARY, 2024
PLACE: NEW DELHI

सही प्रतिलिपि होने के लिए प्रमाणित /
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नीलम पुंडीर / Neelam Pundir
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
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