



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

PR/95/2021-DD/110/2021/DC/1754/2023

[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/95/2021-DD/110/2021/DC/1754/2023]

In the matter of:

CA. Neha Agarwal (M.NO.418765)
B/1, B.S Chakroberty Complex,
Contractor's area,
Behind Hotel Castle
BISTUPUR – 831 001.

.....COMPLAINANT

Versus

CA. Maninder Singh Dinga (M.NO.312679)
House No.143, Basti No.10,
Sidhora Golmuri,
East Singhbhum,
JAMSHEDPUR – 831 003.

.....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. Maninder Singh Dinga (M.No.312679), Jamshedpur (hereinafter referred to as the 'Respondent') is GUILTY of Professional Misconduct falling within the meaning of Item (8) of Part I of the First Schedule and Item (1) 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 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, accepting that error was there on his part and assured that the same will not be repeated in future. He informed that he was still conducting the audit of the Company. He requested for a lenient view in the case as the alleged misconduct took place in the initial years of his practice.

CA. Neha Agarwal (M.NO.418765), Bistupur -Vs- CA. Maninder Singh Dinga (M.NO.312679), Jamshedpur



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4. The Committee considered the reasoning as contained in the Findings holding the Respondent Guilty of Professional Misconduct vis-à-vis 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 with respect to the first charge noted that though the Respondent brought on record a courier receipt yet he could not establish that his letter dated 7th October, 2020 seeking no-objection from the Complainant reached her hand. He also admitted his mistake that he failed to communicate with the previous auditor through the allowed mode i.e. in writing sent through RPAD (Registered Post Acknowledgement Due) or by hand against written acknowledgement or through e-mail, making it evident that he failed to ensure compliance of the requirement of Item (8) of Part I of First Schedule to the Chartered Accountants Act, 1949.

5.1 The Committee with respect to the second charge noted that in the financial statements for the F.Y. 2018-19 for both the firms i.e. M/s Jamshedpur Tractor Service and M/s. Mata Rani Gas Agency signed by the Complainant, provision regarding pending audit of fee was appearing on the face of the Balance Sheet. Since the pending fee was reflected on the face of the Balance Sheet, hence it was not difficult for the Respondent to identify whether the fee is pending or not. The Respondent on this charge too accepted his guilt. Thus, the Committee held that the Respondent accepted the audit without ensuring that the undisputed outstanding fees of the previous auditor i.e. the Complainant had been fully paid.

5.2 Hence, professional misconduct on the part of the Respondent is clearly established as spelt out in the Committee's Findings dated 7th February 2024 which is to be read in consonance with the instant Order being passed in the case.

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

7. Thus, the Committee ordered that a Fine of Rs. 35,000/- (Rupees Thirty-Five Thousand only) be imposed upon CA. Maninder Singh Dinga (M.No.312679), Jamshedpur payable within a period of 60 days from the date of receipt of the Order.

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

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

अरुण कुमार / Arun Kumar
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer

CA. Neha Agarwal (M.NO.418768) vs. CA. Maninder Singh Dinga (M.NO.312679), Jamshedpur

अखिल भारतीय लेखाकार संस्थान / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhowan, Vishwas Nagar, Shahdra, Delhi-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/95/2021-DD/110/2021/DC/1754/2023]

In the matter of:

CA. Neha Agarwal (M.NO.418765)

B/1, B.S Chakroberty Complex,
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BISTUPUR – 831 001

.....COMPLAINANT

Versus

CA. Maninder Singh Dinga (M.NO.312679)

House No.143, Basti No.10,
Sidhora Golmuri,
East Singhbhum,
JAMSHEDPUR – 831 003

.....RESPONDENT

MEMBERS PRESENT:

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

Ms. Rani Nair, I.R.S. (Retd.), Government Nominee (Through Video Conferencing Mode)

Shri Arun Kumar, I.A.S. (Retd.), Government Nominee (Through Video Conferencing Mode)

CA. Sanjay Kumar Agarwal, Member (Through Video Conferencing Mode)

CA. Sridhar Muppala, Member (Through Video Conferencing Mode)

DATE OF FINAL HEARING : 09.06.2023 (through physical/video conferencing mode)

PARTIES PRESENT

Complainant: CA. Neha Agarwal (Through Video Conferencing)

Respondent: CA. Maninder Singh Dinga (Through Video Conferencing)

BACKGROUND OF THE CASE

1. The brief background of the case is that the Complainant was the tax auditor of M/s. Mata Rani Gas Agency and M/s. Jamshedpur Tractor Services for the financial year 2018-19. The Respondent conducted the tax audit of these entities for the financial year 2019-20 without doing prior communication with the previous auditor and without ensuring payment of the outstanding fee of the Complainant.

CHARGES IN BRIEF: -

2. The Committee noted that the Complainant vide her complaint dated 27th March, 2021 levied the following charges against the Respondent:
 - a. The Respondent did not take any prior consent from the previous auditor before accepting the audit of M/s. Mata Rani Gas Agency and M/s. Jamshedpur Tractors for the financial year 2019-20.
 - b. The Respondent accepted the audit without first ensuring that outstanding audit fees of the previous auditor has been paid or not.
3. The Committee noted that the Respondent at the stage of PFO had inter-alia submitted as under:
 - a. That he has sent a letter dated 7th October 2020 to obtain the Complainant's consent, but the Complainant did not bother to reply before due date of F.Y 2019-20.
 - b. After the due date was over, the Complainant e-mailed him on 6th February 2021 for not taking her consent.
 - c. That the Complainant provided a wrong address which belonged to his senior partner.
4. The Director (Discipline) had, in his Prima Facie Opinion dated 23rd February 2023, with respect to **first allegation** noticed that the Respondent had communicated

with the Complainant vide letter dated 7th October, 2020 through Courier for taking her NOC whereas he was required to send communication through Registered Post. Hence, the Respondent appears to have not made any prior communication with the previous auditor as required in terms of Item (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

4.1 With respect to **second allegation**, it is noted that as per Council General Guidelines, 2008 it is clear that the incoming auditor should not accept the audit in the case of non-payment of audit fees of previous auditor reflected in financial statement. But in the instant matter, despite audit fees being outstanding, the Respondent accepted and conducted the audit. Further, he failed to bring on record any evidence that outstanding audit fees of previous auditor was paid by the party. Hence, it appears that the Respondent has violated the requirement of Chapter VII of the Council General Guidelines, 2008.

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 Misconduct falling within the meaning of Item (8) of Part I of First Schedule and Item (1) of Part II of Second Schedule to the Chartered Accountants Act, 1949. The said clause 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 (1) 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-

(1) contravenes any of the provisions of this Act or the regulations made thereunder, or any guidelines issued by the Council;"

BRIEF FACTS OF THE PROCEEDINGS

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

S.No.	Date	Status of Hearing
1.	09.06.2023	Heard and Concluded

7. On the day of hearing held on 09th June 2023, the Committee noted that both parties, i.e., the Complainant and the Respondent were present through Video Conferencing Mode from their respective places. Both the parties were administered on Oath.

7.1 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 Guilty to the charges levelled against him. Both the parties also consented to proceed with the proceedings and submitted that they did not want any adjournment in the matter.

7.2 Thereafter, regarding the first allegation, the Respondent submitted that he does not want to contest the complaint. He submitted that he had made a mistake that he did not send the letter through RPAD (Registered Post Acknowledgement Due) or by hand against written acknowledgement or through e-mail. With respect to second allegation also, he submitted that he had made a mistake but that was due to the confidence on the client that he thought that there was no pendency of audit fees of previous auditor. He further submitted that since it is his first time offence so the Committee may take a lenient view and award lesser punishment.

7.3 Thereafter, the Committee asked the Complainant to make her submissions. The Complainant in her submissions had inter-alia submitted as under:

a. That the Respondent quoted a very general reason for not taking NOC.

b. That she had communicated to the client and the Respondent both that her fee is outstanding through email and also on whatsapp.

- c. That her total fee was Rs. 40,000/- from two firms, out of which Rs. 20,000/- was paid in lumpsum and the balance was not paid, and is still outstanding.
- d. That she had communicated to the Respondent that he had not taken NOC from her but atleast he should ensure that her fee is being paid.
- e. That the Respondent had offered her the settlement ten days before the hearing.
- f. That when she was on maternity leave, the Respondent came to her office and created scene.
- g. She requested the Committee to penalize the Respondent in monetary terms.
- h. That the Respondent is also not taking NOC from any Chartered Accountants for his other assignments.

7.4 Thereafter, the Committee, looking into the Respondent's submissions and his acceptance of guilt against the charges levelled, recorded his plea and proceeded in accordance with the provisions of Rule 18(8) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, and accordingly concluded the hearing.

FINDINGS OF THE COMMITTEE

8. As regards the **first charge**, the Committee noted that the Respondent admitted his mistake that he failed to communicate with the previous auditor through the allowed mode i.e. in writing sent through RPAD (Registered Post Acknowledgement Due) or by hand against written acknowledgement or through e-mail which, making it evident that the Respondent had failed to ensure compliance of the requirement of Item (8) of Part I of First Schedule to the Chartered Accountants Act, 1949.

- 8.1 The Committee noted that the objective of communicating with the previous auditor is that the incoming auditor may have an opportunity to know the reasons for the change in auditor to safeguard his own interest.
- 8.2 In this regard, it is observed that two elements of communication to comply with the requirements of provisions of Item (8) of Part 1 of the First Schedule to the Chartered Accountants Act, 1949 are that the communication should be prior to the acceptance and should be in writing sent through RPAD (Registered Post Acknowledgement Due) or by hand against written acknowledgement or through e-mail. Though the Respondent brought on record a courier receipt yet he could not establish that his letter dated 7th October, 2020 seeking NOC from the Complainant reached her hand.
- 8.3 Therefore, the contention of the Respondent that he had sent the same through courier cannot be an excuse for non-compliance of this requirement as he had not provided any evidence that the same was received by the Complainant.
- 8.4 The Committee noted that the Respondent to this charge had already accepted his guilt. Accordingly, the Committee held the Respondent **GUILTY** of Professional Misconduct falling within the meaning of Item (8) of Part I of First Schedule to the Chartered Accountants Act, 1949.
9. As regards to the **second charge** of acceptance of audit without ensuring that outstanding audit fees of the previous auditor has not been paid, the Committee noted that the financial statements for the F.Y. 2018-19 for both the firms i.e. M/s Jamshedpur Tractor Service and M/s Mata Rani Gas Agency signed by the Complainant that provision regarding pending audit of fee was appearing on the face of the Balance Sheet which reflected as under:

M/S JAMSHEDPUR TRAILOR SERVICE
 Prop - Mohammad Ansar
 H Road, Madarsa Chumashah Colony, Azadnagar
 Mango, Jamshedpur - 831002

BALANCE SHEET (As at 31st March 2019)

CAPITAL & LIABILITIES	AMOUNT	AMOUNT	ASSETS & INVESTMENT	AMOUNT	AMOUNT
Capital Account			Fixed Assets		
Opening Balance	18,051,801.31		As per Schedule 'A'		13,702,000.00
Add - Net Profit During the year	556,531.00				
Less - Drawings	17,994.00	18,590,338.31			
			Current Assets & Loans & Advances		
			Loan and Advances	584,512.00	
			Sundry Debtors	3,999,292.00	
			TDS Receivable	182,556.00	4,766,360.00
Current Liabilities & Provisions			Cash & Bank Balance		
Sundry Creditors For Service & Exp	3,129,641.00		IndusInd Bank (A/c no-201001844659)	2,899,019.31	
Audit Fees Payable	20,000.00	3,149,641.00	Cash	372,600.00	3,271,619.31
		21,739,979.31			21,739,979.31

As per our report of even date for
 M/s Neha Suresh & Associates
 (Chartered Accountants)

For and on behalf of M/s Jamshedpur Trailor Service

Sd/-

Sd/-

NEHA AGRAWAL
 (Proprietor)

Md Ansar
 (Proprietor)

Place : Jamshedpur
 Dated : 29th Day of June, 2019

M/S MATA RANI GAS AGENCY

Prop - Anamika Juhl
 Shop no-08, Marketing Complex, Ashiana Suncity, Baliguma
 Mango, Jamshedpur - 831002

BALANCE SHEET (As at 31st March 2019)

CAPITAL & LIABILITIES	AMOUNT	AMOUNT	ASSETS & INVESTMENT	AMOUNT	AMOUNT
Capital Account			Fixed Assets		
Opening Balance	2,850,061.12		As per Schedule 'A'		660,969.00
Add - Net Profit During the year	702,829.40				
Less - Drawings	236,525.00	3,325,365.53			
			Investments		
Loan & Liabilities			Gold & Jewellery	358,314.00	
CC With IDBI Bank		186,991.48	Other Investments	215,125.00	573,439.00
Current Liabilities & Provisions			Current Assets & Loans & Advances		
Sundry Creditors For Goods & Exp	165,257.66		Advance to BPCL	142,608.00	
Audit Fees Payable	20,000.00		Security Deposit with BPCL	500,000.00	
Income Tax Provision	30,289.00	215,546.66	GST Refundable	14,075.80	
			Closing Stock	1,485,452.00	2,142,135.80
			(As certified by Proprietor)		
			Cash & Bank Balance		
			IDBI Bank (A/c no-1131102000000709)	17,213.87	
			Cash	334,146.00	351,359.87
		3,727,903.67			3,727,903.67

As per our report of even date for
 M/s Neha Suresh & Associates
 (Chartered Accountants)

For and on behalf of
 M/s Mata Rani Bharat Gas Agency

Sd/-

Sd/-

(Neha Agarwal)
 Proprietor
 M.No. : 418765

Anamika Juhl
 (Proprietor)

Place : Jamshedpur
 Dated : 29th Day of June, 2019



- 9.1 The Committee noted that since the pending fee was reflected on the face of the Balance Sheet, hence it was not difficult for the Respondent to identify whether the fee is pending or not.
- 9.2 The Committee in this regard observed that Chapter VII of Council Guidelines No. 1-CA (7)/02/2008, dated 8th August, 2008 states as under:

"A member of the Institute in practice shall not accept the appointment as auditor of an entity in case the undisputed audit fee of another Chartered Accountant for carrying out the statutory audit under the Companies Act, 1956 or various other statutes has not been paid:

Provided that in the case of sick unit, the above prohibition of acceptance shall not apply.

Explanation 1:

For this purpose, the provision for audit fee in accounts signed by both - the auditee and the auditor shall be considered as "undisputed" audit fee.

Explanation 2:

For this purpose, "sick unit" shall mean where the net worth is negative."

- 9.3 The Committee on perusal of the above guidelines noted that the Respondent has accepted the audit without ensuring that undisputed outstanding fees of the previous auditor i.e. the Complainant has been fully paid.
- 9.4 The Committee noted that the Respondent on this charge too had accepted his guilt. Accordingly, the Committee held the Respondent **GUILTY** of Professional Misconduct falling within the meaning of Item (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

CONCLUSION

10. In view of the above findings stated in the above para's vis-a-vis material on record and oral submissions, the Committee, in its considered opinion, holds the Respondent is **GUILTY** of Professional Misconduct falling within the meaning of Item (8) of Part 1 of the First Schedule and Item (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

SD/-

(CA. RANJEET KUMAR AGARWAL)

PRESIDING OFFICER

SD/-

(MRS. RANI NAIR, I.R.S. RETD.)

GOVERNMENT NOMINEE

SD/-

(SHRI. ARUN KUMAR, IAS, RETD.)

GOVERNMENT NOMINEE

SD/-

(CA. SANJAY KUMAR AGARWAL)

MEMBER

SD/-

(CA. SRIDHAR MUPPALA)

MEMBER

DATE: 07TH FEBRUARY, 2024

PLACE: NEW DELHI

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

B. B. R.
बिष्वा नाथ तियारी / Bishwa Nath Tiwari
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
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