



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

PR-305/2021-DD/311/2021/DC/1751/2023

[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-305/2021-DD/311/2021/DC/1751/2023]**

**In the matter of:**

CA. Anupam Sharma (M. No. 079150)  
Partner, M/s Anupam Ramesh & Associates  
Chartered Accountants  
02, Victoria Garden,  
Victoria Park Road,  
Near Jail Chungi Crossing,  
Meerut – 250002.

...Complainant

versus

CA. Mohammad Shahbaz Ansari (M. No. 527903)  
Proprietor, M/s Mohammad Shahbaz & Associates  
Chartered Accountants  
51, Darya Ganj,  
Near Prahlad Nagar,  
Meerut – 250002.

...Respondent

**Members Present: -**

CA. Ranjeet Kumar Agarwal, Presiding Officer (in person)  
Mrs. Rani S. Nair, IRS (Retd.), Government Nominee (through VC)  
Shri Arun Kumar, IAS (Retd.), Government Nominee (in person)  
CA. Sanjay Kumar Agarwal, Member (in person)  
CA. Cotha S Srinivas, Member (through VC)

Date of Hearing : 10<sup>th</sup> April, 2024  
Date of Order : 28<sup>th</sup> 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. Mohammad Shahbaz Ansari (M. No. 527903), Meerut (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 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 10<sup>th</sup> April 2024.

3. The Committee noted that on the date of the hearing held on 10<sup>th</sup> April 2024, the Respondent was present through video conferencing and made his verbal representation on the Findings of the Disciplinary

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CA. Anupam Sharma (M. No. 079150)-Vs- CA. Mohammad Shahbaz Ansari (M. No. 527903), Meerut

RECORDED  
INDEXED  
SERIALIZED  
FILED  
MAY 28 2024  
MEERUT



# भारतीय सनदी लेखाकार संस्थान

(संसदीय अधिनियम द्वारा स्थापित)

**THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA**

(Set up by an Act of Parliament)

PR-305/2021-DD/311/2021/DC/1751/2023

Committee, inter-alia, stating that whatever he did was in a bona-fide faith. The Complainant was aware about his appointment in the Company wherein he was the previous auditor. The Respondent requested the Committee to take lenient view in his case.

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. Thus, keeping in view the facts and circumstances of the case, material on record including verbal representation on the Findings, the Committee noted that the Respondent failed to bring on record any evidence of communication with the Complainant which was imperative on his part in terms of Code of Ethics. Thus, the Committee held that the Respondent has accepted the position of Statutory Auditor of the seven entities namely, M/s AL-Faheem Meatex Private Limited, M/s AL-Fozan Meatex Export Private Limited, M/s AL-Ayyub Exports Private Limited, M/s Grand Indian Overseas Poultry Private Limited, M/s Perfect Premium Dairy Products Private Limited, M/s Indraprastha Educational and Cultural Society and M/s Yaqoob Educational Charitable Trust for financial year 2019-20 without first communicating with the Complainant being the previous auditor in writing.

5.1 Hence, professional misconduct on the part of the Respondent is clearly established as spelt out in the Committee's Findings dated 7<sup>th</sup> 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. 25,000/- (Rupees Twenty-Five Thousand only) be imposed upon CA. Mohammad Shahbaz Ansari (M.No.527903), Meerut 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

प्रमाणित सत्य प्रतिलिपि / Certified True Copy

*Prover*

CA. Anupam Sharma (M. No. 079150)-Vs- CA. Mohammad Shahbaz Ansari (M. No. 527903), Meerut

अनुपम शर्मा / ANUPAM SHARMA  
अनुशासनात्मक निदेशक / Disciplinary Directorate  
भारतीय सनदी लेखाकार संस्थान  
The Institute of Chartered Accountants of India  
आर.सी.ए.आई. भवन, विन्हास नगर, गाहदर, दिल्ली-110032  
R.C. Bhawan, Vinwas / andra, D-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-305/2021-DD/311/2021/DC/1751/2023]**

**In the matter of:**

**CA. Anupam Sharma (M. No. 079150)**

Partner, M/s Anupam Ramesh & Associates

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02, Victoria Garden,

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Near Jail Chungi Crossing,

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**...Complainant**

**versus**

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Chartered Accountants

51, Darya Ganj,

Near Prahlad Nagar,

Meerut – 250002

**...Respondent**

**MEMBERS PRESENT:**

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

**Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee (Present in person)**

**Shri Arun Kumar, I.A.S. (Retd.), Government Nominee (Present in person)**

**CA. Sanjay Kumar Agarwal, Member (Present in person)**

**CA. Sridhar Muppala, Member (Present in person)**

**DATE OF FINAL HEARING : 16.10.2023**

**DATE OF JUDGEMENT : 14.12.2023**

**PARTIES PRESENT** :

**Complainant:** CA. Anupam Sharma (Through Video Conferencing Mode)

**Respondent:** CA. Mohammad Shahbaz Ansari (Through Video Conferencing Mode)

**Counsel of Respondent:** CA. Lakshay Gupta (Through Video Conferencing Mode)

**BACKGROUND OF THE CASE:**

1. The brief background of the case is as under:
  - a. As per the Complainant, he was appointed as the Statutory Auditor of seven entities namely, M/s AL-Faheem Meatex Private Limited, M/s AL-Fozan Meatex Export Private Limited, M/s AL-Ayyub Exports Private Limited, M/s Grand Indian Overseas Poultry Private Limited, M/s Perfect Premium Dairy Products Private Limited (hereinafter cumulatively referred to as the "Companies"), M/s Indraprastha Educational and Cultural Society, and M/s Yaqoob Educational Charitable Trust (hereinafter jointly referred to as the "Trusts / Societies") upto FY 2018-19.
  - b. The Respondent accepted the position as statutory auditor of all the 7 entities mentioned above for FY 2019-20 upon resignation given by the Complainant.

**CHARGES IN BRIEF: -**

2. The Committee noted that the various instances of professional misconduct were highlighted by the Complainant against the Respondent which were as under:

S.no.	Allegations	View of Director (Discipline)
1. a.	The Respondent has accepted the position of Statutory Auditor of the Companies and Trusts (total 7 entities) for financial year 2019-20 without first communicating with the Complainant being the previous auditor in writing.	<b>Held Guilty</b>

1.b.	The Respondent has accepted the aforesaid assignment despite the non-payment of undisputed audit fees payable to the Complainant.	<b>Held Guilty</b>
2.	The Respondent, despite holding full-time Certificate of Practice (CoP), was drawing a monthly remuneration from one of the Companies namely, M/s AL- Faheem Meatex Private Limited and also accepted the position of Statutory Auditor in the same Company. It was, thus, alleged that the Respondent has done Professional Misconduct falling within the meaning of Item (11) of Part-I of First Schedule to the Chartered Accountants Act, 1949.	<b>Held Not Guilty</b>
3.	The Respondent has accepted the appointment as Statutory Auditor of the Companies and Trusts without first ascertaining that whether the requirements of Section 139 and 140 of Companies Act, 2013 in respect of his appointment had been duly complied with.	<b>Held Guilty</b>
4.	The Respondent has not exercised due diligence in conducting his professional duties as he was appointed as the Statutory Auditor of Companies for financial year 2019-20 in an EGM dated 30 <sup>th</sup> December 2020 and submitted his audit report for all five Companies on the same day i.e., on 30 <sup>th</sup> December 2020.	<b>Held Not Guilty</b>

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

- a. That the Complainant had resigned from all Companies on 22<sup>nd</sup> October 2020 and on 23<sup>rd</sup> October 2020, all Companies sent their intent letter to appoint the Respondent as their Statutory Auditor against which the

Respondent had given his consent on 26<sup>th</sup> October 2020, after communicating the same to the Complainant in writing by sending letters dated 23<sup>rd</sup> October 2020 to the office of the Complainant which were delivered by hand, and which were duly received by the staff of the Complainant, but the Complainant / his staff did not issue the acknowledgement as per routine practice followed by them, since inception.

- b. The management issued the appointment letter to the Respondent on 27<sup>th</sup> October 2020 and requested him to start the work from the first week of November 2020. Later, the management held an EGM in the month of December 2020
- c. After having a telephonic conversation, the Respondent visited the office of the Complainant.
- d. Thereafter, the Respondent gave his consent to the Companies on 26<sup>th</sup> October 2020 and accepted the appointment as the Statutory Auditor of the Companies
- e. The Respondent has argued that the Complainant had wilfully not given any written consent even through orally. The Complainant had not only acknowledged the cheques received for pending dues amounting to Rs. 5,54,158/- but had also informed the Respondent that he was not interested to continue as the Statutory Auditor of the Companies anymore in the presence of Mr. Pramod Sharma (Senior Accountant of AL-Faheem Meatex Pvt Ltd).
- f. It is stated that the Complainant had received post-dated cheques, which were given by Mr. Nawid on behalf of the Companies against his full dues from the Companies and all the cheques were honoured in due course on 07<sup>th</sup> November 2020 and this fact has been acknowledged by the Complainant in his complaint itself.
- g. That the Complainant was not removed by the Companies, he himself resigned due to pre-occupation in other assignments. Further, the Complainant had at several times denied the management to continue as the Statutory Auditor due to his pre-occupation and that after the wilful resignation of the Complainant, the Company had no other option except to appoint the new Statutory Auditor.

4. The Director (Discipline) had, in his Prima-facie opinion dated 13<sup>th</sup> February 2023, noticed that with respect to the **first leg of the first charge** (mentioned at Sr. 1(a) of the Para 2), though the Respondent has also brought on record the letters of communication stated to be sent to the Complainant before accepting the appointment as the Statutory Auditor of the Companies yet he has failed to prove that the said letters had been received by the Complainant as the Respondent has not provided any written acknowledgement of the said letters on record. It was noted that in the absence of any proof of delivery of letters of communication to the Complainant, the said contention of the Respondent appears to be merely an afterthought especially when the Complainant has clearly denied of having received any such letter from the Respondent. Thus, the Respondent was opined as **prima facie guilty** of professional misconduct falling within the meaning of Item (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

4.1 With respect to the **second leg of the first charge** (mentioned at Sr. 1(b) of Para 2), on perusal of the documents on record, it was noted by the Director (Discipline) that the Complainant had been given post-dated cheques by the Companies pertaining to his audit and other professional fees which were cleared in the first and second week of November 2020 whereas the Respondent has accepted the appointment as Statutory Auditor of the Companies and Trusts on 27<sup>th</sup> October 2020 and admittedly started his audit work. It was also noted that mere handover of the post-dated cheques cannot be termed as ultimate payment of dues to the Complainant as there is every chance of dishonour of such post-dated cheques. Thus, the Respondent was opined as **prima facie guilty** of professional misconduct falling within the meaning of Item (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

4.2 With respect to the **second charge** (mentioned at Sr. 3 of the Para 2), the Director (Discipline) noted that the Respondent was appointed on 27<sup>th</sup> October 2020 and the Respondent has himself admitted that upon his appointment on 27<sup>th</sup> October 2020, he immediately started conducting the

audit of financial statements of the Companies. However, as required under Section 139(8) of Companies Act, 2013, his appointment by passing a resolution in the Extra-ordinary General Meeting of the Company was done on 30<sup>th</sup> December 2020 and thereafter only, Form ADT-1 for the appointment of the Respondent as the Statutory Auditor for all the Companies was filed on 21<sup>st</sup> January 2021. Even in the said Form ADT-I, the date of Appointment of the Respondent has been mentioned to be 30<sup>th</sup> December 2020. Thus, it is amply clear that the Respondent has not ensured the compliance of Section 139 of Companies Act, 2013 to ensure that his appointment as the Statutory Auditor of the Companies was valid. Thus, the Respondent was opined as **prima facie guilty** of professional misconduct falling within the meaning of Item (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

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) and (9) of Part-I of First Schedule and Item (I) of Part-II of Second Schedule to the Chartered Accountants Act, 1949. The said item in the Schedule to the Act states as under:

**Item (8) of Part I of the 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 the 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 of the Companies Act, 1956 in respect of such appointment have been duly complied with".*

**Item (1) 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-

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

**SUBMISSIONS OF THE RESPONDENT ON PRIMA FACIE OPINION**

6. The Committee noted that the Respondent in his submissions dated 14<sup>th</sup> October 2023 on Prima Facie Opinion had, inter-alia, mentioned as under:
- a. That the Respondent had served the Companies as independent consultant for implementation of new projects since 2018 and during such consultancy assignment he was under concurrent interaction with the Complainant to discuss various aspects of the companies in process of providing said consultancy services and they both shared mutual respect for each other. As there was good faith in the mind of the Respondent towards the Complainant, he refrained from insisting for a written no objection certificate from the Complainant.
  - b. That with respect to the delivery of the letter dated 23<sup>rd</sup> October 2020 seeking NOC construed as afterthought, the Respondent stated that he vide his letter dated 28<sup>th</sup> October 2021 has already filed identity proof of Sh. Nawid Anwar who confirmed that delivery of the letter to the Complainant so that an independent enquiry can be made from him by the Directorate but on perusal of impugned PFO, it is evident that no such

enquiry has been conducted by the office of Ld. Director (Discipline) from Sh. Nawid Anwar who is nowhere under the control of the Complainant and is employed in one of the Companies.

- c. That in the annexure to the Form 1 submitted with the Complaint, reference to non-waiting of the Respondent for response to communication duly substantiates the fact that impugned letter dated 23<sup>rd</sup> October 2020 issued by the Respondent seeking no objection certificate from the Complainant was duly delivered to his office and he is very well aware of said communication but has been bluntly saying that no such documents were delivered to his office.
- d. That the Complainant duly acknowledged the fact that he had received the post-dated cheques pertaining to the undisputed amount of audit fees payable by the auditee companies for earlier audit assignments and these cheques were duly presented for payment on prescribed dates and the same were duly cleared and credited in his bank account. During the personal visit of the Respondent on 26<sup>th</sup> October 2020 to the office of the Complainant, the Complainant not only acknowledged the fact regarding receipt of post-dated cheques but nowhere posed any apprehension regarding its clearance or stated any objection regarding acceptance of impugned audit assignment. Thus, the audit assignment was accepted in the good faith and after obtaining oral consent from the Complainant.
- e. That the Respondent not only relied on the oral consent of the Complainant but had duly enquired the fact regarding payment of impugned undisputed audit fees prior to acceptance of impugned audit assignment from the management who had confirmed that the post-dated cheques have been delivered to the Complainant and by the time, impugned audit assignment will be initiated i.e., in first week of November, 2020, the said post-dated cheques would be available for presentation for payment and the clearance thereof will be ensured in all possible manner.
- f. That since the time available for completion of the audit was very less, the Respondent upon obtaining aforesaid assurance from the management of the Companies and under a bona-fide belief that handing over of post-dated cheques would be ample compliance regarding payment of undisputed audit fees whereas, confirmation was duly sought regarding its

- clearance as and when the post-dated cheques were presented by the Complainant. As such, in light of the prevailing facts of the case, the findings of the Director (Discipline) in holding the Respondent to be guilty of professional misconduct merely on the premise that post-dated cheques pertaining to undisputed audit fees were not actually cleared before the acceptance of audit assignment is unjustified and deserves to be dropped.
- g. That the provisions of Section 139(8) of the act has been appropriately complied by the Companies as the Respondent was prima facie appointed by the board of directors within 30 days of the date of resignation of the Complainant creating casual vacancy and subsequently, the prima facie appointment of the Respondent as statutory auditor of the Companies has been duly ratified / approved by the members of Companies at the extraordinary general meeting held on 30<sup>th</sup> December 2020 i.e. within prescribed period of 3 months from the date of prima facie appointment / recommendation of new statutory auditors of the Companies to the members of the Companies. Thereby, the Director (Discipline) was not justified in holding that the Respondent had not ensured compliance of provisions of section 139 & 140 of the Companies Act, 2013 relating to his appointment as statutory auditor of the Companies and thereby, impugned prima facie opinion deserves to be dropped.

#### **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.	09.06.2023	Part-Heard and Adjourned
2.	23.08.2023	Adjourned at the request of the Respondent
3.	18.09.2023	Adjourned at the request of the Respondent
4.	16.10.2023	Concluded & Judgment Reserve
5.	14.12.2023	Final decision taken on the case

8. On the day of the first hearing held on 09<sup>th</sup> June 2023, the Committee noted that both the Respondent and the Complainant were present through video conferencing mode from their respective places and were administered on 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 fact that this was the first hearing, the Committee decided to adjourn the hearing to a future date. With this, the hearing in the matter was partly heard & adjourned.
9. On the date of second hearing held on 23<sup>rd</sup> August 2023, the Committee noted that the Complainant was not available at the time the case was called for hearing. The Respondent over the phone informed that his Counsel is out of town so requested for adjournment in the matter. Accordingly, the Committee decided to provide one more opportunity to the Respondent to represent his matter and the case was adjourned to a future date.
10. On the date of third hearing held on 18<sup>th</sup> September 2023, the Committee noted that the Respondent vide email dated 16<sup>th</sup> September 2023 sought adjournment till 31<sup>st</sup> October 2023 due to professional commitments. The Committee informed the Complainant about the same and asked him to make his submissions to which the Complainant replied that he had already submitted his inputs and queries and did not want to submit anything else. Thereafter, the Committee decided to provide one more opportunity to the Respondent to represent his matter and also directed that no more adjournment shall be granted to the parties. Accordingly, the instant matter was adjourned to a future date on the request of the Respondent.
11. On the date of final hearing held on 16<sup>th</sup> October 2023, the Committee noted that the Complainant was present through Video Conferencing Mode. The Committee further noted that the Respondent along with his Counsel were also present through Video Conferencing Mode.

11.1 The Committee noted that the matter relates to NOC, pending fee and non-compliance Section 139 and 140 of the Companies Act, 2013 and asked the Complainant to confirm the same. The Complainant confirmed the same stating that these are the only charges against the Respondent. Thereafter, the Committee asked the Complainant to present his case. The Complainant in his submissions, had, inter-alia, submitted as under:

- a. That no one ever came to his office for taking NOC from him.
- b. That the Respondent had accepted the audit assignment before payment of his undisputed fees as the date mentioned on post-dated cheques was of November 2020 and ADT-1 for Respondent's appointment was filed on 16<sup>th</sup> October 2020
- c. That he had voluntarily resigned from the Company and all his dues were cleared before signing of balance sheet by the Respondent.

11.2 Thereafter, the Respondent was asked to make his submissions. The Respondent/ his Counsel in his submissions, had, inter-alia, stated as under:

- a. The Respondent's Counsel reiterated his earlier submissions made at the stage of PFO.
- b. That there is no written confirmation from the Complainant regarding NOC. He stated that the Respondent was under a good faith that he would not be required to defend or anything like that and has been ensured by the Complainant that he can continue with the assignment and his duty regarding communication has been discharged.
- c. That the management of the Company assured the Respondent about the clearance of the post – dated cheques Further the post-dated cheques were cleared in the first week of November itself even before the initiation of audit assignment.
- d. The Respondent's Counsel explained the provisions of casual vacancy as per Companies Act, 2013..

Thereafter, the Committee posed certain questions to both the parties to understand the issue involved and the role of the Respondent in the case. On consideration of the case, the Committee gave directions to both the parties to

submit any further papers they want to submit within the next seven days. After detailed deliberations, and on consideration of the facts of the case, various documents on record as well as oral and written submissions made by the Counsel for the Respondent before it, the Committee decided to conclude the hearing by reserving its judgement.

12. Thereafter, this matter was placed in meeting held on 14<sup>th</sup> December 2023 wherein the same members, who heard the case earlier, were present for consideration of the facts and arriving at a decision by the Committee. The Committee noted pursuant to its direction given in the hearing held on 16<sup>th</sup> October, 2023, the Respondent has failed to submit the documents however the Complainant had made his submissions stating as under:
- a. The Respondent has himself admitted that he did not communicate with the retiring auditor as prescribed.
  - b. That the incoming auditor should not accept the appointment unless such fees are paid.
  - c. The Respondent neither communicated his appointment to the previous auditor nor waited a reasonable time to start the audit on the same date i.e., 30<sup>th</sup> December, 2020.

Accordingly, keeping in view the facts and circumstances of the case, the material on record and the submissions of the parties, the Committee passed its judgment.

### FINDINGS OF THE COMMITTEE

13. The Committee noted that the **first charge** against the Respondent was the non- communication with the previous auditor before accepting the audit assignment within the meaning of item (8) of Part I of First Schedule to the Chartered Accountants Act, 1949.
- 13.1 The Committee noted that as per Para 2.14.1.8(i) of Code of Ethics (Revised 2020), 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. Further, there is a specific requirement in the Code of Ethics regarding communication with the previous auditor.

- 13.2 The Committee further noted that, **Para 2.14.1.8(x) of Code of Ethics (Revised 2020)** reads as below:

*"Members should therefore communicate with a retiring auditor in such a manner as to **retain in their hands positive evidence of the delivery of the communication to the addressee.** In the opinion of the Council, the following would in the normal course provide such evidence:*

- (a) Communication by a letter sent through "Registered Acknowledgement due", or*
- (b) **By hand against a written acknowledgement, or (emphasis added)***
- (c) Acknowledgement of the communication from retiring auditor's vide email address registered with the Institute or his last known official email address, or*
- (d) Unique Identification Number (UDIN) generated on UDIN portal (subject to separate guidelines to be issued by the Council in this regard)"*

- 13.3 On perusal of above provisions, the Committee noted that it is amply clear that Code of Ethics (Revised 2020) casts clear-cut duty on the incoming auditor to communicate with the previous auditor in writing not only as a professional courtesy but also to know the reason of such change in auditor. Further, the written acknowledgement should also be obtained when doing the said communication by hand.

- 13.4 The Committee noted that the Respondent had submitted that he had communicated with the previous auditor i.e., the Complainant and had also submitted the letter of communication dated 23<sup>rd</sup> October, 2020 sent to the Complainant by hand. However, the Respondent has failed to bring on record any written acknowledgement for the same and submitted that the staff of the Complainant had received the said NOC letters, but they had not issued any acknowledgement and that on his personal visit to the office of the

Complainant, the Complainant had orally informed him that he was not interested to continue anymore as Statutory Auditor of the Companies.

13.5 The Committee noted that the Complainant denied of receiving any NOC letters and the Respondent has failed to bring on record any evidence of communication with the Complainant hence, the plea of Respondent that the Complainant wilfully did not provide the written acknowledgement of the NOC cannot be treated as a valid excuse as being an incoming auditor, it was imperative on the part of the Respondent to obtain the same without fail in terms of code of ethics.

13.6 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.

14. The Committee noted that the second charge against the Respondent was that he accepted the audit assignment of the Companies despite non-payment of undisputed fees to the previous auditor i.e., the Complainant.

14.1 The Committee observed that in this regard Chapter VII of Council Guidelines No. 1-CA (7)/02/2008, dated 8<sup>th</sup> 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."*



From the above provisions, it is amply clear that the incoming auditor shall not accept the appointment unless the pending undisputed Statutory Audit fees has been paid to the previous auditor and for this purpose, undisputed Statutory Audit fees means that Audit fees which has been disclosed in the financial statements signed by the auditee and the auditor.

14.2 On perusal of audited financial statements of the Companies namely AL-Faheem Meatex Private Limited and AL-Fozan Meatex Export Private Limited for financial year 2018-19, it is noted that the amount of Rs. 70,800/- and Rs. 35,250/- respectively have been disclosed as the audit fees payable in the notes to accounts. Further on perusal of financial statements of the Companies namely AL-Ayyub Exports Private Limited, Grand Indian Overseas Poultry Private Limited, and Perfect Premium Dairy Products Private Limited for the financial year 2019-20 audited by the Respondent, it is noted that in the previous year figures (for the financial year 2018-19), the amount of Rs. 15,000/-, Rs. 14,000/- and Rs. 14,000/- respectively have been disclosed as the audit fees payable in the notes to accounts. Hence, it is clear that the audit fees which was payable to the Complainant was undisputed

14.3 The Committee noted that the Respondent had submitted that the Complainant had already been given post-dated cheques amounting to Rs. 5,54,158/- which had also been acknowledged by Complainant orally. Further the said cheques were duly honoured on 6<sup>th</sup>, 7<sup>th</sup> and 9<sup>th</sup> November, 2020. The details of which provided by the Respondent are as under:

**Details of Cheques issued to CA Anupam Sharma against their Dues**

Company's Name/Entity's Name	Cheque Number	Cheque clearing Date	Amount(Rs)
M/s Al-Faheem Meatex Pvt Ltd.	361195	09.11.2020	3,32,640.00
M/s Al-Fozan Meatex Exports Pvt Ltd.	336678	07.11.2020	35,400.00
M/s Al-Ayyub Exports Pvt Ltd.	472457	07.11.2020	15,000.00
M/s Grand Indian Overseas Poultry Pvt Ltd.	366281	07.11.2020	14,000.00
M/s Perfect Premium Dairy Product Pvt Ltd.	369168	07.11.2020	14,000.00
Indraprastha Educational & Cultural Society	328257	07.11.2020	60,048.00
Yaqoob Educational Charitable Trust	819057	06.11.2020	83,070.00
			<b>5,54,158.00</b>

- 14.4 The Committee noted that even the Complainant had accepted the same however, he submitted that though he had received the post-dated cheques but the same was not cleared at the time of acceptance of audit assignment by the Respondent. He further stated that ADT 1 for appointment of Respondent was filed on 16<sup>th</sup> October 2020 whereas his payment was cleared on 07<sup>th</sup> November 2020.
- 14.5 The Committee noted that the Counsel of the Respondent stated that the Complainant had resigned and filed ADT 3 on 22<sup>nd</sup> October 2020 and the appointment of the Respondent was approved in the EGM on 30<sup>th</sup> December 2020 and the ADT 1 for the same was filed on 21<sup>st</sup> January 2021.
- 14.6 The Committee in this regard on perusal of the Form ADT 1 noted that the date of appointment of the Respondent is 30<sup>th</sup> December 2020 and the said form has been filed on 21<sup>st</sup> January 2021. The Committee also noted that the audit assignment was to be started in the first week of November and the entire pending fees of the Complainant was paid vide multiple cheques in the same period. The Committee was also noted that the Complainant could not refute the statement of the Counsel of the Respondent that all the cheques were cleared even before starting the audit assignment.
- 14.7 The Committee noted that the date of consent given by the Respondent cannot be construed as his appointment as it only shows the intention to appoint him, and the appointment has completed only when ratified in the EGM of the Company. The Committee also noted that the entire pending fees of the Complainant got cleared before signing of the financial statements of the Companies on 31<sup>st</sup> December 2020 and even before approval of his appointment in the EGM of the Companies held on 30<sup>th</sup> December 2020.
- 14.8 Accordingly, the Committee held the Respondent **NOT GUILTY** of Professional Misconduct falling within the meaning of Item (1) of Part II of Second Schedule to the Chartered Accountants Act, 1949.

15. The Committee noted that the **third charge** against the Respondent was that the Respondent being an incoming auditor accepted the appointment without ascertaining as to whether the Company has complied with the provisions of Sections 139 and 140 of the Companies Act, 2013.

15.1 The Committee noted that in this regard, Section 139(8) of the Companies Act 2013 reads as under: -

*"(8) Any casual vacancy in the office of an auditor shall-*

*(i) 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;*

*(ii) in the case of a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Comptroller and Auditor-General of India within thirty days."*

From the above provision, it is noted that if there is any casual vacancy in the office of auditor in case of a private company i.e., a company other than a company whose accounts are subject to audit by an auditor appointed by comptroller and Auditor-General of India, then such vacancy shall be filled by Board of Directors within thirty days and further shall be approved by the Company in the general meeting of the Company if such casual vacancy has come up due to resignation of the previous auditor.

15.3 The Committee further observed that Section 140 of Companies Act, 2013 states as under:

**140. Removal, resignation of auditor and giving of special notice.—**

*(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.

- 15.4 On perusal of the above provision, the Committee noted that an auditor can be removed from his office before expiry of his term only by passing a special resolution after obtaining previous approval from the Central Government.
- 15.5 The Committee noted that in the present case, the Complainant filed his notice of resignation on 22<sup>nd</sup> October, 2020 due to which the casual vacancy arises in the Company. The Board filled the casual vacancy by appointing the Respondent on 27<sup>th</sup> October, 2020 within one month of resignation of the Complainant as per the provisions and the same was ratified by the Company in the EGM held on 30<sup>th</sup> December 2020 i.e., within 3 months and the ADT 1 was then filed on 21<sup>st</sup> January 2021.
- 15.6 The Committee noted that the Complainant had filed his resignation voluntarily on the grounds of pre-occupation in other assignments and also filed the same with ROC as under:

3. Category of Auditor  Individual  Firm

4. \* (a) Income Tax PAN of auditor or auditor's firm

\* (b) Name of the auditor or auditor's firm

\* (c) Membership Number of auditor or auditor's firm's registration number

\* (d) Address of the auditor or auditor's firm

\* (e) City

\* (f) State

\* (g) Pin code

\* (h) email id of the auditor or auditor's firm

5. \* (a) Date of appointment of the auditor or auditor's firm

\* (b) Date of resignation of the auditor or auditor's firm

6. \* Reasons for resignation and any other facts relevant to the resignation

15.7 The Committee noted that since the Complainant had resigned voluntarily hence, provision of Section 140 was not applicable. Further, the provision of Section 139 was duly complied. Thus, it cannot be said that the appointment of the Respondent was in contravention of Section 139 and Section 140 of the Companies Act, 2013.

15.8 Accordingly, the Committee held the Respondent **NOT GUILTY** of Professional Misconduct falling within the meaning of Item (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

**CONCLUSION**

16. In view of the findings stated in the above paragraphs 13 to 13.6 vis-a-vis material on record, the Committee, in its considered opinion, holds the Respondent **GUILTY** of Professional Misconduct falling within the meaning of Item (8) of Part I of the First 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, I.A.S. RETD.)**

**GOVERNMENT NOMINEE**

**SD/-**

**(CA. SANJAY KUMAR AGARWAL)**

**MEMBER**

**SD/-**

**(CA. SRIDHAR MUPPALA)**

**MEMBER**

**DATE: 07<sup>TH</sup> FEBRUARY, 2024**

**PLACE: NEW DELHI**

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

*Nisha Sharma*  
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