



भारतीय सनदी लेखाकार संस्थान

(संसदीय अधिनियम द्वारा स्थापित)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

[DISCIPLINARY COMMITTEE [BENCH-I (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/01/2021/DD/48/2021/DC/1661/2022]

In the matter of: -

CA. Tapan Kumar Mukhopadhyay (M. No. 058758),
102/3, N.C. Ghosh Sarani,
Sarbamangala Pally,
Sheoraphuli
Hooghly – 712223

.....Complainant

-Vs-

CA. Devashish Garodia (M. No. 060289),
M/s. D Garodia & Co.,
Chartered Accountants,
45, Girish Park,
3rd Floor,
Kolkata (West Bengal) – 700006

.....Respondent

MEMBERS PRESENT: -

CA. Charanjot Singh Nanda, Presiding Officer
Shri Jugal Kishore Mohapatra, IAS (Retd.) (Government Nominee)
CA. Chandrashekhar Vasant Chitale, Member

Date of Hearing : 2nd April 2024

Date of Order : 26.06.2024

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 noted that CA. Devashish Garodia (M. No. 060289) (hereinafter referred to as the Respondent") was held GUILTY of professional misconduct falling within the meaning of Item (8) of Part I of First Schedule and Item (1) Part II of Second Schedule to the Chartered Accountants Act, 1949.



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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 communication was addressed to him thereby granting opportunity of being heard in person / through video conferencing and to make written & verbal representation before the Committee on 2nd April 2024.
3. The Committee noted that on the date of the hearing held on 2nd April 2024, the Respondent was present through video conferencing, and he made his verbal submission on the findings of the Disciplinary Committee.
4. In his verbal submission the Respondent inter alia stated that he has already given his written submission on the findings of the Committee.
5. The Committee considered the reasoning as contained in the findings holding the Respondent Guilty of professional misconduct vis-à-vis verbal/ written submissions of the Respondent.
6. Keeping in view the facts and circumstances of the case, material on record including submissions of the Respondent on the findings of the Committee, the Committee is of the view that the professional misconduct on the part of the Respondent is established. Accordingly, the Committee ordered that a fine of Rs. 15,000/- (Rupees Fifteen Thousand only) be imposed upon the Respondent i.e. CA. Devashish Garodia (M. No. 060289) to be paid within 90 days of receipt of the Order. If the Respondent fails to pay the fine within the stipulated period, his name be removed from the Register of Member for a period of thirty days.

Sd/-

(CA. CHARANJOT SINGH NANDA)
(PRESIDING OFFICER)

Sd/-

(SHRI JUGAL KISHORE MOHAPATARA),
I.A.S. (RETD.), (GOVERNMENT NOMINEE)

Sd/-

CA. CHANDRASHEKHAR VASANT CHITALE
(MEMBER)

Place : 26.06.2024

Date : New Delhi

प्रमाणित सत्य प्रतिलिपि / Certified True Copy

Anju Grover

अंजू ग्रोवर / ANJU GROVER

सहायक सचिव / Assistant Secretary

अनुशासनात्मक निदेशालय / Disciplinary Directorate

भारतीय सनदी लेखाकार संस्थान

The Institute of Chartered Accountants of India

आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032

ICAI Bhawan, Vishwas Nagar, Shahdara, Delhi-110032

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – I (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

Ref. No. – [PR-01/2021/DD-48/2021/DC/1661/2022]

In the matter of:

**CA. Tapan Kumar Mukhopadhyay (M. No. 058758),
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Sheoraphuli, Hooghly – 712223**

.....Complainant

Versus

**CA. Devashish Garodia (M. No. 060289),
M/s D Garodia & Co. Kolkata
45, Girish Park, 3rd Floor,
Kolkata – 700006**

.....Respondent

MEMBERS PRESENT: -

- i) CA. Aniket Sunil Talati, Presiding Officer
- ii) Sh. Jugal Kishore Mohapatra, IAS (Retd.) (Government Nominee)-
Through Online Mode
- iii) Shri Prabhash Shankar, IRS (Retd.), (Government Nominee)
- iv) CA (Dr). Rajkumar Satyanarayan Adukia, Member
- v) CA. Gyan Chandra Misra, Member

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DATE OF FINAL HEARING : 31-10-2023
PLACE OF FINAL HEARING : New Delhi / Through Video Conferencing

Parties Present:

Respondent : CA. Devashish Garodia (Through VC)

BRIEF OF THE DISCIPLINARY PROCEEDINGS: -

- 1- On the day of hearing held on 31st October 2023, the Committee noted that the Respondent was present through VC. Thereafter, the Respondent was put on oath and on being enquired as to whether he is aware of the charges levelled against him and whether he pleads himself guilty or not, he replied that he is aware of the charges and pleaded himself not guilty. Thereafter, the Respondent made brief submissions on the allegation. The Committee also posed questions to the Respondent. After hearing the submissions, the Committee decided to conclude the hearing in the above matter.

2- BRIEF BACKGROUND OF THE MATTER AND ALLEGATIONS: -

In the instant case the Complainant was engaged by Paschim Bardhaman Zilla Parishad (West Bengal) for preparation of Audit Report/ Utilization Certificate of Banglar Awaas Yojana (BAY / PMAY-G) Admin Fund for the financial year 2018-19. For the financial year 2019-20 Paschim Bardhaman Zilla Parishad has issued a "Notice Inviting Quotation" dated 9th September 2020 in which sealed quotation were invited from registered Chartered Accountant firms for the audit work in respect of fund sanctioned under BAY Admin & Program Fund and IAY Admin & Program Fund and 8 (eight) Panchayat Samities under Paschim Bardhaman District.

On aforesaid background following allegations have been levelled against the Respondent on which Director (Discipline) has found him prima facie guilty:

- (i) That the Respondent has accepted the assignment of aforesaid funds without first communicating with the previous auditor (i.e., Complainant) making him guilty of professional misconduct falling under item (8) Part I of the First Schedule to the Chartered Accountant Act, 1949.

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- (ii) That the Respondent has participated in tender which was exclusively meant for Chartered Accountant firms and in which no minimum fee was prescribed thereby violating council guideline no. 1-CA(7)/03/2016 dated 07th April 2016 making him guilty of professional misconduct falling under item (1) Part II of the Second Schedule to the Chartered Accountant Act, 1949.

3- SUBMISSION OF THE RESPONDENT AND FINDINGS OF THE COMMITTEES

3.1 Committee observed that the Respondent during the course of hearing and also through his Written Statement has inter-alia made the following submissions in his defense:

- (i) Due to Covid-19, the communication with the previous auditor was made through courier mode and not as per the method prescribed in Code of Ethics.
- (ii) That the tender was not strictly reserved for the Chartered Accountants and other auditors could also have applied for the same.

3.2 With respect to first allegation the Committee noted that Item (8) of Part I of the First Schedule of the Chartered Accountants Act, 1949 provides as under:

Item (8): A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he-

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."

Committee also observed that Code of Ethics provide following with respect to item (8) of Part I of the First Scheduled:



"It must be pointed out that professional courtesy alone is not the major reason for requiring a member to communicate with the existing accountant who is a member of the Institute or a certified auditor. The underlying objective is that the member may have an opportunity to know the reasons for the change in order to be able to safeguard his own interest, the legitimate interest of the public and the independence of the existing accountant. It is not intended, in any way, to prevent or obstruct the change. When making the enquiry from the retiring auditor, the one proposed to be appointed or already appointed should primarily find out whether there are any professional or other reasons why he should not accept the appointment."

Code of Ethics further states as under:

*"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*
- (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)"*

In the instant case the Respondent has stated that the communication with the previous auditor was made through courier mode and not as per the method prescribed in Code of Ethics. Thus, it is amply clear that the Respondent has failed to comply with the said requirement and therefore the Committee observed that the Respondent has made violation of the said provision. Accordingly, the Committee decided to hold Respondent **GUILTY** of professional misconduct falling within the meaning of Item (8) Part I of the First Schedule to the Chartered Accountants Act, 1949.

- 3.3 The second allegation levelled against the Respondent is that he has participated in tender which was exclusively meant for Chartered Accountant firms and in which no minimum fee was prescribed in violation to Guideline No. 1-CA (7)/03/2016 dated 07.04.2016.

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The Committee observed the relevant guidelines dated 7th April 2016 in respect of the tender which read as under: -

"Guideline No. 1-CA (7)/ 03/2016: -In exercise of the power conferred on it under Item (1) of Part II of the Second Schedule of the Chartered Accountants Act, 1949, the Council of the Institute of Chartered Accountants hereby issue the following guidelines for compliance of member of the Institute-

(i) A member of the Institute in practice shall not respond to any tender issued by an organization or user of professional services in areas of services which are exclusively reserved for chartered accountants, such as audit and attestation services. However, such restriction shall not be applicable where minimum fee of the assignment is prescribed in the tender document itself or where the areas are open to other professionals along with the Chartered Accountants."

The Committee observed that Respondent in his verbal and/ or written submissions has stated that the subject tender was not exclusively reserved for Chartered Accountants, and it was opened for other categories too, however, he failed to produce any substantive evidence before the Committee in support of his contention.

For ascertaining the facts, the Committee pursued the tender advertisement, and observed that its relevant para read as under: -

"Sealed quotations are invited from registered Chartered Accountant Firms for the audit work in respect of fund Sanctioned under BAY Admin Fund, BAY Program Fund, IAY Admin Fund & IAY Program Fund for the year 2019-20 of Paschim Bardhaman Zilla Parishad and 8 (eight) Panchayat Samities under Paschim Bardhaman District. Interested Chartered Accountant firms are requested to submit the rate of audit fees for Paschim Bardhaman Zilla Parishad & 8 Panchayat Semites in sealed envelope as per following schedule".

On perusal of aforesaid para of the advertisement, the Committee opined that it is amply clear even for a layman that the subject tender was open exclusively for

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the CA firms and not for any other professional category, hence the mere averment of the Respondent does not stand out and is not tenable.

Accordingly, by participating in the subject tender and thereafter by accepting the assignment thereunder, the Respondent has made a violation of the abovementioned guidelines issued by the Council of the ICAI and therefore, the Committee decided to hold the Respondent **GUILTY** of Professional Misconduct within the meaning of Item (1) of Part II of Second Schedule to the Chartered Accountants Act, 1949.

4- Conclusion: -

Thus, in the considered opinion of the Committee, 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 Second Schedule to the Chartered Accountants Act, 1949.

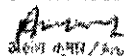
Sd/-
(CA. ANIKET SUNIL TALATI)
PRESIDING OFFICER

Sd/- **Sd/-**
SH. JUGAL KISHORE MOHAPATRA, IAS (RETD.) (SHRI PRABHASH SHANKAR, I.R.S. (RETD.))
GOVERNMENT NOMINEE **GOVERNMENT NOMINEE**

Sd/- **Sd/-**
(CA (DR). RAJKUMAR SATYANARAYAN ADUKIA) **(CA. GYAN CHANDRA MISRA)**
MEMBER **MEMBER**

DATE: 08.02.2024
PLACE: NEW DELHI

Certified to be true and correct.


अनिकेत कुमार / Aniket Kumar
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक वि. शाखा / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड अकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
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