



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/294/2020/DD/281/2020/DC/1663/2022]

In the matter of: -

Mrs. Anuradha Majumdar,
Flat No. 5D, G.D. Apartments,
Dr. J. C. Das Road, Pan Bazar,
Guwahati (Assam) – 781001

.....Complainant

-Vs-

CA. Surajit Bhowmick (M. No. 058866),
2nd Floor, House No. 10,
Shrimanta Bhawan Kalyani,
(Above Dimple Distributers)
Danish Road, Pan Bazar
Guwahati (Assam) – 781001

.....Respondent

MEMBERS PRESENT: -

CA. Charanjot Singh Nanda, Presiding Officer
Shri Jugal Kishore Mohapatra, IAS (Retd.) (Government Nominee)
CA. Chandrashekhhar Vasant Chitale, Member
CA. Gyan Chandra Misra, 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. Surajit Bhowmick (M. No. 058866)** (hereinafter referred to as the **Respondent**) was held **GUILTY** of professional and other misconduct falling within the meaning of



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Item (2) Part IV of the First Schedule and Item (7) of Part I & Item (3) 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 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 and requested bench to consider the same.

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 verbal & written submissions of the Respondent, the Committee is of the view that professional misconduct on the part of the Respondent is established. Accordingly, the Committee ordered that **the name of Respondent i.e., CA. Surajit Bhowmick (M. No. 058866) be removed from the Register of Member for a period of One Month and a fine of Rs. 25,000/- (Rupees Twenty-five Thousand only) be imposed upon him 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 an additional period of one month.**

Sd/-

(CA. CHARANJOT SINGH NANDA)
(PRESIDING OFFICER)

Sd/-

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

Sd/-

(CA. CHANDRASHEKHAR VASANT
CHITALE)
(MEMBER)

Sd/-

(CA. GYAN CHANDRA MISRA)
(MEMBER)

DATE: 26.06.2024

PLACE: New Delhi

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
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
CAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

CONFIDENTIAL

DISCIPLINARY COMMITTEE BENCH – I (2023-2024)

[Constituted under Section 21B of the Chartered Accountants (Amendment) 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/294/2020/DD/281/2020/DC/1663/2022]

In the matter of:

Mrs. Anuradha Majumdar
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.....Complainant

CA. Surajit Bhowmick (M. No. 058866)
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Danish Road, Pan Bazar,
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.....Respondent

MEMBERS PRESENT: -

- i) CA. Aniket Sunil Talati, Presiding Officer
- ii) Shri Prabhaskar Shankar, IRS (Retd.), (Government Nominee)
- iii) CA (Dr). Rajkumar Satyanarayan Adukia, Member
- iv) CA. Gyan Chandra Misra, Member

DATE OF FINAL HEARING : 06-12-2023
PLACE OF FINAL HEARING : New Delhi / Through Video Conferencing

1- Background of the Case and Charges in Brief:

In the instant matter, the Complainant is spouse of Late CA. Dipak Majumdar, who was one of the partners of M/s U C Majumdar & Co. (hereinafter referred to as 'Respondent firm') and who has expired on 28.06.2020. It is alleged that other partner of the firm i.e., the Respondent had not informed ICAI about the

demise of her husband till the date of Compliant inspite of her request to him to do so. She further contended that legally, the Respondent firm had become a defunct firm on the very date of death of her husband who was the senior partner out of two partners of the firm and despite the firm becoming defunct, the Respondent kept certifying the statement of accounts and audit reports of various Companies and other entities and also kept operating the bank accounts of the firm maintained with different banks.

2- BRIEF OF PRIMA FACIE OPINION: -

- 2.1 The Director Discipline, on perusal of documents on record, noted that though the death certificate firstly issued bears the wrong date of death as 28.07.2020 instead of 28.06.2020, whereas the date of death is evident from the copy of medical certificate issued by Apollo hospital dated 28.06.2020, where the date of death is mentioned as 28.06.2020.
- 2.2 The Director Discipline has noted that the Respondent has very cleverly tried to use the wrong date of death of Late CA. Dipak Majumdar in the death certificate issued previously and provided his whole defence taken in his Written Statement based on such wrong date of death of Complainant's husband. As an instance, the Respondent has mentioned that owing to Covid-19 restrictions, there was no scope of visiting hospitals in Guwahati, and thus, he could not keep himself abreast about the health condition of CA. Dipak Majumdar. However, during last part of July 2020, he came to know that CA. Dipak Majumdar had expired. In the instant matter, it is evident that correct date of death of CA. Dipak Majumdar was 28.06.2020 and not 28.07.2020. Further, at Rejoinder stage, the Complainant has also provided a copy of letter signed by 18 members of her society namely, 'G. D. Apartment Co-operative Society' dated 05.02.2021 from which it is evident that the Respondent was also there at hospital where the Complainant's husband had been admitted and died and also attended his cremation and further rituals held thereafter. Thus, the Director (Discipline) opined that the Respondent has provided false information / submissions to the Directorate and the Institute knowing it to be false. Accordingly, the Respondent was held *prima facie* **Guilty** of Professional Misconduct falling within the meaning of Item (3) of Part-II of Second Schedule to the Chartered Accountants Act, 1949 for providing false information to the Institute knowing it to be false.
- 2.3 The Director Discipline has observed that the Respondent has taken defence that the audit reports and financial statements of various entities / companies had been signed by him on 20th and 21st of July 2020 i.e., before the death of Late CA. Dipak Majumdar and the same had been signed by him as Partner of the Respondent firm and thus, there was nothing wrong in it. However, it is evident that Late CA. Dipak Majumdar died on 28.06.2020 and not on 28.07.2020, the instant defense of the Respondent also proves to be false and thus, cannot be accepted. In the instant matter, it is noted that Hon'ble Supreme Court of India, while rendering their judgement in **Civil Appeal No.**

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6933-6934 of 2002, *Mohd. Laiquiddin & Anr. versus Kamala Devi Misra (Dead) By L. Rs & Ors. (dated 05-01-2010)*, has observed that:

"....when there are only two partners constituting the partnership firm, on the death of one of them, the firm is deemed to be dissolved despite the existence of a clause which says otherwise. A partnership is a contract between the partners. There cannot be any contract unilaterally without the acceptance by the other partner...." (emphasis added)

Thus, the Hon'ble Supreme Court has observed that a partnership firm comprised of only two partners, stands dissolved automatically on the death of either partner of the said firm, and this is notwithstanding any clause to the contrary in the partnership deed. In view the said judgement of Hon'ble Supreme Court, it is viewed that the Respondent should not have audited, issued, and signed the audit reports and financial statements after the death of other partner i.e., Complainant's husband as partner of the firm as it was no more a valid partnership firm as on the date of signing of such audit reports. Further, on perusal of bank statement of State Bank of India for the period from 01.07.2020 to 03.09.2020 of the Respondent firm, it is noted that several withdrawals are coming in the name of the Respondent during the month of August 2020, the opening balance of the said bank account of the Respondent firm as on 10.07.2020 was Rs. 3,32,740.88 and the closing balance as on 24.08.2020 was NIL (88 paise only). Thus, it raises a doubt whether the Respondent had made withdrawals from the said bank account of the Respondent firm without intimating the bank about the death of his partner Late CA. Dipak Majumdar. Therefore, the Respondent was held *prima facie* Guilty of Professional and Other Misconduct falling within the meaning of Item (7) of Part-I of Second Schedule and Item (2) of Part-IV of First Schedule to the Chartered Accountants Act, 1949 in respect of instant allegation.

3- BRIEF FACTS OF THE PROCEEDINGS:

3.1 Brief of the Final Hearing held on 6th December 2023

At the outset, the Committee noted that the Complainant was present along with her Counsel through VC. The Respondent was though present in the morning through VC, however, subsequently, he logged off and was not present at the time of hearing. The office tried to contact him multiple times over his mobile phone, however no response was received from him and after waiting for some time, the Committee decided to proceed with the matter in his absence. Thereafter, the Committee continued the hearing in the above matter from the stage as it was left in last hearing. The counsel of the Complainant made their detailed submissions on the allegations. The Committee also posed questions to the counsel of the Complainant. After hearing the submissions, the Committee decided to conclude the hearing in the above matter.

3.2 Brief of the second hearing held on 7th November 2023

The Committee noted that the Respondent was present through VC and the Complainant was also present along with her Counsels through VC. Further, there were a lot of issues with their internet connectivity and their voices were also breaking. Since even after adequate opportunity, no improvement was observed in the audio quality of the Complainant, the Committee decided to adjourn the hearing in the matter thereby directing the Complainant to appear in the next hearing with a stable internet connection and with this, the matter was **adjourned due to internet issue at Complainant's end.**

3.3 Brief of the first hearing held on 31st October 2023

At the outset, the Committee noted that the Respondent was present in person. 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 herself guilty or not; the Respondent submitted that he is aware of the charges levelled against him and pleaded himself not guilty. The Committee noted that there was an adjournment request from the Complainant. Being the first hearing, the Committee decided to adjourn the hearing on the above matter. With this, the hearing in the matter was **part heard & adjourned.**

4- WRITTEN SUBMISSIONS / PLEADINGS BY PARTIES: -

The Respondent, in his Written Statement has made inter alia the following submissions:

- 1) That he enrolled himself as an articled clerk under Dipak Majumdar (i.e., Complainant's Husband). At that time there were two partners in the firm M/s U.C. Majumdar & Co., Chartered Accountants i.e., Mr. Dipak Majumdar and Mr. Mrinal Das Bhowmik having offices in Guwahati and Shillong. He cleared CA exam in January 1998 and joined the firm as partner on 1st July 2000. That after the death of Mr. Mrinal Das Bhaumik on 2nd January 2016 he used to look after the entire work of the Guwahati office.
- 2) However, from latter part of 2018 Mr. Dipak Majumdar started suffering from dementia and as a result he used to look after the work of both Guwahati and Shillong office. Further, that although Mr. Dipak stopped practicing from 2019 onward, however the profit of the firm was shared with him.
- 3) That as long as Dipak Majumdar was alive, the Complainant was completely satisfied with him and the moment Mr Dipak Majumdar expired and the Respondent expressed his inability to share profit with a non-member of the institute, the Complainant started levelling all sort of allegations against him.

- 4) That during lockdown he was informed that Mr. Dipak was not keeping well and has been admitted in a city-based hospital. Owing to covid restrictions, he was not able to keep himself abreast about the health condition of Mr. Dipak. However, during the last part of July 2020 he came to know that he has expired but he has not received any document in support of his death until 2nd week of September 2020 and in the death certificate received by him, the date of death was recorded therein as 28th July 2020.
- 5) That he never attended Apollo hospital along with Mr. Sandip Dutta to enquire the health condition of Mr. Dipak and also that he never visited resident of the Complainant on 28/06/2020 to attend his funeral.
- 6) That the pretext taken by the Complainant that the death of Mr. Dipak was shared in WhatsApp group and hence needed to be seen by him does not hold good as there are various WhatsApp group of which he is a member, and it is not possible for him to check each and every message appearing thereto.
- 7) That regarding allegation pertaining to utilization of funds from the bank account of the firm, he in his written statement dated 13th February 2023, stated that there were two bank accounts of the firm as on the date of death of Mr. Dipak Majumdar and one bank account was frozen by the bank on the complaint of the Complainant, whereas other account was utilized for meeting the expenses incurred on account of salaries to staff, GST payment, office rent & income tax payment etc.
- 8) That since the Death Certificate of CA. Dipak Majumdar was required to be compulsorily uploaded for carrying out necessary correction in ICAI SSP Portal the same could not have been done earlier.
- 9) That CA. Pradip Datta was admitted as Partner of the firm and he was in charge of Shillong office. Hence, the Respondent firm was continuing as a partnership firm with head office at Guwahati and branch office at Shillong.

5- FINDINGS OF THE COMMITTEE:

Before giving findings in the matter, the Committee noted the following background about the facts which are given here-in-below:-

- 5.1 The Committee noted that at the time of death of Complainant's husband i.e., Mr. Dipak Majumdar, the firm comprised of the Complainant's husband and the Respondent. The Committee also observed that the Respondent was well aware about the demise of his partner Late CA. Dipak Majumdar still he continued to operate firm in his sole capacity, while it is settled law that in case wherein the firm comprises of only two partners, if one of the partners leaves the firm due to any reason or in case of death of partner, the firm automatically gets dissolved. In the instant matter, since one of the partners i.e., Late CA.

