



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/02/2021/DD/47/2021/DC/1665/2022]

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. Parimal Sarkar (M. No. 051550),
M/s. Sarkar Gurusurthy & Associates,
Chartered Accountants,
35, Chittaranjan Avenue,
Near Indian Airlines, 3rd Floor,
Kolkata (West Bengal) – 700012

.....Respondent

MEMBERS PRESENT: -

CA. Charanjot Singh Nanda, Presiding Officer
Shri Jugal Kishore Mohapatra, IAS (Retd.) (Government Nominee)
CA. Chandrashekhar 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. Parimal Sarkar (M. No. 051550) (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.

Order - CA. Parimal Sarkar (M. No. 051550), Kolkata



भारतीय सनदी लेखाकार संस्थान

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THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

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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. Regarding participation in the government tender, he stated that many members do not have an understanding about where they should not participate and since now there is tender secretariate in place, this sort of unintentional lapse will not happen again. He also requested bench to be lenient on him.
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 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. Parimal Sarkar (M. No. 051550) 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)

Sd/-

(CA. GYAN CHANDRA MISRA)
(MEMBER)

DATE: 26.06.2024

PLACE: New Delhi

प्रमाणित सत्य प्रतिलिपि / Certified True Copy

Anju Grover

अंजू ग़ोवर / ANJU GROVER
सहायक सचिव / Assistant Secretary
अनुशासनात्मक निदेशक / 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

Order - CA. Parimal Sarkar (M. No. 051550), Kolkata

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/02/2021/DD/47/2021/DC/1665/2022

In the matter of:

CA. Tapan Kumar Mukhopadhyay (M. No. 058758)
102/3, N. C. Ghosh Sarani,
Sarbamangala Palli, Sheoraphully,
Hooghly (West Bengal) – 712223

.....Complainant

Versus

CA. Parimal Sarkar (M. No. 051550)
Partner, M/s Sarkar Gurumurthy & Associates
Chartered Accountants
35, Chittaranjan Avenue, Near Indian Airlines, 3rd Floor,
Kolkata-700012

.....Respondent

MEMBERS PRESENT: -

- i) CA. Aniket Sunil Talati, Presiding Officer
- ii) Shri Prabhash 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

CA. Tapan Kumar Mukhopadhyay (M. No. 058758) Vs. CA. Parimal Sarkar (M. No. 051550)

Parties Present (Through Video Conferencing):

Respondent : CA. Parimal Sarkar

BRIEF OF THE DISCIPLINARY PROCEEDINGS: -

- 1- On the day of hearing held on 6th December 2023, the Committee noted that the Complainant was not present, however, 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, the Respondent submitted that he is aware of the charges and pleaded himself **GUILTY**. The Committee recorded his plea under Rule 18(8) and decided to pursue the case under Rule 19.

2- Brief Background of the matter and Allegations: -

The Complainant firm had been engaged / awarded the work for compilation and preparation of State Level Audit Report, Utilization Certificates and Annual Statement of Accounts in respect of different type of funds under Swachh Bharat Mission (Gramin) program for the period 2018-19 by Panchayats and Rural Development Department, Government of West Bengal. Similar work was awarded to the Respondent firm for the year ending 2019-20.

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.
- (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

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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- **SUBMISSIONS OF THE PARTIES AND FINDINGS OF THE COMMITTEE**

The Committee noted the following background of the case:

- 3.1 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 respect of instant allegation, the Respondent during the course of hearing submitted that at the time of award of assignment, they were not informed about the previous auditor and that only after the acceptance of the assignment, they become aware about the previous auditor. Having said that, the Respondent pleaded himself guilty of the allegation. The Committee recorded his plea under Rule 18(8) and decided to pursue the case under Rule 19. Accordingly, the Committee found Respondent GUILTY of professional misconduct under Item (8) Part I of the First Schedule to the Chartered Accountants Act, 1949.

- 3.2 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 and hence there was a violation to Guideline No. 1-CA (7)/ 03/2016 dated 07.04.2016.

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."

In respect of instant allegation, the Respondent pleaded himself guilty to the charges levelled against him. The Committee recorded his plea under Rule 18(8) and decided to pursue the case under Rule 19. Accordingly, the Committee found Respondent GUILTY of professional misconduct under Item (1) of Part II of Second Schedule to the Chartered Accountants Act, 1949.

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 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/-

**(Shri Prabhash Shankar, I.R.S. (Retd.))
GOVERNMENT NOMINEE**

Sd/-

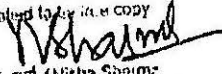
**CA (Dr). Rajkumar Satyanarayan Adukia
MEMBER**

Sd/-

**(CA. Gyan Chandra Misra)
MEMBER**

DATE: 08.02.2024

PLACE: NEW DELHI

निष्ठा शर्मा / Nisha Sharma
जर्मिड को ले जाने की प्रतिलिपि /
Certified to be true copy

निष्ठा शर्मा / Nisha Sharma
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनशास्त्र विभाग / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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CA. Tapan Kumar Mukhopadhyay (M. No. 058758) Vs. CA. Parimal Sarkar (M. No. 051550)

