

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – IV (2024-2025)]

[Constituted under Section 21B of the Chartered Accountants Act,1949]

Findings under Rule 18(17) and Order under Rule 19(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

File No: [PPR/P/246/16/DD/142/INF/2018/DC/1647/2022]

In the matter of:

**CA. Jagdish Gupta (M. No. 085353)
M/s. Jagdish Mantri & Co. (FRN No. 006736N),
CEC, Ashoka Place Building,
Opp. Metro Pillar 211,
Bungalow No. 23, West Patel Nagar,
New Delhi-110 008**

...Respondent

MEMBERS PRESENT:

**CA. Ranjeet Kumar Agarwal, Presiding Officer (in person)
Ms. Dakshita Das, IRAS (Retd.), Government Nominee (in person)
CA. Mangesh P Kinare, Member (in person)
CA. Abhay Chhajed, Member (in person)**

**DATE OF FINAL HEARING : 23rd April 2024
DATE OF DECISION TAKEN : 28th May 2024**

PARTIES PRESENT:

Respondent : CA. Jagdish Gupta (In person)

1. Background of the Case:

The Respondent Firm was appointed the Statutory Auditor of one of the Divisional Office (D.O.-11) of M/s. Oriental Insurance Company Limited (hereinafter referred as "the Informant Company") for Financial Year 2015-16. The Respondent conducted the quarterly review of the said Divisional office in December 2015 and September 2015 and gave a clean report. However, at the time of Final Audit, the Respondent kept delaying final audit report on the pretext of not having adequate information to furnish the Audit Report. Despite sending repeated reminders of the fact of fixation of Board meeting of the Company on 02nd May 2016, the Respondent allegedly failed to submit his audit report within stipulated time.

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2. **Charges in brief:**

2.1. The Respondent failed to submit the Audit Report in stipulated time despite fixation of Board meeting on 2nd May 2016 and he made a further delay in submission of the same and submitted Audit Report on 18th June 2016 after the finalization of accounts of the Company i.e. approx. one and half month after approval of accounts by the Board of the Company.

3. **The relevant issues discussed in the Prima Facie Opinion dated 20th June 2022 formulated by the Director (Discipline) in the matter, in brief, are given below:**

3.1. There were various requisitions letters submitted by the Respondent firm on their letter head to the Informant Company through which the Respondent firm for the purpose of audit had sought the required information and documents from Senior Divisional Manager and other staff of the Informant Company.

3.2. The Informant Company vide letter dated 23.04.2016 informed the Respondent that the reports could be checked in the system in the login-id of any officer of Divisional Office. Further, the Board meeting of the Informant Company was fixed on 02.05.2016, wherein the financials of the Informant Company were to be approved and the Respondent was requested by the Informant Company to submit his audit report. However, the audit report was not submitted by the Respondent and the matter was noted in the main Statutory Audit Report of the Head office of the Informant Company and the Accounts of the Head office of the Informant Company were finalized with unaudited accounts of Divisional office of the Informant Company.

3.3. The Respondent in respect of the audit was not satisfied with the explanation provided by the Management of the Informant Company towards his queries and also he was not provided independent access to the accounting system of the Informant Company. However, since there was a clear cut directions from C&AG, the appointing authority of the Respondent, to complete the task of audit within a specified time and the Company itself after a point of follow-up with the Respondent, had stated that whatever information they had was already provided, the Respondent was required to issue his modified audit report in accordance with the provisions of SA 705 (Revised) issued by ICAI in this regard. The Respondent ignored the directions of the C&AG to give audit report in time and kept on approaching the various authorities like C&AG, Ministry of Finance and ICAI, and finally submitted his report on 18th June 2016.

- 3.4. The Respondent in his defence has submitted to the Disciplinary (Directorate) and also to C&AG that he could not submit his audit report in time due to delay from the side of management in providing crucial information and details, however, it was noted that between 23.04.2016 (when the Informant Company last communicated with the Respondent in respect of the audit) and till the date of submission of his audit report i.e., on 18/06/2016, there was no communication on record through which it gets proved that any additional information or document or records were provided to the Respondent by the Company in respect of the audit which means that there was no change in the stand of the Company taken on 23.04.2016 that they did not have any further document/ information to provide.
- 3.5. The Respondent should have issued his audit report in time as per the directions of the C&AG and if he had any grievance against the Informant Company, he could have separately raised his issues to C&AG after submitting his report. The notice issued by C&AG to the Respondent due to delay in submitting his audit report itself draws a negative inference on the approach adopted by the Respondent that instead of providing his Audit Report in accordance with the Standard of Auditing issued by ICAI to guide the member in such situations, he kept on approaching Ministry of Finance/ICAI/C&AG for guidance and thereby delayed in submission of his audit report and violated the direction of C&AG to submit the audit report in time. Such an act of the Respondent not only shows the casual approach adopted by the Respondent in his audit assignment but also brings disrepute to the profession in the eyes of stakeholders and authorities like C&AG.
- 3.6. Accordingly, the Director (Discipline) in his Prima Facie Opinion dated 20th June 2022 opined that the Respondent was *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. The said items of the Schedule to the Act, states as under:

Item (7) of Part I of the Second Schedule:

"A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct if he:

x x x x x x

(7) does not exercise due diligence or is grossly negligent in the conduct of his professional duties".

Item (2) of Part IV of the First Schedule:

"A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he—

X X X X X X

"(2) in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work."

- 3.7 The Prima Facie Opinion formed by the Director (Discipline) was considered by the Disciplinary Committee in its meeting held on 20th September 2022. The Committee on consideration of the same, concurred with the reasons given against the charges and thus, agreed with the Prima Facie Opinion of the Director (Discipline) that the Respondent is **GUILTY** of Professional and Other Misconduct falling within 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 and accordingly, decided to proceed further under Chapter V of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

4. Dates of Written Submissions/ Pleadings by the Parties:

The relevant details of the filing of documents in the instant case by the parties are given below -

S. No.	Particulars	Dated
1.	Date of Information	04 th July 2016
2.	Date of Written Statement filed by the Respondent	15 th June 2018
3.	Date of Prima Facie Opinion formed by Director (Discipline)	20 th June 2022
4.	Written Submissions filed by the Respondent after PFO	---

5. Brief facts of the Proceedings:

- 5.1 Details of the hearing(s)/ meeting(s) fixed and held/ adjourned in the said matter are given as under –

Particulars	Date of Meeting(s)	Status
1 st hearing	05 th June 2023	Part heard and adjourned.
2 nd hearing	23 rd April 2024	Hearing concluded and Judgment Reserved.
	17 th May 2024	Deferred due to paucity of time.
	28 th May 2024	Decision taken

- 5.2 On the day of first hearing on 05th June 2023, the Committee noted that the Respondent was present in person and appeared before it. Being first hearing of the case, the Respondent was put on Oath.
- 5.3 Thereafter, the Committee enquired from the Respondent as to whether he was aware of the charges against him and then the charges as contained in Prima Facie Opinion were read out. On the same, the Respondent replied that he was aware of the charges and pleaded Not Guilty to the charges levelled against him.
- 5.4 In view of Rule 18(9) of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee adjourned the case to a later date.
- 5.5 On the day of final hearing on 23rd April 2024, the Committee noted that the Respondent was present in person and appeared before it. The Committee noted that the case was part heard and the Respondent was already on Oath.
- 5.6 Thereafter, the Committee asked the Respondent to make his submissions. The Committee noted the submissions of the Respondent which, inter alia, are given as under –
- a. There was no professional misconduct on his part, and no single discrepancy in his audit report. There was only delay in submission of audit report by the Respondent.
 - b. The Informant never addressed/resolved his queries in any manner whatsoever during the audit.
 - c. Regarding the matter of delayed submission of audit report, the Informant Company was causing the delay in audit and there was nothing from Respondent's side which could indicate his mala-fide intention and unprofessionalism.
 - d. The Informant had concealed material information, denied records, held up their work stored in their computers and misguided by providing impracticable audit dates.
 - e. The Respondent noticed financial and operational irregularities during audit which led to adverse opinion report, because of which the Informant had filed frivolous complaint to cover up its failures.
 - f. The Respondent required certain information/details from the very beginning of audit and sought the same in writing from the Informant Company under acknowledgement. He started his work immediately after receiving the appointment, but the Informant Company and its Management continued to delay and avoided the requested information on one pretext or the other.

5.7 Based on the documents and material available on record and after considering the oral submissions made by the Respondent, the Committee concluded the hearing in the matter and judgment was reserved.

5.8 The Committee also directed that the following documents/ information be sought from the Central Statutory Auditor of the Oriental Insurance Company Limited at the relevant time (i.e., for Financial Year 2015-16):

- (i) Whether the Central Statutory Auditor of the Company had made any observation/ comments on the unaudited Financial Statements of Divisional Office-XI in the audit report of the Company for Financial Year 2015-2016.
- (ii) Whether the observations/ comments made by M/s Jagdish Mantri & Co. in its audit report of Divisional Office-XI of the Company for the financial year 2015-16 dated 18th June 2016, were considered/ taken cognizance of by the Central Statutory Auditor of the Company in the said financial year or thereafter.

5.9 On 17th May 2024, the subject case was listed for finalization of decision, however, the consideration of the subject case was deferred by the Committee due to paucity of time.

5.10 Thereafter, on 28th May 2024, the subject case was listed for finalization of decision. The Committee noted that the subject case was heard by it at length in the presence of the Respondent. Further, the Committee concluded the hearing at its meeting held on 23.04.2024 and the judgment was reserved. The Committee noted that the allegation against the Respondent is that he failed to submit audit report in stipulated time despite fixation of Board meeting on 02nd May 2016 and he made a further delay in submission of audit report on 18th June 2016 after the finalization of accounts of the Company which was approx. one and half month from approval of accounts by the Board of the Company.

5.11 The Committee further noted that as per its directions (as above), Central Statutory Auditor of the Oriental Insurance Company Limited vide email dated 08.05.2024, inter alia, submitted as under –

- (i) The Oriental Insurance Company Ltd. being a PSU, had got timelines for completion of Annual Accounts. Its Board Secretariat had fixed the Board Meeting on 2nd May 2016, after consulting the Government Nominees and other independent directors to adopt the accounts for the Financial Year 2015-16, therefore, made a disclaimer in audit report, regarding inclusion of unaudited accounts of Divisional Office. The Management in Point No. 45 of Notes to Accounts to Financial Statements had also mentioned about non

submission of audit report of one its Divisional Office before adoption of accounts by Management and signing of accounts by Central Auditors. Further, Central Auditor submitted that in absence of Audit Report of the Respondent, they had made reference to point no. 45 of the notes of accounts (as above).

5.12 After detailed deliberations and on consideration of the facts of the case and reply of the Central Statutory Auditor, various documents on record as well as oral and written submissions made by the Respondent before it, the Committee took the decision on the conduct of the Respondent.

6. Findings of the Committee:-

The Committee noted the background of the case as well as oral submissions made by the Respondent, documents/ material on record and gives its findings as under: -

6.1 There is one charge against the Respondent in which he had been held prima facie guilty i.e. the Respondent was failed to submit Audit Report in stipulated time. The details of allegation is given in para 2.1 above.

6.2 The Committee noted the submissions of the Respondent made before it, wherein he has submitted that the Informant Company failed to address his audit queries raised by him during the audit. The Informant Company had concealed material information, denied to access the records, held up work stored in the computers, misguided by providing impracticable audit date(s). Further, in his submissions, the Respondent stated that he noticed financial and operational irregularities during audit leading him to give adverse opinion in his audit report. The Informant never raised any issue before any forum and never contested or replied any of the Respondent's audit observations. The Respondent required certain information since the very beginning of audit and always handed over his requirements in writing to the Informant Company under acknowledgement. He started his work immediately after receiving the appointment, but the Informant Company and its management continued to delay and avoided the requisite information on one pretext or the other and on each occasion for each requirement, the Informant simply asserted that things will automatically become available at the time of finalization of accounts at the end of the year. Further, it was informed that the Respondent should not insist on such things formally and also the Management had never provided any information to any of the auditors in the past over so many years.

6.3 On the perusal of documents available on record, the Committee noted that in subject matter, there have been various requisitions letters dated 03-10-2015, 05-10-2015, 06-10-2015, 07-10-2015, 01-01-2016, 03-01-2016, 29-03-2016, 01-04-2016, 02-04-2016, 03-04-2016, 04-04-2016, 05-04-2016, 06-04-2016, 07-04-2016, 08-04-2016, 13-04-2016 and 26-04-2016 submitted by the Respondent firm on their letter head to the Informant Company through which the Respondent firm for the purpose of audit had sought the required information and documents from Senior Divisional Manager and other staff of the Company. Besides, there are various other communications on record towards the completion of audit. On perusal of these requisitions/letters/and email exchanged between the Respondent and the Informant Company, the Committee noted the followings extracts relevant for the instant allegation:

(i) Respondent Firm vide its email dated 07-04-2016, while replying to the Company's reminder w.r.t. audit of accounts for Financial Year ended on 31.03.2016, had reiterated its requirement of the information and details to complete the audit as below:

"Sir, these communications ought to be backed by simultaneous execution of pending work requirements which have been notified by us to you from time and various reminders have been exchanged; kindly come forward with the available information and details that you have since developed and kindly submit your point-wise undertaking on the issue raised by us."

(ii) Further, the Respondent firm vide its letter dated 07-04-2016 asked for the following information/clarification/justification from the Informant Company:
"35. Kindly expedite making records and preparing details required for audit and asked by us.

36. Kindly provide confirmation, undertakings and assurances asked by us for issuance of our audit report without your giving access to A/c system.

36A. Kindly provide justification with stage-wise time distribution justification for fixing dateline for signing Statutory Audit Report on 7/4/2016 and mounting unprecedented pressure on Statutory Auditors without presenting desired information and records repeatedly asked by auditors along with all D.O. Branch, R.O., H.O. Auditors email ids."

(iii) Further, there is another email on record dated 08-04-2016 by which the Respondent once again asked for the various information and clarification required to issue his audit report and in particular stated the following:

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"We had to deploy more than scheduled time and resources on the job due to reasons of repeat requests for obtaining required information and late providing records that too in non-numeric physical paper form which cannot be verified in a cursory manner.

Sir, we enquiring certain things and allowing you opportunity to arrange records because we do not want to straightaway disclaim our opinion or give an adverse opinion where we can arrive at an understanding on the issues which are important from audit and reporting point of view."

"Kindly also ensure that the confirmations/assurance by the management on the issues already admitted by the DGM (Finance & Accounts) reaches us in time.

Sir, we are equally eager for releasing our audit report for the time being as all our other assignments are just staring at us during our double shift devotion on this audit for past two weeks."

(iv) The Respondent vide his letter dated 08-04-2016 is further noted to have sought for the further clarification/information in the matter of audit of the company:

"37. Sir, everything cannot be ignored/overlooked by auditors by giving disclaimer/remarks; kindly update and make available filed/data and records mandated under law to be maintained by your Office"

(v) It is further noted that the Respondent vide his email dated 08-04-16 & 19-04-2016 reiterated his request as below:

"Sir, delay in providing information and your late associating with the audit process has to be substantiated with reasons of delay. Audit and auditors cannot be kept hanging. We have to accordingly schedule our resources.

Kindly reply pointwise only in case not providing records, information or access to accounts so that your replies can be tabled at appropriate forums, please....."

"You are requested to kindly share audit communication with CAG's concerned officers....."

(vi) In this regard the Informant Company vide its email dated 20-04-2016 is noted to have replied to the Respondent firm in the below manner:

"(1) We had repeatedly replied your queries, may be some of our reply may not be satisfactory to you and thus you raise same query again. We have replied your all queries and if some of queries are not satisfactorily replied to you, you may incorporate in your Audit Report, sir.

(2) The details of query no. & reply are as under-

Query No.-10; Kindly provide access to computer system with operative Accounting Software and S/W menu prints.

Reply: We have already conveyed you that we do not provide access to computer system to statutory auditor and again confirmed via mail dt.9-4-16, We have shown S/W menu prints on your visit to our office.

Query No.11: Kindly provide Auditors' Login ID for surfing Accounting Records.

Reply: We do not provide Auditors' login ID for surfing Accounting Records.

(vii) It is further noted that Senior Divisional Manager of the Informant Company without making available the required books of accounts by the Respondent (as sought by the Respondent in the previous Paras for audit) vide its letter/email dated 21-04-2016 stated that since they had already replied his (Respondent) all audit queries hence, requested the Respondent to submit his audit report. Further, the Deputy Manager of the Informant Company on the same day vide his email mentioned the following to the Respondent:

"We have replied all your queries, may be some of our replies are not upto your satisfaction. We request you to issue your audit report."

6.4 From the above mentioned extracts of the communication exchanged between the Respondent and Informant Company, the following points have been observed by the Committee:

- (i) The Respondent had been continuously following up with the Informant Company for the required information/documents and clarification w.r.t. audit of the Company for the financial year 2015-16.
- (ii) The Respondent on various occasions viz. on 06-10-2015, 29-03-2016 and 07-04-2016 had requested the Informant Company to provide access to a Computer System

and also for Auditor's Login ID on its accounting software INLIAS for surfing accounting records of the Company to carry out audit. However, the Respondent was denied of such access of its software system for audit.

- (iii) The Respondent did not want to give adverse opinion/Disclaimer in his audit report inspite of the fact that the Informant Company vide its email dated 20-04-2016 mentioned to the Respondent that in case some of his queries were not replied he could incorporate the issues in his audit report.

6.5 The Committee further noted that the Board meeting of the Informant Company was fixed on 02/05/2016, wherein the financials of the Company were to be approved and the Respondent was being requested by the Informant Company to submit his audit report. However, the audit report was not submitted by the Respondent due to various audit queries (as explained above) and the matter was noted in the main Statutory Audit Report of the Head office of the Company and the Accounts of the Head office of the Informant Company were finalized with unaudited accounts of the Informant Company/division.

6.6 The Committee further noted that the Respondent had approached the Principal Director (Member Audit Board – II) of C&AG vide his letter dated 22-04-2016, to the Presiding Officer of C&AG vide his letter dated 27-04-2016, to the President of ICAI/PDC Department of ICAI vide his email dated 28-04-2016, to the Ministry of Finance vide his email dated 28-04-2016 and visited to the Ministry of Finance on 04-05-2016, wherein, he among several deficiencies in the accounting system of the Informant Company, also mentioned that he was denied access to the accounting records of the Company for its audit and thereby sought guidance of these authorities and from C&AG and he even sought for the specific guidance as to whether he should have issued 'Adverse Report' or 'Disclaimer'.

6.7 The Committee observed that the Respondent thereafter on 18th June, 2016 i.e. after one and half month of the Board meeting of the Informant Company, submitted his 'Adverse Audit Report' on the various matters including the matter of non-providing of independent access to the accounting system by the Informant Company.

6.8 In view of above facts, the Committee observed that it is a matter of record that there was delay in submission of audit Report by the Respondent but it is also a fact that the information/details/accounting records provided by the Company were not upto the satisfaction of the Respondent to make him to give his true and fair view on the financials of

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the auditee being its statutory auditor. Further, the Committee also observed that it is evident that the Respondent was not satisfied with the explanation provided by the Management of the Informant Company towards his audit queries and also he was not provided independent access to the accounting system of the Informant Company.

- 6.9 On overall consideration, the Committee was of the opinion that issue in hand is based on a procedural aspect, wherein the Respondent had not submitted audit report in stipulated time as mentioned in his appointment letter. Except this, there is nothing on record, in the form of allegation or wrongdoings at the end of the Respondent.
- 6.10 Moreover, in view of reply of Central Statutory Auditor and the documents/submissions of the Respondent, the Committee was of the view that the Respondent failed to submit his audit report in stipulated period due to the reason that he had not received the answers to his audit queries from the Management of the Informant Company. The Committee also took note of the fact that the Respondent approached various authorities seeking guidance/clarification in the matter (as explained in preceding paras above), which reflect the attempts on the part of the Respondent to find answers to his queries and his intention to avoid any disclaimer in the Audit Report. In view of same, the Committee decided to extend benefit of doubt to the Respondent considering the efforts put in by him in seeking response to his audit queries, and the fact that there was no evidence to show malafide or deliberate attempt on his part to delay the submission of Audit Report. Furthermore, there is no negative comments in the audit report of the Central Statutory Auditor regarding non-submission of Audit Report by the Respondent.
- 6.11 In view of the above, the Committee held the Respondent **NOT 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 the First Schedule to the Chartered Accountants Act, 1949.

7. Conclusion:

In view of the findings stated in above paras, vis-à-vis material on record, the Committee gives its charge wise findings as under:

Charges (as per PFO)	Findings	Decision of the Committee
Para 2.1 as given above	Paras 6.1 to 6.11 as given above	NOT GUILTY –Item (7) of Part I of the Second Schedule and Item (2) of Part IV of the First Schedule

8. In view of the above observations, considering the oral and written submissions of the Respondent and material on record, the Committee held the Respondent **NOT 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.

Order

9. Accordingly, in terms of Rule 19(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee passes an Order for closure of this case against the Respondent.

Sd/-

(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

Sd/-

(MS. DAKSHITA DAS, I.R.A.S. {Retd.})
GOVERNMENT NOMINEE

Sd/-

(CA. MANGESH P KINARE)
MEMBER

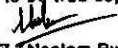
Sd/-

(CA. ABHAY CHHAJED)
MEMBER

DATE: 16/10/2024

PLACE: New Delhi

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


नीलम पुंडीर / Neelam Pundir
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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