

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: [PR-G/122/22-DD/118/2022-DC/1775/2023]

In the matter of:

Shri Shyam Sunder,
Registrar of Companies (Chandigarh & Punjab),
Ministry of Corporate Affairs,
Corporate Bhawan, Plot No. 4-B, Sector 27-B,
Chandigarh – 160 019

...Complainant

Versus

CA. Tejinder Prakash (M.No.089388)
M/s. Tejinder Garg & Co,
SCO 20, Sector 20-D, Tribune Road,
Chandigarh – 160 020

...Respondent

MEMBERS PRESENT:

Shri Jiwesh Nandan, IAS (Retd.), Government Nominee (in person)
Ms. Dakshita Das, IRAS (Retd.), Government Nominee (in person)
CA. Mangesh P Kinare, Member (in person)
CA. Abhay Chhajed, Member (through VC)

DATE OF FINAL HEARING : 29th July 2024

DATE OF DECISION : 21st August 2024

PARTIES PRESENT:

Complainant : Ms. Kamna Sharma, ROC – Authorized Representative of the Complainant (through VC)
Respondent : CA. Tejinder Parkash (through VC)
Counsel for Respondent : CA. C.V. Sajan (through VC)

1. Background of the Case:

- 1.1. As per the Complainant Department, certain information had come to the knowledge of Central Government that Foreign Nationals/ individuals/ entities with the help and support of professional were involved in formation of Companies wherein dummy persons were engaged

as subscribers to MOA & Directors by furnishing forged documents with falsified addresses / signatures, Director Identification Number (DIN) to MCA.

- 1.2. It is stated that some companies/individuals/entities who were directly or indirectly connected with the Companies were found to be engaged in illegal/ suspicious activities, money laundering, tax evasion and non-compliance of various provisions of laws.
- 1.3. The Complainant Department stated that certain professionals in connivance with such individuals/directors/subscriber to MOA have assisted in incorporation and running of these Companies for illegal/suspicious activities in violation of various laws by certifying e-forms/various reports etc. on MCA portal with false information concealing the real identities of such individuals.
- 1.4. It was further stated that professionals are duty bound to discharge their duties as per law and certify / verify documents / e-forms or give certificate / Report after due diligence so that compliance to the provisions of law shall be ensured. However, they had failed to discharge their duties and willfully connived with directors / company / shareholders / individuals in certifying e-forms knowingly with false information / documents / false declaration / omitting material facts or information.
- 1.5 M/s. Shri Shyam Enterprises Private Limited (hereinafter referred to as the **Company**) was incorporated by subscribers/ First directors, namely Mr. Navraj Mittal and Mr. Ram Kumar Mittal on 23.05.2008 having its registered office at C/o. Navraj Mittal, #7, Model Town, Patran -147005. Incorporation documents were certified/ witnessed by Company Secretaries, namely Ms. Richa Goel (ACS No. 19492) and Mr. Harsh Kumar Goyal (FCS No. 3314). Thereafter, the Company was converted into M/s. Shri Shyam Enterprises LLP (hereinafter referred to as the **LLP**) on 13.08.2019. The Respondent has audited the financial statements of LLP for the financial years 2019-20 and 2020-21.

2. Charges in brief:

- 2.1. The Company was showing long term borrowings from directors and others in crores and on the other hand, has given same loans and advances to other parties. Some of the borrowers and lenders are not related to the Company, which shows the suspicious activities of the Company and appears to be money laundering. Directors of the Company and certifying official have used the Company as platform to provide accommodation entries to various businesses in the form of bogus loans and bogus invoices and circular transactions. The Company has accepted loan from individuals whose name is not shown in the list of shareholders, director and relative of director and has violated section 73 Rule 2 (VIII) of

Companies (Acceptance of Deposits) Rules of CA, 2013. Hence, it appears that Company has done violation of FEMA and RBI rules. The Respondent has audited the forged financial accounts of the said LLP for the Financial Years 2019-2020 and 2020-2021.

3. The relevant issues discussed in the Prima Facie Opinion dated 04th October 2022 formulated by the Director (Discipline) in the matter, in brief, are given below:

- 3.1. The Complainant alleged that the Respondent was auditor of the LLP for the financial years 2019-20 and 2020-21, and he audited the forged financial accounts of LLP for the said years. However, the Respondent stated that he was auditor of the LLP for financial year 2019-20 only and he did not audit the financial statement of the LLP for any other financial year. It was observed that the Complainant while making the allegations did not provide copy of the financial statements for the alleged years. It was the Respondent who brought on record copy of the financial statement of the LLP for the financial year 2019-20. The Complainant was requested vide letter dated 12th August 2022 to provide a copy of the audited financial statement of the LLP for the financial years 2019-20 and 2020-21, but he did not provide the same.
- 3.2. In absence of any documents on record, it could not be stated that the Respondent had audited the financial statement of the LLP for the financial year 2020-21. Hence, the allegation as pertaining to the financial year 2019-20 only was taken into consideration and dealt with accordingly. It was also noted that all the assets of the Company (M/s. Shri Shyam Enterprises Pvt. Ltd.) were taken over by the LLP on conversion of the said Company into LLP on 30.08.2019.
- 3.3. In respect of specific allegation that the LLP was borrowing and giving loans & advances to the parties which were not related to the LLP, the Respondent only stated that details of short-term borrowing and lending/ loans were duly shown in the financial statements audited by him and a note regarding balance confirmation & reconciliation thereof was duly given in the Notes to Accounts. It was observed that the Respondent did not provide any documents/ working papers in support of the balance of borrowing and loan & advances as reflected in the financial statement of the LLP.
- 3.4. It was noted that almost 81% of the unsecured borrowing i.e. Rs. 665 Lakhs was given as unsecured loan to an individual/ Company. The Complainant alleged that the person from whom the loan was taken and to whom loan was given were not related to the LLP. In this regard, the Respondent did not bring on record any documents/ working papers to show that how the persons to/ from whom loan was given and taken were related to the LLP and why

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such huge amount of Rs. 539 Lakhs (69% of total size of the Balance Sheet) was given to unknown / unrelated person. The Respondent also did not bring on record any documents to establish that the borrowing and advances were taken/ made for the purpose of the business of the LLP only and not for any other purpose.

- 3.5. Since the Respondent appeared to have failed to verify the transactions related to the Borrowing and Advance as reflected in the Balance Sheet of the LLP, the possibility of money laundering in the form of borrowing and advance could not be denied. The Respondent being an auditor of the LLP was supposed to be more careful and vigilant while verifying the transactions, but he failed to do so. Hence, it was viewed that the Respondent was grossly negligent in conduct of his professional duties as an auditor of the LLP.
- 3.6. Accordingly, the Director (Discipline) in his Prima Facie Opinion dated 04th October 2022 opined that the Respondent was *prima facie* **Guilty** of Professional Misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949. The said item 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".

- 3.7 The Prima Facie Opinion formed by the Director (Discipline) was considered by the Disciplinary Committee in its meeting held on 09th June 2023. 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 prima facie **GUILTY** of Professional Misconduct falling within the meaning of Item (7) of Part I of Second 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 –

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Signature

S. No.	Particulars	Dated
1.	Date of Complaint in Form 'I' filed by the Complainant	31 st January 2022
2.	Date of Written Statement filed by the Respondent	---
3.	Date of additional submissions/ documents filed by the Respondent	24 th August 2022
4.	Date of Prima Facie Opinion formed by Director (Discipline)	04 th October 2022
5.	Written Submissions filed by the Respondent after PFO	18 th May 2024
7.	Rejoinder filed by the Complainant after PFO	---

5. Written Submissions filed by the Respondent:

The Respondent vide letter dated 18th May 2024 had, inter alia, made the submissions which are given as under –

- a. M/s. Shri Shyam Enterprises LLP was engaged in real estate business. The whole of the long-term unsecured liability of Rs. 6,65,53,611.00 was represented by a balance in the name of M/s. Gupta Builders and Promoters P. Ltd. who were also in real estate business. Therefore, transactions between the LLP and this Company were with the intent of entering into real estate related deals. The said liability was on account of advance collected against proposed sale of a property.
- b. M/s. Gupta Builders and Promoters Pvt. Ltd. were not a "related party". The Respondent as an auditor had obtained necessary information in this regard for the purpose of audit.
- c. There was no bar in law for the LLP to have transactions with persons with whom the LLP was not related.
- d. If the Complainant had any objections about the nature of relation between the parties with whom the LLP had advance transactions, the onus was upon Complainant to substantiate any alleged illegality about the "relation" between the LLP and the third parties whom with the LLP had transacted. But the complainant did not substantiate anything.
- e. The LLP sold immovable properties (that appeared in the Balance sheet as at 31.03. 2020) during Financial Year 2020-21. In addition, the LLP also refunded a part of the advance collected in Year 2020-21, in view of the revised mutual arrangement between the two parties. The LLP and M/s. Gupta Builders and Promoters P. Ltd. work closely in the real estate business and there have been regular transactions of giving and taking between the two as part of mutual arrangement. All the transactions are legitimate. Therefore, there was no case of raising any kind of suspicion about the balance of Rs 665 lakhs appearing as long-term liability in the Balance sheet of LLP as at 31.03.2020.

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6. **Brief facts of the Proceedings:**

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

Particulars	Date of Meeting(s)	Status
1 st Hearing	10 th August 2023	Part heard and adjourned.
2 nd Hearing	28 th May 2024	Deferred due to paucity of time.
3 rd Hearing	03 rd June 2024	Adjourned at the request of the Respondent.
4 th Hearing	20 th June 2024	Deferred due to paucity of time.
5 th Hearing	15 th July 2024	Adjourned at the request of the Complainant.
6 th Hearing	29 th July 2024	Hearing concluded and judgment reserved.
---	21 st August 2024	Decision taken.

- 6.1 On the day of the first hearing on 10th August 2023, the Committee noted that the Authorized Representative of the Complainant was present through Video conferencing. The Committee further noted that the Respondent along with his Counsel were also present through Video Conferencing mode. Thereafter, they gave a declaration that there was nobody present except them from where they were appearing and that they would neither record nor store the proceedings of the Committee in any form.
- 6.2 Being first hearing of the case, the Respondent was put on oath. Thereafter, the Committee enquired from the Respondent as to whether he was aware of the charges and charges against the Respondent 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. 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 later date.
- 6.3 On the day of the hearing on 28th May 2024, consideration of the subject case was deferred by the Committee due to paucity of time.
- 6.4 On the day of the hearing on 03rd June 2024, the Committee noted that the Respondent, vide email dated 31.05.2024, had sought an adjournment as he was out of town on the day of the hearing. Acceding to the said request of the Respondent, the Committee adjourned the case to a future date.
- 6.5 On the day of the hearing on 20th June 2024, consideration of the subject case was deferred by the Committee due to paucity of time.

- 6.6 On the day of the hearing on 15th July 2024, the Committee noted that the Complainant Department, vide email dated 15.07.2024, had sought an adjournment on account of urgent official commitments. Acceding to the said request of the Complainant, the Committee adjourned the case to a future date.
- 6.7 On the day of the final hearing on 29th July 2024, the Committee noted that the authorized representative of the Complainant and Respondent along with Counsel were present and appeared before it. The Committee noted that the Respondent was put on oath on 10.08.2023. The Committee also noted that the Respondent had filed a Written Statement dated 18th May 2024.
- 6.8 Thereafter, the Committee asked the Counsel for the Respondent to make submissions. The Committee noted the submissions of the Counsel for the Respondent which, inter alia, are given as under –
- a. The Respondent was the auditor of LLP which was converted from Private Limited Company in year 2019.
 - b. The Respondent was Statutory Auditor of the said LLP for Financial Year 2019-2020 and not for Financial Year 2020-2021 as alleged by the Complainant.
 - c. M/s. Gupta Builders and Promoters from whom long term borrowings were received was a Real Estate Company and said transaction was entered into normal course of business.
 - d. M/s. Gupta Builders and Promoters was not related party to the LLP.
 - e. There is no prohibition in law to accept or to give loan to parties which are not related to LLP.
 - f. Advances taken were towards sale of property which has been settled in Financial Year 2020-2021.
 - g. 96% of advances were given to partner, Mr. Navraj Mittal and balance 4% to other Real Estate Company.
- 6.9 The Committee asked the authorised representative of the Complainant to make submissions. She submitted that she had already provided all the documents related to this case and has nothing more to submit in this case and the Committee may decide the case on merits. She also clarified that there is no prohibition in law to receive loan from parties which are not related to LLP.
- 6.10 Based on the documents/ material and information available on record and the oral and written submissions made by the parties, and on consideration of the facts of the case, the Committee concluded the hearing in subject case and judgement was reserved.

6.11 Thereafter, on 21st August 2024, the subject case was fixed for taking decision. The Committee noted that the subject case was heard by it at length in the presence of the Complainant and the Respondent and the hearing was concluded at its meeting held on 29.07.2024 and the judgment was reserved. The Committee noted the allegations against the Respondent.

6.12 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 parties, the Committee took decision on the conduct of the Respondent.

7. Findings of the Committee:

7.1 The Committee noted the allegation that the LLP had borrowed funds from Directors and provided funds in terms of loans and advances to other parties. Some of the borrowers and lenders are not related to the LLP which shows the suspicious activities of the LLP and appeared to be money laundering. The Respondent has audited the balance sheet of the LLP (M/s. Shri Shyam Enterprises LLP) for the Financial Year 2019-2020. The detail of allegation is given in para 2.1 above.

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

7.2 The Committee noted that the Counsel for the Respondent during the hearing had submitted that the Respondent was auditor of LLP which was converted from Private Limited Company in year 2019. The Respondent was Statutory Auditor of LLP for Financial Year 2019-2020 and not for Financial Year 2020-2021 as alleged by the Complainant. Further, M/s. Gupta Builders and Promoters Pvt. Ltd. (GBP) from whom long term borrowings were received, was a Real Estate Company and the said transaction was entered in the normal course of business. M/s. Gupta Builders and Promoters was not related party to the Company. The Committee noted that the authorized representative of the Complainant submitted during the hearing that there is no prohibition in law to receive loan from parties which are not related to LLP.

7.3 Further, the Committee observed that the long-term borrowings appearing in the Balance Sheet which was received from M/s. Gupta Builders and Promoters was prior to date of formation of LLP i.e., 30.08.2019. Moreover, it is also noted that the Respondent had brought on record a letter dated 20.11.2020 containing ledger account of M/s. Gupta Builders and

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Promoters Pvt. Ltd., wherein it is stated that this amount was advance received from M/s. Gupta Builders and Promoters Pvt. Ltd. towards proposed sale of property and an amount of Rs. 199.10 lakhs was brought forward as opening balance, and Rs. 466.44 lakhs were received in multiple instalments as per ledger account, and as on 31.03.2020 the outstanding balance was Rs. 665.54 lakhs. The LLP had also sought balance confirmation from M/s. GBP vide letter dated 01/04/2020, wherein M/s. Gupta Builders and Promoters Pvt. Ltd. was requested to submit its reply within fortnight, but no response of M/s. Gupta Builders and Promoters Pvt. Ltd. is on record. Further, the Company had confirmed that there was no common business interest to be treated as related parties.

- 7.4 On perusal of ledger account of M/s. Gupta Builders and Promoters Pvt. Ltd. brought on record by the Respondent, the Committee noted that during the year, the LLP received on various dates (beginning from 31/08/2019 to 31/12/2019) an amount of Rs. 466.44 lakhs crores from M/s. Gupta Builders and Promoters Pvt. Ltd. and as on year end i.e. on 31/03/2020, the outstanding balance of M/s. Gupta Builders and Promoters Pvt. Ltd. was shown as Rs. 665.54 lakhs in the audited Financial Statements of the LLP. The Committee further noted that the Respondent in Notes to Accounts had clearly mentioned that *"all the balances of sundry debtors/creditors, loans & advances are subject to confirmation & reconciliation"*.
- 7.5 Similarly, the Committee noted that an amount of Rs. 539.13 lakhs is appearing under head long term loans and advances. In this regard, the Committee noted that in letter dated 20/11/2020, it has been clarified that out of said advance, an amount of Rs. 518.13 lakhs was in the name of Mr. Navraj Mittal (partner of the LLP) and remaining amount of Rs. 21.00 lakhs was towards advance from a real estate Company viz. M/s. City Heights Projects Pvt. Ltd. in relation to purchase of a property. The Committee noted that the Respondent has brought on record the ledger account of Mr. Navraj Mittal, wherein an amount of Rs. 518.13 lakhs has been shown in the name of Mr. Navraj Mittal. Further, the LLP vide its letter dated 01/04/2020 had sought balance confirmation from Mr. Navraj Mittal, and Mr. Navraj Mittal in letter dated 20/11/2020 has confirmed this amount. The Committee further noted that the Respondent in Notes to Accounts had clearly mentioned that *"all the balances of sundry debtors/creditors, loans & advances are subject to confirmation & reconciliation"*.
- 7.6 Further, the Committee noted that the Respondent had brought on record an agreement dated 01/09/2019 entered into between the LLP and M/s. Gupta Builders and Promoters Pvt. Ltd., wherein both parties had agreed to enter into sale of property. The Respondent had also brought on record balance confirmation letter(s) and letter as discussed above. In view of these documents, the Committee was of the view that transaction(s) made by LLP were for the purpose of business of LLP. On other side, the Committee noted that authorized

representative of the Complainant has not brought on record any evidence to prove that the transactions were not for business purpose of the LLP.

7.7 The Committee noted the statement of authorized representative of the Complainant, wherein she admitted that there is no prohibition in law to receive loan from parties which are not related to LLP. The Committee noted that the Respondent has brought on record documentary evidence(s) to corroborate that the transactions of LLP were undertaken for its business purposes. Moreover, there is no law as admitted by the authorized representative of the Complainant, which prohibits the LLP to receive/give loan and advances to/from unrelated parties. In view of these facts, the Committee decided to absolve the Respondent of the charge(s) in this case.

7.8 While arriving at its Findings, the Committee also observed that in the background of the instant case the Complainant Department informed that the Company was registered with ROC, Chandigarh by engaging dummy persons as subscribers to MOA & Directors by furnishing forged documents with falsified addresses / signatures, Director Identification Number (DIN) to MCA. Further, certain professionals in connivance with such individuals/directors/subscriber to MOA assisted in incorporation and running of these Companies for illegal/suspicious activities in violation of various laws by certifying e-forms/various reports etc. on MCA portal with false information concealing the real identities of such individuals. However, no evidence of the involvement of the Respondent to that effect had been brought on record by the Complainant Department in the instant case. As such, the role of the Respondent was limited to the audit of Financial Statements of the LLP for Financial Year 2019-2020, which has been examined by the Committee.

7.9 Accordingly, in view of the above and based on the documents/material and information available on record and after considering the oral and written submissions made by the Complainant and the Respondent, the Committee was of the view that the Respondent was **NOT GUILTY** of Professional Misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

8. Conclusion

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

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Charges (as per PFO)	Findings (Para ref.)	Decision of the Committee
Para 2.1 as given above	Para 7.1 to 7.9 as given above	NOT GUILTY as per Item (7) of Part I of Second Schedule

9. In view of the above observations, considering the oral and written submissions of the parties and documents on record, the Committee held the Respondent **NOT GUILTY** of Professional Misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

Order

10. 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/-
(SHRI JIWESH NANDAN, IAS {RETD.})
GOVERNMENT NOMINEE

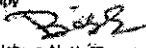
Sd/-
(MS. DAKSHITA DAS, I.R.A.S {RETD.})
GOVERNMENT NOMINEE

Sd/-
(CA. MANGESH P KINARE)
MEMBER

Sd/-
(CA. ABHAY CHHAJED)
MEMBER

DATE: 04/11/2024
PLACE: New Delhi

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कार्यकारी अधिकारी / Executive Officer
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