



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/70/2019/DD/91/2019/DC/1440/2021]

In the matter of: -

Shri Mithun Mahakud,
PO Palaspat,
Distt. Boudh,
Odisha – 762014

.....Complainant

-Vs-

CA. Jagdish Prasad Mittal, (M. No. 052282),
Partner, M/s. Jagdish Mittal & Co.
Sahej Success,
Office No. 3-E, 2nd Floor,
Near New Court Building,
Rourkela – 769012

.....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. Jagdish Prasad Mittal, (M. No. 052282) (hereinafter referred to as the Respondent") was held GUILTY of professional misconduct falling within the meaning of 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 made his written submission and accordingly he has no further submission.
5. The Committee considered the reasoning as contained in the findings holding the Respondent Guilty of professional misconduct vis-à-vis verbal 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 a fine of Rs. 15,000/- (Rupees Fifteen Thousand only) be imposed upon the Respondent i.e. CA. Jagdish Prasad Mittal, (M. No. 052282) 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

Approved

जयु गोवर / ANIL GOVER
सहायक सचिव / Assistant Secretary
अनुशासन-सम्बन्धित विभाग / Disciplinary Directorate
भारतीय सनदी लेखाकार संस्थान
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वनाथ 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 (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/70/19/DD/91/2019/DC/1440/2021]

In the matter of:

Shri Mithun Mahakud,
At/PO Palaspat,
Distt. Boudh,
ODISHA- 762 014

.....Complainant

Versus

CA. Jagdish Prasad Mittal (M. No. 052282),
Partner, M/s Jagdish Mittal & Co.
Sahej Success,
Office no. 3-E, 2nd Floor,
Near new Court building, Uditnagar
ROURKELA- 769 012

.....Respondent

MEMBERS PRESENT (Through Video Conferencing): -

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

DATE OF FINAL HEARING : 07-11-2023
PLACE OF FINAL HEARING : Through Video Conferencing

A.

Jugal

Parties Present

Respondent : CA. Jagdish Prasad Mittal
Counsel of Respondent : Sh. Lakshay Gupta

1- **BACKGROUND OF THE CASE-**

In the instant case the Respondent Firm was appointed as Statutory Auditor of District Rural Development Agency (hereinafter referred to as "DRDA"), Kandhamal Phulbani for the financial year 2017-18, by participating in a tender issued by DRDA.

2- **CHARGES IN BRIEF:**

It is alleged that the Respondent Firm has participated in tender process specifically for CA firms in which no minimum fee was prescribed, at a much lower rate thereby violating Guidelines No. 1-CA (7)/03/2016 dated 7th April 2016.

3- **BRIEF OF THE PROCEEDINGS: -**

Brief of hearing held on 7th November 2023

At the outset of the hearing, the Committee noted that the Complainant was not present, however, the Respondent along with his counsel was present through VC. Thereafter, the hearing in the above matter continued from the stage it was left in the last hearing. The counsel of the Respondent made his detailed submissions. The Committee also posed various questions to the Respondent/ counsel of Respondent. After hearing the detailed submissions from both the parties, the Committee decided to conclude the hearing in the matter.

Brief of hearing held on 31st October 2023

At the outset of the hearing, 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 not guilty. Thereafter, the Committee decided to adjourn the hearing in the above matter. With this, the hearing in the matter was part heard & adjourned.

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SUBMISSION OF THE RESPONDENT:

- 4- It is observed that during the course of hearing and/or through his Witten Statement the Respondent has inter-alia made the following submissions in his defence:
- 4.1 That he has participated in the tender that was floated by District Rural Development Agency, Kandnamal, Panchaytiraj Department, Government Kandnamal, Panchaytiraj of Odissa and proviso (ii) of item 6 of Part I of the First Schedule of the Act does not prohibit him from responding to tenders or enquiries issued by various users of professional services or organisations for securing professional work. So, the first and foremost is that participating in the tender is not prohibited in the Act.
- 4.2 That item (1) of Part II of Second Schedule of the Act provides that a member shall be deemed to be guilty of Professional Misconduct if he contravenes any guideline issued by the Council. As referred in Part II of Second Schedule of the Act, Appendix No. 34 prescribed the Guidelines for member of ICAI. The Act specifies the guidelines as part of the Act under this Appendix, but it nowhere confers a right to Council to issue the guidelines, which is not part of the Act, and which restrict the member for applying to tender or by putting any restriction if the same has not been restricted by the Act. If the intention of the Act is to put some condition on submitting the tender by the member, it should have specified so but in the competitive world the limitation on submitting the valid bid on a tender is to deprive the right to apply to tender, which has not been intended by the Act.
- 4.3 That the word "Guideline" has not been defined in Section 2 or in Section 15 of the Act and there is no provision for issuing any guideline in the Act except the specific guidelines referred in the Appendix no. 34. And even though, section 15(2)(J) of the Act, provides for the regulation and maintenance of the status and standard of professional qualifications of the members of the Institute, but by mere reading of the guideline it is evident that the same does not cover the function of issuing guidelines for restricting the member for applying in to a tender. Further that even the Chartered Accountants Regulation, 1988 does not define the term Guidelines. As such the Council is not empowered to issue any guideline within the meaning of the Chartered Accountants Act or Regulation.
- Further, that in case, this is a notification as defined in Section 2(ea), then it is to be placed before the Parliament as defined in Sec 30B and to the best of his knowledge, there is no such approval of Parliament.

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- 4.4 That though, there were multiple conditions in the tender document but quoting minimum fee was a recent requirement, that they have failed to incorporate the same in the subject tender document. All the members/firms who have applied to the subject tender, were under impression that the tender has been issued specifically for the CA and though there were multiple restrictions but there were no minimum fees prescribed in the said tender document.

FINDINGS OF THE COMMITTEE

5. On perusal of documents and information as available on record in respect of instant allegation, the Committee noted that DRDA has invited tender mentioning ***“Expression of Interest for engagement of Chartered Accountant’s Firm for Maintenance and Audit of Accounts of DRDA for the Financial Year 2017-18”***. On perusal of the appointment letter of the Respondent Firm dated 30th June 2018, it is clear that the Respondent Firm was appointed as the Statutory Auditor of DRDA for the financial year 2017-18 against which the fee quoted by the Respondent firm was INR 21,240/-. Further, on pursual of RTI reply received from DRDA the Committee noted that point no. 4 of the said reply stated that ***“The Government has not prescribed any scale of fees for statutory audit”***. Thus, it is evident that the Respondent Firm has participated in tender floated exclusive for Chartered Accountants in which no minimum fees were prescribed.

- 5.1 The Committee also perused the **Guideline No. 1-CA (7)/ 03/2016 dated 7th April 2016** and noted that the same reads as under: -

“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.”

(ii) This Guideline shall come into force with immediate effect.” (i.e., from 7th April 2016 - Emphasis Added)

Dr. X
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The Committee noted that the aforesaid guidelines are quite clear that the Respondent firm was required not to participate in the subject tender as the tender was exclusively for the CA firms and not for any other professional category and minimum fee was not prescribed in the tender document.

- 5.2 The Committee further noted that in terms of item (1) of Part II, of the Second Schedule to the Chartered Accountant Act, 1949, contravention of any of the provisions of any guidelines issued by the Council shall be deemed to be a "Professional Misconduct". Therefore, the Council has been given an implied power under the act to issue Guidelines. Accordingly, by participating in the subject tender, followed by acceptance of assignment, the Respondent has made a clear violation of the abovementioned guidelines issued by the Council of the ICAI and therefore, the Committee held the Respondent **GUILTY** of Professional Misconduct falling within the meaning of Item (1) of Part II of Second Schedule to the Chartered Accountants Act, 1949.

6. **CONCLUSION:**

In view of the above noted facts and discussion, in the considered opinion of the Committee, the Respondent is **GUILTY** of Professional Misconduct falling within the meaning of Item (1) of Part II of Second Schedule to the Chartered Accountants Act, 1949.

Sd/-

(CA. Aniket Sunil Talati)
PRESIDING OFFICER

Sd/-

Shri. Jugal Kishore Mohapatra, IAS (Retd.) (Shri Prabhaskh Shankar, I.R.S. (Retd.))
GOVERNMENT NOMINEE

Sd/-

GOVERNMENT NOMINEE

Sd/-

CA (Dr). Rajkumar Satyanarayan Adukia
MEMBER

Sd/-

(CA. Gyan Chandra Misra)
MEMBER

DATE: 11.02.2024

PLACE: NEW DELHI

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy
अरुण कुमार / Arun Kumar
बिम्ब कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनालयक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विकास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahdara, Delhi 110032

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