

[PPR/HPC/DD/86/INF/18/BOD/675/2022]

CONFIDENTIAL

BOARD OF DISCIPLINE**Constituted under Section 21A of the Chartered Accountants Act 1949****Findings under Rule 14(9) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007****File No. : [PPR/HPC/DD/86/INF/18/BOD/675/2022]****CORAM (present in person):****CA. Rajendra Kumar P, Presiding Officer****Ms. Dolly Chakrabarty (IAAS, retd.), Government Nominee****In the matter of:****M/s. Carvalho Associates LLP (FRN 00532S/S200002) in Re:****[Formally known as Carvalho Associates (FRN 00532S)]****[Member Answerable - CA. Manjunath C.S. (M.No.226641)]****.....Respondent****DATE OF FINAL HEARING : 20th April, 2023****PLACE OF FINAL HEARING : Chennai****PARTIES PRESENT (in person):****Respondent : CA. Manjunath C.S.****FINDINGS:****BACKGROUND OF THE CASE:**

- 1.1 The attention of the Disciplinary Directorate was drawn to the Report on Operation of Multinational Network Accounting Firms in India, which was considered by the Council of ICAI in the year 2010 and finalised by a Group constituted by the Council in July 2011. Subsequently, while considering further course of action in respect of the recommendations as contained in Para 7 of the aforesaid report, the Council at its meeting held in January 2013 had authorized the Secretary, ICAI to take necessary action as considered appropriate by him. In accordance with the said decision of the Council, upon placing the matter before the Secretary, he considered the issues relating to violations of provisions of the Chartered Accountants Act, 1949 by the various firms and

forwarded the same along with his recommendations for necessary action to the Director (Discipline).

- 1.2 On an overall examination of allegations together with the reference received from the Council of the Institute, the matter was treated as "Information" within the meaning of Rule 7 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

CHARGE ALLEGED:

- 2.1 The Respondent firm, in its letter dated 27th July 2009 at para 8 mentioned that the cost of running the International Office is funded by membership subscriptions. In para 12 of the said letter, it mentioned that in January 2009, it remitted annual subscription fee of GBP 239.69. The same is in violation of Item (2) of Part I of the First Schedule to the Chartered Accountants Act, 1949. The Respondent firm further mentioned in its letter dated 27th July, 2009 that it has been told by Kreston International (hereinafter referred to as the "Kreston") to sign a new agreement. This implies that the Respondent firm has entered into an agreement with Kreston International, a copy of which has not been sent by the Respondent firm. The Respondent firm, however, sent a copy of proposed new agreement. Section 2.2 of the said agreement provided as under:

"During the continuance of this Agreement, the Association shall levy a subscription equally for each Member firm that shall be calculated as a fixed fee for each member made up to two parts, a standard flat fee not exceeding GBP 2,000 together with a further flat fee not to exceed GBP 1,000 per partner."

The Respondent firm did not disclose as to what comprises membership subscription and what services have been received by it from Kreston International or from its member firms in lieu of the subscription. The purpose of this payment has not been disclosed by the Respondent firm. The information has been given for the year 2009 only. Presumably, remittances have been made by the firm in other years as well.

The Respondent firm did not provide break-up / computation and whether the remittance is only towards marketing, publicity and advertising the products and service in India as well as

abroad and any other payment cost which is not allowed as per the Chartered Accountants Act, 1949, Regulations framed thereunder and Code of Ethics. The Respondent firm has not furnished any data in support of their claim that the money remitted by them to the multinational entity is in respect of above matters only and that the same in no way relates to the volume of business generated through the efforts of the multinational entity and through use of brand name. Moreover, the information has been given for one year only. Such an act on the part of the Respondent firm appears to be in violation of Item (2) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

2.2 A recent judgement of Hon'ble Supreme Court in CIVIL APPEAL No. 2422/2018 and W.P. NO. 991/2013 was brought to the attention of the Disciplinary Directorate. The Hon'ble Apex Court observed violation of Sections 25 and Section 29 of the Chartered Accountants Act, 1949 and also raised certain questions on the way and manner the fee is being shared by the Indian CA firms who are associates of multinational international entities. In light of the said judgement and facts / submissions on record, the Respondent firm was charged for violation of the provision of Item (1) of Part II of Second Schedule to the Chartered Accountants Act 1949.

The Board noted that the Director (Discipline) in his Prima Facie Opinion held the Respondent prima facie Guilty of Professional Misconduct falling within the meaning of Item (2) of Part I of the First Schedule to the Chartered Accountants Act, 1949 only in respect of the charge specified at para 2.1 above and the said view had been accepted by the Board. Accordingly, the conduct of the Respondent was examined in respect of Professional Misconduct falling within the meaning of Item (2) of Part I of the First Schedule to the Chartered Accountants Act, 1949 only in respect of the charge specified at para 2.1 above.

BRIEF OF PROCEEDINGS HELD:

3.1 At the time of hearing held in the case on 19th April 2023 the Respondent was present in person before the Board and was put on Oath. The charges alleged against the Respondent were taken as read with his consent. On being asked by the Board as to whether the Respondent pleaded guilty in respect of the charges alleged against him, he replied in negative and made his submissions before the Board. The Respondent was examined by the

Board. Upon consideration of the submissions and documents on record the Board adjourned the hearing in the case to 20th April 2023 with the following direction to the:

Respondent:

1. to provide an Affidavit to the effect that the membership fees was last paid by the Respondent firm to M/s Kreston International Ltd on 17th November 2012. Subsequent thereto, no further payment was made to M/s Kreston International Ltd. and that the Respondent firm is not a member of M/s Kreston International Limited since then.
- 3.2 Thereafter, at the time of hearing held in the case on 20th April 2023 the Respondent was present in person before the Board and submitted an Affidavit. Thus, on consideration of the documents and submissions on record, the Board conclude the proceedings in the case.

BRIEF SUBMISSIONS OF THE RESPONDENT:

4.1 The Respondent, in his written submissions, inter alia, stated as under:

- a) The attention of the Disciplinary Directorate was drawn to the Report on Operation of Multinational Network Accounting Firms in India, which was considered by the Council in July 2011. Subsequently, while considering further course of action in respect of the recommendations as contained in Para 7 of the aforesaid report, the Council at its meeting held in January 2013 had authorised the Secretary, ICAI to take necessary action as considered appropriate by him. As a member of the Institute of Chartered Accountants of India, he was not a party to any of the actions taken by Late Mr. Angelo Carvalho who demised in July 2010. The Respondent joined the firm as a Partner wef 1st January 2012. Within twelve months of joining the firm, the Respondent made sure with best of his knowledge about working of Multinational Network Accounting Firms to exit the membership and the firm is not a member of Kreston International or any other Network with effect from Jan 2013. As a member he did the right thing to exit. Also, the Council at its meeting held in January 2013 decided to take appropriate action on various firms relating to violations of provisions of the Chartered Accountants Act, 1949. This means the intensity and magnitude of the operations are coming to light only in Jan 2013 and the Council initiating action after sixty-four years of set up of the Institute. The

Respondent, a young member then, with one year of post qualification experience, decided to exit the Network. This means, as a member in practice, he did not want to continue with the legacy of decisions made by Late Mr Angelo Carvalho that could impair his professional practice.

- b) The Respondent on behalf of the firm, responded in all fairness and integrity, the circumstances that prevailed after the demise of Late Mr Angelo Carvalho and as a member continuing in practice in the firm, it was Respondent's moral and professional duty to respond to such notices/letters.
- c) The Hon'ble Supreme Court had come out with the whole gamut of the issues surrounding Operation of Multinational Network Accounting Firms in its Judgment dated 23rd February 2018. This means, intricacies surrounding operation of multinational network accounting firms came to light as late as in 2018. The Respondent as a member of the Institute with his foresight decided to exit the network way back in 2013.
- d) The person who executed the Agreement with Kreston International was Late Mr Angelo Carvalho who demised in July 2010. The Respondent is a Partner since January 2012 and he decided to exit the network wef January 2013. Therefore, queries put forth by the ICAI has to be answered by the member connected with the firm. In the absence of deceased member, the Respondent answered the same as a responsible member of the Institute.
- e) The member who submitted the letter dated 27th Jul 2009 demised in July 2010. Therefore, he is not privy to the context in which the letter was submitted. It would be pertinent to state that the Respondent was not a member in Jul 2009.
- f) The Respondent provided the copy of the following invoices for reference:
 - Exhibit 1 - Invoice dated 17th Nov 2010 towards M/s Kreston International Membership Subscription 2011 amounting to GBP 427.50 signed by CA. V. B. Sekar (who was Partner with the Firm)
 - Exhibit 2- Invoice dated 17th Nov 2011 towards M/s Kreston International Membership Subscription 2012 amounting to GBP 550.00
 - Exhibit 3 - Invoice dated 17th Nov 2012 towards M/s Kreston International Membership Subscription 2013 amounting to GBP 633.33. The decision to exit was taken in November 2012. Where the decision to terminate the membership with Kreston is not made prior

to six months of next calendar year, membership fee is payable in full. In view thereof, the firm paid GBP 633.33 as termination Fee.

The Exhibit 1 and Exhibit 2 did not take place during Respondent's tenure as Partner with the firm and Exhibit 3 indicates termination from M/s Kreston International.

- g) Since the Respondent is continuing with the firm as a Partner wef Jan 2012 he is responsible to answer to queries put forth by ICAI. He is declaring himself as member answerable to the allegations does not in any manner indicate that he should be bearing the consequences of actions taken by the deceased member of the firm. It clearly goes against the principles of natural justice particularly so when the deceased member is not in action.
- h) The Respondent drew reference to Item (2) of Part I of First Schedule (Professional misconduct in relation to Chartered Accountants in practice) to the Chartered Accountants Act, 1949 which provides as under:

"A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business, to any person other than a member of the Institute or a partner or a retired partner or the legal representative of a deceased partner, or a member of any other professional body or with such other persons having such qualifications as may be prescribed, for the purpose of rendering such professional services from time to time in or outside India.

Explanation. - In this item, "partner" includes a person residing outside India with whom a chartered accountant in practice has entered into partnership which is not in Contravention of item (4) of this Part."

The Respondent stated that no share, commission or brokerage in the fees or profits were ever paid by him or firm. All payments pertained to membership and subscription.

The Respondent was neither a party to the payment nor did he authorise the payments.

- i) There was no sharing of fees to M/s Kreston and all payments were towards membership.

OBSERVATIONS OF THE BOARD:

5.1 As regard the charge alleged against the Respondent, the Board noted that Item (2) of Part I of the First Schedule to the Chartered Accountants Act, 1949 provides as under:

"A Chartered Accountant in practice shall be deemed to be guilty of Professional Misconduct, if he :-

Clause (2): pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business, to any person other than a member of the Institute or a partner or a retired partner or the legal representative of a deceased partner, or a member of any other professional body or with such other persons having such qualifications as may be prescribed, for the purpose of rendering such professional services from time to time in or outside India.

Explanation: In this item "partner" includes a person residing outside India with whom a Chartered Accountant in practice has entered into partnership which is not in contravention of item (4) of this part.;"

5.2 The Board also noted that the Respondent firm signed an Agreement with M/s Kreston International Ltd. which was effective from 17th November 2009, inter-alia, containing the following provisions:

During the continuance of this Agreement the Association shall:

2.2 Levy a subscription equally for each Member firm that shall be calculated as a fixed fee for each Member made up of two parts, a standard flat fee not to exceed GBP 2,000 together with a further flat fee not to exceed GBP 1,000 per partner.

2.3 Receive a work referral fee being a percentage (currently 5%) of all gross fees earned by a Member as a result of work referred to that member by another member of the Association or the Association itself for a period of twenty four months from the date of the commencement of the work.....

2.4 Each Member shall be entitled to the inclusion of one entry in the directory without additional charge. Where a member firm has more than one office, the International Secretary may decide the manner in which the additional addresses are to be displayed. Members

requesting inclusion of additional offices may be liable to an additional payment per entry of a sum equivalent to the standard flat fee."

5.3 The Board further noted that the Respondent brought on record an Appendix forming part of the said Members' Agreement signed between M/s Kreston International Limited and the Respondent firm effective from 17th November 2009 wherein it was agreed as follows:

"

1. *Clause 2.3 of the attached Membership Agreement stipulates the requirement for payments of a fee to Kreston International Limited being a percentage of the gross fees earned by a Member as a result of work referred to that Member by another Member of the Association or the Association itself for a period of twenty-four months from the date of the commencement of the work.*
2. *The ICAI has expressed the opinion that such payments would be deemed to be in breach of the ICAI Code of Conduct Clause 2 which states:-*
"Clause (2)-Practising member prohibited to pay or allow any share, commission or brokerage or profits of his professional business, to any person other than a member of the Institute or a partner or retired partner or the legal representative of deceased partner"
3. *KI does not concur with the opinion expressed by the ICAI. KI is a company limited by guarantee, has no share capital and is a not-for-profit entity established to manage the administrative affairs of the KI association of independent accountancy firms. The payments sought under Clause 2.3 of the attached Membership Agreement are considered to be contributions to the costs incurred by KI in supporting international referrals of assignments.*
4. *Notwithstanding the difference in interpretation given by KI and ICAI to the nature of the payments sought under Clause 2.3. KI hereby agrees that the Member shall not be obligated to make such referral payments for such time as the ICAI continues hold the opinion that the payments would represent a breach of the ICAI Code of Conduct. "*

5.4 The Board also noted that the Respondent brought on record copy of the invoices raised by M/s Kreston International Ltd. on the Respondent firm for the Membership Subscription for 2011, 2012 and 2013 to the tune of GBP 427.50, GBP 550 and GBP 633.33 respectively. The Board also noted that the Respondent also informed that the Respondent firm paid a Referral Fee of GBP 12.79 dated 25th January 2012. However, he could not bring on record the copy of the said invoice being past record. The Board also noted that the Respondent in his written submissions also informed as under:

"work referral received was in connection with a telephonic call with a client who sought certain instances.

.....No work referral was given by us....

we had not made any significant income out of our association with M/s. Kreston International."

5.5 The Board further noted that the Respondent's association with the Respondent firm as a Partner commenced on 1st January 2012. Furthermore, the Respondent firm's association with M/s Kreston International Ltd. terminated on 17th November 2012. The Board also noted that the Respondent brought on record a notarised Affidavit dated 20th April 2023 to the following effect:

"1. That the firm discontinued its membership with Kreston International Limited by paying the 2012 membership fee' vide invoice number F13-31 dated 17 November 2012.

2. That no further payments were made to Kreston International Limited.

3. That the firm is not a member of Kreston International Limited since 17 November 2012."

5.6 Thus, the Board observed that the Respondent firm's association with M/s Kreston International Ltd. was from 17th November 2009 to 17th November 2012. During the said period, apart from the Subscription Fee, the Respondent Firm paid a sole as well as miniscule referral Fee of GBP 12.79 on 25th January 2012 to M/s Kreston International Ltd. which was around 5 % of all gross fees earned as a result of work referred to it. Apart from that there is no evidence to indicate any further payment made to M/s Kreston International Ltd. by the Respondent firm. The said fact has also been affirmed by the Respondent on an Affidavit.

[PPR/HPC/DD/86/INF/18/BOD/675/2022]

Thus, in view of the above especially keeping in view the fact that there is only a solitary miniscule payment of Referral Fee by the Respondent Firm to M/s Kreston International Ltd. way back in 2012 and the Agreement between the two had been terminated within 3 years, the Board took a pragmatic view and decided to hold the Respondent Not Guilty in respect of the charge alleged.

CONCLUSION:

6. Thus, in conclusion, in the considered opinion of the Board, the Respondent is **NOT GUILTY** of Professional Misconduct falling within the meaning of Item (2) of Part I of the First Schedule to the Chartered Accountants Act, 1949. Accordingly, the Board passed Order for closure of the case in terms of the provisions of Rule 15 (2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

Sd/-

CA. Rajendra Kumar P

(Presiding Officer)

Sd/-

Ms. Dolly Chakrabarty (IAAS, ret'd.)

(Government Nominee)

DATE: 05-10-2023

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

नीलम पुंडीर / Neelam Pundir
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अभ्युक्तन्यायक विभाग / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आइसीएआई भवन, विरवार चमर, साइबर, दिल्ली-110002
ICAI Bhawan, Vishwas Nagar, Cyber, Delhi-110002