



DISCIPLINARY COMMITTEE [BENCH-V (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.

PPR/HPC/DD/11/INF/18-DC/857/2018
PPR/HPC/DD/13/INF/18-DC/859/2018
PPR/HPC/DD/14/INF/18-DC/860/2018
PPR/HPC/DD/16/INF/18-DC/862/2018
PPR/HPC/DD/75/INF/18-DC/865/2018
PPR/HPC/DD/76/INF/18-DC/866/2018

In the matter of:

1. M/s Price Water House, Kolkata (FRN 301112E) in Re:
2. M/s Price Waterhouse & Co., Chennai (FRN 050032S) in Re:
3. M/s Price Waterhouse & Co. Chartered Accountants LLP (FRN 304026E / E300009)
(Formerly known as M/s Price Waterhouse & Co. (FRN 304026E)) in Re:
4. M/s Price Water House, Bangalore LLP (FRN 007567S/S200012)
(Formerly known as M/s Price Water House, Bangalore (FRN 007567S)) in Re:
5. M/s Dalal & Shah Chartered Accountants LLP (FRN 102020W/W100040)
(Formerly known as M/s Dalal & Shah (FRN 102020W)) in Re:
6. M/s Dalal & Shah LLP (FRN 102021W/W100110)
(Formerly known as M/s Dalal & Shah (FRN 102021W)) in Re:

CA. Neeraj Kumar Gupta (M. No. 055158)

(member answerable)

252 Veer Savarkar Marg,
Shivaji Park, Dadar (West),
MUMBAI – 400028

...Respondent

MEMBERS PRESENT:

CA. Ranjeet Kumar Agarwal, Presiding Officer (Present in person)

Smt. Anita Kapur, Government Nominee (Present in person)

Dr. K. Rajeswara Rao, Government Nominee (Present through Video Conferencing Mode)

CA. Piyush S. Chhajed, Member (Present through Video Conferencing Mode)

CA. Gyan Chandra Misra, Member (Present through Video Conferencing Mode)

Date of Hearing: 29th April 2024

Date of Order: 08th May 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 dated 22nd January 2024, the Disciplinary Committee was, inter-alia, of the opinion that **CA. Neeraj Kumar Gupta (M. No. 055158)** (hereinafter referred to as the “**Respondent**”, who was identified as ‘member answerable’) was **GUILTY** of Professional Misconduct falling within the meaning of Items (2), (3), (5) and (7) of Part I of the First Schedule and Item (1) of Part II of Second Schedule to the Chartered Accountants Act, 1949.

2. On the same, the Respondent vide letter dated 22nd February 2024, stated that he is in receipt of findings of the Committee by speed post on 16th February 2024 and requested time till 31st March 2024 to file his written representation in the matter(s).

2.1 Thereafter, it was noted that a notice dated 15th March, 2024 was issued to the Respondent to appear before it for award of punishment on 2nd April 2024. On receipt of said notice, the Respondent vide email dated 22nd March, 2024 stated that he is in process of preparation and finalization of his written representation and requested for deferment of hearing on account of Appellate Tribunal which is stated to be non-functional. In response thereto, vide email dated 22nd March, 2024 it was informed to the Respondent that findings of the Bench was sent to him vide letter dated February 12, 2024 and he has not submitted his written representation in the matter till date. He was further advised to file his written representation by 31st March 2024.

2.2 Thereafter, the Respondent vide email dated 25th March, 2024 requested the Committee to consider his request to be represented through an authorised representative/ Counsel. Vide email dated 26th March 2024, it was informed to the Respondent that 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 provides for the Committee to give an opportunity of hearing to the Respondent and that there is no provision in the said Rules that his appearance could be done with appearance of authorised representative as available in the hearing stage under Rule 18 (6) of the said Rules and accordingly, the Respondent was advised to appear before it on 2nd April 2024.

2.3 Thereafter, the Respondent approached the Hon’ble Delhi High Court vide Writ Petition [W.P.(C) 4679/2024] with a request to be represented through an Authorised Representative/ Counsel. The Hon’ble Delhi High Court vide order dated 1st April 2024 observed as under:

“13. Resultantly, this Court is inclined to dispose of the writ petitions by permitting the Petitioners to engage Counsels to represent them during the proceedings under Rule 19 of the Chartered Accountants Rules, 2007.

14. In view of the fact that the matter is to be heard on 02.04.2024, this Court directs the Respondents to give at least one week’s time to the Petitioners to engage Counsels so that the lawyers can be given proper instructions and get prepared to represent the Petitioners during the hearing.”

2.4 The Committee during the course of hearing held on 2nd April 2024 noted that Respondent(s)/ Member answerable(s) were not present for hearing. The Committee noted that the Respondent(s) vide their separate emails dated 1st April, 2024 stated that they had filed Writ Petition(s) before

Hon'ble Delhi High Court for their representation through Advocate/ Authorised representative before the Disciplinary Committee. It was further stated that the said Writ Petitions were heard on 1st April, 2024 and the Hon'ble Court after hearing the submissions in the matter, reserved its order. As per Respondent(s), the Hon'ble Court has indicated that it would pass order in the matter shortly and accordingly requested the Committee to not to conduct hearing on 2nd April, 2024. The Committee also noted that in the meantime, the order of Hon'ble Court was uploaded on its portal and on consideration of the same, the Disciplinary Committee in compliance of the said order provided the Respondent an opportunity to engage Counsel/ Authorised Representative in the matter(s) within one week's time and doing the needful at his/their end.

2.5 Thereafter, these cases were fixed for hearing on 22nd April, 2024. The Committee noted that the Respondent alongwith his Counsel appeared before it and requested to defer these cases on the ground that stay was granted in similar cases by Hon'ble High Court of Punjab and Haryana (in CA. Anupam Dhawan matter – DC-858-2018) and Hon'ble High Court of Telangana (in CA. N K Varadarajan matters – DC-863-2018 and DC-864-2018). The Disciplinary Committee noted that there is no stay in the extant cases and accordingly directed the Respondent to argue on merits for award of punishment. The Counsel for the Respondent stated that he has not received instructions from his client and requested the Committee to note his objections to represent these matters. The Committee, considering the principles of natural justice, provided one week's time and decided to fix the cases on 29th April 2024 at the request of the Respondent.

2.6 In the meantime, the Respondent filed a fresh writ petition [W.P.(C) 5735/2024] before Hon'ble Delhi High Court challenging the extant proceedings before the Disciplinary Committee. The Hon'ble Court vide order dated 26th April, 2024 (communicated on 29th April, 2024) observed that the Respondent (i.e. the petitioner who approached the Hon'ble Court) desires to withdraw the writ petition and accordingly, the said writ petition was disposed off as under:-

"3. After the Order of Penalty is pronounced, let the same be kept in abeyance for seven days.

4. It is made clear that this Court has not expressed any opinion on the merits of the case and all the rights and contentions of both the parties are left open."

3. Since, there was no stay in these cases, hence pursuant to the said findings, an action under Section 21B(3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and a communication was addressed to him thereby granting an opportunity of being heard in person/through video conferencing and to make representation before the Committee on 29th April 2024.

4. The Committee noted that on the date of hearing held on 29th April 2024, the Respondent was present alongwith his Counsel Sh. Ajay Bahl through Video Conferencing Mode and made his verbal submissions on the findings of the Disciplinary Committee. The Committee also noted that the Respondent relied on his written representation dated 29th March 2024, wherein he apart from denial of guilt, inter-alia, submitted as under:

- a. the extant matters are quasi-criminal in nature. The Respondent relied upon para 4 in the matter of An Advocate v. Bar Council of India and another [(1989) Suppl. 2 SCC 25].
- b. there is an inordinate delay in process in addressing the matters.

- c. there is no authoritative interpretation of term “secure” and “means which are not open to a chartered accountant”; “fee sharing”; “receipt by Respondent Firm(s) of non-refundable financial resources from the international licensor” ;“use of email id within scope of Item (7) of Part I of First Schedule”.
- d. referring the Committee of Experts (CoE) report and MCA affidavit filed before Hon’ble Apex Court in the matter of S. Sukumar Vs. The Secretary, Institute of Chartered Accountants of India & Ors., the Respondent stated that ingredients of Section 25 and Section 29 are satisfied. Thus, as per Respondent there is different views regarding scope and interpretation of Section 25 and Section 29 of the Chartered Accountants Act.
- e. the issues raised are not peculiar to the Respondent Firms but are industry issues and align with international practise.
- f. there was no direct or personal involvement of the Respondent.
- g. he further sought for an adjournment until the Appellate Authority becomes functional to ensure that his right to appeal is preserved.
- h. the Respondent stated that removal of his name from the Register of Members will cause irreparable and irreversible harm and damage to his reputation and will adversely impact his livelihood. The Respondent relied upon para 18 in the matter of Institute of Chartered Accountants of India v. L.K. Ratna and Others [(1986) 4 SCC 537].
- i. as per doctrine of doubtful penalization, where two views and reasonable constructions exist, court must lean in favour of the construction which is beneficial to the accused and exempts him from imposition of penalty. The Respondent relied upon para 9 in the matter of Tolaram Relumal and Ors. v. The State of Bombay [AIR 1954 SC 496] and para 54 & 55 in the matter of Securities and Exchange Board of India v. Sunil Krishna Khaitan [(2023) 2 SCC 643] in this regard.
- j. the Respondent requested that his written representation be annexed to order passed under Section 21B(3) of the CA Act and the said order be not made public till the Respondent has the ability to pursue the statutory right of appeal.

5. The Committee considered the reasoning as contained in the findings holding the Respondent Guilty of professional misconduct vis-à-vis written and verbal representation of the Respondent made before it.

6. The Committee, with respect to objections raised by the Respondent, considered the reasoning as contained in the findings holding the Respondent Guilty of professional misconduct vis-à-vis written and verbal representation of the Respondent made before it. As regards other submissions of the Respondent, the Committee held that due consideration to the submissions and documents on record had been given by the Committee before arriving at its Findings and that no fresh ground can be adduced at this stage.

7. As regards the plea of the Respondent for delay in process, the Committee noted that the same was already dealt with in para 5.2 and its sub paragraphs of the findings report.

8. As regards the plea of the Respondent that the Appellate Authority is presently not functional, the Committee viewed that it cannot withhold its further proceedings as provided under the Chartered Accountant Act and Rules framed thereunder when various other legal recourses are available with the Respondent.

9. As regards the plea of the Respondent regarding the findings of COE and affidavit of MCA and that no authoritative interpretation on key terms was available, the Committee observed that at the hearing stage a proper opportunity was provided to the Respondent to defend and was heard at length. Further it arrived at the finding after evaluating all the evidence produced before it and after adhering to the due procedure as enshrined in the Chartered Accountants Act, 1949 and the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

10. As regards the plea of the Respondent that the extant proceedings are quasi-criminal, the Committee opined that the proceedings before it are quasi-judicial in nature where the misconduct can be proved by preponderance of probabilities having regard to the conduct of the Respondent firm vis-à-vis Respondent which is distinct from Criminal proceedings where the misconduct has to be proved beyond reasonable doubt. While coming to the said view, the Committee took into consideration the decision of the Hon'ble Supreme Court in the matter of '**Ajit Kumar Nag –vs- General Manager (PJ) Indian Oil Corporation Limited**' -AIR 2005 SC 4217 wherein the Hon'ble Apex Court held as under:-

“The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rules relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused ‘beyond reasonable doubt’ he cannot be convicted by a Court of law. In a departmental enquiry penalty can be imposed on the delinquent Officer on a finding recorded on the basis of ‘preponderance of probability’.”

Similarly in the matter of **Capt. M Paul Anthony –vs- Bharat Gold Mines Limited - AIR....1999 SC 1416** the Hon'ble Supreme Court held as under: -

“In Departmental proceedings, factors prevailing in the mind of the Disciplinary authority may be many, such as enforcement of discipline or to investigate level of integrity of delinquent or other staff. The standard of proof required in those proceedings is also different from that required in a criminal case. While in Departmental proceedings, the standard of proof is one of preponderance of probabilities, in a criminal case, the Charge has to be proved by the prosecution beyond reasonable doubt.”

Thus, in the matters before the Committee, the Strict Rules of Evidence may not be considered while examining the conduct of the Respondent and such a plea is not sustainable.

11. The Committee further noted that case laws referred and relied upon by the Respondent were clearly distinguishable from the extant cases as the Respondent Firms are Chartered Accountant Firms registered with the Institute and the partners of these Respondent Firms are members of the Institute. The Institute is empowered to regulate the conduct of the erring professionals by following due procedure as enshrined under the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. The cases referred relies on conduct of Advocates which is regulated by separate Act, further the principles of natural justice and equity is followed by the Committee throughout the extant disciplinary proceedings.

11.1 As regards the principle of doubtful penalization is concerned, the Committee viewed that the findings deal with all the aspects raised by the Respondent Firms and arrived at its findings considering the invoices, agreements and other evidence brought on record.

12. Keeping in view the facts and circumstances of the case, material on record, including verbal and written representations on the Findings, the Committee is of the view that the Respondent Firm(s) had entered into various agreements such as Accession Agreement, Name License Agreement, Firm Services Agreement which contains clauses which clearly violates the provisions of the Chartered Accountants Act, 1949. The Respondent Firm(s) through the said agreement, obtained the services of PwC Services which include assisting the Respondent Firm(s) in obtaining professional business. Though the Respondent Firm(s) stated that there is no consideration paid to PwC for obtaining the services, however, on review of information on outward remittances made to PwCIL (Price Waterhouse Coopers International Limited) and its affiliates, it is noted that huge sum of Annual Charges are paid for the same. The details of remittances made by Respondent Firm(s) prove that substantial payments for services were made. Further, the Respondent Firm(s) secured professional business through means which are not open to a Chartered Accountant viz brand promotion and marketing. Considering the huge business being run under the said arrangement, the Respondent Firm(s) had totally deviated from the righteous path and indulged in activities not open to CA in practice and their acts constituted Professional Misconduct in terms of Item (5) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

12.1 Further, the Committee noted that visiting cards of the personnel of Respondent Firm(s) contains suffix “@pwc.com” in their email id(s) which depicted their close association or linkage with the international entity. Further, the Name License Agreement signed between PwC Business Trust (an entity set up under the laws of USA and owner of the brand ‘PricewaterhouseCoopers’) contains clauses which permits the Respondent Firm(s) to use the trademark PwC. The Respondent firm(s)/ Respondent(s) in their submissions have failed to point out as to how they were able to maintain their independence when the domain that was being used belonged to the third party i.e. multinational entity. The Respondent Firm(s) with the name Pricewaterhouse, Dalal & Shah used domain name “@pwc.com” which signify its relation with multinational entity to capitalize on their goodwill and such acts constituted Professional Misconduct in terms of Item (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

12.2 The Committee is of the view that substantial payments were made to PwC services and all the said payments were made as per provisions of Firm Services Agreement was nothing, but allocation of costs incurred by PwC services on its objectives and not for the Respondent Firm(s). These are payments made by the Respondent firms for obtaining the benefit of using PwC marks and indirect benefit of referral of work obtained from other member firms. Incidentally, from perusal of the invoice bills brought on record by the Respondent firms, it is noted that the Respondent Firms charges percentage of share of its fees from other member of PwC Network outside India for work conducted by them for the Indian client companies. For instance, when particulars of bill state “Being 50% of our fees of XXX assignment of XXX India Private Limited for the year ended XXX or “75% of agreed fees for valuation related services pertaining to the valuation of assets of XXX India Private Limited) In other words, the rest of the percentage of fees was shared with the member firm of PwC Network outside India. In view of facts and circumstances as detailed in its findings report, it is evident that the

arrangement with PwCIL and thereby with PwC Services and other member firms that the arrangement was more aligned with fee/ profits sharing practices than mere reimbursement and their acts constituted Professional Misconduct in terms of Item (2) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

12.3 The Committee further noted the Respondent firm (M/s Price Water House, Kolkata (FRN 301112E)) had disclosed about the arrangement of receipt of financial support from multinational entity before the High Powered Committee. Further there exists a Grant Agreement executed between PwC Services and Pricewaterhouse (a partnership firm) and an additional agreement of same date for Grant of US \$4 million was entered between the same parties citing the same purpose (i.e. development of and acquisition of resources to provide additional technical excellence and knowledge in the fields of professional practice development) and thereafter subsequent grant agreements were entered on 20th February 2012 as well as 27th March 2015 wherein definitive firm was identified and reasoning of the grants being Satyam matter was referred as well as it was clarified that such grant is on non-refundable basis. The purpose of obtaining the grant was 'development and acquisition of resources' and **the protection and promotion of the brand**. Further there was an understanding that grants will be provided if required in future too. This contribution was nothing but share their professional revenues. Hence, by accepting such grants, the Respondent firm had indirectly shared the revenue of other PWC member firms and hence their acts further constituted violation of Item (3) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

12.4 In addition, it is already dealt with in detail in the findings of the Committee that there was apparent sharing of human resources, infrastructure, brand name and contact details which signifies that in substance PwC was controlling the Respondent firm(s). Hence, the conduct of the Respondent Firms(s) was falling within the ambit of parameters defined in the Judgment of Hon'ble Supreme Court in the matter of S. Sukumar -vs- ICAI. Accordingly, it was a Professional Misconduct within the meaning of Item (1) of Part II of Second Schedule read with Section 25 and Section 29 of the Chartered Accountants Act, 1949.

13. Hence the professional misconduct on the part of the Respondent is clearly established as spelt out in the Committee's Findings dated 22nd January 2024 which is to be read in conjunction with the instant Order being passed in the case.

14. The members in order to arrive at appropriate decision observed that the Chartered Accountants Act, 1949 was enacted to regulate the profession of Chartered Accountants in India. The members of the Institute are entrusted with larger role to protect the interest of investors and other stakeholders. Accordingly, the Committee was of the view that ends of justice will be met if appropriate punishment commensurate with his professional misconduct is given to him.

15. Upon consideration of the facts and circumstances of the case and after due deliberations on the Report, the Committee ordered that the name of the Respondent i.e. **CA. Neeraj Kumar Gupta (M. No. 055158) be removed from Register of Members for a period of 03 (three) years (concurrently in all six cases), and a fine of Rs.5,00,000/- (Rupees Five Lakh only) (in all six cases separately) be imposed upon him, to be paid within 90 days of the receipt of the order and in case of failure in payment of fine as stipulated, the name of the Respondent be**



भारतीय सनदी लेखाकार संस्थान

(संसदीय अधिनियम द्वारा स्थापित)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

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removed for a further period of 01 (one) year (concurrently in all six cases) from the Register of Members. The said punishment for the removal from the Register of Members for a period of 03 years shall run concurrently in all the six cases referred above. Similarly, punishment for removal of name for one year in lieu of non-payment of fine shall also run concurrently in all the six cases referred above. However, the fine of Rs. 5,00,000/- is to be imposed on him in each case separately.

16. The Committee further directed that the Respondent and the Respondent Firm(s) shall immediately stop existing arrangements with the Multinational entities, as the same is circumventing the provisions of the Chartered Accountants Act 1949. The Hon'ble Supreme Court in the matter of S. Sukumar vs The Secretary, ICAI also found that the CA firms were trying to bypass the provisions of Section 25 and Section 29 of the Chartered Accountants Act 1949. The same is dealt with in detail in the findings of the Committee issued in the instant matters. The Committee further directed that a compliance report regarding adherence to the above directions be submitted by the Respondent and the Respondent Firm(s) within 90 days of receipt of the order.

Sd/-
(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

Sd/-
(SMT. ANITA KAPUR)
GOVERNMENT NOMINEE

Sd/-
(DR. K. RAJESWARA RAO)
GOVERNMENT NOMINEE

Sd/-
(CA. PIYUSH S CHHAJED)
MEMBER

Sd/-
(CA. GYAN CHANDRA MISRA)
MEMBER

PLACE: New Delhi

DATE: 08/05/2024