

CONFIDENTIAL

**COUNCIL OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
384TH MEETING OF THE COUNCIL –18TH AND 19TH AUGUST, 2019
FINDING OF THE COUNCIL – 19TH AUGUST, 2019
UNDER SECTION 21 OF THE CHARTERED ACCOUNTANTS ACT, 1949**

**Managing Director, Pradeshiya Industrial and Investment Corporation of U.P.
Limited (PICUP), Lucknow**

-Vs-

**CA. Anil Kumar Jain of M/s. Anil Jain & Co.,
[25-CA (182)/2002]**

MEMBERS PRESENT:

CA. Atul Kumar Gupta (Vice-President)(In the chair)
CA. Jay Chhaura
CA. Chitale Chandrashekhar Vasant
CA. Nandkishore Chidamber Hegde
CA. Nihar Niranjan Jambusaria
CA. Durgesh Kabra
CA. Prasanna Kumar D
CA. Rajendra Kumar P
CA. Ranjeet Kumar Agarwal
CA. Sushil Kumar Goyal
CA. (Dr.) Debashis Mitra
CA. Pramod Kumar Boob
CA. Anuj Goyal
CA. Satish Kumar Gupta
CA. Prakash Sharma
CA. Hans Raj Chugh
CA. Pramod Jain
CA. Nanda Charanjot Singh
Shri Vijay Kumar Jhalani

[Out of four Signatories to the Report of the Disciplinary Committee dated 6th February, 2017, one signatory namely, CA. Manu Agrawal was not present at the time of consideration of the Report on 19th August, 2019 and the remaining three signatories namely, CA. M. Devaraja Reddy, CA. Nilesh Shivji Vikamsey and CA. Sanjay Vasudeva were no longer members of the Council.]

[CA. Atul Kumar Gupta, Vice-President in Office, was in the Chair when this Report was taken up for consideration on 19th August, 2019]

1. In his Complaint, duly verified on 27th January, 2001, **Shri Prabhat C. Chaturvedi, Managing Director, The Pradeshiya Industrial and Investment Corporation of U. P. Ltd., (PICUP), Lucknow** (hereinafter referred to as the "**Complainant**") made the following allegations against **CA. Anil Kumar Jain (M. No. 070253) of M/s. Anil Jain & Co., Chartered Accountant, Haridwar** (hereinafter referred to as the "**Respondent**"):-

- 1.1 They had sanctioned a short term loan of Rs.150.00 lacs to Yogi Pharmacy Limited to supplement its working capital requirement for its unit at Haridwar in the State of Uttar Pradesh. The Statutory Auditors of the Company were M/s. Anil Jain & Co., Chartered Accountants.
- 1.2 As per the scheme of short term loan, the loan is to be sanctioned to a unit which is not in default to any financial institutions/bank and the company is required to get a certificate from a Chartered Accountant confirming about no default position to financial institution/bank.
- 1.3 The Company had submitted a Chartered Accountant's certificate dated 10th July 1997 from M/s Anil Jain & Co., Chartered Accountant, Haridwar who had certified that there is no default in payment of dues to banks/ financial institutions as on that date by the Company, Further, as per their certificate dated 21 July 1997, the Respondent again certified that Yogi Pharmacy Limited have installed new plant & machinery for manufacture of Ayurvedic formulation at their unit no. 2 at Haridwar on 17th May, 1997 at a total cost of Rs. 2,42,13,479.00, which has been financed by way of unsecured loan from the promoters of the Company viz. Dr. Avinash Magon and Dr. Atul Magon. Further, as per certificates dated 25th July 1997 the said Chartered Accountant again certified item of plant & machinery acquired by Yogi Pharmacy Limited, Haridwar, which has been financed by way of unsecured loans from promoters and the same are not charged//hypothecated to any banks/ financial institutions.
- 1.4 Subsequently, it has come to their knowledge that the Respondent's certificates are not based on factual positions. On further inquiry by PICUP, the Respondent has informed that the certificate dated 25th July 1997 was not issued by him.
- 1.5 It appears that the Respondent have not exercised due diligence in issuing the aforesaid certificates.
- 1.6 The Complainant Corporation sanctioned / disbursed its financial assistance on the basis of Respondent's certificate and any failure on the part of the Respondent in taking the due care in issuing the certificate regarding default or the expenditure incurred may put the Corporation to financial loss.

2. The Respondent submitted his written statement, duly verified on 5th March, 2014. The Complainant submitted his rejoinder, duly verified on 1st August, 2014. The Respondent has submitted his comments dated 7th October, 2014.

3. Thereafter, in accordance with the provisions of Regulation 12(11) of the Chartered Accountants Regulations, 1988, the above papers containing the Complaint, the Written Statement, the Rejoinder and the Comments were considered by the Council at its 342nd (Adjourned) meeting held on 5th May, 2015 at New Delhi. The Council being prima facie of the opinion that the Respondent was guilty of professional and/or other misconduct, decided to cause an enquiry to be made in the matter by the Disciplinary Committee.

4. The Disciplinary Committee conducted the enquiry in the case and the hearing in the matter was concluded at its meeting held on 2nd November, 2016 at New Delhi. The Disciplinary Committee submitted its report dated 6th February, 2017 with the conclusion that the Respondent **NOT GUILTY** of professional misconduct falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountant Act, 1949.

5. While arriving at its aforesaid conclusion, the Disciplinary Committee had relied on the following reasonings/arguments:-

5.1. The Committee noted that the crux of the allegations made by the Complainant Corporation was that the Respondent had signed three certificates for the Company, M/s. Yogi Pharmacy Limited without taking due care and without following due diligence. These certificates were not based on factual positions. The Complainant Corporation sanctioned / disbursed its financial assistance on the basis of these certificates to Yogi Pharmacy Limited. The act of wrong certification by the Respondent caused a financial loss to the Complainant Corporation.



5.2. In respect of the allegations, the Committee noted that the Complainant enclosed copy of three certificates with the complaint. In the said certificates, it was certified as under:-

- i. **Certificate dated 10th July, 1997** – In the said certificate, it was certified that Yogi Pharmacy Limited has not defaulted till date in meeting its financial obligations towards central / state government dues and/or any financial institutions and / or banks.
- ii. **Certificate dated 21st July, 1997** – In the said certificate, it was certified that Yogi Pharmacy Limited have installed new plant and machinery for manufacture of Ayurvedic formulations at a cost of Rs.2,42,13,479/-. The aforesaid amount has been funded by unsecured loans from the promoters of the Company.
- iii. **Certificate dated 25th July, 1997** – In the said certificate, it was certified that certain items of plant of machinery were acquired by Yogi Pharmacy Limited through promoters funds invested in the above Company by way of unsecured loans and the same were not charged / hypothecated to any bank/financial institution.

5.3. On perusal of complaint and rejoinder to the written statement, the Committee noted that the Complainant made the following contentions in support of his complaint as under:-

- i. As per the scheme of the Short Term Loan, a certificate was required from a Chartered Accountant certifying "no default in payment of dues to any banks / financial institutions" apart from other documents.



- ii. Yogi Pharmacy limited submitted a certificate dated 10th July, 1997 and two other certificates dated 21.07.1997 and 25.07.1997 issued by the Respondent firm before the Complainant Corporation alongwith the Balance Sheet.
- iii. The Complainant Corporation on the basis of these certificates sanctioned a Short Term loan of Rs.150 lakhs to Yogi Pharmacy Limited. The certifying firm i.e. M/s. Anil Jain & Company was also the Statutory Auditors of the Company. The Company had defaulted in making payment. Enquiry was made by the Complainant Corporation wherein it came to the notice of the Complainant Corporation that the Certificates issued by the Respondent firm were forged.
- iv. The Complainant Corporation wrote a letter dated 09.09.1999 to the Respondent to verify as to whether the aforesaid certificates were issued by him. The Respondent vide his letter dated 17.09.1999, denied having issued any of the aforesaid certificates.

5.4. The Respondent vide his various letters and by making oral submissions before the Committee, denied that he had issued any of the aforesaid certificates and further stated that these certificates were fabricated and forged documents. Signatures on those certificates have no resemblance at all with that of the Respondent's signature. Name of CA firm was shown as M/s. Anil Jain & Company instead of the actual name M/s. Anil Jain & Co.. Stamp affixed on the certificates were not of the Respondent's firm. Styling, font size, font type etc. of the letter heads that were used in the forged certificates were in variance with the actual letter head of the Respondent's firm.

5.5. The Respondent further stated that he has the habit of signing with full name i.e. Anil Kumar Jain, whereas the forged certificates carry shortened name. The Complainant

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Corporation did not verify the aforesaid mistake apparent from the Certificates before the disbursal of loans. On being enquired by the Complainant Corporation, he vide his letter 17th September, 1999 clarified that these certificates were not issued by him. He also brought to their knowledge about the glaring anomalies in those certificates and he attached two certificates obtained from his bankers, attesting his signatures to prove the point that the signatures in the certificates were not his and hence forged. He was not involved with the sanctioning of the alleged loan. He was never contacted by the Complainant Corporation before disbursal of loan nor there was any verification. The report of the hand writing expert Shri Deepak Jain categorically pointed out that the signatures on the certificate in debate were not of the Respondent. He had also written a letter to the Police on 27.12.2000 informing about the fact of the matter.

5.6. During the course of hearing, the Respondent stated that since the matter is very old and he could not find original balance sheets signed by the directors of the Company and copy of available documents have been submitted by him. He further stated that due to fraud by the Company, he voluntary resigned from the post of Statutory Auditor on 2nd April, 2000. He learned about the forgery and controversial forged certificates only in July, 1999. To a specific question as to why he did not mention in his resignation letter that his name had been mis-utilised by the Company, the Respondent could not give any cogent reply to the same except saying that there were a series of correspondence between the Company and the Respondent.

5.7. The Committee noted that the Respondent had submitted letters dated 15.09.1999 and 14.09.1999 wherein he requested the banks to attest his signature. The



bank on the same letters confirmed his signatures. Further, on perusal of hand-writing opinion submitted by the Respondent, the Committee noted the opinion of the hand writing expert as under:-

".....my considered opinion is that the disputed signatures marked Q1 to Q3 are not written by one and the same person Anil Kumar Jain, whose admitted / specimen signatures and writing are marked A-1 to A-6 and S-1 to S-10."

5.8. In view of the above facts, the Committee was of the view that the documents on record clearly indicate that the Respondent had not signed the alleged certificates. However, certain questions raised by the Committee were not convincingly answered by the Respondent such as why he could not produce the Balance Sheet of 1998 and 1999 signed by the Directors and when he was aware about the forgery, why he had not mentioned in resignation letter that he was resigning due to mis-use of his name by the Company. The Respondent expressed his inability to produce documents due to the matter being old and pertained to year 1997. The Committee is of the view that it was the duty of the Respondent to preserve his working papers relating to the audit of accounts of the Company in view of the disciplinary proceedings and his excuse for not providing the same was not wholly acceptable.

5.9. The Committee noted that inspite of giving opportunity of being heard, no representative from the Complainant Corporation was present in any of the hearings. The Complainant Corporation vide its letter dated 6th September, 2016 requested the Committee to take necessary action as per rules of the Institute under intimation to them. The Committee was of the view that it was the duty of the Complainant Corporation to present their case and corroborate the allegations with documentary

A handwritten signature in black ink, consisting of a stylized 'A' followed by a horizontal line that curves upwards at the end. A small number '7' is written to the right of the signature.

evidence but they have chosen not to participate in the proceedings of the Disciplinary Committee.

5.10. In view of above and in absence of any evidence against the Respondent, the Committee is of the view that material on record and oral submissions made by the Respondent indicates that the Respondent did not issue any of the alleged certificates and he has been a victim of misrepresentation of his name through fabrication and forgery without his knowledge. Accordingly, the Committee decided that he is not guilty of professional misconduct falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

6. The Council noted that neither the Complainant nor the Respondent appeared before it to make their oral representation. It is noted that the Respondent vide his letter dated 25th July, 2019 stated that he is in agreement with the report of the Committee and he has nothing more to submit on the same. On the other hand, the Complainant instead of making representation on report of the Committee, sought documents vide letter dated 5th June, 2018.

7. Upon consideration of report of the Committee along with submissions on record, the Council noted that it is a matter where three certificates have been issued with false information to secure finance from the Complainant Corporation. The Respondent denied to have issued such certificates and stated that his name has been misused by the Company without his knowledge. Apart from pointing out various variances in the styling, font size, font type etc. of the letter head that were used for issuing the certificates vis-a-vis the actual letter head of the Respondent firm, the Respondent brought on record Hand Writing Expert's opinion stating that signatures on the certificates are not of the Respondent and have been forged. It is also noted that the Complainant Corporation, inspite of being aware of the fact since Sep, 1999

that the Respondent had not issued any of the alleged certificates, failed to produce any evidence to establish that these certificates were issued by the Respondent. Accordingly, the Council agreed with the findings of the Disciplinary Committee that the Respondent had not issued any of the alleged certificates and he has been a victim of misrepresentation of his name through fabrication and forgery without his knowledge.

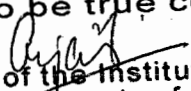
8. The signature attested by the Bank were different from the one as on the certificate. Even the Complainant Corporation has not submitted any concrete document to substantiate the matter against the Respondent. In view of the above, the Council agreed with the submissions of the Respondent that he has not signed the alleged certificate. Accordingly, the Council decided to accept the Report of the Disciplinary Committee holding the Respondent not guilty of the charges against him.

9. The Council upon consideration of the Report of the Disciplinary Committee dated 6th February, 2017 decided to accept the finding(s) of the Disciplinary Committee holding the Respondent "Not Guilty" of professional misconduct falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

10. The Council also decided that the papers related to the case be filed.

11. The Council further resolved that CA. Atul Kumar Gupta, Chairman of the meeting at the time of consideration of the report be authorised to sign the Finding of the Council in the case, on behalf of the Council.

Certified to be true copy


The Council of the Institute of
Chartered Accountants of India
New Delhi


By Secy

Sd/-
(CA. ATUL KUMAR GUPTA)
CHAIRMAN