

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

Shri Anil R Patel, Managing Director, M/s. Rubamin Ltd., Mumbai

-vs-

CA. Ajay P. Agarwal (M. No. 054233), Vadodara

[PR/248/2013-DD/244/2013/BOD/228/2016]

CORAM:

**CA. G. Sekar, Presiding Officer
Shri R.K. Tewari (Government Nominee)
CA. Dhinal Ashvinbhai Shah, Member**

In the matter of:

**Shri Anil R Patel
Managing Director,
M/s. Rubamin Ltd.,
Regd. Office Synergy Office,
Subhanpura
VADODARA – 390 023**

..... Complainant

Versus

**CA. Ajay P. Agarwal (M. No. 054233)
B- 602, Aishwarya Apartment
Ellora Park
Vadodara – 390 001**

..... Respondent

**DATE OF HEARING: 20.12.2018
PLACE OF HEARING: AHMEDABAD**

PARTIES PRESENT:

**Complainant : Mr. Pradeep Gupta on behalf of the
Complainant Company
Counsel of the Complainant : CA. Milin Mehta
Respondent : CA. Ajay P Agarwal**

Findings:

1. The Board noted that the charge on which the Respondent has been held guilty is that he was indulged in financial frauds and misappropriation of funds in respect of M/s. Rubamin Ltd. i.e. the Company.
2. The Board noted that the Respondent vide letter dated 9th September, 2017 submitted as under on the merits of the case:
 - a. That no benefit of doubt ought to be granted to the Complainant.
 - b. The transactions inter-se the promoters of the Company (including the Complainant) are completely private in nature.
 - c. Neither the Complainant nor the Company nor both together can be validly aggrieved by the alleged transactions which were entirely for the benefit of the Complainant.
3. The Board also noted that the Respondent vide his letter dated 31st December, 2018 submitted as under on the merits of the case:
 - a. The allegations made by the Complainant are basically focused on siphoning of funds by him. Despite the same, he was not held guilty for any embezzlement or defalcation under Clause (4) of Part II of the Second Schedule.
 - b. The Company was having robust system of "Internal Control" and regular audit by the Statutory and internal auditors, there was no "fraud" committed as alleged in the complaint for a period of 4 years continuously without it being getting detected by the system and Auditors as alleged in the complaint.
 - c. As per the SOP of the Company no documents could be authorised unless the same are jointly approved by at least 2 signatories and furthermore any Credit Note/ PO/ Instrument of value above Rs. 10 Lakh was necessarily to be authorised either by Managing Director i.e. the Complainant or the other Director. Hence, any instrument cannot be honoured/ entered in the system without their specific approval.
 - d. The Company had ERP accounting system software in form of SAP, which links all the modules on a real time basis and there exists and balances in the

system. Hence, there is no scope for any single individual to do any manipulation.

- e. All the cheque payments had to be under joint signatories only and no payment can be released under a single signatory as per the internal SOP and mandate given to bankers of the Company.
 - f. He was just one of the authorised signatories. Mr. Anil Patel and Mr. Atul Dalmia are also authorised signatories of the Cheques.
 - g. As per SOP/Policy and Control mechanism, no credit note could be issued without the signature and authorisation of managing Director i.e Mr. Anil Patel and Mr. Atul Dalmia. All purchase orders over Rs. 10 Lakhs could be authorised by Managing Directors only.
 - h. He was head of Finance and Accounts Department in his capacity as CFO of the Company. He was not heading the Commercial Department which is the department for making purchase orders issued by the Company for procurement of raw material and other items of the Company. The Commercial Department was headed by Mr. Anil Patel who was the final authority for the Commercial function and the respective functioning of Purchase Department.
 - i. No discrepancy was reported in any of the quarterly audit reports being submitted to Audit Committee constituted by the Board of Directors during the period of 6 years.
4. The Board noted that the Respondent at the first instance made a submission that he has been found prima facie guilty of Clause (2) of Part IV of First Schedule, but a bare reading of the said clause shows that at first, there has to be an opinion of the 'Council' that the aforesaid act on the part of the Respondent brought disrepute to the profession or the Institute.
5. In this regard, it may be noted that the Chartered Accountants Act was amended in the year 2006. While amending the provisions of the Act, especially related to the Disciplinary mechanism of the Institute, all the powers vested with the Council in the pre-amended Act, has been vested in Director (Discipline), Board of Discipline and Disciplinary Committee as the case may be. As per the present scheme, the prima facie opinion is formed by Director (Discipline) and in turn

placed before Board of Discipline or Disciplinary Committee as the case may be for its approval. Whereas, the Board of Discipline consists of Presiding Officer, a member of the Council and a nominee of Central Government, the Disciplinary Committee consists of a Presiding officer, two members of the Council and two nominees appointed by the Central Government. Further, the Central government has also notified Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 laying down the manner to deal with the complaints/ information so received by the Disciplinary Directorate.

6. Further, the Board also noted that on earlier several occasions the misconduct of other Respondents under this clause was considered by the Board in terms of provisions of Section 22 of the Chartered Accountants Act, 1949 which reads as under”

22. Professional or other misconduct defined For the purposes of this Act, the expression “professional or other misconduct” shall be deemed to include any act or omission provided in any of the Schedules, but nothing in this Section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of Section 21 to inquire into the conduct of any member of the Institute under any other circumstances

7. In view of the above the Board decided to overrule the submission made by the Counsel of the Respondent.
8. The Board also noted that the Respondent raised issue that he was not charged for embezzlement of funds. The Board in this regard opined that the Respondent was under employment with the Company and hence the money was received by him could not be treated as received in professional capacity.
9. The Board also noted that the Respondent in his Written Statement dated 27th January, 2014 has categorically admitted that his personal bank account was being misutilized to effect fraudulent transactions of the Company though he has cited the same has been done in his capacity as employee and obeying the

instructions of his masters i.e. the Complainant. Moreover, the Respondent has himself accepted that he was a part of the fraudulent activities of the company and allowed himself to be used as a camouflage for such illegal acts committed by permitting use of his own bank account for the purpose. Accordingly, the Board viewed that the role of the Respondent in his capacity as CFO is dubious and not expected of a professional.

10. As regards the submissions of the Respondent that documents of the Company required approval from two signatories, The Board viewed that the Respondent was one of the signatory and he allowed himself to be used for illegal acts, which is not expected from a Chartered Accountant.
11. The Board further noted that the Respondent has refunded a sum of Rs. 1.41 crores to the Complainant Company.
12. The Board thus based on facts/evidence on record as also the submission before it was of the view that the Respondent has not been able to present any documents that would prove his genuineness or absolve him in totality of the allegations made out against him and on which he has been held prima-facie guilty. The deposition clearly depicts that his acts bring disrepute to the profession.

CONCLUSION:

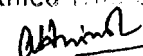
13. Thus, the Board concluded that the Respondent is held **GUILTY** of "Other Misconduct" falling within the meaning of Clause (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of said Act.

Sd/- (G. SEKAR) PRESIDING OFFICER	Sd/- (R K TEWARI) GOVERNMENT NOMINEE	Sd/- (DHINAL ASHVINBHAI SHAH) MEMBER
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DATE : AHMEDABAD

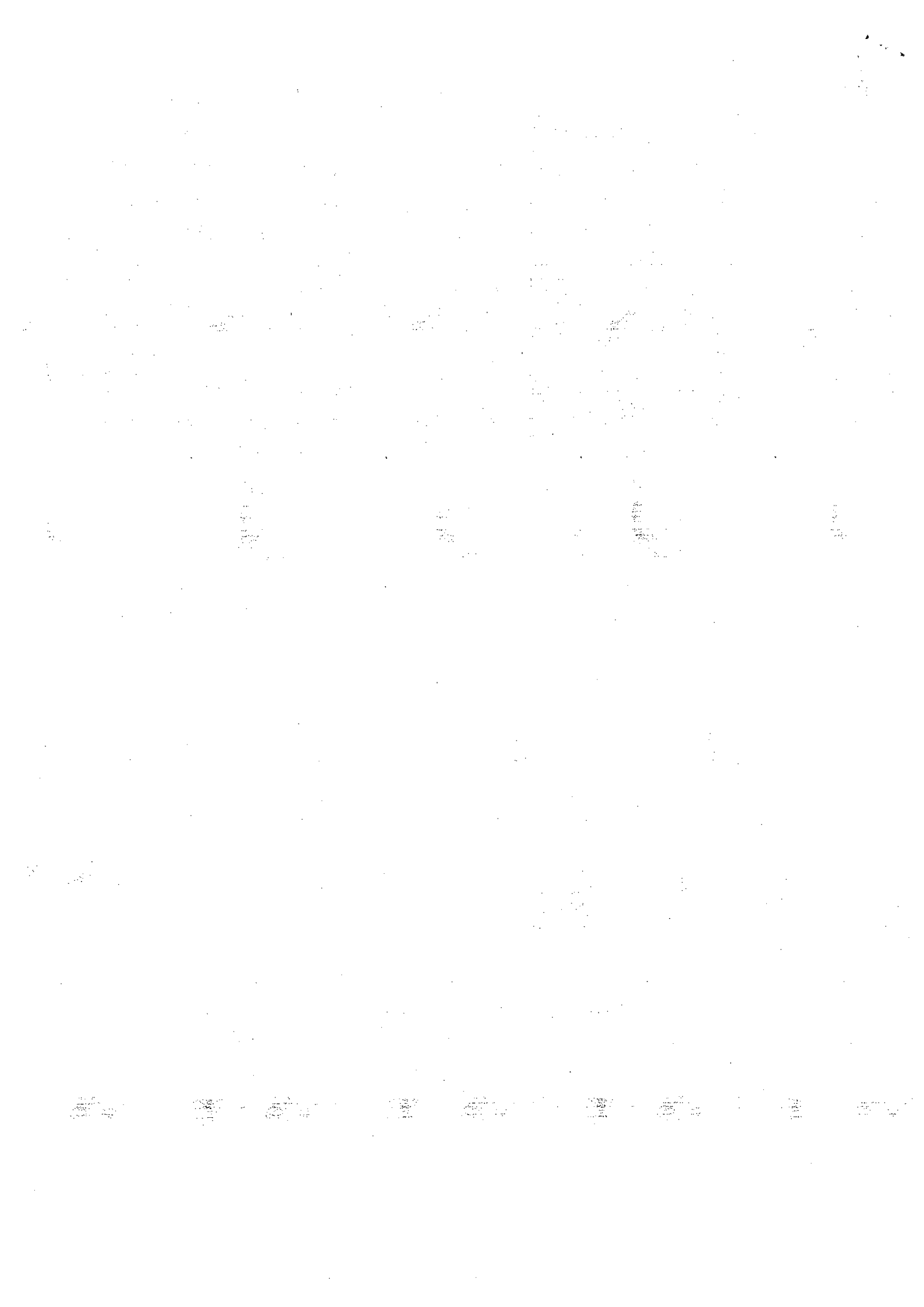
PLACE: 2nd FEBRUARY, 2019

Certified True Copy



R.S. Srivastava
Assistant Secretary
Disciplinary Directorate

The Institute of Chartered Accountants of India
ICAI Bhawan, I.P. Marg, New Delhi-110 002





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(Set up by an Act of Parliament)

ORDER UNDER SECTION 21 A(3) OF THE CHARTERED ACCOUNTANTS ACT, 1949 READ WITH RULE 15(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATIONS OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007.

Shri Anil R Patel, Managing Director, M/s. Rubamin Ltd.,

Mumbai

....Complainant

-Vs-

CA. Ajay P. Agarwal (M. No. 054233), Vadodara

.....Respondent

[PR/248/2013-DD/244/2013/BOD/228/2016]

CORAM:

CA. Atul Kumar Gupta, Presiding Officer
Shri Arun Kumar (Government Nominee)

1. That vide findings dated 2nd February, 2019, the Board of Discipline was of the opinion that CA. Ajay P. Agarwal is guilty of Other Misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act.
2. That an action under Section 21A(3) of the Chartered Accountants Act, 1949 was contemplated against CA. Ajay P. Agarwal and communication dated 28th February, 2019/18th March, 2019 was addressed to him thereby granting him an opportunity to make written representation. Further, vide letter dated 27th March, 2019 CA. Ajay P. Agarwal was granted an opportunity to represent himself in person & make his representation before Board on 10th April, 2019.
3. That CA. Ajay P. Agarwal appeared before the Board and also made his oral submission as under;
 - a. That the Company is closely related Company. Hence, there is no question of any transaction done without knowledge of promoters.
 - b. In the year 2008-09 around 20-25 transactions took place amounting Rs. 1.40 crores.
 - c. He did not get any benefit from routing of transaction from his account.
 - d. There was Income tax raid in 2013 and he was made scapegoat.
4. This Board has carefully gone through the facts of the case.



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5. As per the findings of the Board dated 2nd February, 2019, **CA. Ajay P. Agarwal** was found guilty due to he being found indulged in financial frauds and misappropriation of funds in respect of M/s. Rubamin Ltd. i.e. the Company.
6. The Board noted that **CA. Ajay P. Agarwal** during hearing stage had admitted that his account was used for purpose of transferring funds. **CA. Ajay P. Agarwal** further submitted that he did not get any benefit from such transactions.
7. The Board was of the view that misconduct was evident on the part of the **CA. Ajay P. Agarwal** as he allowed himself to be used as a camouflage for such illegal acts committed by permitting use of his own bank account for the purpose. The Board viewed that the role of **CA. Ajay P. Agarwal** in his capacity as CFO is dubious and not expected of a professional.
8. The Board also noted that it is coming on records that **CA. Ajay P. Agarwal** has refunded a sum of Rs. 1.41 crores to the Complainant Company.
9. As per the findings of the Board, it has been conclusively proved that **CA. Ajay P. Agarwal** is Guilty of Other Misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of said Act.
9. Upon consideration of the facts of the case, the consequent misconduct of the Respondent, and keeping in view his oral and written submissions before it, the Board was of the view that since matter is very old and looking into the totality of the circumstances and overall conduct of **CA. Ajay P. Agarwal** the ends of justice shall be met if reasonable punishment is awarded to the Respondent.
10. Accordingly, the Board decided to remove the name of **CA. Ajay P. Agarwal (M.No. 054233)** from the Register of Members for a period of 2 (two) months and further impose a fine of Rs. 1,00,000/- (Rupees One Lakh (inclusive of GST, if applicable)) upon him, which shall be payable by him within a period of 60 days from the receipt of the Order.

-Sd/-

(ATUL KUMAR GUPTA)
PRESIDING OFFICER

DATE : 10.04.2019

PLACE : Mumbai

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-Sd/-

(ARUN KUMAR)
GOVERNMENT NOMINEE

Certified Copy

SHASHI MAHAJAN

Deputy Secretary
Disciplinary Directorate

The Institute of Chartered Accountants of India
ICAI Bhawan, I.P. Marg, New Delhi-110 002