



**THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA**  
(Set up by an Act of Parliament)

**DISCIPLINARY COMMITTEE [BENCH-I (2020-2021)]**  
**[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 INVESTIGATION OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007.**

**In the matter of:**

**CA. Anil Kumar Jha, Jharkhand**

**-Vs-**

**CA. Archana Sharma (M. No.401921), Patna**  
**[PR-192/15-DD/187/2015-DC/819/2018]**

**MEMBERS PRESENT:**

**CA. Nihar Niranjana Jambusaria, Presiding Officer**

**Shri Jugal Kishore Mohapatra, I.A.S. (Retd.) (Government Nominee)**

**Ms. Rashmi Verma, I.A.S. (Retd.) (Government Nominee)**

**CA. G. Sekar, Member**

**CA. Pramod Jain, Member**

1. That vide report dated 16<sup>th</sup> January, 2020, the Disciplinary Committee has inter-alia held **CA. Archana Sharma (M.No.401921)** (hereinafter referred to as the "**Respondent**") **GUILTY** of professional misconduct falling within the meaning of Clauses (8) and (9) of Part I of First Schedule and Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

2. That pursuant to the said report, an action under Section 21B (3) of the Chartered Accountants (Amendment) Act, 2006 was contemplated against the Respondent and communication dated 2<sup>nd</sup> March, 2020 was addressed to her thereby granting an opportunity of being heard in person and/or to make a written representation before the Committee on 17<sup>th</sup> March, 2020 at New Delhi.

3. The Committee noted that on 17<sup>th</sup> March, 2020, the Respondent was not present. However, she vide letter dated 27<sup>th</sup> February, 2020 made her written representations on the said report.

4. Upon perusal of the written representations, the Committee observed that the Respondent reiterated her submissions as made before the Disciplinary Committee at the time of hearing. A brief of the written representations made by the Respondent is as under

i) There is need to lift the corporate veil of the Company to know the real facts & cross-examine all the three shareholders & directors.

3



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ii) The disciplinary order is passed without analyzing the complete professional situation and factual circumstances. The Complainant himself formed the Company in professional capacity in which he himself subscribed the memorandum & article as subscriber. The cash book showing contribution of shares are written and prepared by the Complainant himself.

iii) The share application was received in first year by the Board in which the Complainant was also a director and the same was fully approved by the Board. The amount of share application with final account was approved in 1<sup>st</sup> AGM in which the Complainant was himself was a member and shown as approved.

iv) Her reply dated 28<sup>th</sup> January, 2016 was limited to the point that AGM was validly held. She was under impression that once dispute over holding of AGM is clarified on the strength of proceedings before ROC, then there would be no scope for disputing the validity of appointment.

5. The Committee has considered the reasoning (s) as contained in paras no.1 to 15 and 16 of the Disciplinary Committee report holding the Respondent Guilty of professional misconduct vis-à-vis written representations of the Respondent on the findings of the Disciplinary Committee.

6. Keeping in view the facts and circumstances of the case, material on record and written representations of the Respondent made before it, the Committee is of the view that the professional misconduct on the part of the Respondent is established, however, keeping in view the circumstances as brought on record by the Respondent, the said misconduct does not qualify for a severe sentence. Accordingly, the Committee orders that **the Respondent, CA. Archana Sharma (M.No.401921) be reprimanded and imposed a fine of Rs.25000/- (Rupee Twenty Five Thousand only) upon the Respondent, i.e. CA. Archana Sharma (M.No.401921) to be paid within 30 days of receipt of this order.**

sd/-

**(CA. NIHAR NIRANJAN JAMBUSARIA)**  
**PRESIDING OFFICER**

(approved and confirmed through e-mail)

**(SHRI JUGAL KISHORE MOHAPATRA)**  
**GOVERNMENT NOMINEE**

sd/-

**(MS. RASHMI VERMA)**  
**GOVERNMENT NOMINEE**

(approved and signed)

**(CA. G. SEKAR)**  
**MEMBER**

sd/-

**(CA. PRAMOD JAIN)**  
**MEMBER**

Certified to be true copy

  
Anurag Sharma

Assistant Secretary,  
Disciplinary Directorate

The Institute of Chartered Accountants of India,  
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2019-2020)]

[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-192/15-DD/187/2015/DC/819/2018]

In the matter of:

**CA. Anil Kumar Jha (M.No.407117)**

Off: Plot No. HE-23, City Centre,  
Sector 4, Bokaro Steel City,  
**JHARKHNAND-827004**

..... Complainant

**Versus**

**CA. Archana Sharma .....(M. No. 401921)**

M/s Chanakya Ashok & Co,(FRN. No.012680C)  
502/409/208 Hem Plaza,  
Fraser Road,  
Near Dak Bunglow, Chowraha,  
**PATNA-800001 BIHAR**

.....Respondent

**MEMBERS PRESENT:**

**CA. Atul Kumar Gupta, Presiding Officer**  
**CA. Amarjit Chopra, Member (Govt. Nominee)**  
**CA. Rajendra Kumar P., Member**  
**CA. Chandrasekhar Vasant Chitale, Member**

**DATE OF FINAL HEARING : 06.08.2019**

**PLACE OF FINAL HEARING : ICAI Bhawan, New Delhi**

**PARTIES PRESENT :**

**Complainant: CA. Anil Kumar Jha**

**Respondent : CA. Archana Sharma**  
**Counsel for the Respondent : CA C.V. Sajan**





### **Charges in Brief:-**

1. The Complainant CA. Anil Kumar Jha has levelled six charges against the Respondent firm M/s Chanakya Ashok & Co., and the partner of the firm CA. Archana Sharma having accepted to answer the charges, appeared before the Committee along with her Counsel. The Complainant also appeared in person before the Committee.
2. The Director (Discipline) in the prima facie opinion has held the Respondent guilty on three charges and not in the balance charges.
3. The Complainant has alleged that the Respondent has accepted the appointment as statutory auditor without ensuring compliance of Sections 224 & 225 of the Companies Act, 1956. The Complainant relies on notices of Second Annual General Meeting (AGM) of the company M/s Sun Infozone Pvt. Ltd. The notice is dated 27<sup>th</sup> August, 2011. The said notice is issued for the purpose of calling of the 2<sup>nd</sup> AGM of the company on 20<sup>th</sup> September, 2011 at 10.30 A.M. at Bokaro. We reproduce clause (3) as it appears in the said notice:

*“To reappoint M/s Ojha & Co., Chartered Accountants, 108, Co-operative Colony, Bokaro.”*

### **FINDINGS:**

4. From the said notice, we understand that M/s Ojha & Co. were the auditors who have scheduled for reappointment in the said AGM. But Complainant was holding about 33.33% of the total paid up capital of the company and issued a special notice for appointment of auditors other than the retiring auditors. The following communication of the Complainant is reproduced:-

*“This has in reference to your notice dated 27<sup>th</sup> August 2011 for the 2<sup>nd</sup> Annual General Meeting of the Company to be held on 20<sup>th</sup> September 2011.”*

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*I would like to inform that I have 35000 (Thirty Five Thousand) Equity Shares of the company constituting 33.33% (one third) of the total paid up capital of the company and in reference to the provisions of Section 225(1) read with the provisions of section 190 of the Companies Act, 1956. I hereby give a notice that M/s Manoj Saraf & Associates, Chartered Accountants of Kolkata be appointed in place of M/s Ojha & Co. Chartered Accountants, the retiring auditors of the company.*

*I hereby submit a draft of the resolution for approval at the annual general meeting to be held on 20<sup>th</sup> September 2011.*

*You are requested to please do the needful as per provisions of the Companies Act, 1956.”*

5. The Committee finds that neither M/s Ojha & Co. who were named as auditor to be appointed by the company in the notice of AGM nor the auditor proposed by the Complainant were appointed. But instead we find that M/s Chanakya Ashok & Co. were appointed as the auditors for the period 2011-12. The Committee is surprised to note that a firm who was never proposed for appointment by any medium of communication required as per law is appointed. At this juncture, the Respondent submitted that a special notice for appointment of her firm was issued on 11<sup>th</sup> September, 2011. Our attention is drawn to page no.4 of the paper book submitted by the Respondent during the course of hearing. We find a special notice issued by shareholders of the company to appoint the firm of the Respondent as Chartered Accountant in the place of retiring auditors M/s Ojha & Co.

6. The Committee has perused the reply of the Respondent to the complaint. This reply is dated 28<sup>th</sup> January, 2016 and is the first response to the complaint document then it was received by her from the office of the Director (Discipline). On the matter concerning the noncompliance of Section 224 & 225, which is an allegation no.1, we reproduce the following reply of the Respondent:-



*“The first Appointment of our Firm M/s Chanakya Ashok & Co. was made in the AGM dated 20/09/2011 and the same was verified by us from records. As regards contention of the complainant regarding not holding AGM dated 20/09/2011, the said matter has also been enquired by the Registrar of Companies and the matter stands closed from their end (Copy of order enclosed). Considering that the primary base of the allegations has been held to be not tenable, all the allegations, which are borne out of primary one, should be held untenable.”*

7. Now the Committee places both replies of the Respondent and such notices brought on record by her during the course of hearing. This clearly appears to be an afterthought so as to cover her mistake which prevented the Respondent from bringing on record, the special notice dated 11<sup>th</sup> September, 2011 in her original reply dated 21<sup>st</sup> January, 2016. Assuming that the said special notice was actually issued, the date of its issue is not as per the provisions of the Companies Act, 1956. The law requires that such a notice shall be issued within a period of 14 days. But a special notice brought on record by the Respondent is for a short period i.e. 8 days and hence cannot be considered as a notice as per law. The Respondent accepted that yes, the notice is for a short period. Having known this anomaly and having been fully aware of the law, the Respondent accepted the said appointment and thereby in the provisions of Companies Act, 1956. The Committee is pained on this relief of this act of the Respondent. As a CA in practice, the Respondent must have maintained highest standards by following required procedure laid down in the Companies Act, 1956. But unfortunately, the reasons best known to her the Respondent failed. The Committee holds her guilty on this count.
8. Second charge of the Complainant is that the Respondent accepted the appointment as auditor without communicating with the previous auditor.
9. The Complainant is a 33.33% shareholder of the company of which the Respondent's firm was appointed as statutory auditor for the year 2011-

*Q*

10. The Complainant is also a CA in practice. Prior to the appointment of Respondent's firm, the Auditors of the company were M/s Ojha & Co.. The Respondent submitted that the sole proprietor of M/s Ojha & Co., CA. Laxmi Ojha passed away. It is not in doubt that the Respondent has asked for no objection from the previous auditor. The Respondent submits that she has sent an e mail seeking no objection to the e mail id [laxmanahuja108@yahoo.co.in](mailto:laxmanahuja108@yahoo.co.in). The said e mail id is not disputed. The communication through e mail is also or rather the common mode through which information is exchanged in the modern times. The Committee finds that the Respondent has used this modern mode of communication and sought no objection. Legislations like Income Tax Act, the Companies Act and many more have recognised e mail to be a proper mode of communication. The Committee, thus, does not find any merit in the Complainant's allegations that there was no communication from the Respondent. As according to the Committee's view, the Complainant has proved that an e mail was actually sent by her.

11. A question arises here whether the Complainant is affected in any manner by non-communication of the Respondent with the previous auditor and whether the Complainant has locus standi to allege this charge as he being only a shareholder. The affected party here is M/s Ojha & Co. However, the conduct of a member of the ICAI takes precedence for issues of locus standi. The Director (Discipline) in the PFO held the Respondent guilty of this charge. The Committee is of the view that the Director (Discipline) should have treated this charge as the "Information" and proceeded with properly. On the contrary, the Director (Discipline) has treated this as a complaint from the Complainant. Not having treated as "Information" but treating this a complaint from the person who has no role whatsoever is not acceptable. The Committee is pained to note the conduct of the Respondent but in the instant case, it does not agree with the finding of the Director (Discipline).

8

12. The next charge of the Complainant is that fixed assets of Rs.5,02,000/- were written off. It is submitted by the Respondent that the fixed assets were wrongly taken in the balance sheet during the year 2009-10. The mistake was corrected by the management during the year 2012-13. It is necessary to note here that the auditor for the year 2011-12 was conducted by the Respondent. The Committee is pained to note that the Respondent did not notice this mistake which is material considering the financial position. The Respondent draws our attention to notice on Accounts given by her for the year ended 31<sup>st</sup> March, 2013 which is reproduced below:

*“As per statements given by management to us physical verification of fixed assets by the management it was found that a Server is taken in the block of computers wrongly by crediting Capital A/C and no such assets exists in fact. Such assets is taken at 5,02,000.00 in the year 2009-10 and depreciation was claimed on such assets in year 2009-10, 2010-11 and 2011-12 which accumulates to 3,57,126.92. In the current year such error is rectified by reducing the gross block of assets by 5,02,000 and accumulated depreciation by 3,57,126.92 the remaining value of 1,44,873.08 existing in the assets is charged to Profit and Loss Account.”*

13. The Committee is of the opinion that had the Respondent employed proper due diligence and applied professional acumen, the mistake should have been rectified in the previous year itself. The Committee finds that an asset is credited by crediting capital account and debiting Assets Account and depreciation is claimed for two years continuously. The mistake is noticed in 2012-13 which actually should have been noticed in 2011-12. The Respondent has grossly erred in claiming the fixation in 2012-13 thereby being a party to the lesser profit on account of depreciation. The Committee is of the view that this act on the part of the Respondent amounts to gross negligence in performing his professional duties and she is held guilty.







14. The Complainant has alleged that the shares were allotted by the company contrary to clause 40 of the Articles of Association of the company. The said clause contains that Board of Directors shall not except with the consent of the 3/4<sup>th</sup> of the voting members and being authorised by a special resolution in the general meeting issue or make allotment of further shares to any person. The said clause from the Articles of Association of the company is reproduced :

*The Board of directors shall not, except with the consent of 3/4<sup>th</sup> (i.e. 75%) of the voting members and being authorized by special resolution in general meeting*

- (i) Sell, lease or otherwise dispose of the whole, or substantially the whole, of the undertaking of the company, or where the company owns more than one undertaking, of the whole, or substantially the whole, of any such undertaking;*
- (ii) Invest, otherwise than in trust securities, the amount of compensation received by the company in respect of the compulsory acquisition of any of the undertaking of the company;*
- (iii) Contribute the charitable and other funds not directly relating to the business of the company or the welfare of its employees, any amounts the aggregate of which will, in any financial year exceed twenty five thousands;*
- (iv) Winding up voluntarily;*
- (v) Issue or make allotment of further shares under section 81 (1A) of the Act, to any person (which may include existing members).*

15. The Complainant draws our attention to the notice of the 4<sup>th</sup> AGM of the company which is dated 14<sup>th</sup> August, 2013. In the said notice in clause (3), the business to be transacted is "to issue shares for share application money". Our attention is also drawn to the balance sheet for the year ended 31.3.2013, wherein we find that there is an increase in share capital by Rs.40,000/-. The date of the 4<sup>th</sup> AGM in which the agenda to issue shares from share application money pending for allotment is 7<sup>th</sup> September, 2013. It is crystal clear that shares were allotted contrary to the provisions of the Articles of Association of the company. The Respondent submits that the shares were allotted and the said allotment was placed for ratification in the



AGM. The Respondent has grossly erred in certifying the balance sheet for the year ended 31.3.2013 as the shares were allotted contrary to the provisions of the Articles of Association as premised above and hence she is held guilty.

### **Conclusion**

16. In conclusion, in consideration of all facts, circumstances and documents on record and in view of the above reasoning and in the considered opinion of the Committee, the Respondent is held **GUILTY** under Clauses (8) and (9) of Part I of First Schedule and also held **GUILTY** under Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949



**Sd/-**  
**(CA. ATUL KUMAR GUPTA)**  
**PRESIDING OFFICER**

**Sd/-**  
**(CA. AMARJIT CHOPRA)**  
**GOVERNMENT NOMINEE**

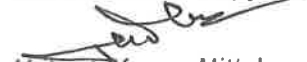
**Sd/-**  
**(CA. RAJENDRA KUMAR P)**  
**MEMBER**

**Sd/-**  
**(CA. CHANDRASEKHAR VASANT CHITALE)**  
**MEMBER**

**DATE : 16<sup>th</sup> January, 2020**

**PLACE : New Delhi**

Certified True Copy



**Mukesh Kumar Mittal**  
Assistant Secretary  
Disciplinary Directorate

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