



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

[PR/198/15-DD/232/2015/BOD/381/2017]

ORDER UNDER SECTION 21A(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.

In the matter of:-

Shri P.L. Mohanty, Director,  
M/s. MGM Mineral Limited, Odisha

.... Complainant

-Vs-

CA. Ajay Kumar Nayak (M.No.063999), Bhubaneswar  
[PR/198/15-DD/232/2015/BOD/381/2017]

.... Respondent

MEMBERS PRESENT(through video conferencing):

CA. Prasanna Kumar D, Presiding Officer

Mrs. Rani Nair, (IRS, Retd.), Government Nominee

CA. Durgesh Kumar Kabra, Member

Date of Final Hearing: 27<sup>th</sup> October, 2020

1. The Board of Discipline vide Report dated 16<sup>th</sup> August, 2019 was of the opinion that CA. Ajay Kumar Nayak (M.No.063999) is GUILTY of Professional Misconduct falling within the meaning of Clause (11) of Part I of First Schedule and 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. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against CA. Ajay Kumar Nayak and communication dated 9<sup>th</sup> October, 2020 was addressed to him thereby granting him an opportunity of being heard in person and/or to make written representation before the Board on 27<sup>th</sup> October, 2020.
3. CA. Ajay Kumar Nayak appeared through video conferencing before the Board on 27<sup>th</sup> October, 2020 and made his oral representation thereat specifically requesting the Board to excuse him for his guilt as this was his first mistake. CA. Ajay Kumar Nayak also made his written representation vide letter dated 31<sup>st</sup> January, 2020.
4. CA. Ajay Kumar Nayak in his written representation, inter-alia, submitted as under:
  - (a) M/s Velcro Electrical was awarded certain contract much before his joining M/s P K Sahoo & Co. as a partner. The date of contract was 07<sup>th</sup> April, 2009 and his joining as partner in CA firm was on 1<sup>st</sup> December, 2009. He never saw the directors of M/s Velcro Electricals in his tenure of service.
  - (b) He did not prepare the Financial Statements of another firm M/s Indus Valley Infratech Pvt. Ltd. and at the time of interview in the company MGM Minerals Ltd.(hereinafter referred to as the 'company'), he negotiated a salary of INR 50,000/- per month as consolidated pay. The Company convinced him paying less salary of Rs.35,000/- pm with the relaxed office timing to carry on other works. As the negotiated salary was not paid, he resigned thrice but the company did not accept it.
  - (c) the Company paid him less salary against his demand of INR 50,000/- pm as consolidated pay. Only because of this he continued to hold COP on full time basis. The Respondent resigned on 7<sup>th</sup> July, 2014 from the company which is well before all this disputes and as per terms of employment, the resignation and termination can happen from either side by giving two months' notice.
5. The Board has carefully gone through the facts of the case and also the oral and written



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representation of CA. Ajay Kumar Nayak.

6. As per the findings of the Board as contained in the report, as per obligation no. 1 of the appointment letter dated 4<sup>th</sup> August, 2008 the Respondent shall be full time employee of the Company and shall not engage him directly or indirectly in any other business or occupation. The said appointment letter was signed by the Respondent by accepting the terms and conditions of the appointment letter, thus, it was clearly evident that the Respondent was in full time employment. The Respondent vide letter dated 7<sup>th</sup> July, 2014 tendered his resignation. The Respondent despite being in full time service had also signed audit report for F.Y. 2011-12 of M/s Indus Valley and Engineering Pvt. Ltd. as partner of M/s P.K. Sahoo & Co., Chartered Accountants. Hence, the Respondent had clearly violated the conditions imposed upon him in his appointment Letter. Further, the Institute's guidelines prohibit holding of full time COP while in employment. The Respondent despite being in full time service had also signed the audit report of M/s Indus Valley and Engineering Pvt. Ltd. for the F.Y. 2011-12 as partner of M/s P.K. Sahoo & Co., Chartered Accountants. Hence, CA. Ajay Kumar Nayak had clearly violated the conditions imposed upon him in his appointment Letter.

7. The Board also noted that the Respondent had also signed financials of M/s Indus Valley and Engineering Pvt. Ltd. for the F.Y. 2012-13 as director of the Company. The Respondent was also partner in M/s P.K. Sahoo & Co., Chartered Accountants at that time and looking into the act of the Respondent by being involved in multifarious engagements viz. (a) as a partner in CA firm (b) Director in Auditee firm (c) opening of a new IT firm etc., the Board was of the view that the act of the Respondent has brought disrepute to the profession. Hence, it has already been conclusively proved that CA. Ajay Kumar Nayak is Guilty of Professional and Other Misconduct falling within the meaning of clause (11) of Part I and Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act.

8. Upon consideration of the facts of the case, the consequent misconduct of CA. Ajay Kumar Nayak and keeping in view his representation before it, the Board decided to Reprimand **CA. Ajay Kumar Nayak** (M.No.063999) and also imposed a fine of Rs. 25,000/- (Rs. Twenty five thousand only) upon him payable within a period of 60 days from the date of receipt of the Order.

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Sd/-  
CA. PRASANNA KUMAR D.  
(PRESIDING OFFICER)

Certified to be true copy  
*Harleen Bhalla*  
CA. Harleen Bhalla  
Assistant Secretary,  
Disciplinary Directorate  
The Institute of Chartered Accountants of India,  
ICAI Bhawan, Vishwas Nagar, Shahrada, Delhi-110032

**BOARD OF DISCIPLINE (BENCH-II)**

**(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 P.L. Mohanty, Director, M/s. MGM Mineral Limited, Odisha**

**-Vs-**

**CA. Ajay Kumar Nayak (M.No.063999), Bhubaneswar**

**[PR/198/15-DD/232/2015/BOD/381/2017]**

**CORAM:**

**CA. Atul Kumar Gupta, Presiding Officer  
Shri Arun Kumar (Government Nominee)  
CA. Prasanna Kumar D, Member**

**In the matter of:**

**Shri P. L. Mohanty,  
Director, M/s. MGM Minerals Limited,  
5/A, Forest Park, Bhubaneswar,  
Odisha – 751 009**

**.....Complainant**

**Versus**

**CA. Ajay Kumar Nayak  
Sha Lift Irrigation Corporation Limited  
N-17/2 Nayapali  
Bhubaneswar – 751 012**

**.....Respondent**

**DATE OF FINAL HEARING : 16.08.2019  
PLACE OF HEARING : KOLKATA**

**PARTIES PRESENT:**

**Respondent : CA. Ajay Kumar Nayak  
Counsel of Respondent : CA. A.P. Singh**

## Findings:

1. The Board noted that the Respondent was held guilty by the Director (Discipline) of Professional misconduct within the meaning of Clause (11) of Part I of First Schedule and Other Misconduct falling within the meaning of Clauses (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 on following charges :
  - a. That the Respondent had violated the terms of his appointment with the Company-M/s. MGM Minerals Limited by accepting Partnership in other firms- M/s. P. K. Sahoo & Co. who were the Statutory Auditor of M/s. Velcro Electrical Manufacturers Private Limited, with whom the Company had business relations, while continuing as Manager (Finance & Accounts) in the Company.
  - b. That the Respondent involved himself in preparation and audit of Financial Statements of another firm M/s. Indus Valley Infratech Private Limited, one of the suppliers of the Company, during his engagement with the Company.
  - c. That the Respondent had also floated a new IT Firm in the name and style of "Synchrodyne Solutions Private Limited" along with three other staff of the Company and all three of them are Directors of the said IT Firm.
  - d. That the Respondent had also allowed two other staff of the Company with whom he had opened his new IT Firm to default in payment of advances causing financial loss to the Company.
  - e. That the Respondent is holding Full-time Certificate of Practice in violation of terms of employment.
2. The Board noted that the Complainant did not appear before it despite due service of notice. The Board also noted that Complainant also chosen not to appear before it in earlier fixed on 31<sup>st</sup> May, 2019.
3. Looking into repetitive absence of the Complainant, the Board in this regard took reference to Rule 14 of the aforesaid Rules relating to "Procedure to be followed by the Board of Discipline" whereby as per sub rule (7) and (8) it is mentioned as under:

*"(7) On the date of hearing, if the respondent, inspite of the service of notice, under sub rule (6) does not appear either in person or through his authorised representative*

*the Board of Discipline may proceed ex-parte and pass such orders as may think fit or direct fresh notice to be served.*

(8) *The Board of Discipline may on such terms as they think fit and at any stage of proceedings adjourn the hearing:*

*Provided that such adjournment shall not be given more than one stage at any stage of the proceedings."*

The Board accordingly decided to take up the matter ex-parte the Complainant.

4. The Board accordingly heard the submissions made by the Respondent and Counsel of the Respondent and duly considered the submissions/documents available on record.
5. The Board noted that the Respondent/ his Counsel submitted as under;
  - a. That the Complainant was representing a Company with whom the Respondent was having professional relationship.
  - b. There was dispute between the owners of that Company (i.e. M/s MGM Minerals Ltd.) and the present complaint is filed due to the said dispute alleging that the Respondent is favouring one group.
  - c. The Respondent joined the said entity on 18<sup>th</sup> August, 2008 and resigned on 7<sup>th</sup> July, 2014.
6. The Board noted that as per obligation no. 1 of the appointment letter dated 4<sup>th</sup> August, 2008 (C-7 and C-8) the Respondent shall be full time employee of the Company and shall not engage him directly or indirectly in any other business or occupation. The said appointment letter was signed by the Respondent by accepting the terms and conditions of the appointment letter. Further, the Counsel of the Respondent had admitted during the hearing the Respondent was in employment on paper. The Board in this regard noted that the submission of the Counsel of the Respondent cannot be accepted as it is clearly evident that the Respondent was in full time employment.
7. The Board further noted that the Respondent vide letter dated 7<sup>th</sup> July, 2014 (W-4) tendered his resignation. The Board also observed that the Respondent despite being in full time service had also signed audit report for F.Y. 2011-12 of M/s

Indus Valley and Engineering Pvt. Ltd. (C-48 to C-49) as partner of M/s P.K. Sahoo & Co., Chartered Accountants. Hence, the Respondent had clearly violated the conditions imposed upon him in his appointment Letter. Further, this is against the Institute guidelines, which prohibits holding of full time COP while in employment. Therefore the Respondent is held Guilty of Professional Misconduct falling within the meaning of clause (11) of Part I of First Schedule of the Chartered Accountants Act 1949.

8. The Board also noted that the Respondent had also signed financials of M/s Indus Valley and Engineering Pvt. Ltd. for F.Y. 2012-13 (C-67 to C-68) as director of the Company. The Respondent/ his Counsel had accepted the fact during the course of hearing that the Respondent was also partner in M/s P.K. Sahoo & Co., Chartered Accountants at that time. The Board noted that the said allegation is although not the part of complaint, but looking into the act of the Respondent by being involved in multi-furious engagements viz. (a) as a partner in CA firm (b) Director in Auditee firm (c) opening of a new IT firm etc., the Board was of the view that the act of the Respondent is not expected from a professional and by such act is harming the reputation of the Institute in the Public. Accordingly, the Board also holds the Respondent guilty of 'Other Misconduct' falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act 1949.

**CONCLUSION:**

9. Thus, the Board concluded that the Respondent is held **GUILTY** of Professional Misconduct within the meaning of Clause (11) of Part I of First Schedule and Other Misconduct falling within the meaning of Clauses (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of said Act.

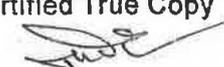
**Sd/-**  
**(ATUL KUMAR GUPTA)**  
**PRESIDING OFFICER**

**Sd/-**  
**(ARUN KUMAR)**  
**GOVERNMENT NOMINEE**

**Sd/-**  
**(PRASANNA KUMAR D)**  
**MEMBER**

**DATE : 16.08.2019**  
**PLACE : KOLKATA**

**Certified True Copy**

  
**Mukesh Kumar Mittal**  
4 Assistant Secretary  
Disciplinary Directorate

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