



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

PR-344/17-DD/359/2017/BOD/533/2019

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:-

CA.Pritam Lal Banga (M.No.009741)  
M/s. Banga & Co.,  
Chartered Accountants, Nainital

...Complainant

-Vs.-

CA. Manoj Joshi (M.No.025757)  
M/s. Manoj Vatal & Co.,  
Chartered Accountants, Haldwani

...Respondent

[PR-344/17-DD/359/2017/BOD/533/2019]

**MEMBERS PRESENT:** (Through video conferencing)

CA. Prasanna Kumar D., Presiding Officer  
Mrs. Rani Nair, (IRS, Retd.), Government Nominee  
CA. Satish Kumar Gupta, Member

Date of Final Hearing: 5<sup>th</sup> October, 2021

1. The Board of Discipline vide Report dated 11<sup>th</sup> February, 2021 held that **CA. Manoj Joshi (M.No.025757)** is guilty of Professional Misconduct falling within the meaning of Item (6), (7) and (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949.
2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against **CA. Manoj Joshi** and communication dated 16<sup>th</sup> September, 2021 was addressed to him thereby granting him an opportunity of being heard in person and/or to make written representation before the Board on 5<sup>th</sup> October, 2021. **CA. Manoj Joshi** also submitted his written representation dated 6<sup>th</sup> September, 2021 on the Findings of the Board.
3. **CA. Manoj Joshi** appeared before the Board on 5<sup>th</sup> October, 2021 through video conferencing and made his oral representation thereat.
4. **CA. Manoj Joshi** in his written representation dated 6<sup>th</sup> September, 2021 accepted the Findings of the Board that has already perused the submissions and gave a very good opportunity to the Respondent to present his understanding as well as the background to the issues. The Respondent further pleaded leniency in his matter of misconduct.



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5. The Board has carefully gone through the facts of the case and also the oral and written representation of **CA. Manoj Joshi**.

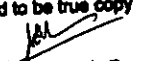
6. As per the Findings of the Board as contained in its report, **CA. Manoj Joshi** used the words/ expression Certified Valuer (ICAI) /Certified Concurrent Auditor in his professional stationery and the Board viewed that the said conduct tantamount to violation of Item (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949. Accordingly, the Board held **CA. Manoj Joshi** Guilty of Professional Misconduct falling within the meaning of Item (7) of Part I of the First Schedule. Regarding the use of such words/ expression Certified Valuer (ICAI) /Certified Concurrent Auditor i.e. attainments/ designations/ qualifications on his professional stationery i.e. letter head dated 07/06/2017, 27/04/2017, 28/04/2017, 09/05/2017, Application Form (Technical Bid) dated 28/04/2017 and Application Form (Financial Bid) dated 09/05/2017 for solicitation of clients/ professional work, the Board observed that **CA. Manoj Joshi** has indirectly solicited the clients/ professional work for inviting the work of valuation and concurrent audit by use of such words in his professional stationery/ letter heads which is specifically not allowed for use by members of the Institute. Regarding acceptance of audit assignment of Aryabhata Research Institute of Observational Sciences ('Aryabhata Institute') for the FY 2016-17 without first communicating with previous auditor (Complainant), the Board observed that **CA. Manoj Joshi** failed to communicate with the Complainant before accepting the Statutory Audit of M/s Aryabhata Institute for FY 2016-17 and could not produce on record reliable material/ evidence to infer his prior communication/ positive evidence about delivery of communication before acceptance of audit. Further, the Board also viewed that the conduct of **CA. Manoj Joshi** was not proper in accepting audit engagement vide letter dated 07/06/2017 without waiting for expiry of prescribed waiting period for issue of no objection by the Complainant. Thus, it has already been held that **CA. Manoj Joshi** is Guilty of Professional Misconduct falling within the meaning of Item (6), (7) and (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

6. Upon consideration of the facts of the case, the consequent misconduct of **CA. Manoj Joshi** (M. No. 025757) and keeping in view his oral and written representation before it, the Board decided to reprimand **CA. Manoj Joshi** (M. No. 025757).

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

Date: 10<sup>th</sup> January, 2022

सही प्रतिलिपि होने के लिए प्रमाणित /  
Certified to be true copy

  
नीलम पुंडीर / Neelam Pundir  
कार्यकारी अधिकारी / Executive Officer  
अनुशासन-मूलक विभाग / Disciplinary Directorate  
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया  
The Institute of Chartered Accountants of India  
आईसीएआई बयान, शिवन नगर, शाहदरा, दिल्ली-110032  
ICAI Bhanan, Vishwas Nagar, Shahdara, Delhi-110032

CONFIDENTIAL

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

File No. : [PR/344/17-DD/359/17/BOD/533/2019]

CORAM:

CA. Prasanna Kumar D., Presiding Officer (In person)  
Mrs. Rani Nair (IRS, Retd.), Government Nominee (Through Video conferencing)  
CA. Durgesh Kumar Kabra, Member (In person)

In the matter of:

CA. Pritam Lal Banga (M.No. 009741)  
M/s. Banga & Co.  
Banga House,  
Mohan Park  
Nainital- 263001

.....Complainant

-Vs.-

CA. Manoj Joshi (M. No. 025757)  
M/s. Manoj Vatsal & Co.  
Chartered Accountants  
Hall-1/D, Second Floor,  
Durga City Centre  
Haldwani- 263141

.....Respondent

DATE OF FINAL HEARING : 29<sup>th</sup> January, 2021

PLACE OF HEARING : Mumbai office/ Through video conferencing

PARTIES PRESENT: (Through video conferencing)

Respondent : CA. Manoj Joshi

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**FINDINGS:**

**Background of the case:**

1. The Complainant/ Complainant Firm were appointed as Statutory Auditors of M/s. Aryabhata Research Institute of Observational Sciences (hereinafter referred to as 'Aryabhata Institute') after approval of C&AG in the year 2015 for a period of four years. Further, the Accounts Department of the Aryabhata Institute appointed the Respondent Firm as their auditors for the year 2016-17.

**Charge alleged :**

2. The following charges are alleged against the Respondent:-
  - a. The Respondent accepted the audit of the Aryabhata Institute for the F.Y. 2016-17 without first communicating with the Complainant being the previous auditor and the Complainant was not provided with any opportunity to raise objections against the appointment of the Respondent as auditor of Aryabhata Institute.
  - b. The Respondent used the words Certified Valuer(ICAI), Certified Concurrent Auditor in the letters/ professional documents of the Respondent Firm which is not permissible as per guidelines of the Institute.

**Brief of proceedings held:**

3. During the hearing held on 29<sup>th</sup> January, 2021, the Board noted that the Respondent was present before it through video conferencing. However, the Complainant was not present and vide his email dated 29<sup>th</sup> January 2021 sought adjournment on the ground that the notice of hearing was received very late by him. However, since the Respondent was there before the Board, the Board decided to proceed ahead with the hearing in the case and duly considered the submissions made by the Respondent.

On consideration of the documents and submissions on record, the Board decided to conclude the proceedings in the case with a direction to the office to inform the Complainant that if he wishes to file any further written submissions, he may do so



within 3 days of receipt of communication with a copy to the Respondent and the Respondent was also advised to send his reply on the same, if any, within next 2 days. Accordingly, the decision on the conduct of the Respondent was kept reserved by the Board.

In compliance of the above directions, the Complainant vide email dated 1<sup>st</sup> February, 2021 provided his further submissions in the case. However, the Respondent did not submit any response to the same.

4. Thereafter at its meeting held on 11<sup>th</sup> February, 2021, the Board considered the submissions of the Complainant received vide his email dated 1<sup>st</sup> February, 2021 together with the other submissions and documents on record and accordingly arrived at its findings in the case.

**Brief of submissions:**

5. The Respondent, in his defence, inter-alia, stated that he participated in discussions with Audit Committee members of Aryabhata Institute before accepting its audit and raised various queries thereat. There was a technical bid followed by financial bid. The Respondent Firm participated in the Technical bid and being shortlisted with several other firms. Further, the firms shortlisted were called to submit the financial bid and as the bid of the Respondent Firm was lowest, it was informed to the Respondent Firm that it was selected for Statutory Audit. The Respondent/ Respondent Firm were misinformed that the previous auditor was not participating and he accepted his mistake to overlook the non-confirmation/non- communication with the Complainant. The Respondent Firm had been appointed on 06<sup>th</sup> June 2017 and the Respondent submitted all communications with Aryabhata Institute in this regard.
6. Regarding solicitation of clients or professional work, the Respondent submitted that participation in tender process is an exception under Item (6) of Part I of First

Schedule and Aryabhata Institute invited CA firms from a list forwarded by CAG on 19<sup>th</sup> April 2017 and the name of Complainant Firm was not in the list of CA firms. The Respondent further submitted the event chronology with respect to its appointment with Aryabhata Institute.

7. Regarding advertisement of professional attainments, services, use of designation or expression other than chartered accountant on professional documents etc., the Respondent submitted that they will hence forth only use CA and no other nomenclature. The designation was only part of the write up setting out the services provided by Respondent Firm as members of the ICAI. There was no intention for what has been conveyed and the Respondent stand corrected for this non adherence to the Code.
8. The Complainant vide his email dated 1<sup>st</sup> February, 2021 relied upon following decisions as provided under the Code of Ethics (Edn. Reprinted December, 2010 – Page 178-179 and 187-188) with regard to Clause (8) of Part I of First Schedule:-
  - a. *Where a Chartered Accountant accepted the audit of a Government Agency without first communicating with the Previous Auditor. Held that he was guilty of professional misconduct under the Clause.*  
(*J. Patnaik vs. G.R. Mekap – Page 511 Vol.IX-2A-21(4) of Disciplinary Cases – Council's decision dated 26<sup>th</sup> to 28<sup>th</sup> December, 2002*)
  - b. *Where a Chartered Accountant accepted the audit of a Government Agency without first communicating with the Previous Auditor. Held that he was guilty of professional misconduct under Clause (8) of Part I of the First Schedule of the Chartered Accountants Act, 1949.*  
(*J. Patnaik vs. Brahmananda Sahu – Page 580 Vol.IX-2A-21(4) of Disciplinary Cases – Council's decision dated 26<sup>th</sup> to 28<sup>th</sup> December, 2002*)
  - c. *Where a Chartered Accountant accepted and conducted the audit of a Company without first communicating with the Previous Auditor. Held that he was guilty of professional misconduct under Clause (8) of Part I of the First Schedule of the Chartered Accountants Act, 1949.*  
(*S.L. Damania vs. S.P. Kapadia – Page 527 Vol.IX-2A-21(4) of Disciplinary Cases – Council's decision dated 26<sup>th</sup> to 28<sup>th</sup> December, 2002*)
  - d. *A Chartered Accountant accepted appointment as auditor of Company without communicating with Complainant (previous auditor) in writing. Respondent was held guilty under Clause (8) of Part I of First Schedule.*

*(D. C. Surana of M/s D. C. Surana & Associates v. Ashok L. Gosar of M/s Gosar Associates (25-CA(224)/2002) - to be published later under Disciplinary Cases Volume X-2B-21(4). Council decision of 273rd Meeting held in October, 2007)*

e. *A Chartered Accountant accepted audit of a firm without first communicating with the Complainant (previous auditor). Respondent was held guilty under clause (8) of Part I of First Schedule.*

*(Ms. Minakshi Tantia v. Anil Kumar Mandawewala (25-CA(200)/2002) - to be published later under Disciplinary Cases Volume X-2B-21(4). Council decision of 278th Meeting held in May, 2008).*

**Observations and Findings of the Board:**

9. As regards the charge of using the words Certified Valuer(ICAI), Certified Concurrent Auditor in the letters/ professional documents, the Board noted that Complainant submitted the copy of acceptance letter dated 07<sup>th</sup> June 2017 issued on the letterhead of the Respondent Firm addressed to the Registrar of Aryabhata Institute wherein the Respondent below his signatures and name had used words "*Certified Valuer (ICAI)*" and "*Certified Concurrent Auditor (ICAI)*". The said attainments/ designations/ qualifications were also used by the Respondent in his letter dated 27<sup>th</sup> April 2017 (application for empanelment for audit of Aryabhata Institute), letter dated 28<sup>th</sup> April 2017 (regarding submission of documents/ other details for empanelment for audit of Aryabhata Institute), Application Form (Technical Bid) dated 28<sup>th</sup> April 2017, letter dated 09<sup>th</sup> May 2017 (regarding submission of Financial Bid for empanelment for audit of Aryabhata Institute) and Application Form (Financial Bid) dated 09<sup>th</sup> May 2017. However, the Respondent has not used said words/ expressions in his letter dated 06<sup>th</sup> June 2017 addressed to the Complainant seeking his no objection for acceptance of audit of M/s Aryabhata Institute.
- 9.1 The Board also noted that the Respondent during the hearing stated that he was under impression that any degree that had been given by the Institute is permitted to be used and the letter dated 07<sup>th</sup> June 2017 for correspondence with the Complainant with respect to acceptance of audit was subsequent to tender process of the Aryabhata Institute and pleaded guilty for having misinterpreted with respect

to such usage of words/ letters in his professional stationery. He also stated that henceforth he will only use CA and no other nomenclature and there was no intention for what has been conveyed and the Respondent stand corrected for this non adherence to the Code.

- 9.2 The Board took into view the requirements of Item (7) of Part-I of First Schedule to the Chartered Accountants Act, 1949 which provides that a Chartered Accountant in practice shall be deemed to be guilty of professional misconduct if he uses any designation or expressions other than chartered accountant on professional documents, visiting cards, letter heads or sign boards, unless it be a degree of a University established by law in India or recognised by the Central Government or a title indicating membership of the Institute of Chartered Accountants of India or of any other institution that has been recognised by the Central Government or may be recognised by the Council.

The Board also considered that with respect to the aforesaid Item, the Code of Ethics, 2009 (page 154) prescribes as under:-

*"The above clause also restrains a member from using any designation or expression other than that of a Chartered Accountant in documents through which the professional attainments of the member would come to the notice of the public. It is improper for a Chartered Accountant to state on his professional documents that he is an Income-tax Consultant, Cost Accountant, Company Secretary, Cost Consultant or a Management Consultant"*

- 9.3 The Board observed that the defences raised by the Respondent in his written submissions and at the time of hearing are not sustainable as the advertisement for attracting clients by the professionals is strictly prohibited by the Institute so as to regulate the conduct of members. Considering the above, the Board viewed that the use of words/ expression Certified Valuer(ICAI)/Certified Concurrent Auditor in the professional stationery by the Respondent, tantamount to violation of Item (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949. Accordingly, the





Board held that the Respondent is Guilty of professional misconduct falling within the meaning of Item (7) of Part I of the First Schedule.

10. As regards the charge within the meaning of Item (6) of Part I of First Schedule, the Board noted that the Respondent has used "*Certified Valuer (ICAI)*" and "*Certified Concurrent Auditor (ICAI)*" i.e. attainments/ designations/ qualifications on his professional stationery i.e. letter head dated 07/06/2017 for solicitation of clients/ professional work. The said attainments/ designations/ qualifications were also used by the Respondent in his letter dated 27/04/2017, 28/04/2017, 09/05/2017, Application Form (Technical Bid) dated 28/04/2017 and Application Form (Financial Bid) dated 09/05/2017. However, the Respondent has not used said words/ expressions in his letter dated 06<sup>th</sup> June 2017 addressed to the Complainant seeking his seeking his no objection for acceptance of audit of M/s Aryabhata Institute.
- 10.1 The Board also took into view the defence of the Respondent in this regard that clause for solicitation of clients and professional work is exempted in case of responding to tenders or enquiries issued by various users of professional services or organisations. However, the Board was of the view that the members can respond to queries for tender but the Respondent is not allowed to use such words/ expressions while replying to such queries for tender and thus, the same is not in consonance with Code of Ethics issued by the Institute.
- 10.2 The Board further took into view commentary for Clause (6) of Part I of First Schedule as per Code of Ethics (Edn. Reprint December, 2010, page no. 136) which provides as hereunder:-
- "The members should not adopt any indirect methods to advertise their professional practice with a view to gain publicity and thereby solicit clients or professional work."*
- Upon perusal of above, the Board observed that the Respondent has indirectly solicited the clients/ professional work for inviting the work of valuation and

concurrent audit by use of such words in his professional stationery/ letter heads which is specifically not allowed for use by members of the Institute.

10.3 The Board also categorically noted that the words "*Certified Valuer (ICAI)*" and "*Certified Concurrent Auditor (ICAI)*" had been used by the Respondent in his professional stationery while corresponding with his client M/s Aryabhata Institute, however, the Respondent has not used the said words in letter dated 06<sup>th</sup> June 2017 seeking No Objection from the Complainant, which speaks in volume about the conduct of the Respondent being in practice as member of the Institute and thus, it is evident that the said words have been used tactfully for solicitation of clients and not for correspondence with fellow professionals of the Institute. The Board further observed that there is ample evidence available on record with regard to usage of such attainments/ expressions by the Respondent in regular business correspondence/ official stationery/ letter heads and accordingly, keeping in view the said submissions and documents available on record, the Board viewed that Respondent is Guilty in respect of the said charge.

11. As regards the charge within the meaning of Item (8) of Part I of First Schedule, the Board noted that the Registrar, for Director of Aryabhata Institute vide letter dated 06<sup>th</sup> June 2017 intimated the Respondent Firm for its appointment to conduct Statutory Audit for Financial Year 2016-17. The Respondent Firm in response to the said letter dated 06<sup>th</sup> June 2017 conveyed its acceptance to the Aryabhata Institute vide letter dated 07<sup>th</sup> June 2017.

11.1 The Board also took into view the defence of the Respondent in this regard that he wrote a letter to the Complainant seeking his no objection vide his letter dated 06<sup>th</sup> June 2017 and sent the same through courier wherein he stated as under:-

*"Accordingly this is to seek your No Objection in writing in our favour so as to enable us to accept the said appointment as Statutory Auditor of the Company. In case if we do not hear from you within 15 days from the date of this letter then we shall presume that you do not*



*have any objection to our acceptance of the appointment as statutory auditor of the said Company. Your early response shall be highly appreciated."*

Considering the above, the Board observed that the Respondent did not wait for any reply/ response of the Complainant even for a day and accepted the audit assignment by his letter dated 07<sup>th</sup> June 2017 addressed to the Registrar, Aryabhata Institute. The said conduct of the Respondent also points misconduct as on the one hand he himself pleaded that he communicated with the Complainant prior to acceptance of audit engagement through courier and himself submitted courier receipt dated 06<sup>th</sup> June 2017 and on the other hand, on the next day itself, i.e. 07<sup>th</sup> June 2017 communicated with the Registrar, Aryabhata Institute for acceptance of statutory audit for FY 2016-17.

- 11.2 The Board further observed that the Respondent during the hearing accepted his mistake and submitted that the only error he had committed was that after having sent the letter, he did not proceed to reconfirm when he did not receive any communication after the gap of 15 days.
- 11.3 The Board took into view the commentary under Item (8) of Part I of the First Schedule as per Code of Ethics (Edn. Reprint May, 2009, page no. 170) which provides as hereunder:-

*"The requirements of Clause (8) of Part I of the first Schedule can be considered to have been complied with only:*

- (i) if there is evidence that a communication to the previous auditor had been by R.P.A.D.*
- (ii) if there was positive evidence about delivery of the communication to the previous auditor.*

*In the absence of both, the member should be found to have contravened this Clause."*

The Board noted that the Respondent sent letter dated 06<sup>th</sup> June 2017 seeking no objection from the Complainant through courier and submitted copy of courier receipt dated 06<sup>th</sup> June 2017. However, the same is not an acceptable mode of communication as per opinion of the Council enshrined under Code of Ethics.

- 11.4 Keeping in view, the facts and documents available on record, the Board observed that the Respondent failed to communicate with the Complainant before accepting the Statutory Audit of M/s Aryabhatta Institute for FY 2016-17 and could not produce on record reliable material/ evidence to infer his prior communication/ positive evidence about delivery of communication before acceptance of audit. Further, the Board also viewed that the conduct of the Respondent was not proper in accepting audit engagement vide letter dated 07/06/2017 without waiting for expiry of prescribed waiting period for issue of no objection by the Complainant. Accordingly, the Board held the Respondent is guilty in respect of the said charge.
12. Having regard to the attendant circumstances, the submissions and evidences on record, the Board is of the considered view that the Respondent has committed an act of Professional Misconduct falling within the meaning of Item (6), (7) and (8) of Part I of the First Schedule to the Chartered Accountants Act 1949 for soliciting clients/ professional work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means, for advertising his professional attainments or services on letters etc. used for professional communication/ correspondence and for accepting audit of M/s Aryabhatta Institute for the financial year 2016-17 without first communicating with the Complainant.

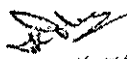
**CONCLUSION:**

13. Thus, in the considered opinion of the Board of Discipline, the Respondent is **Guilty** of Professional Misconduct falling within the meaning of Item (6), (7) and (8) of Part I of First Schedule to the Chartered Accountants Act 1949.

Sd/-

**CA. PRASANNA KUMAR D.**  
**(PRESIDING OFFICER)**

**DATE : 11<sup>th</sup> February, 2021**

Certified to be true copy  
  
Mukesh Kumar Mittal  
Assistant Secretary,  
Disciplinary Directorate,  
The Institute of Chartered Accountants of India,  
ICAI Bhawan, Vaidya Nagar, Shalimar, Delhi-110032