



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

PR/197/16/DD-249/16/BOD/578/2020

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:-

Sh. Raj Kumar,  
Jalandhar City, Punjab

...Complainant

-Vs.-

CA. Rajesh Sharma (M. No. 092879)  
Jalandhar, Punjab

...Respondent

[PR/197/16/DD-249/16/BOD/578/2020]

**MEMBERS PRESENT:**

CA. Prasanna Kumar D., Presiding Officer

(In person)

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

(Through video conferencing)

Date of Final Hearing: 9<sup>th</sup> February, 2022

1. The Board of Discipline vide Report dated 1<sup>st</sup> February, 2022 held that **CA. Rajesh Sharma (M. No. 092879)** is Guilty of Professional Misconduct falling within the meaning of Item (11) of Part I of 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. Rajesh Sharma** and communication dated 4<sup>th</sup> February, 2022 was addressed to him thereby granting him an opportunity of being heard in person and/or to make written representation before the Board on 9<sup>th</sup> February, 2022.
3. **CA. Rajesh Sharma** appeared before the Board on 9<sup>th</sup> February, 2022 through video conferencing and made his oral representation thereat. **CA. Rajesh Sharma** stated that he had already made his submissions at the time of inquiry and he stands by the same.
4. The Board has carefully gone through the facts of the case and also the oral representation of **CA. Rajesh Sharma**.
5. As per the Findings of the Board as contained in its report, it is alleged that **CA. Rajesh Sharma** while holding full time Certificate of Practice from the Institute formed, promoted and incorporated Prayas Multimedia P. Ltd, Jalandhar ('Company'). The Board noted that Form-23AC of M/s. Prayas Multimedia P. Ltd. (Company) for the period 10/09/2013 to 31/03/2014 was digitally signed by the Respondent with the Designation as 'Managing Director'. Further, Forms-AOC-4 submitted to ROC by the Company for the F.Y.2014-15 and F.Y. 2015-16 was also digitally signed by

A1



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

PR/197/16/DD-249/16/BOD/578/2020

the Respondent with designation as Director. Beside this, there were various other documents brought on record by the Complainant to establish that the Respondent was neither a Director Simplicitor nor the Promoter-Director in the Company which are the positions permitted generally by the Council of ICAI to be held by Chartered Accountants in practice. The Respondent signed various documents in the capacity of Director of the Company and more specifically participated in statutory filings of the Company and accepted his designation as Managing Director of the Company. The Respondent also brought on record a Certificate dated 28th May 2021 from a Company Secretary Firm rendering consultancy to the Company to the effect that due to some clerical error, the same was mentioned in the said e-form submitted with MCA and that the company is non-operational since June, 2018. The Respondent laid emphasis on the word 'substantial powers of the management of the affairs of the company' and 'includes a Director occupying the position of the Managing Director and the power to do administrative acts of a routine nature when so authorized by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share' shall not be deemed to be included within the substantial powers of the management as per the provisions of the Companies Act 2013. Accordingly, the substantial powers of the management, of a person, of a Director, routine natures are not included in those powers. However, the Board was not convinced with the view of the Respondent as evident from the documents on record that he on behalf of the Company had participated in the bid process for allotment of tender for imparting coaching in Meritorious School of Jalandhar, Punjab, the financial statements, e-forms and Income Tax Returns were duly submitted by the Respondent in the capacity of Director of the Company with respective regulatory Authorities and he himself admitted that he was the office bearer of the said Company. Moreover, the word 'Director-Simplicitor' has been given an inclusive definition and the acts carried out by the Respondent on behalf of the company clearly exceeded the said definition. Thus, the Board viewed that the Respondent had failed to establish that he was holding Non-Executive directorship with M/s Prayas Multimedia Pvt. Ltd. (Company). The Board further on perusal of Membership records maintained with the Institute observed that the Respondent was holding full time COP w.e.f. 01/08/1995 and incorporated M/s Prayas Multimedia Pvt. Ltd. on 10/09/2013. The Board thus held that, from the period September 2013 onwards till 2018, the Respondent was holding full time Certificate of Practice while engaging himself in other occupation as Director of the Company (M/s Prayas Multimedia Pvt. Ltd.), whereby he actively participated in its day to day affairs without obtaining the specific and prior approval of the Council which is in clear violation of provisions laid under Item (11) of Part I of the First Schedule to Chartered Accountants Act, 1949. Thus, it has already been held that **CA. Rajesh Sharma** is Guilty of Professional Misconduct falling within the meaning of Item (11) 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. Rajesh Sharma (M. No. 092879)** and keeping in view his oral representation before it, the Board decided to

A1



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

PR/197/16/DD-249/16/BOD/578/2020

Reprimand CA. Rajesh Sharma (M. No. 092879) and also imposed a Fine of Rs. 25,000/- (Rupees Twenty Five Thousand only) upon him payable within a period of 60 days from the date of receipt of the Order.

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

DATE: 11<sup>th</sup> February, 2022

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

*Arun Kumar*

अरुण कुमार / Arun Kumar  
कार्यकारी अधिकारी / Executive Officer  
अनुशासनात्मक निदेशालय / Disciplinary Directorate  
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया  
The Institute of Chartered Accountants of India  
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032  
ICAI Bhawan, Vishwas Nagar, Shahdra, 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/197/16/DD-249/16/BOD/578/2020]

CORAM:

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

In the matter of:

Sh. Raj Kumar  
Authorised Representative of  
NBS Gurukul Institute of Competition P. Ltd  
SCO-6, Sh.Guru Teg Bahadur Mkt.  
Jalandhar City, Punjab .....Complainant

-Vs.-

CA. Rajesh Sharma (M. No. 092879)  
SCO-167-186,  
Gujral Nagar Market  
Jalandhar, Punjab .....Respondent

DATE OF FINAL HEARING : 29<sup>th</sup> December, 2021  
PLACE OF HEARING : New Delhi/ Through video conferencing

PARTIES PRESENT: (Through video conferencing)

Respondent : CA. Rajesh Sharma

OK

✓

**Findings:**

**Background of the case:**

1. The brief background of the case is as under:-
  - a. The Complainant and the Respondent were involved in the business of imparting education through their respective coaching Institutes i.e. M/s. NBS Gurukul Institute of Competitions Pvt. Ltd. (NBS Gurukul) and M/s. Prayas Multimedia Pvt. Ltd.
  - b. Both coaching Institutes submitted their bids in response to the tender floated by the Office of Deputy Commissioner, Jalandhar for providing extra classes to meritorious students in schools of Jalandhar.
  - c. Initially, the coaching institute of the Complainant i.e. NBS Gurukul was allotted the tender and he got the contract of teaching. However, due to a complaint filed by the Respondent to the Office of Deputy Commissioner, Jalandhar against the Complainant's coaching institute NBS Gurukul about their fraudulent submission of eligibility related documents/ information, the said contract was cancelled by the Authority and was awarded in favour of the Respondent.

**Charge alleged :**

2. The charges alleged against the Respondent are as under:-
  - a. The Respondent acted as Director of coaching Institute M/s Prayas Multimedia Pvt. Ltd. and on the basis of false, misleading, wrong representation adopting unethical, unprofessional malpractices, managed to obtain contract from the office of Deputy Commissioner of Jalandhar for teaching extra hours in various schools for meritorious students preparing for entrance examinations which caused irreparable loss to the Complainant's coaching Institute M/s NBS Gurukul in monetary as well as non-monetary terms.
  - b. The Respondent was holding full time Certificate of Practice from the Institute and has formed, promoted and incorporated Prayas Multimedia P. Ltd, Jalandhar (hereinafter referred to as the 'Company') on 10th October, 2013. The Respondent has been actively involved in the day to day operations/activities of the said Company.

Out of the two above charges alleged against the Respondent, the Director (Discipline) held the Respondent Not Guilty in respect of the Charge specified at 2(a) above in his Prima Facie Opinion dated 6<sup>th</sup> August, 2020 and the said view had been

*CA*

✓

accepted by the Board. Accordingly, the Board inquired into the conduct of the Respondent in respect of the Charge specified at 2(b) above only.

**Brief of Proceedings held:**

3. During the hearing held on 29<sup>th</sup> December 2021, the Respondent was present before the Board through video conferencing. He was put on oath, he confirmed that he has read and understood the contents of the modalities and protocols of e-hearing and follow them. However, neither the Complainant was present before the Board nor was there any intimation as regards his non-appearance. Thus, the Board decided to proceed ahead with the hearing in the case. Thereafter, the charges alleged against the Respondent were taken as read with his consent. On being asked by the Board as to whether the Respondent pleaded guilty in respect of the charges alleged against him, he replied in negative and made his detailed oral submissions before the Board. The Respondent was examined by the Board. On consideration of the documents and submissions on record, the Board decided to conclude the proceedings in the case.

**Brief of submissions of the Respondent:**

4. The Respondent in his defense, inter-alia, submitted as under:-
  - a. The Complainant has no legal authorization to represent M/s. NBS Gurukul Pvt. Ltd. Mr. Raj Kumar (Complainant) is neither the Director of the Company nor holding any legal authority to represent the Company.
  - b. The Respondent is a Member of the esteemed Institute since 1995 and is in practice since then as a Proprietor of Firm M/s. Rajesh Krishan Sharma & Co. The spouse of the Respondent Ms. Vishakha Sharma is a B.A.,B.Ed. and is in the profession of teaching and running tuition/coaching centre even before the incorporation of the Company. The Respondent submitted the Income Tax Returns with computation and degrees of Ms. Vishakha Sharma in this regard. In the year 2013, Ms. Vishakha Sharma promoted a private limited Company and the Respondent joined his spouse as Promoter Director (non-executive). The Company is an Educational Organization providing coaching to the students. The spouse of the Respondent expanded her business under the private limited Company and started coaching classes for competitive exams in Punjab. One of the Main School in which company provided its services was Meritorious School Jalandhar being run by State of Punjab for poor and meritorious students of

*OK*

*✓*

Punjab. Under the able coaching and guidance provided by the Company, the results of the school ranked on top in the State of Punjab.

- c. The Respondent referred to Section 22 and Item (11) of Part I of First Schedule to the Chartered Accountants Act 1949, Regulation 190A and Appendix No. (9) of the Chartered Accountants Regulations 1988 with reference to the position of the Respondent as Managing Director or Whole Time Director. The Respondent further submitted that a Chartered Accountant can become a Director or Promoter Director in a Company and a general permission for the same has been granted by the ICAI. The Council of ICAI has further granted permission for a Chartered Accountant to become an Honorary Office Bearer of an Educational Organisation.
- d. The Respondent further referred to Section 2 Subsections (20), (22), (51), (54), (78) & (94) and submitted that the Companies Act, 2013 does not mandate a Private Company to appoint Managing Director, Whole-Time Director or Manager. It also does not prohibit voluntary appointment of Managing Director, Whole-Time Director or Manager by the Private Companies for efficient management of their businesses. As per the explanation of definition, the power to do administrative acts of a routine nature does not fall under substantial power of the management of the affairs of the Company.
- e. The Respondent was not appointed Managing Director or Whole Time Director by the Company or holding any Key Managerial Position in the Company. No procedure to appoint Respondent as MD or WTD has been followed by the Company as per the legal requirements of the Act. The Respondent did not receive any remuneration, dividend, perquisites or any allowance or profit from the Company during its lifetime. The Respondent submitted a certificate issued by the Company Secretary in this regard.
- f. The total authorized capital of the Company is Rs. 1.00 Lac and both promoter Directors have 50% share each. Later on, one more shareholder joined the Company. The Company discontinued its operations since June 2018. The Respondent also submitted copy of Annual Returns to prove that the Company was providing educational services only since its inception.
- g. The Respondent just acted as an Honorary Office Bearer of the Company which is an Educational Organisation. He participated in certain routine matters and has not actively participated in the business of the Company. As per ICAI Act 1949 and ICAI Regulations 1988, a Chartered Accountant holding COP can become a Promoter Director and work as an Honorary Office Bearer of an Educational

GA

✓

Organization which falls in the purview of the general Permissions granted to a Chartered Accountant by the Council of ICAI.

- h. The Respondent did not indulge in any profit making activity which is a pre-requisite for engaging in a business or profession.

**Observations and Findings of the Board:**

5. The Board observed that the Respondent has primarily made the following 2 submissions in his defence:
- (a) He just acted as an Honorary Office Bearer of the Company which is an Educational Organisation and the same falls in the purview of the general Permissions granted to a Chartered Accountant in practice by the Council of ICAI.
- (b) He was only a promoter director in the company, participated in certain routine matters and has not actively participated in the business of the Company.
6. As regard the plea of the Respondent that his involvement in imparting coaching/ educational activities is generally permitted by the Council, the Board took into view Code of Ethics, 2009 (Edn. Reprint May 2009, Page 345) and the relevant part of the same is as under:-

*“(A) Permission granted generally :*

*Members of the Institute in practice be generally permitted to engage in the following categories of occupations, for which no specific permission from the Council would be necessary in individual cases:-*

.....

*7. Honorary office-bearership of charitable, educational or other non-commercial organisations. ....”*

7. The Board perused the Certificate of Incorporation and Permanent Account Number (PAN Card) of M/s. Prayas Multimedia P. Ltd. (Company) which establishes that the Company was incorporated on 10/09/2013. The Memorandum of Association of M/s. Prayas Multimedia P. Ltd. (Company) establishes that the Respondent was the first subscriber to it and 5,000 out of 10,000 equity shares were held in his name i.e. 50% shareholding of the Company. The 'Main Objects' of the Company as per its MOA were as under:-







- "1. To Carry on the business of producing, acquiring, broadcasting and distribution of television and radio programs for entertainment and for promoting human values through the Company's own or hired channels by satellite link up and terrestrial networks and by radio programmes and by any other means of broadcasting subject to the rules and regulations prescribed by the government.*
- 2. To install, operate, design, fabricate, purchase, sell, import, export, trade, engineer, assemble, entertainment and other purposes service, repair, exploit or deal in audio, video and/or computer generated data signal broadcasting, data transfer, transmission, and or reception system/ networks or part there of which may include ISP, Local Area Network (LAN), Wide Area Network (WAN), satellite television channels, entertainment channels in all languages, informative channels, educative channels, microwave multichannel distribution system, fibre optic system, laser beam system, telephonic, personal cellular system, Data Transfer, transmission/ reception, Dissembles, by utilising, using, subscribing, hiring, chartering, renting, leasing or in any other manner exploiting satellite transponders, satellite transmission/reception, processing of audio, video and data communication for information/educational.*
- 3. To carry on the business to manufacture and set-up of systems, plants, machineries, etc. for attaining the above objects.*
- 4. To establish printing press and publish Newspapers, Magazines and any advertising related information.*
- 5. To act as wholesaler, retailer, agent, stockist, distributor, franchise or other wise to deal in all sorts of items, systems, plants, machines, instruments, appliances, devices, articles, or things of communications of different models, capacities, characteristics, applications and uses in all its branches and to carry out all the foregoing activities for components, parts, fittings, fixtures, accessories, tools, devices and system, connected thereto and to do all incidental acts and things necessary for the attainment of foregoing objects."*

Upon perusal of the said 'Main Objects' of by the Company as per its MOA, the Board observed that the said activities did not specifically contain the running of the Educational and Coaching activities or the Company being an Educational Institution or a non-commercial organisation as claimed by the Respondent in his submissions.

8. As regards the plea of the Respondent that he was only a promoter director of the company and did not actively participate in the business of the company, the Board perused the following documents and observed as under:
  - a. The Respondent was involved in the bidding process on behalf of the Company with the Office of Deputy Commissioner of Jalandhar and submitted BID

*CA*

Document - Letter dated 7th June, 2016, 'Request for Proposal' and Bid Summary duly signed by him in the capacity of Director of the Company along with copy of Bank Challan remitting Bid Fee wherein his mobile number was also mentioned.

- b. The Resolution passed by the Board of the Company dated 25/05/2016 in favour of the Respondent stated as under:

*"Resolved that the Company has decided to authorize Mr. Rajesh Sharma, Director and he is hereby authorized to sign and submit all the necessary papers, letters, forms etc to be submitted by the company in connection with authorizing any of the personnel of the company to participate in tender process of Meritorious Schools of Punjab or any other school".*

- c. The copy of Acknowledgement of the Income Tax Return of the Company for the Assessment Year 2014-15 and 2015-16 was digitally signed by the Respondent in the capacity of the Director of the Company.
- d. A copy of the letter dated 28th May, 2014 issued by Sub-regional Office of ESI Corporation, Jalandhar to the Company wherein the name of the Respondent was mentioned as the Principal employer of the Company.
- e. A copy of the Franchise Agreement entered into between the Company and one third party, A. K. Vidya Mandir Pvt.Ltd. duly signed by the Respondent on behalf of the Company.

Thus, the Board observed that the Respondent participated in the day to day functions of the Company and by signing various documents/ returns and correspondences has actively engaged himself in managing the business of the Company while posing himself as the Non-Executive Director/ Promoter Director of the Company.

9. The Board further took into view Regulation 190A of Chartered Accountants Regulations, 1988, which deals with the provision for Chartered Accountants in practice not to engage in any other business or occupation, and the same reads as below:

*"A Chartered Accountant in practice shall not engage in any business or occupation other than the profession of accountancy, except with the permission granted in accordance with a resolution of the Council".*

Car

✓

The permissible categories of engagements approved by the Council under Regulation 190A, are available in Appendix No. 9 to the Chartered Accountants Regulations, 1988. Further, a member in practice shall be permitted to be a Director (Director Simplicitor), Promoter/Promoter Director, Subscriber to the Memorandum and Articles of Association of any company including a Board Managed Company. Further, the expression 'Director Simplicitor' shall be used for an ordinary/simple Director, who fulfills the following conditions :

- (a) he is required to attend the Board meetings only.
- (b) He will not be paid any remuneration except the sitting fees for attending the Board meetings; and
- (c) He will be devoting his time for the company only to attend Board meetings and not for any other purpose.

A member in practice is permitted generally to be a Director Simplicitor in any Company including a Board-Managed Company and as such he is not required to obtain any specific permission of the Council in this behalf irrespective of whether he and/or his relatives hold substantial interest in that Company. Further, there is no bar for a member to be a Promoter/Signatory to the Memorandum and Articles of Association of any Company. There is also no bar for such a promoter/signatory to be a Director Simplicitor of that Company irrespective of whether the objects of the Company include areas which fall within the scope of the profession of Chartered Accountancy. Therefore, members are not required to obtain specific permission of the Council in such cases.

10. The Board further noted that Form-23AC of M/s. Prayas Multimedia P. Ltd. (Company) for the period 10/09/2013 to 31/03/2014 was digitally signed by the Respondent with the Designation as 'Managing Director'. Further, Forms-AOC-4 submitted to ROC by the Company for the F.Y.2014-15 and F.Y. 2015-16 was also digitally signed by the Respondent with designation as Director. Beside this, there were various other documents brought on record by the Complainant to establish that the Respondent was neither a Director Simplicitor nor the Promoter-Director in the Company which are the positions permitted generally by the Council of ICAI to be held by Chartered Accountants in practice. The Respondent signed various documents in the capacity of Director of the Company and more specifically participated in statutory filings of the Company and accepted his designation as

CA

✓

Managing Director of the Company. The Respondent in this regard also brought on record a Certificate dated 28<sup>th</sup> May 2021 from a Company Secretary Firm rendering consultancy to the Company to the effect that due to some clerical error, the same was mentioned in the said e-form submitted with MCA and that the company is non-operational since June, 2018. The Respondent laid emphasis on the word 'substantial powers of the management of the affairs of the company' and 'includes a Director occupying the position of the Managing Director and the power to do administrative acts of a routine nature when so authorized by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share' shall not be deemed to be included within the substantial powers of the management as per the provisions of the Companies Act 2013. Accordingly, the substantial powers of the management, of a person, of a Director, routine natures are not included in those powers. However, the Board was not convinced with the view of the Respondent as evident from the documents on record that he on behalf of the Company had participated in the bid process for allotment of tender for imparting coaching in Meritorious School of Jalandhar, Punjab, the financial statements, e-forms and Income Tax Returns were duly submitted by the Respondent in the capacity of Director of the Company with respective regulatory Authorities and he himself admitted that he was the office bearer of the said Company. Moreover, the word 'Director-Simplicitor' has been given an inclusive definition and the acts carried out by the Respondent on behalf of the company clearly exceeded the said definition. Thus, the Board viewed that the Respondent has failed to establish that he was holding Non-Executive directorship with M/s Prayas Multimedia Pvt. Ltd. (Company).

11. The Board further on perusal of Membership records maintained with the Institute observed that the Respondent was holding full time COP w.e.f. 01/08/1995 and incorporated M/s Prayas Multimedia Pvt. Ltd. on 10/09/2013. The Board thus held that, from the period September 2013 onwards till 2018, the Respondent was holding full time Certificate of Practice while engaging himself in other occupation as Director of the Company (M/s Prayas Multimedia Pvt. Ltd.), whereby he actively participated in its day to day affairs which is in clear violation of provisions laid under Item (11) of Part I of the First Schedule to Chartered Accountants Act, 1949.
12. Thus, having regard to the attendant circumstances, evidences and submissions on record, the Board held that the Respondent ought to have sought the specific and

CA

prior approval of the Council before engaging in 'Other Occupation' besides being in full-time Practice and accordingly is guilty in respect of the charge alleged.

**CONCLUSION:**

13. The Board of Discipline, in view of the above, is of the considered view that the Respondent is **Guilty** of Professional Misconduct falling within the meaning of Item (11) of Part I of First Schedule to the Chartered Accountants Act 1949.

Sd/-

CA. PRASANNA KUMAR D.  
(PRESIDING OFFICER)

DATE: 1<sup>st</sup> February, 2022

*GM*

प्रमाणित सत्य प्रतिलिपि / Certified true copy

*[Signature]*  
मुकेश कुमार मिश्रा / Mukesh Kumar Mittal  
सहायक सचिव / Assistant Secretary  
अनुशासनात्मक निदेशालय / Disciplinary Directorate  
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया  
The Institute of Chartered Accountants of India  
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032  
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032