



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

PR-19/2018-DD/37/2018/BOD/562/2020

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:-

Shri Devendra Sethia, Guwahati

...Complainant

-Vs.-

CA. Kamal Chand Jain (M. No. 009928), Guwahati

...Respondent

[PR-19/2018-DD/37/2018/BOD/562/2020]

MEMBERS PRESENT:

CA. Prasanna Kumar D., Presiding Officer

(In person)

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

(Through video conferencing)

CA. Satish Kumar Gupta, Member

(Through video conferencing)

Date of Final Hearing: 11th February, 2022

1. The Board of Discipline vide Report dated 1st February, 2022 held that **CA. Kamal Chand Jain (M. No. 009928)** 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. Kamal Chand Jain** and communication dated 9th 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 11th February, 2022. **CA. Kamal Chand Jain** submitted his written representation dated 10th February, 2022 on the Findings of the Board.
3. **CA. Kamal Chand Jain** appeared before the Board on 11th February, 2022 through video conferencing and made his oral representation thereat.
4. **CA. Kamal Chand Jain** in his written representation dated 10th February 2022, inter-alia, stated as under:-
 - a. The word "Engagement" has not been defined by the Chartered Accountants Act, 1949 and the Respondent has merely joined and not actively engaged or participated in the day to day operations. No evidence has been adduced by Complainant to show such day to day participation.



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- b. The Respondent has already submitted unconditional apologies and has explained the urgent circumstances under which at the age of 75 years and after 50 years of unblemished practice, had to become partner to save his life long savings and property.
- c. The complaint has origins in the family dispute and the Complainant is nephew of the Respondent.

5. The Board has carefully gone through the facts of the case and also the oral and written representation of **CA. Kamal Chand Jain**.

6. As per the Findings of the Board as contained in its report, as regards the allegation that **CA. Kamal Chand Jain** engaged himself in practice as a Chartered Accountant and simultaneously entered into partnership business in the name and style of M/s Rajkamal & Co. and M/s Kamal & Associates without obtaining the prior permission of the Council, the Board perused the copy of two Partnership Deeds both dated 5th July, 2017 duly executed on Non-Judicial stamp paper and registered at the Office of the Senior Sub-Registrar Office, Guwahati. On perusal of the same, the Board observed that the Complainant rightly pointed out presence of contrary Clauses in respective Partnership Deeds wherein one clause 9) RE: Rights & Duties, gives complete power to **CA. Kamal Chand Jain** to open and operate bank accounts of the Partnership Firm, to borrow money and raise loans on behalf of Firm, to enter into contracts with any person for carrying out partnership business etc. and on other hand limit the powers of **CA. Kamal Chand Jain** that he will act as a financing partner. Thus, the Board was of the view that one cannot be permitted to take benefit of the terms which favour their conduct of entering into partnership. Also, **CA. Kamal Chand Jain** submitted a Declaration dated 13th March, 2018 wherein he stated that he has applied to the Institute for permission of the Council to engage in family business/ occupation other than the profession of Chartered Accountancy vide his application dated 12th March, 2018 in accordance with Clause (11) of Part I, First Schedule to the CA Act, 1949. The Board in this regard observed that **CA. Kamal Chand Jain** entered into partnership business by execution of two Partnership Deeds both dated 5th July, 2017 and sought the permission of the Council on 12th March, 2018 after receipt of the letter seeking his Written Statement dated 16/02/2018 in the instant case. Whereas the Complainant filed extant complaint in Form I against **CA. Kamal Chand Jain** on 15th January, 2018. The said chronological events and the submissions of the parties further corroborate the misconduct on the part of **CA. Kamal Chand Jain**. The Respondent drew benefits from the said partnership business and is still continuing to do the same. The Board viewed that the entering into partnership business besides being in full time practice without obtaining prior permission of the Council as per Regulation 190A of the Chartered Accountants Regulations, 1988 clearly shows the misconduct on the part of **CA. Kamal Chand Jain**. Thus, it has already been held that **CA. Kamal Chand Jain** 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.



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7. Upon consideration of the facts of the case, the consequent misconduct of **CA. Kamal Chand Jain (M. No. 009928)** and keeping in view his oral and written representation before it, the Board decided to Reprimand **CA. Kamal Chand Jain (M. No. 009928)** 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: 11th February, 2022

प्रमाणित सत्य प्रतिलिपि / Certified true copy

R. S. Srivastava
आर. एस. श्रीवास्तव / R. S. Srivastava
सहायक सचिव / Assistant Secretary
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, 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-19/2018-DD/37/2018/BOD/562/2020]

CORAM: (Through Video conferencing)

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

In the matter of:

Shri Devendra Sethia,
House No. 6, Amtola Gali,
Bye Lane No. 1,
A.K. Azad Road,
Guwahati-781008

.....Complainant

-Vs.-

CA. Kamal Chand Jain, (Mem. No. 009928)
Hotel Rajmahal Building,
Paltan Bazaar,
A.T. Road,
Guwahati-781001

.....Respondent

DATE OF FINAL HEARING : 5th July, 2021
PLACE OF HEARING : Vishakapatnam/through video
conferencing

PARTIES PRESENT: (Through video conferencing)

Complainant : Shri Devendra Sethia
Complainant's Counsel/ AR : Adv. Hira Lal Maurya
Respondent : CA. Kamal Chand Jain
Respondent's Counsel/ AR : Shri Manoj Sethia

FINDINGS:

Background of the case:

1. The Respondent is a qualified, well known, learned, famous and reputed practicing Chartered Accountant of Guwahati having good name and fame in the entire North East Region. A number of practicing Chartered Accountants of Guwahati have undergone internship and training under him while studying the course of Chartered Accountancy. Being a well-known, learned and reputed Chartered Accountant, the Respondent knows it well that being in practice he cannot actively engage or involve himself in business. But inspite of the said fact, the Respondent entered into partnership business and illegally carried on business as partner in the name and style of Partnership Firms, M/s. Rajkamal & Co. and M/s. Kamal & Associates.
2. As per version of the Respondent, he was the Karta of the HUF, M/s Rajmal Kamal Chand Sethia (HUF) of which other co-parceners were Shri Badarmal Sethia and Shri Narendra Kumar Sethia, both also sons of Late Sh. Rajmal Sethia. The said HUF was carrying on various businesses. Since difficulties were faced in borrowings from Banks and Financial Institutions for business under the name of the HUF and in getting subsidies under Central and State Governments' Industrial Policies for setting up hotels etc., Coparceners of the said HUF decided to form partnership firms in the name of M/s. Kamal & Associates and M/s. Rajkamal & Co., in 1985 with the family members of said three Coparceners and the Companies promoted by the said HUF, as partners. Thereafter, difference started to crop up between the Coparceners of the HUF and on facilitation by two neutral facilitators appointed by mutual consent of all the three Coparceners, the parent HUF was partitioned and properties, assets and liabilities divided between the three Coparceners and their family members. On such partition, the respective Coparceners took possession and control of the properties, assets and businesses with liabilities thereof according to such partition and continued to carry on businesses separately. In the said partition, the assets and liabilities of Hotel Rajmahal (unit of M/s Rajkamal & Co.) and Raj Palace (unit of M/s Kamal & Associates) came to the share of the Respondent and his family members. Both the firms M/s Kamal & Associates and M/s Rajkamal & Co. which came to the Respondent and his family members' share on partition were reconstituted on 1st July, 2017 to induct the Respondent as a partner.

Charge alleged :

3. The charges alleged against the Respondent are as under:-

- a. The Respondent entered into partnership business and was illegally carrying on business as partner in the name and style of the partnership firm M/s. Rajkamal & Co., as well as in the name and style of the partnership Firm M/s. Kamal & Associates without seeking the prior permission of the Council in this regard and thereby liable for Professional Misconduct under Item (11) of Part I of First Schedule.
- b. The Respondent gave his false identity in introducing himself as Chairman of Hotel Rajmahal, which is a unit of the Partnership Firm M/s Rajkamal & Co.
- c. The Respondent was engaged and involved in Finance and Money Laundering business.

The Director(Discipline) in his Prima Facie Opinion dated 22nd May, 2020 viewed that the Respondent is Guilty in respect of first charge only [as specified at (a) above] falling within the meaning of Item (11) of Part I of First Schedule to the Chartered Accountants Act, 1949 and the said Opinion was accepted by the Board. Accordingly, the Board of Discipline inquired into the conduct of the Respondent in respect of the first charge only (specified at (a) above).

Brief of proceedings held:

4. During the hearing held on 24th March, 2021, the Board noted that the Complainant and the Respondent alongwith their respective Counsels were present through video conferencing and made their respective submissions. However, on account of certain connectivity issue at the end of the Complainant due to which he could not actively take part in the proceedings, the Board decided to adjourn the hearing in the case with the direction to the Complainant to provide his further rejoinder and also to the Respondent to provide his submission as to under what circumstances he was forced to take interest in the partnership firm.

Thereafter, the Respondent vide letter dated 1st April, 2021 submitted his additional submissions and the Complainant vide letter dated nil received on 19th April, 2021 submitted his further rejoinder.

5. During the hearing held on 5th July, 2021, the Board noted that both the parties were present before it through video conferencing alongwith their respective Counsel/ Authorised Representative and made their respective



detailed submissions. On consideration of the documents and submissions on record, the Board decided to conclude the proceedings in the case.

Brief of Submissions:

A. Submissions of the Respondent:-

6. The Respondent, in his defence, vide letter dated 21st October, 2020 reiterated his earlier submissions and further submitted as under:-
 - a. Item (11) of Part I of First Schedule to the Chartered Accountants Act, 1949 read with CA Regulations, 1988 stipulate as to the "Engagement" of the Respondent in any business or occupation other than the profession of Chartered Accountant, unless permitted by the Council so as to "Engage". The word "Engage" occurring at Item (11) denotes continuity of action or being busy or conducting or devoting attention or efforts or employing oneself in business. According to the meaning of the word "Engage", the Respondent never engaged himself as an active partner which is apparent on the face of the respective Partnership Deeds.
 - b. The respective clauses of the Partnership Deeds in question, in unequivocal terms indicate or state that the Respondent is only a sleeping partner. There is no allegation at all in the complaint that the Respondent engaged himself actively in carrying on the business and the allegation only extends that the Respondent entered into partnership business and is illegally carrying on business as a partner which does mean that the Respondent is taking active part in the business. Except submitting the Partnership Deeds, the Complainant did not adduce any kind of evidence that the Respondent is actively engaged in the business. Thus, the Respondent can only be said to have joined the partnership as sleeping partner.
 - c. The Respondent joined as a sleeping partner in both the firms under bonafide belief that no permission is required from the Institute and thus, there was no mens-rea or intention of the Respondent to disrespect this august body. Under such situation, not obtaining the specific or prior approval of the Council is only a technical violation on the part of the Respondent in as much as the Schedule I to the Act and the Regulations, 1988 does not forbid in absolute terms that the Respondent cannot be a sleeping partner in the aforesaid two firms. As soon as the Respondent became aware that permission from the Council is a legal necessity, the Respondent submitted an application dated 13th March, 2018 with required declaration and apologized for the delay in making the application and



further requested to condone such delay. The Respondent sought the Council's approval for his induction as sleeping partner in the said firms consisting of his family members and his associate entities.

- d. The Complainant and other co-parceners filed various cases (civil/ criminal) since the calendar year 2001 onwards as specified in letter dated 15/05/2018 to disturb day to day business of the hotel allotted to the family members of the Respondent. Consequently, the partnership firms were reconstituted with induction of the Respondent as a sleeping partner abruptly as the head of the family to protect the interest of his family members including himself.
- e. The Respondent further prayed for lenient view in this matter being senior member of the Institute and acted without any intention and only to protect the interest of his family members.

6.1 The Respondent in his additional submissions dated 01/04/2021 submitted as under:-

- a. The Respondent is the eldest son of Late Rajmal Sethia (expired on 10/06/1970) and is the Karta of the HUF, M/s. Rajmal Kamal Chand Sethia (known as Sethia Group) governed by the Mitakshara School of Hindu Law and his other brothers Sri Badarmal Sethia (BMS) and Sri Narendra Kumar Sethia (NKS) (both son of late Rajmal Sethia) were other co-parceners.
- b. The Respondent after qualifying as a Chartered Accountant in 1968 from Kolkata, shifted to Guwahati and established practice as a Chartered Accountant in the name of M/s Kamal Chand Jain & Co as proprietor.
- c. At the time of death of Rajmal Sethia (Expired on 10.06.1970)
 - i. Sh. Badarmal Sethia (Father of the Complainant/brother of the Respondent) was studying CA course at Kolkata and after completion of Student's Training, he was called by Respondent to Guwahati and stayed with the Respondent, started working under the guidance of Respondent and later on qualified as CA and worked with Respondent in the manner suited to the requirements of Sethia Group. The Complainant was 3 years old at that time.
 - ii. Sri Narendra Kumar Sethia was studying at Nagaur (Rajasthan) and after completion of HS Course he was called to Guwahati / stayed with Respondent/ Completed Graduation / other courses and Respondent arranged his marriage and trained him in Hire Purchase Financing business.
- d. The members of the Parent HUF (Sethia Group) floated several partnership firms, proprietorship firms, other entities etc. for conducting

businesses of Hire Purchase Financing / Leasing, other businesses etc. since 1978 and affairs thereof were also looked after on behalf of the parent HUF by the family members of Sethia Group. The requisite funds therein were also provided/ arranged by the Sethia group, as such all investments/liabilities as well as income earned through such entities vested with the Sethia group till these were allotted divided among the family members of Sethia group as per terms recorded in the Memoranda dated 12th September, 1999 (Annexure B). In course of time Businesses of Parent HUF (Sethia Group) were further expanded by:

- i. Promoting several private limited companies including Four Private limited Companies in 1983 in the names of KSS Financiers Private Ltd, BDS Financiers Private Limited, NKS Financiers Private Limited, Deepak Enterprises Private Limited and a public limited company Pragati Impex Limited for carrying on hire purchase, leasing and finance businesses in addition to the business being carried on of trading in handloom products, shares and securities, advancing secured and unsecured loans and other ancillary businesses. The businesses of all such companies were looked after on behalf of parent HUF by the aforesaid coparceners and their relatives. The shares in these companies were held in the name of members of the extended families of Respondent, Sri Badarmal Sethia and Sri Narendra Kumar Sethia in the proportion agreed between the coparceners. The Directors of these companies were also the members of the extended families of Respondent, Sri Badarmal Sethia and Sri Narendra Kumar Sethia.
- ii. Entire businesses owned by the parent HUF / family members were managed initially from the office premises taken on lease by M/s. Kamal Chand Sunil Kumar Sethia (HUF) Karta: Respondent: situated at 2nd floor, UCO Bank Building, Hem Baruah Road, Guwahati and thereafter since 1982 from 2nd floor, Chand Market, A T Road, Guwahati (Tenancy thereof stands in the name of parent HUF, Rajmal Kamal Chand Sethia, (Karta: Respondent) and also from the office premises located in Ajanta Shopping Centre, Surat (Gujrat). Premises for office and residential accommodation at Surat were purchased accordingly.
- iii. With expansion of business and for proper planning more HUFs came into being in the name of Kamal Chand Sunil Kumar Sethia(HUF), Sunil Kumar Sethia & Sons(HUF) with Sri Sunil Kumar Sethia son of Respondent as Karta, Manoj Kumar Sethia & Sons(HUF) with Sri Manoj Kumar Sethia son of Respondent as Karta, Badarmal Devendra Kumar Sethia(HUF) with Sri Badarmal Sethia as Karta, Devendra Kumar Sethia & Sons(HUF) with Sri Devendra Kumar Sethia (present

- complainant) son of Sri Badarmal Sethia as Karta and Narendra Kumar Sethia & Sons(HUF) with Sri Narendra Kumar Sethia as Karta.
- iv. The Co-parceners of parent HUF i.e. Respondent (KCJ), BMS and NKS, for better tax planning, harmony inter-se, transparency, accountability, proper legal compliance and institutional borrowings decided to constitute in 1985 two partnership firms in the name of M/s Rajkamal & Co (Unit Hotel Rajmahal) and M/s Kamal & Associates (Unit Hotel Rajpalace). The Firm's partnership deed were modified number of times and Rajkamal & Co also promoted Hire Purchase financing business unit Pragati Finance Co and promoting travel business M/s Rajmahal Travel & Tours. The sons of the Respondent were entrusted to look after hotel businesses and Devendra Kumar Sethia (son of BMS) (Complainant) was entrusted to look after travel and tour business. NKS was looking after the Hire purchase business.
- e. All the companies, partnership firms, proprietorship concerns were owned by the members of Sethia Group- Respondent (KCJ)/BMS/ NKS were part and parcel of parent HUF. The funds for all businesses were provided by the parent HUF in the name of its members and income from all the businesses were treated as pooled for the purpose of distribution thereof to the members of the parent HUF in the proportion agreed between the coparceners.
- f. Considering all pros and cons and to define the share of income between the coparceners of the parent HUF namely Respondent(KCJ), BMS and NKS from all the businesses, they formed themselves into Groups for the purpose of identification as under:

Group - A: (KCJ) Headed by Respondent including KCJ; Smt. Chaina Devi Sethia wife of KCJ; M/s Kamal Chand Sunil Kumar Sethia (HUF); M/s Sunil Kumar Sethia & Sons (HUF); Shri Sunil Kumar Sethia; M/s Manoj Kumar Sethia & Sons (HUF); Shri Manoj Kumar Sethia; KSS Financiers Private Limited and Deepak Enterprises Pvt. Ltd.,

Group - B: (BMS) Headed by Badarmal Sethia including BMS; Smt Rajkumari Sethia wife of BMS, M/s Badarmal Devendra Kumar Sethia (HUF); M/s Devendra Kumar Sethia & Sons (HUF); Shri Devendra Kumar Sethia and BDS Financiers Pvt. Ltd.

Group - C: (NKS) Headed by Narendra Kumar Sethia including NKS; Smt Puspa Devi Sethia wife of NKS, M/s Narendra Kumar Sethia & Sons(HUF), Naresh Kumar Sethia (then Minor) and NKS Financiers Pvt. Ltd.,

and Profit sharing ratios in all the businesses brought under the said Partnership Firms were agreed to between the Groups and provided in the Partnership Deeds dated 1st Jan 1996 and 1st July 1994 with share of Group - A 50%, Group - B 25% and Group - C 25 %.

- g. Discord between the family members of Sethia Group started making rounds immediately after death of their mother in 1998. The discord with passage of time developed into differences between Respondent (KCJ), BMS and NKS heading and representing their respective Groups in the matters of discharging market liabilities, division of immovable and movable properties and assets of the Group management and control of various businesses being carried on in different names and shares of profit. Efforts to settle the disputes mutually between the Groups, however, failed.
- h. All the three brothers i.e. Respondent (KCJ), BMS and NKS acting on behalf of their respective Group, requested Shri Parasmal Loonawat and Shri Jethmal Sethia to act as mediators/ facilitators and Shri Shyam Sundar Agarwala as witness; which had been accepted by them; to resolve the disputes between the brothers heading their respective groups and to arrive at an amicable settlement.
- i. Finally in a prolonged meeting held on 11/09/1999 to 12/09/1999, between the Heads of Groups A, B and C and the said mediators / facilitators / witness, settlement was arrived at unanimously, effective from, 31st July, 1998,(Inclusive) i.e. 1st August, 1998 dividing all the properties / assets and businesses being carried on in whatever names as on the date of settlement and the market liabilities relating to such settlement, as under :
 - i. Group-A (Kamal Chand Jain) : Entire hotel businesses being carried on in the names of Hotel Rajmahal (a unit of Rajkamal & Co) and Hotel Raj Palace (a unit of Kamal & Associates) in Paltan Bazar, Guwahati with all immovable and movable properties and assets with liabilities of the Indian Bank, as well as other borrowings of Sethia Group to the extent specified and other liabilities whatsoever relating to the said hotel businesses; Deepak Enterprises Pvt. Ltd and KSS Financiers Pvt. Ltd.
 - ii. Group-B (Badarmal Sethia) : Total clientele of Kamal Chand Jain & Co., Chartered Accountants proprietary firm which was established by Respondent (excluding the Firm Kamal Chand Jain & Co which is to continue with the Respondent), with all books, furniture, office equipments etc. and outstanding fees receivable from the clients; Tours

& Travels business; 50% share in office premises at 2nd floor, Chand Market, AT Road, Guwahati (tenancy whereof is in the name of Rajmal Kamal Chand Sethia (HUF) (balance 50% to NKS) together with all furniture, fixtures and fittings and BDS Financiers Private Limited.

- iii. Group C (Narendra Kumar Sethia) : Residential House at Surat and office premises in Ajanta Shopping Complex, Ring Road, Surat with all furnitures, fixtures, office equipment and others entire hire purchase and finance businesses being carried on in the names of Pragati Finance Co. at Guwahati (which was a unit of Rajkamal & Co.) and Pragati Finance Co. Surat with all its assets and liabilities; Pragati Impex Ltd.; R.K. Finance Co., Guwahati and Surat, Naresh Motor Finance Co., Guwahati and Surat; and other units having NKS or Narendra Kumar Sethia & Sons as proprietor; 50% share in office premises at 2nd floor, Chand Market, AT Road, Guwahati (tenancy whereof is in the name of Rajmal Kamal Chand Sethia (HUF) (balance 50% to BMS) together with all furniture, fixtures and fittings and NKS Financiers Private Limited.

The Respondent submitted the statement showing division of various businesses, assets and liabilities, other terms etc. based on the Memorandum of Settlement and typed copy of said Settlement was recorded vide Memorandum on 12/09/1999 in the hand of Shri Parasmal Loonawat on behalf of the mediators/facilitators and witnessed by Shri Shyam Sundar Agarwala.

- j. All the three Groups have since the date of settlement but with effect from 31st July, 1998 (inclusive) i.e. 1st August, 1998: had taken exclusive possession and charge of the immovable and movable proprieties and assets and liabilities (including market borrowings/loans) divided in terms of para as stated here above and have been enjoying income thereof owning / possessing/ managing and carrying on their respective businesses in accordance with the settlement aforesaid in their own account.
- k. Though the settlement aforesaid was fully acted upon and implemented in letter and spirit as stated hereinabove, the same could not be recorded by reconstituting the firms, M/s Rajkamal & Co. and Kamal & Associates in the absence of receipt of the copy of Memorandum of Settlement recorded by Shri Parasmal Loonawat in the meeting held on 11/09/1999 to 12/09/1999, hence with the mutual consent of Respondent(KCJ), BMS and NKS representing their respective three Groups the businesses in the names of



the aforesaid firms and companies along with liabilities were continued to be carried on till reconstitution of the firm.

- l. In the meantime, in the month of June, 2017, the Complainant filed several Police Complaints and threatened to file Civil and Criminal cases against wife of the Respondent and other family members. The day to day operation of the functions/banquets, room guests etc. were disturbed by Complainant using private bouncers, jeopardizing Respondent's life's savings and hard earned reputation. Respondent was under severe mental agony and pain and unable to bear the financial loss, humiliation done by one's own blood relatives ignoring the family partition.
- m. In such urgent circumstances, as head of the family at the age of 75 years, the Respondent entered into partnership as a non-active partner to safeguard his inherited interest on 5th July 2017 (w.e.f. 01.07.2017).
- n. The Respondent relied upon the decision of the Council in the matter - Harish Kumar in Re:- Pages 286 of Vol. VIII (2) of Disciplinary Cases - Council's decision dated 1st to 3rd August, 2001.

B. Submissions of the Complainant:-

7. The Complainant in his submissions dated 27/11/2020, inter-alia, submitted as under:-
 - a. The statements made by the Respondent are cleverly twisted statements of the Respondent with the aim and intent to give a different meaning to the word "ENGAGE" as per his own suitability. The Partnership Deeds in question clearly show that the Respondent has engaged himself in the partnership business and his name is appearing as Partner in the said Partnership Deeds. The status of the Respondent is not shown as Sleeping Partner in the Partnership Deeds and therefore, the Respondent cannot claim himself to be the Sleeping partner in the questioned Partnership Firms.
 - b. Showing the name of a particular person as a partner in the partnership deed, and carrying on business and continuation of business of the partnership firm constituted under such partnership deed, by the partners of the said partnership firm, itself indicates, states and mean that the said person whose name is shown as a partner in the partnership deed is an active partner in the partnership firm and has engaged himself in the business of the said partnership firm.
 - c. Since the partnership firms i.e. M/s. Rajkamal & Co and M/s. Kamal & Associates are continuing the business in partnership through their partners, under the terms of their respective partnership deeds, and the

Respondent is a partner in the said partnership Firms, as such it is clear that the Respondent has engaged himself in the business of the said partnership firms as a partner.

- d. Clause no: 12.01 of the Partnership Deed of M/s. Rajkamal & Co. shows Smt. Chaina Devi Sethia (First Part)/ Shri Kamal Chand Jain (Third Part) practicing Chartered Accountant as financing partners does not mean that they are sleeping partners in the said Partnership firm.
- e. Similarly, clause no: 11.01 of the partnership deed of M/s. Kamal & Associates Co. shows Shri Kamal Chand Jain (Sethia) (Second Part) practicing Chartered Accountant / and Smt. Chaina Devi Sethia (third Part) as financing partners does not mean that they are sleeping partners in the said partnership firm.

However, as per the Institute, there is no concept of sleeping partner or dormant partner, meaning thereby a practicing Chartered Accountant even cannot be a sleeping partner or dormant partner. If a practicing Chartered Accountant becomes a partner in a trading/commercial business establishment, in whatsoever capacity or status, then he renders himself guilty of Professional Misconduct.

- f. The Respondent has taken the plea in his written statement that he joined the said partnership firms under bonafide belief that no permission is required from the ICAI, and thus there was no mens rea or intention of the Respondent to disrespect the August body i.e. ICAI. The Respondent has taken further plea in his written statement to the effect that not obtaining prior approval of the Council is only a technical violation on his part, in as much the Schedule- I to the Act and the Regulations 1988 does not forbid in absolute terms that the Respondent cannot be a sleeping partner in the aforesaid two firms. In this regard, the Complainant submitted that even after filing of the complaint by the Complainant before the ICAI, the Respondent has not retired from the above said partnership firms and is continuing as a partner in the said partnership firms and thereby, his act of committing Professional Misconduct is continued.
- g. The submission of application dated 13th March 2018 with required declaration apologizing for the delay in making the application and thereby requesting for condonation of delay and seeking the approval from the Hon'ble Council for his induction as sleeping partner in the above said two partnership firms is no ground for exonerating the Respondent from the purview of the Professional Misconduct committed by the Respondent. The approval from the Hon'ble Council for being a partner in a commercial establishment is to be taken prior to entering into partnership business/ partnership firm. The alleged application seeking approval is filed by the

Respondent on 13th March 2018 as per own statement of the Respondent stated in his written statement i.e. after his induction as partner and continuation as partner in the above said two partnership Firms. As such, the said application seeking approval from the Hon'ble Council is not maintainable at all and is liable to be rejected and the Respondent is liable to be proceeded with as per law for committing Professional Misconduct as stated above. The Respondent has not made out any case for condonation of delay committed by him in submitting application before the Hon'ble Council seeking approval for his being inducted or being a partner in whatsoever nature or status, in the above said two partnership firms and the said application dated 13th March 2018 is liable to be rejected.

7.1 The Complainant in his submissions dated 10/04/2021, inter-alia, submitted as under:-

- a. The Complainant accepted that the Respondent is the eldest son of Late Rajmal Sethia. However, as regards the status of the Respondent as karta of Rajmal Kamal Chand Sethia, the Complainant stated that there is no existence of Rajmal Kamal Chand Sethia (HUF) at present. The Respondent although has stated that Mr. Badarmal Sethia and Mr. Narendra Kumar Sethia were the co-parceners of the said Sh. Rajmal Kamal Chand Sethia, but the Respondent has not annexed any document regarding the present status of the said HUF i.e. Rajmal Kamal Chand Sethia; which goes on to show that the said HUF is no more continuing. There is no such identification of Rajmal Kamal Chand Sethia (HUF) as Sethia Group. The said Rajmal Kamal Chand Sethia (HUF) being known as Sethia Group, as stated by the Respondent is a self-styled identity created by the Respondent to suit his own purposes.
- b. At no point of time there is / was any division / partition of the properties owned, maintained and managed by the Respondent and his brothers namely Mr. Badarmal Sethia and Mr. Narendra Kumar Sethia. The alleged Memoranda dated 12th September, 1999, filed by the Respondent with his additional Written Submissions is a baseless, false, concocted and manufactured document, and the same is evident on the face of its record. The said alleged Memoranda dated 12th September 1999, appears to be a hand written document, drafted / written in hindi consisting of 4 (four) pages under the name and style as "YAD DAST BATAUR SANKSHIPTA LEKHA" and the said alleged "YAD DAST BATAUR SANKSHIPTA LEKHA" is filed by the Respondent as Memoranda dated 12th September 1999. The said alleged Memoranda shows that it is prepared and manufactured with an ill and malafide intent and with an oblique motive, by the Respondent

and his sons in collusion with Mr. Parasmal Lunawat (the so called facilitator) and Mr. Shyam Sundar Agarwal (the so called witness). The Complainant in support of his contentions submitted as under:-

- i. The said alleged Memoranda nowhere shows that it is prepared in consultation with and with consent of Mr. Badarmal Sethia and Mr. Narendra Kumar Sethia and / or their respective family members. Further, it also does not bear the signature of Mr. Badarmal Sethia and Mr. Narendra Kumar Sethia either as parties or as witnesses, as the case may be. Thus, the alleged Memoranda is absolutely a manufactured and fabricated document by the Respondent in collusion with Mr. Parasmal Lunawat and Mr. Shyam Sundar Agarwal, for which a Criminal case is already pending.
- ii. The alleged Memoranda discloses the name of one Mr. Jethmal Sethia as another Facilitator, but the said alleged Memoranda does not bear the signature of Mr. Jethmal Sethia. On the other hand, Mr. Jethmal Sethia vide his open letter / declaration dated 28/10/2017 under the heading "TO WHOM IT MAY CONCERN" has stated and declared that, on perusal of the said document i.e. "Memorandum of recording" he never took part in any reference of disputes mentioned in the said document and never participated as mediator and hence the contents of the said document is not in his knowledge or consent and he never signed on the said document. The Complainant submitted the copy of said Declaration dated 28/10/2017 alongwith his written submissions.
- iii. The alleged Memoranda does not speak of any consent letter from Mr. Badarmal Sethia and Mr. Narendra Kumar Sethia, which also proves that the said document is one sided and is prepared without the consent of Mr. Badarmal Sethia and Mr. Narendra Kumar Sethia and therefore has no value in it. The affidavits of Mr. Shyam Sundar Agarwala and of Mr. Parasmal Lunawat, filed by the Respondent with the additional written submissions are also madeup documents and have been manufactured at the instance of the Respondent to suit the purposes of the Respondent. The affidavits of Mr. Shyam Sundar Agarwala and of Mr. Parasmal Lunawat as well as the alleged Memoranda are totally silent as to why the alleged Memoranda does not bear the signatures of another alleged Facilitator namely Mr. Jethmla Sethia and the signatures of Mr. Badarmal Sethia and Mr. Narendra Kumar Sethia which too goes on to show that Mr. Jethmal Sethia never attended any such alleged facilitation / mediation proceedings and the alleged Memoranda is a false, fabricated and manufactured document.

- c. The alleged division/partition of the properties shown in the paragraphs/sub paragraphs of the additional written submissions of the Respondent, have been shown by the Respondent in terms of the alleged Memoranda dated 12th September 1999, and the same are absolutely false, baseless and malafide and a number of Civil suits and Criminal cases are already pending in respect of the same.
- d. Mr. Badarmal Sethia i.e. father of the Complainant and Mr. Narendra Kumar Sethia never requested Mr. Parasmal Lunawat and Shri Jethmal Sethia to act as mediators /facilitators nor requested Sri Shyam Sundar Agarwala to be witness. Mr. Parasmal Lunawat appears to have acted as self styled mediator / facilitator and Mr. Shyam Sundar Agarwala appears to have acted as self styled witness on the instructions of the Respondent to fulfill the evil and malafide intents of the Respondent and hence the alleged Memoranda dated 12/09/1999 has no legal force in it.
- e. The Respondent as per his own admission is in practice as a Chartered Accountant since 1968 and thereby, he must have the knowledge that by being in active practice as Chartered Accountant cannot and should not engage himself in partnership business or in any other business. But, the Respondent knowing fully well that his act of engaging himself in partnership business by becoming a partner in Partnership Firm without obtaining prior permission from the Institute, amounts to Professional Misconduct and renders him liable for the consequences arising there from as per the Chartered Accountants Act and Rules framed there under. The Respondent cannot claim immunity or leniency, by citing reasons of his old age. Furthermore, the Respondent admittedly still is continuing as a partner in the partnership Firms namely "M/s. Rajkamal & Co." as well as in "M/s. Kamal & Associates" which is evident from the fact that the Respondent as on today has not submitted any document before the Hon'ble BOD, regarding his removal / retirement from the said Partnership Firms. On the other hand, the Respondent has already prayed for permission from the Hon'ble BOD to allow him to remain as partner.
- f. This is not a case wherein 'ignorance of law' may be used as shield. Since the Respondent is one of the senior most Practicing Chartered Accountant and is still in practice as such he cannot take the plea of ignorance of law. On the other hand, the Respondent is to considered and treated as wilful and intentional violator of the principles of Professional Ethics and misconduct and requires to be dealt with as per law in terms of Chartered Accountants Act 1949.

- g. As regards the decision relied upon by the Respondent i.e. Harish Kumar in Re :- page 286 of Vol. VIII(2) of Disciplinary Cases - Councils decision dated 1st to 3rd August, 2001, the said Judgment favours the Complainant in as much as the Hon'ble Authority of the Institute in the said Judgment has held that engaging as partner without seeking prior permission from the Institute by the Chartered Accountant is Professional Misconduct under Clause (11) of Part 1 of the First Schedule to the Chartered Accountants Act, 1949.
- h. The factum of being a partner by the Respondent in the above said two partnership Firms during continuation of practice as chartered Accountant and continuation as partner by the Respondent in the said two partnership firms till today and during active continuation of practice as Chartered Accountant is not denied by the Respondent rather have been admitted by the Respondent.
- i. A partner in a partnership firm is always a partner. It is immaterial as to what is status of the Partner in the partnership Firm. By claiming that he is only the financing Partner in the Partnership Firms, the Respondent cannot claim immunity or leniency in as much as the Chartered Accountants Act clearly holds that by becoming a partner without prior permission from the Institute amounts to Professional Misconduct.

Observations and Findings of the Board:

- 8. As regards the charge that besides being engaged in practice as a Chartered Accountant, the Respondent simultaneously entered into partnership business in the name and style of M/s Rajkamal & Co. and M/s Kamal & Associates without obtaining the prior permission of the Council, the Board noted that the Complainant brought on record the copy of two Partnership Deeds both dated 5th July, 2017 duly executed on Non-Judicial stamp paper and registered at the Office of the Senior Sub-Registrar Office, Guwahati to substantiate his claim.
- 9. The Board also noted that in the recital part of the Partnership Deed of M/s. Rajkamal & Co., Guwahati entered on 5th July, 2017 it is mentioned as under:-

"AND WHEREAS disputes arose since 1st August 1998 between the partners representing K C Family and the partners representing BMS Family & NKS Family as to management of several business(es) run through in the name of Family members of Sethia Group : as Proprietor/ Karta/ Partners/ Directors of Ltd. Companies etc. as well as in Partnership business : which was amicably settled vide FAMILY

SETTLEMENT finalized by/ in the presence of Sri Parasmal Loonawat (PML) / Sri Jethmal Sethia (JMS) / Sri Shyam Sundar Agarwal (SSA) & MEMORANDA confirmed through Affidavits (PMS/ SSA) thereof were received during the month of June-2017 from such Well Wishers cum Facilitators clarifying all the terms and conditions of Family Settlement."

Similarly, the Partnership Deed of M/s. Kamal & Associates, Guwahati entered on 5th July, 2017 contained recital on similar lines with respect to creation of Partnership Deed as a result of family settlement entered into between the family members of the Respondent with respect to varied businesses and properties.

10. The Board further noted the other terms of the said Partnership Deeds as stated hereunder:-

"8) **RE: BANKING OPERATIONS**

8.01 That all the partners shall be entitled to open/ operate Bank Account(s) of the firm or its Branches with Schedule Bank(s)/ Financial Institutions : whose names are provided hereunder:

#	GROUP :A: PARTNERS	
1.	Chaina Devi Sethia	Self: Chaina Devi Sethia
2.	Kamal Chand Sunil Kumar Sethia (HUF)	Karta: Kamal Chand Jain
3.	Kamal Chand Jain	Self: Kamal Chand Jain
#	GROUP :B: PARTNERS	
4.	Sunil Kumar Sethia & Sons	Karta: Sunil Kumar Sethia
5.	Sunil Kumar Sethia	Self: Sunil Kumar Sethia
6.	KSS Financiers (P) Ltd.	Director: Sunil Kumar Sethia
#	GROUP :C: PARTNERS	
7.	Manoj Kumar Sethia & Sons	Self: Manoj Kumar Sethia
8.	Manoj Kumar Sethia	Self: Manoj Kumar Sethia
9.	Deepak Enterprises (P) Ltd.	Director: Manoj Kumar Sethia

11. The Board also noted that induction of the Respondent as partner was specifically provided under the respective Partnership Deeds as a financing partner only as per Clause 12.01 of the Partnership Deed of Rajkamal & Co. and Clause 11.01 of Kamal & Associates, as reproduced hereunder:

Rajkamal & Co

"12.01 That Smt Chaina Devi Sethia (First Part) / Shri Kamal Chand Jain (Third Part) practicing Chartered accountant shall be financing partners AND each of them shall not be responsible towards day to day management of the firm as such each of them shall not be liable for Civil/Criminal breaches, if any, committed by the firm in course of construction/management either by employees/ contractor/other partners."

Kamal & Associates:

"11.01 That Shri Kamal Chand Jain (Sethia) (2nd part); Practicing Chartered Accountant/ and Smt Chaina Devi Sethia (3rd Part) shall be FINANCING PARTNER(S) and none of them shall be responsible towards day to day management of the firm as such none of them shall be liable for Criminal Civil/breaches; if any; committed by the Firm in course of construction/management either by employees/contractor/other partners."

12. The Board further noted that the Complainant in this regard, during the course of hearing submitted that the said Partnership Deeds contain contrary Clauses and the Respondent cannot be permitted to rely upon the Clause which suits/ favours his version before one Forum and denies other Clauses of the said Partnership Deed. The Board, considering the said terms of the Partnership Deeds, observed that the Complainant rightly pointed out presence of such contrary Clauses in respective Partnership Deeds wherein one clause 9) RE: Rights & Duties, gives complete power to the Respondent to open and operate bank accounts of the Partnership Firm, to borrow money and raise loans on behalf of Firm, to enter into contracts with any person for carrying out partnership business etc. and on other hand limit the powers of the Respondent that he will act as a financing partner, thus, one cannot be permitted to take benefit of the terms which favour their conduct of entering into partnership.
13. The Board also noted that the Respondent submitted a Declaration dated 13th March, 2018 wherein he stated that he has applied to the Institute for permission of the Council to engage in family business/ occupation other than the profession of Chartered Accountancy vide his application dated 12th March, 2018 in accordance with Clause (11) of Part I, First Schedule to the CA Act, 1949. The Board in this regard observed that the Respondent entered into partnership business by execution of two Partnership Deeds both dated 5th July, 2017, sought the permission of the Council on 12th March, 2018 after receipt of the letter seeking his Written Statement dated 16/02/2018 in the instant case whereas the Complainant filed extant complaint in Form I against the Respondent on 15th January, 2018. The said chronological events and the

submissions of the parties further corroborate the misconduct on the part of the Respondent. Further, one cannot be allowed to take an excuse of ignorance of law as per legal principle "*Ignorantia juris non excusat*". The Board viewed that the Respondent has drawn benefits from the said partnership business and is still continuing to do the same.

14. The Board took into view Regulation 190A of the Chartered Accountant Regulations, 1988 which provides as under:-

"Regulation 190A - Chartered Accountant in practice not to engage in any other business or occupation

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."

The **APPENDIX (9) - C.A. REGULATIONS, 1988** provides as under:

"In pursuance of Regulation 166 of the Chartered Accountants Regulations, 1964 (190A of the Chartered Accountants Regulations, 1988) and in supersession of the earlier resolutions on the subject, it was resolved that:

.....

(B) Permission to be granted specifically:

Members of the Institute in practice may engage in the following categories of business or occupations, after obtaining the specific and prior approval of the Council in each case:-

1. Full-time or part-time employment in business concerns provided that the member and/or his relatives do not hold substantial interest in such concerns.

.....

4. Interest in family business concern or concern in which interest has been acquired as a result of relationship and in the management of which no active part is taken.

....."

The Board, thus, observed that the Permission to be granted specifically by the Council of ICAI as provided under Appendix 9 read with Regulation 190A of CA Regulations, 1988 is a prior permission to be sought by a Member in Practice before entering into his family business which in the instant case was not done by the Respondent.



15. The Board further viewed that the plea of the Respondent that being elder member he engaged in his family business to protect his own interest based on the family settlement/ Memorandum dated 12/09/1999 cannot be the basis to allow the professional members of the Institute to enter into family partnership business without obtaining due permission of the Council and following CA Regulations, 1988 issued by the Institute. The Board also noted that the Respondent qualified the CA examinations in the year 1968, was holding COP and was a Fellow member of the Institute having experience of more than 50 years, thus, such a conduct on his part is certainly not appreciable.
16. Keeping in view the facts and circumstances as discussed herein above, the Board viewed that the entering into partnership business besides being in full time practice without obtaining prior permission of the Council as per Regulation 190A of the Chartered Accountants Regulations, 1988 clearly shows the misconduct on the part of the Respondent.
17. Having regard to the attendant circumstances, the evidences and submissions 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 (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949.


CONCLUSION:

18. 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: 1st February, 2022

प्रमाणित सत्य प्रतिलिपि / Certified true copy


मुकेश कुमार मिश्रा / Mukesh Kumar Mittal
सहायक सचिव / Assistant Secretary
अनुशासनात्मक निदेशालय / Disciplinary Directorate
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