

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-246/2019/DD/274/2019/BOD /553/2020

CORAM(present in person):

CA. Prasanna Kumar D., Presiding Officer
 Ms. Dolly Chakrabarty (IAAS, Retd.), Government Nominee
 CA. (Dr.) Raj Chawla, Member

In Re:

Mr. Raj Kumar Agarwal,
 742, Beside Mirania Battery,
 Style Bazar Building, Sevoke Road,
 (opp. Kolkata Bazar), Siliguri,
 District Darjeeling -734001

....Complainant

Versus

CA. Rahul Agarwal (M. No. 301783)
 130 Burdwan Road,
 Bengal Engineering Works, Siliguri,
 District Darjeeling -734001

....Respondent

DATE OF FINAL HEARING : 06th September, 2022

PLACE OF FINAL HEARING : New Delhi/ through video
 conferencing

PARTIES PRESENT:

Respondent : CA. Rahul Agarwal
 Counsel of the Respondent : CA. A.P.Singh
 Complainant : Mr. Raj Kumar Agarwal (alongwith his son
 Mr. Gaurav Garg)
 Witness : CA. S.R. Nakipuria (M.no. 52761)

FINDINGS:

Brief background of the case:

1. As per the Complainant, in order to estimate his wealth and get an idea of his income and financial worth, the Respondent managed to break open the Income Tax e-filing server and changed his credentials as he was never engaged by the Complainant for any purpose whatsoever. Thereafter, the Respondent kept on phishing out alerts and

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notifications. He also became the unintended receiver of all the alerts, acknowledgements and communications by using the phone numbers and e-mail ids. All the notifications from the Income Tax Department were thereby received by the Respondent which caused damage in fulfillment of the Complainant's statutory obligation. The Complainant reported the same to the respective authorities by lodging a complaint with the local police. The police in their Charge Sheet dated 31st March, 2019 *inter-alia* stated, as under:-

"During the investigation of the case the previous IO Insp. Sanjay Aggarwal collected all details of the e-filing and it could be learnt that during the reset of the password of the income tax e-filing by using phone number of one Miss Diksha Jindal having mobile number 96417-22354 and e-mail address caravirahul@gmail.com"

"She also confirmed that in course of her internship at the office of S.R. Nakipuria many times Rahul used to her mobile phone. She also allowed the same on goodfaith. Now after being learnt that her mobile number 96417-22354 has been used for hacking the e-filing of the account of Raj Kumar Agarwal, she got astonished and also stated clearly that the same has been done by Rahul Agarwal as a long family dispute is going on between the two families. I send requisition to the Google authority to provide details of email ID caravirahul@gmail.com and collected details from google in which found one recovery mail caragarwalslg@gmail.com."

In the said Charge-Sheet, it was mentioned by the police that the mobile number which was used to change password of Income-tax filing was of one female intern who was working with the Respondent's firm at the relevant time. Thereafter, Ms. Diksha Jindal during the interrogation has informed the police that her phone was many times used by the partners of the firm. Moreover, the police obtained the details from Income Tax server wherein the recovery email address has been mentioned as caragarwalslg@gmail.com which as per the records belongs to the Respondent.

Charge Alleged:

2. In the aforesaid background, it has been alleged by the Complainant that he was harassed and incapacitated by the Respondent for conducting his statutory tax filing obligations as he had never authorised the Respondent to act as his CA or Accountant in any capacity.

Brief of Proceedings held:

- 3.1 At the time of hearing held in the case on 19th January, 2021 wherein the Complainant alongwith his son and the Counsel for the Respondent were present through video conferencing, the Counsel for the Respondent made his detailed oral submissions and requested the Board to call CA. S.R. Nakipura (M.no. 52761) and Ms. Diksha Jindal, intern at the office of CA. S.R. Nakipura (M.no. 52761) as a witness in the matter. Thereafter, the Board adjourned the hearing in the case with the direction to the office to share the further written statement of the Respondent dated 12th September, 2020 with the Complainant for his comments/ submissions thereon, if any and to consider the request of the Respondent for calling of the witnesses.
- 3.2 Thereafter, at the meeting held on 20th April 2022, the Board directed the Complainant to provide the following information/ documents with a copy to the other party to the case to provide their comments thereon, if any:

The Complainant:

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1. Copy of the complete Chargesheet.
2. The details of occupation of the Complainant and the professional through whom the ITR of the Complainant was being filed prior to his IT account being hacked / his credentials on the Income Tax portal being changed.
3. When alternative method was available to file the ITR, why the same was not used by the Complainant to file his ITR.
4. Which mobile number/email-id was used in the IT portal by the Complainant prior to his account being hacked / on the Income Tax portal being changed.
5. When did the divorce proceedings of his son start and when was the screenshot of the IT portal used by him in the divorce proceedings.

The Board also directed the office to issue summons to CA. Diksha Jindal and CA. S.R. Nakipuria (M.no. 52761).

- 3.3 Thereafter, at the meeting held on 7th July 2022, the Board directed the parties to the case to provide the following information/ documents with a copy to the other party to the case to provide their comments thereon, if any:

The Respondent :

1. Copy of complete Charge sheet.
2. To share his submission dated 15th June, 2022 with the Complainant (although a soft copy of the said submissions had earlier been sent by him through email to the Complainant).
3. To rebut the submissions made by the counsel for the Complainant during the hearing.

The Complainant:

1. To provide the information/documents sought at the time of last hearing held on 20th April 2022.

- 3.4 Subsequently, at its meeting held on 29th July 2022, the Board noted that the Complainant vide email dated 29th July 2022 stated that the following witnesses are fully relevant to prove his complaint and thus prayed for summoning the said witnesses for the next hearing :

1. Shweta Agarwal
2. Investigating Officer (upon whose report this proceeding was started)
3. Reserve Officer
4. Income tax E-filing team and documents received (IAS officer mentioned In the list of witnesses).
5. Rahul Agarwal
6. Ravi Agarwal (partner of the firm whose email was used)
7. Shweta Agarwal (Co-accused)
8. Gaurav Garg (Witness)
9. Magistrates who recorded the statements under 164 crpc

The Board noted that on the complaint of the Complainant, a FIR bearing no. 23/18 dated 16th September 2018 had been filed against the Respondent and others wherein the Statement of Ms. Diksha Jindal and CA. Ravi Agarwal had been recorded and subsequently, the Respondent was Chargesheeted.

The Board took into view the provisions of Section 21C of the Chartered Accountants Act 1949 which provides as under:

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"For the purposes of an inquiry under the provisions of this Act, the Authority, the Disciplinary Committee, Board of Discipline and the Director (Discipline) shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908***, in respect of the following matters, namely :-

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) the discovery and production of any document; and
- (c) receiving evidence on affidavit"

Thus, looking into the facts of the case and documents on record, the Board decided to summon CA. Ravi Agarwal as a witness to be examined.

3.5 Subsequently, the Complainant vide communication dated 02.08.2022 sought withdrawal of his complaint. Accordingly, the case was considered by the Board under Rule 6 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 at its meeting held on 5th August 2022. The Board noted that while the case was before it for enquiry in terms of the provisions of Rule 14 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Complainant vide communication 02.08.2022 sought withdrawal of his complaint on the following grounds:

1. The Hon'ble Board de-listed the matter for 1.5 years after which the Complainant filed Writ Petition. When the matter was derailed for almost 1.5 years, the Complainant made several email and phone calls for next date of hearing and minutes of meetings being supplied to him.
2. Despite first hearing being an appearance hearing wherein Written Submissions was not served and Rejoinder was to be filed, without giving any hearing to the Complainant, the Bench made some note about considering witnesses even before the matter was discussed on merit.
3. The Complainant objected/opposed the request to summon witnesses on hearing dated 07.07.2022 and 20.04.2022 and even filed a petition dated 30.04.2022 but the same is not being reflected in the minutes.
4. The Respondent was asked to provide copy of Charge sheet running into 180 pages but he provided incomplete copy of the same. The Respondent first gave clumsy written statement and now he is submitting written statement after written statement which he could have given earlier in 2019 and the Board is not stopping him from submitting written statement, forged documents and tampered Charge sheet copy. The Board is just biased in favour of him.
5. The witness was called without having complete documents. They are judicial witness in criminal proceedings and they will be leading the present matter which might result in intimidating witness and other grievances. These issues were highlighted in e-mail dated 02.02.2022 but were not paid attention to.
6. The Board without placing of 180 pages of Charge sheet has allowed summoning of witness which was to explain "no one other than the owner of the phone-device-sim and no one other than the user of any email can register his phone and email on e-filing site, because when you register an email or phone, OTP is sent to those email and phone, and until you enter the OTP from the new e-mail id and phone they cannot get registered and reflect there". The presence of Rahul Agarwal's email id and Diksha Jindal's phone number on Complainant's e-filing account clearly shows that they were registered there by the handlers of Rahul Agarwal's email id and Diksha Jindal's phone number.
7. The Board has failed to see that the Respondent's intent to call the witness and cross examine them without placing the complete 180 page Charge sheet is an attempt to intimidate judicial witness and mingle them here before the Criminal Proceedings.

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8. Written prayers of adjournment (of 4 weeks because of accident of Complainant's advocate) and prayers of completion of Documents Discovery before getting into witness is prayed for in written and not honoured. On the other hand, even on his oral submissions, the Respondent has been granted allowances.

That being the case, the Complainant felt that he will not get a fair treatment by the Hon'ble Board. In view of the aforesaid, the Complainant wishes to withdraw its complaint with immediate effect, reserving his rights to approach the appropriate forum if the need so arises.

Since the case was under enquiry before the Board of Discipline and meanwhile withdrawal letter from the Complainant had been received, the provisions of Rule 6 were taken into view by the Board.

Accordingly, the Board considered the withdrawal letter of the Complainant along with the documents on record. Keeping in view the facts of the case and the observations made in the Prima Facie Opinion, the Board did not allow the withdrawal in the case and decided to proceed further in terms of the provisions of Rule 14(6) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 .

While arriving at the decision, the Board was also conscious of the fact that as per Section 21A(2) of the Chartered Accountants Act 1949 read with Rule 14(1) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, it shall follow the summary disposal procedure in dealing with all cases before it. Further, as per Section 21C of the Chartered Accountants Act 1949, it also has the same powers as are vested in a Civil Court under the Code of Civil procedure 1908 in respect of summoning and enforcing the attendance of any person and examining him on oath, the discovery and production of any document and receiving evidence on affidavit. Thus, the Board was of the view that being a quasi-judicial authority, the Chartered Accountants Act 1949 and the Rules framed thereunder empower the Board to exercise such powers in such manner to arrive at a logical conclusion in the case. Accordingly, the due process has been duly followed while conducting the proceedings in the case as is done in each and every case which is before the Board for its consideration. Thus, casting aspersions on the way and manner of working of the Board is clearly unwarranted.

- 3.6 Thereafter, the Board at its meeting held on 22nd August 2022 also noted that the Complainant vide letter dated 31st July 2022 requested to summon the Inspector Satnam Singh, Inspector Cybercrime, Siliguri Police Commissionerate and Inspector Sanjay Ghosh, Inspector cybercrime, Silliguri PS alongwith a copy of the complete chargesheet and evidence so that the original/ true-copy of the complete set of the same can be brought on record in all fairness, equity and justice.

The Board noted that the case of Other Misconduct had been made against the Respondent on the basis of Charge Sheet filed against him in the Court of Ld. ACJM, Siliguri and he had been asked to provide the copy of the complete Charge Sheet to defend the charges alleged against him. The Respondent vide email dated 21st July 2022 provided the copy of the FIR, Seizure list, Statement of CA. Diksha Jindal and CA. Ravi Agarwal recorded under section 161 of Cr.P.C., Charge Sheet alongwith other documents and submissions. Thereafter, the Respondent vide email dated 19th August 2022 submitted the certified copy of the Charge Sheet received from the Court. The Complainant raised questions on the completeness of the Charge Sheet submitted by the Respondent and made the same as a ground to summon the aforesaid authorities .The Board was of the view that it is incumbent upon the parties to the case to produce the documents which he/she wants to rely upon to substantiate their case. Thus, the said ground does not merit calling of the said

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witness(es). The Board also took into view the following observation made by the Apex Court in Union Of India vs Orient Engg. & Commercial Co. Ltd. (1977 AIR 2445, 1978 SCR (1) 622) as under while coming to the said view :

"It is not right that everyone who is included in the witness list is automatically summoned, but the true rule is that if grounds are made out for summoning a witness, he will be called ".

Courts also deprecate the practice of summoning officers at the drop of a hat. Also, application for summoning such a witness should not be granted as a matter of course, as the proceedings before the Board are summary in nature. But at appropriate stage and in deserving cases, the Board can pass Orders for summoning the witness(es) keeping in view the facts of the case and conduct of the member alleged in mind.

Accordingly, the Board did not accede to the request of the Complainant for calling of the said witness(es).

- 3.7 Thereafter, during the hearing held in the case on 6th September 2022 the Respondent alongwith his Counsel, the Complainant along with his son and CA. S.R. Nakipuria (as a witness) were present before the Board through video conferencing. The Board also noted that summons were issued to 2 other witnesses in the case namely CA. Diksha Jindal and CA. Ravi Agarwal. However, they were not present. The witness CA. S.R. Nakipuria was examined by the Respondent. The Complainant was also given the opportunity to cross examine CA. S.R. Nakipuria. Thereafter, the witness was discharged. The son of the Complainant on behalf of the Complainant and the Counsel for the Respondent made their respective submissions before the Board. On consideration of the documents and submissions on record, the Board concluded the proceedings in the case.

Brief of the Submissions :

(A) Respondent :

4. The Respondent, in his defense, inter-alia submitted as under:-
- a. The complaint has been filed on 3rd September 2019 in respect of an alleged misconduct of the Respondent somewhere in 2015, based on which the Complainant lodged First Information Report (FIR) in September 2018. The long delay between the alleged act of the Respondent which presumably constitutes his professional misconduct and the filing of an FIR, and thereafter the filing of the complaint in Form I at the ICAI, clearly indicates some extraneous factors had triggered such actions by the Complainant to lodge complaints against the Respondent from time to time.
 - b. The Complainant appears to be a regular litigant and has filed his complaints before various authorities and is thus engaged in forum shopping to bring pressure on the Respondent for reasons explained in the succeeding paragraphs. At this juncture, it may be noted that the Complaint filed in Form I contains only a narrative and does not contain any Clauses/parts of the relevant Schedules under which the charge of professional or other misconduct is made by the Complainant. The Director (Discipline) has hand-picked Clause (2) o Part IV of the First Schedule at his own will and pleasure, whereas the Complainant is to identify the Clauses/parts of any two Schedules under which the complaint is made.
 - c. For the purpose of holding any member of the Institute guilty of Professional or Other Misconduct under Clause 2 Part IV of the First Schedule, an opinion of the Council is mandatory. The Respondent has not been provided with a copy of any such opinion of the Council. Certain facts of the matter have not been considered by the

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Director(Discipline) and thus, the PFO of the Director(Discipline) is not sustainable. Without the opinion of the Council, the Director(Discipline) could not have formed his PFO in the instant case, holding the Respondent to be prima facie guilty under this clause. This clause has been introduced only in 2006 when the disciplinary mechanism was restructured, and the Disciplinary Directorate was sought to be established. Hence, the intent of the law is clear, and holding of any member guilty under this clause without an opinion of the Council is bad in law.

- d. The Complainant in Form I, while providing particulars of the allegations has referred to Shri S. R. Nakipuria in Paras 1, 8, 10, 11 and 13 of the contents of the allegations. The allegations refer to "Resource of the office of Shri S. R. Nakipuria". In Para 1 of the allegations, this resource has been identified as one Diksha Jindal in the document produced in Page C-S of the PFO. The email address caravirahul@gmail.com is not the personal email address of the Respondent. It was the email address of the firm of the Respondent. The attachments to the complaint also include the name of Shri Ravi Agarwal as a partner of the Respondent. The Director(Discipline) has sought no clarification or inputs from Shri Nakipuria or Shri Ravi Agarwal or Ms Diksha Jindal.
- e. The Complainant is the father-in-law of the Respondent 's sister Smt. Shweta Agarwal. Shweta is married to Gaurav Garg (son of the Complainant). However, their marriage does not appear to be sustaining in the normal course and their matrimonial relationship is headed for a divorce under extremely painful circumstances. The Respondent has been made a soft target by the Complainant as a result of the family disputes.
- f. The document submitted as the charge-sheet on page C-5 of the PFO clearly states that the Respondent had obtained access to the Income Tax account of the Complainant unauthorisedly in 2014. The most important question that arises is: why and how did the Complainant not realise this for three years in case he was being "harassed and incapacitated by the Respondent " as stated in Para 7.1 of the PFO. Further, the Director(Discipline) has also stated that the Respondent "managed to break open the income tax e-filing server". Further, the Complainant has made a statement in his rejoinder which has been reproduced by the Director(Discipline) in the PFO as follows:

"The CBDT has confirmed that Income Tax Server of CPC is a protected Server of Union of India that has been broken in illegally for the account of Raj Kumar Agarwal using his and his partners' official email ID and used the phone number belonging to his female intern. "

- Respondent puts the Complainant to strict proof to demonstrate any confirmation received from the CBDT as claimed by the Complainant.
- g. Since the Complainant had no reason to get agitated between 2015 and 2018 that in itself is an undeniable proof that he was not being harassed and incapacitated by the Respondent.
- h. The Director(Discipline) has relied purely on the ChargeSheet and the police investigation without understanding and appreciating that no person can be held guilty unless proven in a Court of law.
- i. The credentials for login by the Complainant in the Income Tax Portal were changed on 22nd May 2015. The Matrimonial Suit No: 60 of 2018 was filed on 21st February 2018. Accordingly, it is evident that the change of the credentials on the Income Tax Portal had nothing to do with the filing of the matrimonial suit, as claimed by the Counsel for the Complainant before the Board of Discipline.
- j. The Respondent can only recollect from his memory that he had been informed by the Complainant (at the time when the relationship between the families of the Complainant and the Respondent was cordial and greater trust prevailed between them) that the email address used on the Income Tax Portal for establishing the credentials was: ajodia.vendent@gmail.com. This email address did not belong to him. The Charge Sheet includes the copy of the mail sent to

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- iajodia.vendent@gmail.com for the change of the credentials. The phone number which is registered on the Income Tax Portal is stated to be of the Respondent but the Respondent was never aware of such cell phone number.
- k. Accordingly, when the credentials were allegedly changed, information would have been automatically sent at the registered email address and cell phone number. The credentials could not have been changed in any other manner. The Complainant has been fully aware that the change in the credentials for log in was made only when he had been informed and had not objected to it. Hence, the contention of the Complainant that the credentials were changed without his consent is entirely baseless and not sustainable.
 - l. Although the Counsel for the Complainant has stated that the Complainant has not been able to file his Income Tax Returns post 2015, the Income Tax Returns of the Complainant for the Assessment Year 2016-17 and Assessment Year 2017-18 have been filed with the Income Tax Department. The Respondent cannot produce any document relating to the filing of the said returns. However, the acknowledgment numbers of the said returns are 737063080310317 and 546606760290318.
 - m. It is found that Complainant had submitted a Profile Page of Income Tax Portal. This page in Income Tax Portal can only be accessed after Log In. This shows that the Complainant already had access to his Income Tax Portal and he was in no way prevented from filing his IT Return, any other statutory obligation, if any. Further his claim that Respondent has locked his account with his own preferred password is baseless.
 - n. The Counsel for the Complainant has specifically mentioned before the Hon'ble Board of Discipline that the Respondent had not filed for quashing of the criminal proceedings initiated against him. The Respondent specifically submitted that filing of Quashing of criminal proceedings is the prerogative of the accused. No one can direct or decide on behalf of the accused that whether he will file quashing application before the appropriate Court. Non-Filing of Quashing application before any Court of law does not make the accused guilty of any offence. Offences can only be proved on completion of Trial and conviction by an appropriate Court. Till such conviction of a person alleged to have committed an offence will be considered innocent.
 - o. The Respondent has not indulged in any manner for the alleged change of credentials of the Complainant on the Income Tax Portal in May 2015.
 - p. A settlement document has been drawn up between the families of the Complainant and the Respondent relating to the separation between the son of the Complainant and the sister of the Respondent. On perusal of the terms of the settlement, it will be clearly demonstrated that various legal cases have been initiated between the family members; each of these such cases have been decided to be withdrawn; the instant complaint for disciplinary proceedings against the Respondent is naturally one of such cases that have been initiated as a result of the matrimonial dispute.

(B) Complainant:

5. The Complainant, in his submissions, inter-alia submitted as under:-
 - i. The Respondent cannot deny the fact that using phone of female interns at work and putting her in frontal risk of being caught at crime, instead of using his personal phone is a clear case of misconduct.
 - ii. The Respondent has taken control of the e-filing account of the Complainant and stolen data from there using the help of his office co-workers and his modus operandi of using a female colleague at work and her device instead of using his personal device shows a lot.
 - iii. The Respondent has submitted a fabricated document with forged signatures claiming them to be of the Complainant's. Supreme Court has said that submitting forged documents and forged signature before the Court is an offence at

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another footing compared to forgery in normal day to day life. Hence, severe punishment should be granted.

- iv. One has the right to submit his defence but in the process if he fabricates material and forged signature then it is a direct offence against the bench.
- v. As far as personal conduct of the Respondent is concerned, he is already facing perjury in lower Court and has been found hand in gloves with the policemen in fabricating false material.
- vi. The Respondent is a habitual offender and in another instance of cyber-crime he hacked Complainant's son's e-filing account. The Respondent's prayer for quashing charges has been dismissed since there was visible evidence against the accused. He had been Charge sheeted with electronic evidence in 3 other criminal cases.
- vii. All documents that are relied upon have to be verified/certified/authenticated documents. The Board has powers of Civil Court to call upon documents from Lower Court instead of relying on unverified-tampered and non-reliable documents submitted by the Respondent. If the Board has decided not to rely on Prima Facie opinion of Director(Discipline) and authentic Chargesheet, then the power to reinvestigate the matter does not lie with Board. It cannot determine whether the offence has happened or not.
- viii. The Board is interfering with the witnesses there of despite not being an investigating agency. The Board is exceeding its jurisdiction by admitting forged and unverified documents. Any document or information has to pass the scrutiny of the Director(Discipline), and how is it that Respondent made no submissions to the Director(Discipline), but had a huge submission against the prima facie opinion at the Board stage.
- ix. There has been no new development in the cyber crime case since the chargesheet in 2018, so how is it that every now and then the Respondent is allowed to make new submissions that are unverified and an afterthought. Even the charges framed are in accordance with the chargesheet. Board may either accept or reject the prima facie opinion of the Director(Discipline) which was relied on authentic chargesheet summary thereof by specialised agency or proceed on summary, since Board has not set the procedure of exhibiting and identification of documents, leading witnesses, cross examine witnesses. Also, it's a standard practice that cross examination can happen only in-person and not virtually.
- x. All documents submitted by the Complainant are true copies. None of the document submitted by Respondent to the Director(Discipline) and the few papers that he has submitted before Board do not look like authentic documents and are not true/certified copies. Also, some of them are forged and fabricated.
- xi. The Complainant disputed ever document and every submission made by the Respondent most of which are tampered and forged/fabricated. Police complaint in respect of forged documents has already been made.
- xii. In case of change of passwords, the investigation began and E-filing team sent information to Cyber Crime wing on the Server access details which show that on 22 May 2015, an IP address belonging to CA. S.R Nakipuria was used for the password change, and account was taken control of, later on the email and phone number was also changed. The service provider confirmed that Ms. Diksha Jindal's

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phone was used for receiving the OTP, and through online search confirmed that caravirahul@gmail.com was used for OTP issued for e-filing website.

xiii. He also submitted the following timeline of the offence:

- (a) 22nd May 2015 - Respondent changed the password of the Complainant's e-filing account and email alert is issued by E-filing team. He also changed the email and phone credentials of the account to his email id.
- (b) 8th Jan 2016 - Respondent's sister submitted the screenshot describing the details of the same in sworn Affidavit in her Maintenance proceedings, making it clear that the hacking on 22 May 2015 was for this purpose and by these people.
- (c) Respondent received all alerts issued by e-filing team thereafter, which is clear from last 3 lines of Para 9 of his additional written statement submitted in June 2022 where he mentions the transaction ID of attempts by the Complainant to restore login and file returns.
- (d) When such alerts were not received by the older email-id, matter was discussed with Income Tax Department and they informed the Complainant that not just the password but also email and phone credentials have been changed.
- (e) Phishing attempts are made on the Complainant.
- (f) Income Tax Department guided the Complainant to see where we can see this change in the e-filing account and it was discovered. FIR is registered against the said information, and the email alert and screen-grab of the presence of another email id of the Respondent and some phone number which is later confirmed belonging to CA. Diksha Jindal.
- (g) Investigation began and E-filing team sent information to Cyber Crime wing on the Server access details which show that on 22 May 2015, from an IP address belonging to CA. S.R. Nakipuria the password was changed and account was taken control of. A few minutes later, the email and phone number was also changed. Vodafone confirmed that Diksha Jindal's phone received the OTP, and google confirmed that caravirahul@gmail.com got the OTP issued by e-filing website. E-filing team also confirmed that subsequently upon CA Vedant receiving the alert of "someBoard y has changed your password", attempt was made to restore login but no alerts were received on the old email or phone. He also tried to file a return but the submission alert was sent to caravirahul@gmail.com.
- (h) CA. Diksha Jindal was interrogated and her statement was submitted by the Respondent. Chargesheet shows that the Respondent used her phone.
- (i) CA. Ravi Agarwal was interrogated and his statement was recorded. ERIC ICAI member Directory established that the Respondent was in use and possession of the email id: caravirahul@gmail.com. GOOGLE has confirmed that the backup phone of this email id is 9832355580 and Vodafone has confirmed as the KYC of the same against the Respondent. The sim card is seized and submitted in the Court as per the seizure report.
- (j) On 15 June 2022, the Respondent has produced Transaction ID of attempts by the Complainant to file IT returns from which it is clear that the Respondent is in its possession else he could not have got it.

xiv. In response to the queries raised by the Board, the Complainant provided the following details:

- A. Occupation of Complainant - The Complainant is a small trader dealing in readymade doors.
- B. Who used to file IT return of the Complainant before hacking – CA. Vedant Agarwal used to file IT return for the Complainant. The intimation email of

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change of password received by CA. Vedant Agarwal a copy of which is provided to the Cyber Crime along with the written complaint which was treated as FIR is already on record. It was mobile number and email of CA. Vedant Agarwal which was recorded on the IT Portal i.e (Mobile No. 9832313414 and email id Jajodia.vedant@gmail.com) before hacking/tampering by the Respondent and his sister/CA. Diksha Jindal (Junior-articledship) on 22nd May 2015.

- C. When and in which proceeding of Respondent 's sisters' matrimonial dispute was the screen shot filed : Thereafter, on 8th January, 2016 Shweta Agarwal (sister of the Respondent) filed a sworn Affidavit before Judicial Magistrate of 4th Court Siliguri, in connection with MR72-2015, (Maintenance Money Case Sweta Agarwal Vs Gaurav Garg instituted on 22 July 2015) wherein she along with the Affidavit attached a screenshot/ Print-Screen of the account showing income details of the Complainant.
- D. Filing of IT return after hacking - The Chartered Accountant thereafter tried to restore access to the account and tried filing of ITR, but no alerts or notification were coming. The Complainant visited Income Tax Department many times to sort out the issue. The CA of the Complainant tried to reset the password and filed returns for the same year and next after discussion with Income Tax but was not even getting return acknowledgements and alerts of submission on his email id. Thereafter, the Complainant again reached to IT Department who then identified that even the email and phone number is changed in 2018 and guided the Complainant to check it but not to make any alterations until the cyber-crime has taken cognizance of it. A print-screen of the same was submitted by the Complainant with the original complaint before the cyber-crime Department which was treated as FIR. The episode of hacking by the Respondent and login/password change by him seems to have happened more than once. The Chartered Accountant of the Complainant tried to reclaim the account but failed to get return acknowledgement as he was focused on restoring the access but did not know that even the phone number and email address inside it had been tampered. (Found this out much later in 2018). The issue was discussed with the Income tax Department, lodged FIR, acquired information slip from the JM 4th Court wherein the Court has confirmed that a screenshot of the Complainant's account has been submitted, which means they had access.
- E. Filing of Complaint in 2018 – In addition to the ongoing cause of action since 2015, 2016 and 2018, it is pertinent to mention that the Complainant is old and a severe heart patient with limited mobility and was entangled with injury of his wife and illness of his mother and other logistic issues and limitations, and also lack of legal guidance. At the initial time the Complainant was only having the knowledge of hacking but had no proof/ evidence that the Respondent was involved in this. Thereafter, when it was determined that the alerts are not being received and advice for lodging a cyber crime case was got in 2018, after which the Police has completed its investigation then only the Complainant was able to know that it is the Respondent who has hacked his account and got evidence against him. Therefore, before completion of investigation the Complainant was not having anything substantial to prove the role of Respondent in hacking. Before collection of evidence by the Police and filing of Chargesheet, the Complainant was not having sufficient reason to file this complaint before Disciplinary Directorate against the Respondent. During the said period, the Complainant was in touch with the IT authorities to find out the issue and its solutions. Since the account was hacked on 22 May 2015, during this time the travel of the Complainant to USA was planned, but since then due to matrimonial dispute of his son and disturbance created by his wife, they were entangled in family affair. The Complainant was struggling

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and entangled with many family issues. The Complainant was suspicious that it is the Respondent and his aides who are involved in hacking of the account because they were constantly perpetrating other acts of crime against the Complainant. Moreover, the question of limitation does not arise. The applicable Rules provide for Complainant to lodge complaints within 7 years and that is the legal right of the Complainant.

- xv. The Respondent has not placed on record the reason for calling witness/prayer for calling them before the Board.
- xvi. The Board is cherry picking witnesses favourable/close to the Accused and selecting them prior to demanding documentary evidence or the recorded statement against the Accused.
- xvii. The Complainant raised serious objection to the procedure adopted by Board in summoning of the witness as well as their power to do so on the following counts:
- (a) There does not exist any decision on record, in the captioned proceeding to call for witness and therefore the summons so issued are void ab initio and issued by the office without any authority.
 - (b) There is nothing on record to indicate the reason or purpose or purported reasons for summoning the witnesses, therefore the purported summons so issued by Board are contrary to any mechanism known in law.
 - (c) The witnesses so desired to be summoned by the Respondent are their own people/colleagues who have already given their Statements before the Police and it was on this count a final Charge sheet was filed before the competent Courts confirming the allegations and the contents of the complaint filed by the Complainant before this Board.
 - (d) Rule 14 of Chartered Accountants (Procedure of Investigation and Conduct of Cases) Rules which lays down the procedural law, does not postulate a procedure giving any power to Board to summon witness, record his statement and/ or rely upon the same while deciding the matter. On the other hand, the Rules clearly provide that the Board shall follow summary disposal procedure. Therefore, this very fact clearly indicate that legislature has never intended to give power to summon witnesses to the Board and therefore such Order even if it exists are beyond the power vested in Board.
 - (e) Under Chapter IV "Board of Discipline" of the said Rules words such as "witnesses and/ or statement of witnesses" are not included and thus there cannot exist no question of whether the same can be summoned or their statement can be relied upon while arriving on a finding. Whereas specific powers have been conferred upon Disciplinary Committee and accordingly, specific provision exist in the said Rules.
 - (f) Further, there is no precedent of decisions taken by Board where the witnesses have been summoned till date (i.e in last 15 years of its existence) therefore the action of Board in summoning of the witnesses, is usurpation of the powers apart from what is conferred upon it by the said Rules.
 - (g) The decision/action of Board in reading its earlier Order wherein it has been recorded that the request of summoning of witness will be considered as a decision to summon the witness is not in consonance of law and against the principles of natural justice.
 - (h) The Board of Discipline before various judicial forums has taken a uniform stand that it has no power to summon witnesses and therefore an exception being made in the present complaint would only delay the process and more so when the investigating agency i.e the police after conducting extensive investigation has come to the conclusion that the complaint filed by the Complainant is correct. Moreover, the statements of the witnesses, now being summoned by the Board, has already been recorded by the police, the proof of which is already before the Board.

- (i) Once an extensive investigation has been carried out by the police on the complaint filed by the Complainant and a Charge sheet has been filed confirming the said allegations against the Respondent, any delay in finalizing the said proceedings would be travesty of justice.
- xviii. The action of Board in construing its earlier decision to summon the witness as well as summoning of witnesses are per se illegal, arbitrary and even outside the scope of the procedural law laid down. Therefore, it is prayed that the summons issued to the witnesses may be recalled and the proceedings in the captioned case should be conducted and finished strictly in terms of the procedure laid down in the said Rule and as followed by this Board in the past.

Observations and Findings of the Board:

On consideration of the submissions and documents on record, the Board observed that parties to the case raised certain technical objections in the case and the Board decided to deal with them prior to dealing the case on its merits.

6. The primary objection raised by the Complainant is with respect to the summoning of the witness(es) by the Board. In this regard, the Board took into view the provisions of Section 21C of the Chartered Accountants Act 1949 which provides as under:

*"For the purposes of an inquiry under the provisions of this Act, the Authority, the Disciplinary Committee, Board of Discipline and the Director (Discipline) shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908***, in respect of the following matters, namely :-*

- (a) *summoning and enforcing the attendance of any person and examining him on oath;*
 (b) *the discovery and production of any document; and*
 (c) *receiving evidence on affidavit"*

The Board is conscious that the proceedings before it are summary in nature wherein on the basis of documents and submissions on record, it has to arrive at its Findings on the conduct of the Respondent. However, Section 21C of the Chartered Accountants Act 1949 gives absolute powers to the Board to summon any witness and examine him on oath to arrive at a logical conclusion in the case. The said power has been exercised in a plethora of cases by the Board keeping in view the facts of the case.

Further, the Board observed that the Complainant blew hot and cold about the summoning of the witness(es). On the one hand, he objected to summoning of the witness(es) by the Board at the request of the Respondent whereas on the other hand, he himself made two applications for summoning of the witness(es). Looking into the facts of the case, the Board summoned the following witness(es):

- (i) CA. Diksha Jindal and CA. S.R. Nakipuria - at the request of the Respondent .
 (ii) CA. Ravi Agarwal - at the request of the Complainant.

Thus, the Board was of the view that no improper procedure has been adopted by it during the conduct of the proceedings. Also, it is the duty of the Board to control the proceedings which has been exercised by it in all fairness keeping in view the principle of natural justice.

7. As regard the plea of the Respondent regarding non-fulfillment of the requirement stipulated in Clause (2) of Part IV of the First Schedule, the Board referred to Para 15 of the Order dated 13th May, 2017 passed by the Hon'ble Appellate Authority in the matter of *Gyan Prakash Agarwal (Appeal No. 08/ICAI/2014), Rajiv Maheshwari*

B-82

(Appeal No. 05/ICAI/2014) and Sameer Kumar Singh Vs. ICAI (Appeal No. 07/ICAI/2014) wherein it is observed as under:

"15. Based on the above and by taking note of the written submissions made on behalf of the Institute of Company Secretaries of India, the Institute of Cost Accountants of India and the Institute of Chartered Accountants of India containing the detailed Page 9 of 14 analysis of the issue in question, we are of the considered view that the proper and correct interpretation which can be given to Clause (2) of Part-IV of the First Schedule to the respective Acts, in the light of the principles laid down and having regard to the case laws of various courts and further considering the basic objects, reasons and purpose of the amendment brought in the statutes as quoted above is that, 'Prima Facie Opinion (PRIMA FACIE OPINION)' formed by the Director (Discipline) in all such complaints / information cases serves the purpose for proceeding further for taking disciplinary action against the errant members as in terms of the amended mechanism for conduct of cases, it is the Director (Discipline) who has to form the first Prima Facie Opinion for the disciplinary proceedings to be initiated. Therefore, the opinion of Council as is mentioned in the clause (2) of Part-IV of the First Schedule to the Act has to be given a purposive meaning and has to be read in consonance with the letter and scheme of the enactment".

Hence, the issue had already been decided by the Hon'ble Appellate Authority, and therefore, there is no merit in the argument of the Respondent in this regard. Further, the Board was of the view that there is no inclusive definition of 'Other Misconduct' under the Chartered Accountants Act 1949 and what constitutes 'Other Misconduct' is determined from the conduct of the member alleged on the basis of substantial, corroborative and circumstantial evidences on record.

8. Thereafter, the Board noted that the main grudge of the Complainant in the instant case is that he was harassed and incapacitated by the Respondent for conducting his statutory tax filling obligations as he had never authorised the Respondent to act as his CA or Accountant in any capacity. In this regard, the following Chronology of events is to be considered to effectively examine the conduct of the Respondent :

Date	Event
22.05.2015	The Credentials of the Complainant's account on Income Tax portal were changed.
22.07.2015	Maintenance Case bearing no. 72/2015 Shweta Agarwal Vs Gaurav Garg instituted
08.01.2016	Shweta (Respondent 's sister/Complainant's daughter -in-law) used the income tax details of the Complainant for the accounting year 2013-14 in an Affidavit filed by her in her Maintenance case
21.02.2018	Matrimonial suit filed by Shweta Agarwal
14.05.2018	Complainant became aware that his account has been hacked
16.09.2018	Complainant made complaint to the police and thereafter FIR against the Respondent amongst others, was filed.
03.11.2018	Notice issued under CrPC to CA. Ravi Agarwal and the Respondent
06.09.2019	Form – I filed by the Complainant with ICAI

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9. The Board noted that the genesis of the case emanated on 22nd May 2015 when the credentials of the Complainant on the Income Tax portal were allegedly changed. Prior to the said change, the following email-id and phone number was used which did not belong to the Respondent :
 email id: jaiodia.vedent@gmail.com.
 Phone number: 9832313414

Even the Complainant admitted in his written submissions dated 05.05.2022 that CA. Vedant Agarwal used to file his IT return and the mobile number and e-mail id used prior to the change of the credentials belonged to him.

The Board noted that as per the information available on the Income Tax website, all registered users on the e-Filing portal can reset their e-Filing portal password with e-Filing OTP / Aadhaar OTP / Bank Account EVC / Demat Account EVC / Digital Signature Certificate (DSC) / Net Banking. The Board further noted that to change the credentials on Income Tax portal using e-filing OTP on registered mobile number and email-id, access to registered primary e-mail-id and phone number is required as One Time Password (OTP) is sent on the same. Since the registered primary phone number and e-mail id prior to the change did not belong to the Respondent but to a different chartered accountant who had been authorized by the Complainant to file his income tax returns, the intimation regarding the change in the login credentials was certainly in the knowledge of the Complainant. Further, the Respondent brought on record the following acknowledgement numbers- 737063080310317 and 546606760290318 to show that the returns of the Complainant for the A.Y. 2016-17 and A.Y. 2017-18 had been filed.

10. The Board also noted that on a complaint of the Complainant dated 15th September 2018, a FIR had been filed on 16th September 2018 against the Respondent wherein subsequently the Respondent had been Charge sheeted. The said Criminal case against the Respondent was based on the Statement of CA. Diksha Jindal and CA. Ravi Agarwal who were also summoned as a witness before the Board. Although, CA. Diksha Jindal gave her confirmation to be present as a witness before the Board on various dates of hearing, however, her deposition could not be taken on the said dates as the hearing had been adjourned at the request of either of the parties to the case. She was not present on the date of hearing when the proceedings in the case were concluded. Thus, her deposition in the case could not be recorded. CA. Ravi Agarwal did not appear as a witness before the Board.
11. The Board perused the Statement of CA. Ravi Agarwal recorded under U/s-161 Cr. P.C, C/w – Cyber Crime PS Case No. -23/18 Date -19/09/2018 u/s – 43/66 of IT Act and noted that he inter-alia, deposed as under (translated from hindi):

"We both had an email address of our partnership firm and it was "caravirahul@gmail.com" which was used for official purposes.

I have nothing to do with hacking. There may be involvement of Rahul Agarwal in that. Because no one else had access to the company's email id except me and Rahul."

Further, CA. Diksha Jindal in her Statement recorded under u/s 161, Cr.P.C. in u/s Cyber Crime PS. Case no.23/18 dated 16/09/2018 u/s 43/66 IT Act, inter-alia, deposed as under:

"Ravi Agarwal and Rahul Agarwal were also jointly running an office as partner. Both of them used email address id caravirahul@gmail.com

Finally I came to learnt from you that they have unauthorizedly accessed an e-filing account of Raj kumar Agarwal by using my phone number."

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Thus, the Board observed that even they were not sure as to who has changed the credentials of the Complainant on the Income Tax portal.

12. The Board also observed that the Respondent and CA. Ravi Agarwal were partners in the firm and the email id : caravirahul@gmail.com which was identified with the changed credentials of the Complainant in the Income Tax portal was the email id of CA. Ravi Agarwal as per the member records of ICAI and thus, was not being used by the Respondent but by a partner in his firm.
13. The Board further noted that the witness namely CA. S.R. Nakipuria, during the proceedings deposed before it as under:

(i) On being questioned by the Respondent :

(a) He denied of being aware of any crime having been originated through his office as stated by the Complainant in his complaint filed before the ICAI. He came to know when the Cyber Crime Police came to his chamber and they told him that certain IP address has been used for doing something by somebody from his office.

(b) He denied of any involvement in this so called crime which is allegedly committed which has been referred to by the Complainant in point 8 of Column no.5 of Form 'I'.

(c) He has neither seen nor ever met the Complainant.

(d) The allegation in point no. 13 of Column no.5 of Form 'I' of the complaint that he neither took any action against the Respondent for his acts both for using his office and causing harassment to an intern because he was hand-in-gloves with the Respondent is baseless.

(ii) On being questioned by the Complainant:

(a) He did not take any steps against the Respondent after getting to know from the Cyber Crime that such an act has perpetrated from his office as the Respondent was neither his employee nor associate. Thus, he questioned who was he to take any step against the Respondent ?

(b) He declined to disclose the details of his audit clients.

14. The Board also observed that the Complainant is the father-in-law of the Respondent's sister. The Respondent was not filing/handling the Income Tax return of the Complainant prior to the change of credentials. The credentials of the Complainant for login in the Income Tax portal were changed on 22nd May 2015. The complaint with the Institute against the Respondent was filed on 6th September 2019. In the meanwhile, the returns of the Complainant for the A.Y. 2016-17 and A.Y. 2017-18 had also been filed vide acknowledgement numbers- 737063080310317 and 546606760290318. Thus, on a careful perusal of the series of events, the Board was of the view that credentials of the Complainant on the Income Tax portal could not have been changed without his knowledge.

15. The Board, on consideration of the submissions and documents on record observed that no misconduct in the circumstances entailed in the complaint is evident on the part of the Respondent.

16. While concluding its Findings, the Board also observed that various communications were sent by the Complainant casting aspersions on the transparency and manner of conduct of the proceedings by the Board. He also approached alternate forums for seeking expeditious disposal of the case. The Board held that being a quasi-judicial Authority, it has always been guided by the principle of natural justice in the conduct of the proceedings. Due opportunity has always been given to the parties to the case to substantiate their case. The said principles have also been duly followed while conducting the proceedings in the instant case.

CONCLUSION:

17. Thus, in conclusion, in the considered opinion of the Board, the Respondent is **NOT GUILTY** of Other Misconduct falling within the meaning Item (2) Part IV of First Schedule to the Chartered Accountants Act, 1949 read with section 22 of the said Act. Accordingly, the Board passed Order for closure of the case in terms of the provisions of Rule 15(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

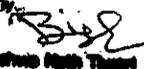
Sd/-
CA. PRASANNA KUMAR D.
(PRESIDING OFFICER)

Sd/-
DOLLY CHAKRABARTY (IAAS, Retd.)
(GOVERNMENT NOMINEE)

Sd/-
CA.(Dr.) RAJ CHAWLA
(MEMBER)

DATE: 10th October, 2022

सही प्रतिलिपि होने को सिद्ध प्रमाणित
Certified to be true copy


श्रीमती मनिषा शिवानी / Shriamati Manisha Shivani
कार्यकारी अधिकारी / Executive Officer
अनुशासनमूलक विभाग / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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