



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

[PR/10/16-DD/55/16-DC/815/18]

**ORDER UNDER SECTION 21B(3) OF THE CHARTERED ACCOUNTANTS ACT, 1949 READ WITH RULE 19(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATION OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007.**

[PR/10/16-DD/55/16-DC/815/18]

**In the matter of:**

**Dr. Sanjay Dhanuka & Dr. Sunita Chauhan,**  
G-01, Vineet Apartments,  
53, Saket Nagar  
INDORE – 452 018

.... Complainant

**-Vs-**

**CA. Anup Pathak (M.No.073907),**  
17CA, Slice 5, Scheme-78,  
INDORE – 452 001

.... Respondent

**MEMBERS PRESENT:**

1. CA. (Dr.) Debashis Mitra, Presiding Officer (Present through Video Conferencing)
2. Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee (Present through Video Conferencing)
3. Shri Arun Kumar, I.A.S. (Retd.), Government Nominee (Present in person)
4. CA. Rajendra Kumar P, Member (Present through Video Conferencing)
5. CA. Cotha S Srinivas, Member (Present in person)

**DATE OF MEETING : 23.08.2022 (Through Video Conferencing Mode)**

1. That vide findings under Rule 18 (17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 dated 19.01.2022, the Disciplinary Committee was inter-alia of the opinion that **CA. Anup Pathak (M.No.073907)** (hereinafter referred to as the **Respondent**) was **GUILTY** of professional misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountant Act, 1949.

2. The Committee noted that the Respondent was present through video conferencing mode from his place. The Respondent submitted his detailed submissions mentioning the Order of the Company Law Board dated 15<sup>th</sup> December 2014 was silent about the source of such payments and only referred to the consent terms between the parties. The Respondent further mentioned that the objective behind the issue of the said alleged certificate was only to certify payment by Dr.



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Subodh Jain to the Shareholders/transferees and not to certify/ justify the correctness of the source of the payments so made. He further submitted that the receipt of money had neither been disputed by any of the recipients nor the recipients returned the money and he was unnecessarily dragged into the issue due to the dispute between the parties.

3. The Committee on perusal of the Order of National Company Law Tribunal, Indore bench dated 25<sup>th</sup> March 2022, observed that the Complainants have already reconciled their disputes with purchasers on the basis of the money received by them and have filed their consent terms with the National Company Law Tribunal, Indore bench and therefore, they are no longer interested in pursuing their complaint. The Committee also noted that the Complainants, in all the previous hearings, did not appear before this bench despite due notice to them. Accordingly, in the absence of any of the Complainants at the hearing stage, the Committee is convinced that the Complainants does not want to persue the matter further.

4. Accordingly, the Committee, looking into the gravity of the charge *vis-a-vis* submissions of the Respondent before it, was of the view that ends of justice can met if reasonable punishment is imposed upon the Respondent.

5. Therefore, keeping in view the facts and circumstances of the case, material on record and submissions of the Respondent before it, the Committee ordered that the Respondent CA. Anup Pathak (M.No.073907), be reprimanded.

Sd/-

(CA. (DR.) DEBASHIS MITRA)

PRESIDING OFFICER

Sd/-

(MRS. RANI NAIR, I.R.S. RETD.)

GOVERNMENT NOMINEE

Sd/-

(SHRI ARUN KUMAR, I.A.S. RETD.)

GOVERNMENT NOMINEE

Sd/-

(CA. RAJENDRA KUMAR P)

MEMBER

Sd/-

(CA. COTHA S SRINIVAS)

MEMBER

DATE: 16.01.2023

PLACE: NEW DELHI

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

  
निशा शर्मा / Nisha Sharma

वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer  
अनुशासनात्मक निदेशालय / Disciplinary Directorate  
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया  
The Institute of Chartered Accountants of India  
आईसीएआई भवन, विास नगर, शाहदरा, दिल्ली-110032  
ICAI Bhawan, Vishwa Nagar, Shahdara, Delhi-110032

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2021-2022)]

[Constituted under Section 21B of the Chartered Accountants Act, 1949]

Findings under Rule 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

File No. : [PR-10/16/DD/55/2016-DC/815/2018]

In the matter of:

**Dr. Sanjay Dhanuka & Dr. Sunita Chauhan,**  
G-01, Vineet Apartments,  
53, Saket Nagar  
Indore – 452018

.... Complainant

-Vs-

**CA. Anup Pathak (M.No.073907),**  
17CA, Slice-5 Scheme-78,  
Indore-452001

.... Respondent

MEMBERS PRESENT AS ON 13.07.2021:

CA. (Dr.) Debashis Mitra, Presiding Officer – Present-in-person

CA. Amarjit Chopra, Government Nominee – through video conferencing mode

CA. Babu Abraham Kallivayalil, Member – through video conferencing mode

CA. Rajendra Kumar P, Member - Present-in-person

DATE OF FINAL HEARING : 13.07.2021 (through Physical/ Video Conferencing)

PARTIES PRESENT:

Respondent : CA. Anup Pathak (through video conferencing mode)

**CHARGES IN BRIEF:**

1. In the instant matter, the Respondent has been charged for issuing a certificate wherein he certified that Dr. Subodh Jain, MD of M/s Sobhagya Hospital & Research Center has made full payment to the persons named as shareholders / transferor in the consent terms (for acquisitions of shares) and to others towards professional fees and refund of unsecured loan. The Complainant(s) have alleged that the Respondent has willfully and knowingly issued such fake and incorrect certificate as no payment was made by Dr. Subodh Jain from his own money as stipulated in the Company Law Board (CLB) order. Allegedly, it is charged that Dr. Subodh Jain has diverted the funds of the Company borrowed from a finance company to companies incorporated solely for this diversion purpose and paid the share purchase amount out of the said diverted money. According to the Complainant, the Respondent was aware of it and still he had issued the false certificate.

**BRIEF FACTS OF THE PROCEEDINGS:**

2. The Committee noted that on this day of hearing, the Complainants were not present before it, however, the Respondent was present through Video Conferencing mode to defend his case on his own. The Committee further noted that the Complainants remained absent in all the earlier fixed for this case. Accordingly, the Committee decided to hear the case ex-parte the Complainants.
- 2.1 At the outset, the Committee enquired from the Respondent that as to whether he wish to opt for the de-novo hearing by the present new bench as a consequence of change in composition of the earlier bench post last hearing held on 16th March, 2020 in his case. The Respondent submitted that the Committee may continue its proceedings in his matter from the stage it was completed in the last hearing by the earlier bench. The Committee acceded to his request and continued the hearing.

- 2.2 Thereafter, the Respondent presented his line of defense by presenting the arguments, among others, that the property in question was already mortgaged and the said mortgage on assets in question was done much before the alleged Company Law Board (CLB) order. He also emphasized that the language in the certificate issued by him reads otherwise than the way it is interpreted in the complaint. Therefore, he pleaded not guilty for not violating the directions under the CLB order. The Committee posed certain questions to him to understand the issue involved and the role of the Respondent in the case.
- 2.3 After hearing the Respondent, the Committee decided to conclude the hearing.

**FINDINGS OF THE COMMITTEE:**

3. The Committee on perusal of the Certificate dated 01-07-2015 noted the Respondent had certified as under:

*"From the scrutiny of the bank statement, relevant books of accounts and related documents, I hereby certify that in compliance to the Company Law Board Order dated 15<sup>th</sup> December, 2014 in the Company petition no.C.P.No.16/397-398/CLB/MB/2014; Dr. Subodh Jain has made full payment to the persons named as shareholders/ Transferor in the consent term sheet Annexure-A of the said order and to other towards professional fee and refund of unsecured loan....."*

**(emphasis added)**

The Committee hence noted that the Respondent had certified two aspects that Company Law Board Order dated 15th December, 2014 is complied and Dr. Subodh Jain has made full payments to the persons named as shareholders/Transferors.

4. It was further noted by the Committee that while paragraph 3 of the CLB Order dated 15th December, 2014 provides the amount to be paid, paragraphs 4 & 5 stipulates the procedure and conditions of such payment which also includes the following:

*"5. Until realization of the consideration amount to the petitioner & others as provided in Clause (4) above, the Respondent shall not transfer, dispose off and or create third party rights in any manner whatsoever, except in the ordinary course of business including the banks for financial facilities, in any of the assets, fixed and moveable of the Respondent No. 1 Company."*

5. From the above extracts of relevant clause under the CLB order, it was noted that both the Company and buyers of shares were prohibited from creating charge on the assets of the Company. Further, it was noted that the charge was created by mortgaging the hospital to obtain the loan from a finance company and the proceeds of which were deposited to pay sale consideration and doctor's fees etc.

6. The Committee noted that the Respondent should have properly used the language in his certificate or should have made appropriate qualifications or disclaimer to avoid any scope of confusion for the stakeholders. Thus, in the opinion of the bench, the Respondent was prima facie negligent in issuing the impugned certificate which was not in compliance with the CLB order. In other words, certifying compliance of CLB Order by the Respondent was factually incorrect in the sense that payments have not been made by Dr. Subodh Jain personally. The said fact was also admitted by the Respondent before the Bench.

7. Therefore, the Committee, on considering the documents on record and the admission of the Respondent decided to hold the Respondent Guilty of professional misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

**CONCLUSION:**

8. In view of the findings as mentioned in above paragraphs, the Committee is of the considered opinion that the Respondent is **GUILTY** under Item (7) of Part- I of Second Schedule to the Chartered Accountants Act, 1949.


sd/-  
**(CA. (DR.) DEBASHIS MITRA)**  
**PRESIDING OFFICER**

(approved & confirmed through email)  
**(CA. AMARJIT CHOPRA)**  
**GOVERNMENT NOMINEE**

(approved & confirmed through email)  
**(CA. BABU ABRAHAM KALLIVAYALIL)**  
**MEMBER**

(approved & confirmed through email)  
**(CA. RAJENDRA KUMAR P)**  
**MEMBER**

**Date : 19.1.2022**  
**Place : New Delhi**

  
प्रमाणित सत्य प्रतिलिपि / Certified true copy

सीए. ज्योतिका ग्रोवर / CA. Jyoti K. Grover  
सहायक सचिव / Assistant Secretary  
अनुशासनमूलक निदेशालय / Disciplinary Directorate  
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया  
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