



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

[PR/86A/18-DD/115/2018/BOD/577/2020]

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:

CA. Mahesh Sahai & Ors.

M/s V. Sahai Tripathi & Co. (FRN 000262N)

Chartered Accountants

8E Hansalaya

15, Barakhamba Road

New Delhi -110001.

.....Complainant

Versus

CA. Adarsh Agrawal (M.No. 092249)

B-21, Lower Ground Floor,

Jangpura Extension,

New Delhi – 110014.

.....Respondent

[PR/86A/18-DD/115/2018/BOD/577/2020]

MEMBERS PRESENT (in person):

CA. Rajendra Kumar P., Presiding Officer

Ms. Dolly Chakrabarty (IAAS, retd.), Government Nominee

Date of Final Hearing: 17th March 2023

1. The Board of Discipline vide Findings dated **10th February 2023** was of the view that **CA. Adarsh Agrawal (M. No. 092249)** is Guilty of "Professional Misconduct" falling within the meaning of Item (8) of Part I of First Schedule and "Other Misconduct" falling within the meaning of Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act.
2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against **CA. Adarsh Agrawal** and communication dated 1st March 2023 was addressed to him thereby granting him an opportunity of being heard in person and/or to make written representation before the Board on 17th March 2023.
3. **CA. Adarsh Agrawal** made his written representation vide letter dated 9th March 2023 and 16th March, 2023. He also appeared before the Board through



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

[PR/86A/18-DD/115/2018/BOD/577/2020]

video conferencing on 17th March 2023 and made his oral representation thereat.

4. **CA. Adarsh Agrawal**, in his written representation, inter-alia, submitted as under:
- The Respondent has been successfully practicing for several years as a respected Member of the Institute. There have been no previous complaints against the Respondent before the Institute. The Respondent is remorseful for his actions and takes full responsibility of his honest mistake, which is an outcome of a different understanding and interpretation of the Agreement and law of land governing partnership and contracts between parties.
 - The Respondent has been found guilty of mere technical infractions which arose due to a different understanding by the Respondent of the clauses of the Partnership Agreement and Retirement Agreement, executed between him and the Complainants.
 - The present complaint is an outcome of animosity between the parties due to falling out of partnership and multiple disputes pending thereof.
 - The Respondent's dependents rely mainly on him for financial support. A severe sentence would not only harm the reputation of the Respondent but also negatively impact his family and dependents.
 - It is requested that a lenient sentence that allows the Respondent to make amends for his actions will help him reform and become a better Member of the Institute.
 - The ulterior motive of settling scores by filing the present Complaint is also evident from the fact that these Complaints were not preferred in September-October of 2016, when audit for the alleged solicited clients of Complainant was carried out by his Firm. However, the complaints were filed in 2018, only after FIR was lodged against CA. Vishwas Tripathi (Complainant) for stealing black pepper crops from farms owned by the Respondent in Odisha. It is imperative to note that the audit for these clients was carried out by the third party in 2017.
5. The Board has carefully gone through the facts of the case along with the oral and written representation of CA. Adarsh Agarwal.
6. As per the Findings of the Board as contained in its report, with respect to the first charge the Board was of the view that the conduct of the Respondent being a partner of the firm M/s RAAS & Associates in accepting the said assignments does not seem to be in line with due procedure as he neither complied with the conditions of either the partnership deed or the Retirement Deed nor did he wait for being relieved from the Complainant firm which clearly reflects that his conduct is unbecoming of a Chartered Accountant. Accordingly, the Board held the Respondent Guilty of Other Misconduct falling within the meaning of Item (2) of Part IV of the First Schedule to the Chartered



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

[PR/86A/18-DD/115/2018/BOD/577/2020]

Accountants Act, 1949 read with Section 22 of the said Act in respect of the said charge. As regards the second charge the Board was of the view that the appointment as Tax Auditor is for the Firm of Chartered Accountants and not for the partner signing on behalf of that firm. Thus, it was required by the Respondent's firm M/s RAAS & Associates to communicate with the previous auditors (i.e. the Complainant firm) before accepting such assignments. Also, the requirement to communicate is applicable in respect of all types of auditees. Therefore, irrespective of the fact whether the Respondent was within his rights or not as per the conditions of Partnership and Retirement Deed to accept assignments of ex-clients of the Complainant firm, it is established that he failed to communicate with the previous auditors (Complainant firm) before accepting the said assignments. Therefore, the Board held the Respondent Guilty of Professional Misconduct falling within the meaning of Item (8) of Part I of First Schedule to the Chartered Accountants Act, 1949 also in respect of the said charge. Accordingly, **CA. Adarsh Agrawal** was held Guilty of "Professional Misconduct" falling within the meaning of Item (8) of Part I of the First Schedule and "Other Misconduct" falling within the meaning of Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act.

7. Thus, upon consideration of the facts of the case, the consequent misconduct of **CA. Adarsh Agrawal** and keeping in view his oral and written representation before it, the Board decided to **Reprimand CA. Adarsh Agarwal (M.No. 092249)**.

Sd/-

CA. Rajendra Kumar P.

(Presiding Officer)

Sd/-

Ms. Dolly Chakrabarty (IAAS, retd.)

(Government Nominee)

DATE: 19th April 2023

Jyotika

प्रमाणित सत्य प्रतिलिपि / Certified true copy

सी.ए. ज्योतिका ग्रोवर / CA. Jyotika Grover
सहायक सचिव / Assistant Secretary
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आई. गे.आई. बवन, 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/86A/18-DD/115/2018/BOD/577/2020

CORAM (present in person):

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

In the matter of:

CA. Mahesh Sahai & Ors.
M/s V Sahai Tripathi & Co. (FRN 000262N)
Chartered Accountants
8E Hansalaya
15, Barakhamba Road
New Delhi -110001.

.....Complainant

Versus

CA. Adarsh Agrawal (M.No. 092249)
B-21, Lower Ground Floor,
Jangpura Extension,
New Delhi – 110014.

.....Respondent

Date of Final Hearing : 5th December, 2022
Place of Final Hearing : New Delhi / through videoconferencing

PARTIES PRESENT (through videoconferencing):

Representative of the Complainant firm : CA. Vishwas Tripathi
Counsel for the Complainant firm : Adv. Mukul Dhawan



Respondent : CA. Adarsh Agrawal
Counsel for the Respondent : Adv. Animesh Thakur

FINDINGS:

BACKGROUND OF THE CASE:

1. The Respondent being a partner in the Complainant's firm i.e. M/s V Sahai Tripathi & Co. alongwith others had breached the conditions of partnership deed entered into by him with the Complainant's firm before and after he resigned from the said firm. His firm accepted the appointments in various entities without first obtaining No Objection Certificate (NOC) from the previous auditor i.e. Complainant firm.

CHARGE ALLEGED:

- 2.1 It has been alleged that the Respondent breached certain conditions of the partnership deed both during the time when he was acting as a partner and also after resigning from the Complainant firm. More specifically, it is mentioned /cited that Clause 12 of the Partnership Deed of the Complainant firm which among others, preconditioned upon or prohibits every partner to not to accept any existing or prospective work allotted to or done by the firm in the name of M/s V. Sahai Tripathi & Co. (Complainant firm) or by erstwhile de-merged firms M/s V. Sahai & Co and M/s V. Tripathi & Co. either in their own name or in name of any firm in which he was a partner/ proprietor either directly or indirectly for a period of three years from his retirement or resignation from the firm or by virtue of his ceasing to be a partner of the firm by any reason. It is also mentioned/cited that the reference of the said clause 12 was reiterated in the retirement Deed entered into by the Respondent with the other continuing partners. Allegedly, the Respondent had breached this condition by accepting assignments in various entities (8 to 9 in numbers) post his resignation from the Complainant firm in which the later was giving services. The Complainant has brought on record various documents to corroborate the fact that the Respondent's firm had accepted assignments of ex-clients of Complainant's firm like M/s Pahle India Pvt Ltd., M/s Nahargarh Havelies & Resorts Pvt Ltd, M/s Futureworks Consulting Pvt Ltd. etc. in violation of partnership deed and retirement deed which were earlier being serviced by the Complainant's firm. Allegedly, these assignments were accepted by the Respondent's firm in violation of the conditions of the partnership deed by joining hands with the other ex-partner of the Complainants' firm who also resigned along with the Respondent and jointly formed a new partnership firm viz. M/s RASS & Associates (FRN 030281N) on 26th June, 2016 even before retiring from the Complainant firm on 30th September, 2016. Allegedly, the other partner of the Respondent firm first submitted the resignation letters to few clients by sending them

resignation letters on behalf of Complainant firm without getting NOC from the other retiring partners then by accepting the same assignments in the name of a newly created firm. Moreover, it was also alleged that there were certain clients of the Complainant firm where the Respondent's firm accepted the assignments with the same modus operandi as mentioned above even without resignation by the former. In addition to the above, it has also been alleged that directors of different companies who were authorised to file Forms ADT-1 with MCA with respect to appointment of new firm M/s RASS & Associates, it was noticeable that Resolution date mentioned in all such ADT Forms vide which these directors of all such companies were given authority to file Form ADT-1 were dated same date i.e., 06.09.2016 which according to the Complainant was quite unusual and conspiring.

2.2 The Respondent failed to secure NOC from the retiring auditors before accepting the assignments as statutory auditors in various entities as discussed/ alleged in para 2.1 above.

BRIEF OF PROCEEDINGS HELD:

3.1 At the time of hearing held in the case on 5th December 2022, the representative of the Complainant firm and the Respondent along with their Counsels were present before the Board through video conferencing. The Respondent and the representative of the Complainant firm were put on oath and they confirmed they have read and understood the contents of the modalities and protocols of e-hearing and follow them. Thereafter, the charges alleged against the Respondent were taken as read with the consent of the parties present. On being asked by the Board as to whether the Respondent pleaded guilty in respect of the charges alleged against him, the Respondent answered in negative and his Counsel made his detailed oral submissions before the Board. The Counsel for the Complainant also made his submissions to substantiate the allegations alleged against the Respondent. On consideration of the documents and submissions on record, the Board concluded the proceedings in the case. However, the Counsel for the Respondent stated that he wanted to submit certain citations in support of the submissions made by him before the Board. The Board acceded to his request and allowed him to submit the same within a period of 7 days' with a copy to the Complainant to provide his comments thereon, if any. Accordingly, the decision on the conduct of the Respondent was kept reserved by the Board. Thereafter, the Respondent submitted his reply.

3.2 At its meeting held on 3rd February 2023, keeping in view the submissions and documents on record, the Board decided on the conduct of the Respondent.

BRIEF OF SUBMISSIONS OF THE PARTIES TO THE CASE:

(a) The Respondent vide his Written Statement submitted as under:

B

- 4.1 It is admitted to the extent of the filing of Form ADT-1 being submitted by the directors of various companies with the Ministry of Corporate Affairs (MCA) with respect to appointment of M/s RAAS & Associates. The rest of the assertions are misleading, baseless, false and hence denied by the Respondent. It is specifically denied that the Respondent had breached certain conditions of the Partnership Deed both during the time when he was acting as a Partner and also after resigning from the Complainant's firm. It is denied that Clause 12 of the Partnership Deed (refer to entry 1 of Appendix II) which is also reiterated in Clause 7 of the Retirement deed (refer to entry 2 of Appendix II) has been breached by the Respondent. Clause 12 of the Partnership deed (refer to entry 1 of Appendix II) acts as restraint to profession under section 27 of Indian Contract Act, 1872 (refer to entry 1. of Appendix I) and being prima facie void cannot be enforced. A professional cannot be restricted from accepting work after the contract/partnership deed has come to an end from clients who voluntarily approach him for his services. Further, the terms of Clause 12 of the Partnership Deed (refer to entry 1 of Appendix II) are discriminatory as they restrict certain and not all partners from accepting work from any of the clients which have previously worked with the Complainant's firm for a period of three years post termination of contract. It is to be further noted that there is no provision either in the Chartered Accountants Act, 1949 or the Indian Partnership Act, 1932 which mandates a Chartered Accountant who is partner of a firm to obtain a No Objection Certificate (NOC) before sending resignation letters on behalf of the firm. Even otherwise, though it is not mandatory to take consent from the other partners before sending resignation letters to the clients on behalf of the firm as each partner acts as an agent to the other partner, an oral consent was taken by the Respondent before sending the said resignation letters.
- 4.2 The Director (Discipline) failed to even take judicial cognizance of Section 27 of the Indian Contract Act, 1872 and relevant provisions of the Indian Partnership Act, 1932 and Clause 4 of the Partnership Deed (refer to entry 5 of Appendix II).
- 4.3 The observation with respect of conspiracy in there being a common date in all the Board Resolutions is specifically denied.
- 4.4 Mere cursory reading of Clause 6 of the Retirement Deed (refer to entry 7 of Appendix II) will demonstrate that it has been executed without even giving an opportunity to the Respondent to read the terms of the Deed.
- 4.5 The Complaint is not maintainable in terms of law of the land as it has been filed only to harass the Respondent. It is also submitted that unreasonable restraint on profession cannot be enforced by any Court of Law.
- 4.6 Clause 12 of Partnership Deed and Clause 7 of Retirement Deed similarly also cannot take shelter of Section 36(2) of the Indian Partnership Act, 1932 (refer to entry 2 of Appendix 1) as the said

provision only carves out an exception for reasonable restraint on carrying on business similar to that of the partnership firm for a limited period and in a specified local territory. However, such restraint is only with respect to carrying on similar business and is not applicable on profession.

4.7 All the clients who have allegedly shifted from M/s V Sahai Tripathi & Co. to M/s RAAS & Associates have done so out of their own sweet will and there is nothing on record to show to the contrary. The term 'solicitation / solicit' has been construed very narrowly both in English and Indian jurisprudence to encompass only direct and indirect inducement for luring clientele or erstwhile employees. The Complainant has failed to place on record even a single document to exhibit any sort of direct or indirect inducement to the Clients who chose to shift from M/s V Sahai Tripathi & Co. to M/s RAAS & Associates.

4.8 The purpose of communication with previous Chartered Accountant is to ensure that the new auditor has complete knowledge about the affairs of the entity and takes note of any reservation of the previous Chartered Accountant with respect to the books of accounts of the entity.

4.9 It is an admitted position between the parties that the Respondent was the concerned Chartered Accountant for auditing the accounts of entities listed in paragraph 13 while he was the partner at M/s V Sahai Tripathi & Co. and he continued to be the concerned Chartered Accountant when the entities shifted to M/s RAAS & Associates. Therefore, it is unimaginable to assert that a person should be compelled to communicate with himself to comply with the provision of Part 1, Entry (8) of First Schedule to the Act and compliance of the same by any stretch of imagination in the present case will lead to absurdity.

4.10 In response to the ancillary allegation of the Complainant that the Respondent did not obtain NOC from the partners of M/s V Sahai Tripathi & Co. before sending resignation on behalf of the firm, the Complainant verbally communicated that they had no objections with the entities continuing with the Respondent as they were with the Complainant firm only because of him.

4.11 A professional cannot be restricted from accepting work after the contract/partnership deed has come to an end from clients who voluntarily approach him for his services. Further, the terms of Clause 12 of the Partnership Deed (refer to entry 1 of Appendix II) are discriminatory as they restrict certain and not all partners from accepting work from any of the clients which have previously worked with the Complainant's firm for a period of three years post termination of contract.

4.12 There was no requirement of seeking No Objection Certificate (NOC) from the previous Chartered Accountant by the Respondent as he was the previous auditor of the said entities on behalf of the Complainant firm and he continued to be the concerned Chartered Accountant for statutory audit as Partner at M/s RAAS & Associates. It is submitted that Part I of Schedule (8) of the First Schedule to

the Act (refer to entry 7 of Appendix I) does not prescribe obtaining of NOC as only asserts communication with previous Chartered Accountant who in the present case was also the Respondent.

4.13 The Respondent also submitted certain case laws in support of his submissions which are as follows:

a. Gujarat High Court

CA. Rajesh V Dudhwala -Vs- Disciplinary on 6 November, 2012

Reliance on	Para 27	(Pg. 8 of 15)
	Para 3.1	(Pg. 9 of 15)
	Para 3.2	(Pg. 9 of 15)
	Para 11	(Pg. 11 of 15)
	Para 12	(Pg. 12 of 15)

b. Delhi High Court

The Council of the Institute of Chartered Accountants of India –Vs- Shri S.N. Sachdeva on 24 January, 2011

Reliance on	Para 15	(Pg. 7 of 9)
	Para 16	(Pg. 7 of 9)
	Para 20	(Pg. 8 of 9)

c. Madhya Pradesh High Court

The Council of the Institute of Chartered Accountants of India –Vs- C.H. Padliya And Co. And Ors. on 24 November, 1976

Reliance on	Para 17	(Pg. 6 of 9)
	Para 19	(Pg. 6 of 9)

d. Delhi High Court

Council of Institute of Chartered –Vs- B. Ram Goel on 23 October, 2000

Reliance on	Para 9	(Pg. 3 of 4)
-------------	--------	--------------

e. Calcutta High Court

B.N. Ry. Co. Ltd. –Vs- Dhanjishah Pestonji And Anr. on 7 June, 1929

Reliance on	Para 7	(Pg. 1 of 4)
	Para 10	(Pg. 2 of 4)
	Para 11	(Pg. 2 of 4)
	Para 15	(Pg. 3 of 4)
	Para 16	(Pg. 4 of 4)

f. Andhra High Court

The Institute of Chartered Accountants of India –Vs- Shri Mukesh Garg

Reliance on	Para 4	(Pg. 22 of 34)
	Para 6	(Pg. 22 of 34)
	Para 7	(Pg. 22 of 34)
	Para 4	(Pg. 23 of 34)
	Last Para	(Pg. 26 of 34)
	Para 2	(Pg. 28 of 34)
	Para 3	(Pg. 28 of 34)
	Para 4	(Pg. 28 of 34)
	Para 5	(Pg. 28 of 34)
	Para 1 to 4	(Pg. 29 of 34)
	Para 2	(Pg. 31 of 34)

g. Joshi John Vs. The Institute of Chartered Accountants of India & Ors., WP (C) No. 5833 of 2020 (D), passed by Hon'ble High Court of Kerala at Ernakulam.

h. Arvinder Singh & Anr. Vs. Lal Pathlabs Pvt. Ltd. & Ors., 2015 SCC OnLine Del 8337

(b) **The Complainant, in support of the allegation, inter-alia, submitted as under:**

- 5.1. The Complainants have preferred the present Complaint under Section 22 of Chartered Accountants Act, 1949 and not under Section 21 of ICAI Act, 1949.
- 5.2. It is true that the Respondent was advised to continue for some more time for completing the ongoing assignments of V. Sahai Tripathi and Co.
- 5.3. The Complainant requested to include Item (2) of Part II of the Second Schedule which is also applicable in this case.
- 5.4 The Complainant also requested to include Item (4) of Part II of the Second Schedule in this case in view of the fact that the Complainant has received written complaint from a client of them Ms. Ira Mishra that the Respondent has defalcated and embezzled money received in their professional capacity and cheated the client.

OBSERVATIONS OF THE BOARD:

- 6.1 At the outset, the Board noted that the Complainant requested to include some more clauses and extend the charges of Misconduct as alleged against the Respondent. In this regard, the Board noted that the Complainant in column 5 of Form 'I' referred to only two allegations against the Respondent. The Director (Discipline) held the Respondent Prima Facie Guilty in respect of the above mentioned charges under "Professional Misconduct" falling within the meaning of Item (8) of Part I of First Schedule and "Other Misconduct" falling within the meaning of Item (2) of Part IV of

the First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act. The said view of the Director (Discipline) had been accepted by the Board. Since the Chartered Accountants Act 1949 and the Rules framed thereunder do not contain any provision for the review of the Orders passed by the BOD/DC, the request of the Complainant was not accepted. Also, since the Respondent is afforded an opportunity to defend on the charges specified in Form 'I', there cannot be expansion of the charges at later stage of the disciplinary proceedings.

6.2 As regard the first charge, the Board noted that the Respondent as a partner of the Complainant firm signed a reconstituted partnership deed dated 29th December 2008 wherein Clause 12 of the said deed provided as hereunder:

"that the third, fourth, fifth (Respondent herein), sixth and seventh party will not accept any existing or prospective work allotted to or done by the firm in the name of M/s V. Sahai Tripathi & Co. (Complainants' firm) or by erstwhile de-merged firms M/s V Sahai & Co and M/s V Tripathi & Co. either in their own name or in name of any firm of which he is a partner/ proprietor either directly or indirectly for a period of three years from his retirement or resignation from the firm or by virtue of his ceasing to be a partner of the firm by any reason."

6.3 The Board also noted that the Respondent retired from the Complainant firm with effect from 1st October 2016 by signing a retirement deed dated 28th September, 2016 wherein at Clause 7 it was provided as hereunder:

*"That as agreed to in terms of para 12 of the partnership agreement dated 29th December, 2008 between the continuing and retiring partners the retiring partners individually and collectively agree and assure the continuing partner that they **will not accept any of the work done by the firm in the name of V Sahai Tripathi & Co., Chartered Accountants whether in their own name or in the name of any firm of which they are partners** or in which they are either directly or indirectly involved for a period of three years from their retirement from the partnership firm with effect from 1st October, 2016."*

6.4 The Board also noted that the Respondent formed a new partnership firm with CA. Rajan Sachdeva on 26th June 2016 which was violative of Clause 13 of the reconstituted partnership deed dated 29th December 2008 as stated hereunder:

"13. Each party shall remain fully, dedicated to the firm M/s V. SAHAI TRIPATHI & CO. for the development of professional work. No party shall carry on any other proprietorship firm or partnership firm or pursue professional work in his own name & will remain completely dedicated to the M/s V. SAHAI TRIPATHI & CO. s full time working partners. If however, any party is carrying on any professional work in his own name or is proprietor/partner in any other

proprietorship/partnership firm, he will take all steps either to wind-it up or leave it within six months from the commencement of this partnership deed."

6.5 The Board further noted that CA. Rajan Sachdeva, the other partner of the Respondent's firm sent resignation letters to the following clients of the Complainant's firm on its letter head on the following dates and through their new partnership firm accepted assignment as statutory auditors in such companies on the following dates:

S.No.	Name of the Auditee	Date of Resignation from the position of the auditor by the Complainant firm (Signed by the other partner of the Respondent firm in the capacity of partner of the Complainant firm)	Date of accepting audit by Respondent's firm (Signed by the other partner of the Respondent firm on behalf of the Respondent firm)
1	Pahle India Private Limited	05 th September 2016	20 th September 2016
2	Nahar Garh Haveli & Resorts Private Limited	05 th September 2016	20 th September 2016
3	Future Works Consulting Private Limited	05 th September 2016	20 th September 2016
4	Sai Prasad Green Power Private Limited	05 th September 2016	20 th September 2016
5	Bedder-IN Private Limited	05 th September 2016	20 th September 2016
6	Integrated Private Limited	05 th September 2016	20 th September 2016

The Board also noted that the dates of all the resolutions authorizing directors of all the companies to appoint the Respondent's firm as auditor in the Form ADT-1 was the same i.e., 6th September 2016 for all the aforesaid Companies.

6.6 The Board also noted that the CA. Rajan Sachdeva on behalf of the Respondent's firm M/s RAAS & Associates accepted such assignments even before he and the Respondent were relieved from the Complainant firm on 1st October, 2016 and since the Respondent is also a partner of the said firm, he is also liable for acceptance of such assignments even before he was relieved from the Complainant firm on 1st October, 2016.

6.7 In view of the above, the Board was of the view that the act of the Respondent being a partner of the firm M/s RAAS & Associates in having accepted the assignment as statutory auditors in the aforesaid companies/entities like M/s Pahle India Pvt Ltd., M/s Nahargarh Havelies & Resorts Pvt Ltd, M/s Futureworks Consulting Pvt Ltd. etc. which were previously being serviced by the Complainant firm wherein the Respondent was also a partner was clearly in violation of Clause 12

of the reconstituted Partnership Deed dated 29th December 2008 and Clause 7 of the retirement Deed dated 28th September, 2016. The Board was of the view that the submission of the Respondent that he signed the Retirement Deed dated 28th September, 2016 in a hurry and received the copy of the said Deed only through the instant complaint is not tenable as even in Clause 7 of the Retirement Deed dated 28th September, 2016 reference was there to the Clause 12 of the reconstituted Partnership Deed dated 29th December 2008 which prohibited the Respondent to not to accept any such work for a period of three years from his retirement.

6.8 The Board was of the view that while executing any document, it is expected of a Chartered Accountant to exercise reasonable care and caution and if the terms of the same are not acceptable to him, he should rescind from the same. It is not called for that once a document has been signed by him, he finds lacuna in the terms of the documents so executed.

6.9 Thus, the Board held that the conduct of the Respondent being a partner of the firm M/s RAAS & Associates in accepting the aforesaid assignments does not seem to be in line with due procedure as he neither complied with the conditions of either the partnership deed or the Retirement Deed nor did he wait for being relieved from the Complainant firm which clearly reflects that his conduct is unbecoming of a Chartered Accountant. Accordingly, the Board held the Respondent Guilty of Other Misconduct falling within the meaning of Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act in respect of the said charge.

6.10 As regard the second charge, the Board noted that the CA. Rajan Sachdeva on behalf of the Respondent's firm M/s RAAS & Associates accepted the Tax Audit assignment of the following companies/entities for the F.Y. 2015-16 without communication with the Complainant firm :

S.No	Name of Company	Auditor in 2014-15	Auditor in 2015-16	Date of Communiation with Complainant firm/present auditor
1	SCENARIO INDIA	V Sahai Tripathi & Co	RAAS & Associates	Not done
2	ACRE CARE Private Limited	V Sahai Tripathi & Co	RAAS & Associates	Not done
3	Gear Technologies	V Sahai Tripathi & Co	RAAS & Associates	Not done

The Board was of the view that the appointment as Tax Auditor is for the Firm of Chartered Accountants and not for the partner signing on behalf of that firm. Thus, it was required by the Respondent's firm M/s RAAS & Associates to communicate with the previous auditors (i.e. the Complainant firm) before accepting such assignments. Also, the requirement to communicate is applicable in respect of all types of auditees. Therefore, irrespective of the fact whether the

Respondent was within his rights or not as per the conditions of Partnership and Retirement Deed to accept assignments of ex-clients of the Complainant firm, it is established that he failed to communicate with the previous auditors (Complainant firm) before accepting the said assignments. Therefore, the Board held the Respondent guilty of Professional Misconduct falling within the meaning of Item (8) of Part I of First Schedule to the Chartered Accountants Act, 1949 also in respect of the said charge.

CONCLUSION:

7. The Board of Discipline, in view of the above, is of the considered view that the Respondent is **GUILTY** of "Professional and Other Misconduct" falling within the meaning of Item (8) of Part I of First Schedule and "Other Misconduct" falling within the meaning of Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act.

Sd/-

CA. Prasanna Kumar D.
(Presiding Officer)

Sd/-


Ms. Dolly Chakrabarty (IAAS, retd.)
(Government Nominee)

Sd/-

CA. (Dr.) Raj Chawla
(Member)

DATE: 10th February 2023

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


नीलम पण्डिर / Neelam Pundir
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक विभाग / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्व नगर, शाहदो, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahdola, Delhi-110032