

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/314/2018/DD/69/2019/BOD/628/2022]**

**CORAM: (Present in Person)**

CA. Rajendra Kumar P, Presiding Officer

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

CA. Priti Savla, Member

**In the matter of:**

Adv. (Dr.) T.N. Sharma

68/27, Pratap Nagar, Sanganer

JAIPUR – 302033.

.....Complainant

**Versus**

CA. Vaibhav Surana (M.No.414490)

M/s Suresh Surana & Company

Chartered Accountants

104, 1<sup>st</sup> Floor

Marudhar Kesri Apartment

Mohanpura Puliya, Sojati Gate

JODHPUR– 342001.

.....Respondent

**DATE OF FINAL HEARING : 06<sup>th</sup> December 2023**

**PARTIES PRESENT(in person):**

**Respondent : CA. Vaibhav Surana**

**Counsel for the Respondent : Shri Rajendra Kumar Salecha, Advocate**

**FINDINGS:**

**CHARGE ALLEGED:**

1. The Respondent provided different fake Certificates to M/s Precise Automation and Robotics (hereinafter referred to as "Firm") in collusion with the said firm. All these Certificates have been found fake when compared with the details provided by Assistant Commercial Taxes Officer, Jodhpur.

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**BRIEF OF PROCEEDINGS HELD:**

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S. No.	Date of Hearing(s)	Status of hearing(s)
1.	7 <sup>th</sup> November 2023	Part heard and adjourned with the direction to the Complainant to refer to the Hon'ble Delhi High Court Judgment dated 11 <sup>th</sup> November 2021 passed in LPA 208/2021 in the case of M/s Wholesale Trading Services Pvt. Ltd. -Vs- ICAI considering the issue of Locus Standi of the Complainant, amongst others and in the light of the same, give his views on the instant case before the Board.
2.	6 <sup>th</sup> December 2023	Heard and concluded in the absence of the Complainant with the direction to the Respondent to provide his written submissions along with an Affidavit to the effect as to the Certificates which he claims to have been issued and not issued by him within a week with a copy to the Complainant to provide his comments thereon, if any. Accordingly, the decision on the conduct of the Respondent was reserved by the Board.
3.	23 <sup>rd</sup> January, 2023	The Board noted that the response of the Respondent was received through communication dated 9 <sup>th</sup> December 2023, a copy of which was also shared with the Complainant. Accordingly, the Board decided on the conduct of Respondent on the basis of the documents and submissions on record.

**BRIEF SUBMISSIONS OF THE RESPONDENT: -**

3. The Respondent in his written submission, inter-alia, stated as under:
- 3.1 The mere assertion of the fact by the Complainant that the Respondent was not a party to the matter of First Information Report (FIR) and DBSAW 20154/2017 *per-se* reveals that the complete disclosure of the factual position was not made by the Complainant.
- 3.2 The allegation about the purported collusion between the Respondent and Mr. Mohit Agarwal as proprietor of M/s. Precise Automation and Robotics was quite misconceived in view of the factual position that the manner in which certain documents were subjected to fabrication and illegal use, was on the risk, responsibility, cost and consequences of its user and the complainant, who had undertaken the legal process by FIR and DBSAW No.20154/2017, could not have taken a truncated view of the situation in isolation.

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- 3.3 The inference drawn about the purported proceedings initiated/triggered by Government of Rajasthan in June 2016 against the Firm for using fake and fabricated documents with signatures of Respondent did not cast any liability/responsibility on the Respondent to take legal action against the Firm.
- 3.4 The way the issue with relation to the "3 Disputed Turnover Certificate" and over the signatures is raised by the complainant *per-se* reveals that forgery and fabrication was committed by the Firm on which the Respondent could hardly have exercised any control and the manner and context in which said issue is raised ought to be directed by the Complainant against the Firm.
- 3.5 With reference to the Certificate dated 3<sup>rd</sup> December 2014 and 28<sup>th</sup> May 2015, the Respondent made his stand clear that no such Certificate was issued and in connection with Certificate dated 3<sup>rd</sup> July 2014, it has been the stand of the Respondent that the figures were forged. The genuine Certificate dated 3<sup>rd</sup> July 2014 was issued by him based on Financial Statement and Income Tax Return for the relevant years and it has been extracted in the prima facie opinion to the effect as under:  
*"From the perusal of such Certificate brought on record by the Respondent, it is noticed that the figures of turnover for the F.Y. 2011-12 & 2012-13 are tallying with the figures disclosed by the Assistant Commissioner Taxes Officer, Government of Rajasthan vide his letter dated 1<sup>st</sup> March 2016 as mentioned in Para 9.4.1 of this PFO. Thus, the Respondent had exercised due care and diligence that there was a Certificate based on the consent and therewith facts and figures and nothing perverse about can be perceived about his conduct about issue of the relevant Certificate and in case these were subjected to any fabrication/forthwith the same cannot be made attributable to the Respondent".*
- 3.6 The manner in which the delivery of such communication dated 16<sup>th</sup> June 2016 duly acknowledged by Mr. Vijendra Singh Naruka having not been considered as authentic and genuine document that though it was acknowledged by some Mr. Vijendra Singh Naruka, AAO of having received as it was not bearing any "official stamp and seal" of the Department of Information and Technology, Government of Rajasthan and hence holding that it was not free from doubt suffers from patent illegality.
- 3.7 The communication dated 16<sup>th</sup> June 2016 which was received with reference to Mr. V.S. Naruka, AAO, Government of Rajasthan did contact him very lucidly states to the following effect:  
*"Incidentally, it is stated that on or around 15<sup>th</sup> June 2016 Mr. Vijendra Singh Naruka, AAO of Government of Rajasthan did contact me along with letter No.F.1.9(168)/RISL/Misc/2016/ 51980 dated 15<sup>th</sup> June 2016 seeking verification of certain documents and the inter-alia included Certificate dated 3<sup>rd</sup> December 2014. The copy of Letter dated 15<sup>th</sup> June 2016 is being annexed. The response to the said*

communication dated 15<sup>th</sup> June 2016 was made by me, per letter dated 16.6.2016, the copy of which is being annexed. It is stated that thereafter nothing was heard from the said office”.

- 3.8 It is relevant to mention in case non appearing of the “official stamp or seal” of Department of Information and Technology, Government of Rajasthan does not make the said document to be unrecognized and if the “non-appearance of seal” was an issue, the Director (Discipline) would have further probed into the said aspect by taking the matter suitably with concerned Department of GOR rather than have gone to “doubt” the authenticity and genuineness of acknowledged letter dated 16<sup>th</sup> June 2016 by a described Government official and thus inference drawn is in serious violation of natural justice and is to be rejected.
- 3.9 As soon as such action were brought to the knowledge of the Respondent by Government of Rajasthan, he did take the proper action which was expected to him to be taken at the relevant point of time and hence the inference drawn that the submission of fake signatures dated 3<sup>rd</sup> December 2014 was not have been subjected to any further action by the Respondent is misdirected in as much as misconceived.
- 3.10 The term “Expert” has been used under Section 45 of Indian Evidence Act, 1872 and Section 293 of Criminal Procedure Code, 1973 to the following effect:  
Section 45 of Indian Evidence Act, 1872  
*“45. Opinions of experts. —When the Court has to form an opinion upon a point of foreign law or of science or art, or as to identity of handwriting<sup>35</sup> [or finger impressions], the opinions upon that point of persons specially skilled in such foreign law, science or art,<sup>36</sup> [or in questions as to identity of handwriting]<sup>35</sup> [or finger impressions] are relevant facts. Such persons are called experts.*
- Section 293 of Criminal procedure Code, 1973  
*“293. Reports of certain Government scientific experts.  
(1) Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.  
(2) The Court may, if it thinks fit, summon and examine any such expert as to the subject- matter of his report.  
(3) Where any such expert is summoned by a Court and he is unable to attend personally, he may, unless the Court has expressly directed him to appear personally, depute any responsible officer working with him to attend the Court, if such officer is conversant with the facts of the case and can satisfactorily depose in Court on his behalf.*

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- (4) This section applies to the following Government scientific experts, namely:-*
- (a) any Chemical Examiner or Assistant Chemical Examiner to Government;*
  - (b) the Chief Inspector of- Explosives;*
  - (c) the Director of the Finger Print Bureau;*
  - (d) the Director, Haffkeine Institute, Bombay;*
  - (e) the Director<sup>1</sup>, Deputy Director or Assistant Director] of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;*
  - (f) the Serologist to the Government."*

Further the opinion of the "expert can" be obtained only when the original/primary evidence is before the opinion seeker during the course of the judicial proceedings and hence there was no reason that the Respondent could have sought "examination through forensic expert". Such an action could not have fallen within the domain of the Respondent.

- 3.11 On the basis of the assessment made with relation to the Certificate dated 21<sup>st</sup> August 2018 and Certificate issued on 21<sup>st</sup> July 2018, the suggestive action that the proprietor of the Firm was to be confronted or complaint against him was to be filed and thus having been considered as "highly strange and incomprehensible lacks the sustenance in view of the fact that there is a limitation to the human memory and after the Reply dated 16<sup>th</sup> June 2016 was delivered to AAO of Government of Rajasthan by the Respondent, there was no communication based on the same and the context in which the entire process of the reason based verification, if any, was being carried out at the level of Government of Rajasthan.
- 3.12 In the facts and circumstances the professional callings expected of the Respondent, did not contemplate such action and the viewpoint that there has been "connivance/collusion" before the Respondent and the Firm is bereft of any material and hence the same is denied.
- 3.13 The Director (Discipline) while has avoided to find out the core issue about the *locus standi* of the complainant, more particularly when he did take certain legal initiatives in which the Respondent was not made a party and now by subject complaint trying to set up a case which apparently does not have any legs to stand.
- 3.14 In arriving at the subject "Prima Facie Opinion", there has been grave violation of principles of natural justice as on the issue of the Reply letter dated 16<sup>th</sup> June 2016 no further enquiries were made by the Director (Discipline) with Government of Rajasthan about establishing genuineness and authenticity of the receipt of the same by Mr. V.S. Naruka, AAO, Government of Rajasthan.

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3.15 The Complainant has alleged about issue of fake certificates by the Respondent as transpiring from the letter dated 01.03.2016 of ACTO, Government of Rajasthan addressed to other Department of State Government. The Complainant has no where disclosed as to how he has been affected prejudicially by these certificates and has not been able to place on record any material to substantiate his "locus" to agitate the grievance against the Respondent.

3.16 In the facts and circumstances, he is completely the stranger to the issue raised with reference to the certificates which were issued by the Respondent and the purported certificates which were forged, tampered and fabricated.

3.17 The Complainant in Form No. I dated 25.02.2019 in Para No.7 have stated "Names of person who have knowledge of the facts of the case" as under:

- Rajcomp Info Services Limited, Rajasthan.
- Thana Ashok Nagar, Jaipur.
- Hon'ble High Court, Rajasthan Jaipur Bench in Writ Petition 20154/2017.

Rajasthan Comp. Info Services Ltd., Rajasthan is a Government of Rajasthan undertaking which has not placed any material/document on record. The Complainant has also not placed on record any document information relating to Thana Ashok Nagar, Jaipur. The Complainant ought to have disclosed that he is a Petitioner in CWP No.20154/2017 titled as Dr. Triloki Nath Sharma Versus. Principal Secretary and others before Hon'ble Rajasthan High Court, Jaipur Bench, Jaipur

#### **OBSERVATIONS OF THE BOARD:**

4.1 At the outset, the Board noted that there are three disputed Turnover Certificates brought on record by the Complainant alleged to be issued by the Respondent viz., Certificate dated 3<sup>rd</sup> July 2014, 3<sup>rd</sup> December 2014 and 28<sup>th</sup> May, 2015. It has been alleged by the Complainant that these Certificates were containing fake figures of Turnover for the F.Y.2010-11 to 2013-14 when these figures were compared to the figures as disclosed by Assistant Commissioner Taxes Officer, Government of Rajasthan with regard to this Firm vide his letter dated 1<sup>st</sup> March,2016. The Board also noted that these turnover figures mentioned in three different dated Certificates did not tally with each other for the same financial years as stated hereunder:

#### **Turnover figures (Rs.) mentioned in different Certificates :**

F.Y.	Certificate dated	Certificate dated	Certificate dated	Figures as
	3 <sup>rd</sup> July, 2014	3 <sup>rd</sup> December, 2014 (in Rs.)	28 <sup>th</sup> May, 2015 (in Rs.)	provided by Assistant

	(in Rs.) (herein after referred as "C1")	(herein after referred as "C2")	(herein after referred as "C3")	Commissioner Taxes Officer, Government of Rajasthan (Rs.)
<b>2010-11</b>	5,53,37,778	15,53,37,778	15,53,37,000	--
<b>2011-12</b>	5,71,67,953	15,71,67,953	15,71,67,000	1,67,953
<b>2012-13</b>	6,83,82,377	26,83,82,377	26,83,82,000	83,82,377.28
<b>2013-14</b>	7,88,69,638 (Still under Audit)	37,67,83,815	27,88,69,000	87,78,937.50

- 4.2 The Board noted that it is the defence of the Respondent that the Certificate C1 is tampered, forged and fabricated document whereas the Certificates C2 and C3 have never been issued by him. As regard the Certificate C1, the Respondent brought on record the original Certificate dated 3<sup>rd</sup> July 2014 issued by him on the basis of Financial Statements and Income tax returns of the firm for the relevant years before the Board during the course of hearing. The Board on a comparison of the Turnovers as mentioned in both the Certificates dated 3<sup>rd</sup> July, 2014 observed as under:

Financial Year	Turnover mentioned in Alleged Certificate as brought on record by the Complainant (in Rs.)	Turnover as per the Certificate produced by the Respondent (in Rs.)
2010-11	5,53,37,778	Not given in such Certificate
2011-12	5,71,67,953	1,67,953
2012-13	6,83,82,377	83,82,377
2013-14	7,88,69,638 (still under audit)	88,69,638 (still under audit)

On perusal of such Certificate brought on record by the Respondent, the Board noted that the figures of turnover for the F.Y.2011-12 and 2012-13 are tallying with the figures disclosed by the Assistant Commissioner Taxes Officer, Government of Rajasthan vide his letter dated 1<sup>st</sup> March,2016.

- 4.3 The Board also noted that the Respondent brought on record a letter dated 15<sup>th</sup> June, 2016 in which the Department of Information Technology & Communication, Government of Rajasthan brought this fact to the attention of the Respondent that the

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Turnover Certificate dated 03<sup>rd</sup> December, 2014 issued under his signature was submitted to them by the Firm in a bidding process for ePDS scheme in support of its financial capability and asked him to confirm the issuance of the same. The Respondent vide his reply dated 16<sup>th</sup> June 2016 denied of any such Certificate issued by him. Subsequent thereto, there had been no communication from the said Department with the Respondent in this respect.

4.4 The Board also noted that the Complainant filed a writ petition bearing no. 20154/2017 before the Divisional Bench of hon'ble High Court of Rajasthan, Jaipur in the said context wherein the Respondent was not a party and the same is still pending at admission stage.

4.5 The Board also noted that the Respondent brought on record a notarised Affidavit dated 9<sup>th</sup> December 2023 to the following effect: -

*"Issued the Certificate dated 03.07.2014 (W-11) relating to turnover in execution of the said Firm for the financial years 2011-2012, 2012-2013 and 2013-2014.*

*Issued the Certificate dated 21.07.2018 based on the annual accounts for the last three years ending 31.03.2018. I further say that W-42 is true and correct copy.*

*The basis of giving of the Certificate on 21.07.2018 has been the financial statement and income tax return for the financial year ended 31.03.2016, 31.03.2017 and 31.03.2018. The true and correct copies of which at W-43 to W-49 and the turnover for the financial years 2017-2018 was based on unaudited figures as per the "Tally" records produced by the firm through its sole proprietor and the true and correct copy of the print out of the document which were considered by me are at W-100 to W-112.*

*That the purported Certificate dated 03.12.2014 and 28.05.2015 were not issued by me and these are forged and fabricated documents.*

*That C-5 purported to be Certificate dated 03.07.2014 is a made up document by tempering with, forging and fabricating the Certificate dated 03.07.2014 which was issued by me in original and correct form as W-11."*

The Board also noted that a copy of the said Affidavit together with the other submissions of the Respondent was also forwarded to the Complainant vide e-mail dated 14<sup>th</sup> December 2023 for his comments thereon. However, no reply was received.



- 4.6 The Board also noted that the Complainant during the course of hearing informed that being RTI activist, he is just a whistle blower, and he has no locus standi to file the complaint. He filed the complaint only in public interest. In this regard, following the observations of the Hon'ble Delhi High Court in the Order dated 11<sup>th</sup> November 2021 passed in LPA 208/2021 in the case of M/s Wholesale Trading Services Pvt. Ltd. -vs- ICAI regarding the issue of Locus Standi of the Complainant amongst others, the Board held that the Complainant did not have any locus standi in the instant case. The Board also noted that the disputed Turnover Certificates allegedly issued by the Respondent as referred to in the instant case had been filed by the firm before the Department of Information Technology & Communication, Government of Rajasthan in a bidding process for ePDS scheme in support of its financial capability which in turn sought confirmation from the Respondent as to the issuance of the same and the Respondent categorically denied to have issued the same. However, no reference from them i.e. aggrieved party till date had been received in the said context by the Disciplinary Directorate.
- 4.7 Thus, on a detailed perusal of the submissions and documents on record, the Board was of the view that the Respondent did not had any role to play in the issuance of the three disputed Turnover Certificates brought on record by the Complainant. Accordingly, the Board held the Respondent NOT GUILTY in respect of the charge alleged.

**CONCLUSION:**

5. Thus, in conclusion, in the considered opinion of the Board, the Respondent is **NOT 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. 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. Rajendra Kumar P  
(Presiding Officer)

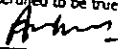
Sd/-

Ms. Dolly Chakrabarty (IAAS, ret'd.)  
(Government Nominee)

Sd/-

CA. Priti Savla  
(Member)

DATE: 08-02-2024

सही प्रतिलिपि  
Certified to be true copy  
  
अरुण कुमार / Arun Kumar  
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer  
अनुशासनात्मक निदेशालय / Disciplinary Directorate  
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया  
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