



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

[PR/142/15/DD/149/2015/BOD/411/2017]

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:

Sh. Sunpreet Singh Gandhi,  
385-386, 1<sup>st</sup> Floor, Double Storey, Rajinder Nagar,  
New Delhi – 110 060.

.....Complainant

**Versus**

CA. Vinay Kumar Seth (M. No. 406625)  
M/s Vinay Seth & Co. (FRN 013600C)  
Chartered Accountants,  
24/73-76, Kishori Niwas, Birhana Road,  
Kanpur – 208 001.

.....Respondent

[PR/142/15/DD/149/2015/BOD/411/2017]

Members present (in person):

CA. Rajendra Kumar P, Presiding Officer  
Ms. Dolly Chakrabarty (IAAS, ret'd.), Government Nominee

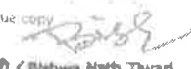
**Date of Hearing: 21<sup>st</sup> July 2023**

**Date of pronouncement of Order: 17<sup>th</sup> December 2023**

1. The Board of Discipline vide its Findings dated 10<sup>th</sup> February 2023 was of the view that CA. Vinay Kumar Seth (M. No. 406625) is 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.
2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against CA. Vinay Kumar Seth and communication dated 22<sup>nd</sup> June 2023 was addressed to him thereby granting him an opportunity of being heard on 21<sup>st</sup> July 2023 which was exercised by him by being present in person before the Board. He confirmed receipt of the Findings of the Board. He also made his written representation on the Findings of the Board and requested the Board to take a lenient view in the case.
3. Since the decision on the quantum of punishment to be awarded to CA. Vinay Kumar Seth (M. No. 406625) was reserved by the Board, he vide communication dated 12<sup>th</sup> December 2023 was asked to be present before the Board on 17<sup>th</sup> December 2023 for the purpose of pronouncement of Order. He was present before the Board through video conferencing on the said date for the said purpose.
4. Thus, upon consideration of the facts of the case, the consequent misconduct of CA. Vinay Kumar Seth (M. No. 406625) and keeping in view his representation before it, the Board decided to remove the name of CA. Vinay Kumar Seth (M. No. 406625) from the Register of Members for a period of 1 (one) month.

Sd/-

CA. Rajendra Kumar P  
(Presiding Officer)

Unaltered to be true copy  
  
बिहू नथ तिवारी / Bihwa Nath Tiwari  
कार्यकारी अधिकारी / Executive Officer  
अनुशासनालय निदेशालय / Disciplinary Director's Office  
इंस्टीट्यूट ऑफ चार्टर्ड अकाउंटेंट्स ऑफ इंडिया  
11, Connaught Place, New Delhi - 110 048

Sd/-

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

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/142/15/DD/149/2015/BOD/411/2017

**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:**

Sh. Sunpreet Singh Gandhi,  
385-386, 1<sup>st</sup> Floor,  
Double Storey, Rajinder Nagar,  
New Delhi – 110 060.

.....Complainant

Versus

CA. Vinay Kumar Seth (M. No. 406625)  
M/s Vinay Seth & Co. (FRN 013600C)  
Chartered Accountants,  
24/73-76, Kishori Niwas,  
Birhana Road,  
Kanpur – 208 001.

.....Respondent

**DATE OF FINAL HEARING** : 21<sup>st</sup> September, 2022  
**PLACE OF FINAL HEARING** : New Delhi/ through video conferencing

**PARTIES PRESENT:**

**Complainant** : Shri Sunpreet Singh Gandhi (through VC)  
**Complainant's father** : Shri Sarvjeet Singh Gandhi (through VC)  
**Complainant's Brother** : Shri Ricky Singh Gandhi (in person)  
**Respondent** : CA. Vinay Kumar Seth (through VC)  
**Counsel for the Respondent** : Adv. Sumit Kansal (through VC)

**FINDINGS:**

**BACKGROUND OF THE CASE:**

*[Handwritten mark]*

- 1.1 M/s. H.R. Polymers, a partnership firm having its registered office at 113/97 Swaroop Nagar, Kanpur and the firm through its own legitimate sources is availing term loan and working capital limits from UPFC and has mortgaged its factory with Uttar Pradesh Financial Corporation (UPFC). The Partners of this Firm are Mr. Swaranjeet Singh Gandhi (50% Partner), Mr. Sunpreet Singh Gandhi (40% Partner) & Mrs. Harvinder Kaur Gandhi (10% Partner).
- 1.2 Mr. Swaranjeet Singh Gandhi with the help of the Respondent manipulated all documents including the nature of the firm i.e. Mr. Swaranjeet Singh Gandhi has misrepresented himself to be the Proprietor and M/s. H.R. Polymers as a Proprietorship Firm. The Respondent through series of window-dressed books and his connection with bankers had been able to provide illegitimate loans to this misrepresented Firm M/s. H.R. Polymers (Prop.) and has been able to provide Mr. Swaranjeet Singh Gandhi illegitimate loans from Bank of Baroda, Anwar Ganj Branch of Rs. 24 Lacs and Punjab National Bank of Rs. 125 Lacs from Colonel Ganj Branch, Kanpur.
- 1.3 The Respondent has also involved another CA in this fraud i.e. CA Riti Agarwal; both the CA have misrepresented the books and have presented different balance sheets in different banks for same Firm i.e. M/s. H.R. Polymers(Prop.) to avail all these loans from Bank of Baroda and Punjab National Bank. The Bank of Baroda has filed FIR in Raipurva Police Station, Kanpur against Mr. Swaranjeet Singh Gandhi and CA Riti Agarwal.

**CHARGES ALLEGED:**

- 2.1 The Respondent along with CA. Riti Agarwal have connived with the Complainant's partner, Mr. Swaranjeet Singh Gandhi, and fabricated the books of accounts including nature of the partnership firm M/s. H.R. Polymers i.e. misrepresented Mr. Swaranjeet Singh Gandhi as the proprietor and M/s. H.R. Polymers as a proprietary firm.
- 2.2 The Respondent through series of window-dressed books and his connections with bankers had been able to provide illegitimate loans to this misrepresented firm M/s. HR Polymers (Prop.) and has been able to provide Mr. Swaranjeet Singh Gandhi illegitimate loan from Bank of Baroda, Anwar Ganj Branch of Rs. 24 lacs and Punjab National Bank of Rs. 125 lacs from Colonel Ganj Branch, Kanpur.
- 2.3 They have misrepresented the books and have presented different Balance Sheets in different Banks for the same firm to avail loans from Bank of Baroda and Punjab National Bank.
- 2.4 Further, they have manipulated the books of M/s. Supersun Laminations & Plastics Pvt. Ltd., wherein the Complainant's father Mr. Sarvajeet Singh Gandhi is the MD and wife of Mr. Swaranjeet Singh Gandhi Mrs. Deepika Gandhi is the Director, which is a non-operational unit for many years, however, the fake Balance Sheet shows that the Company is operational and earning profits.

27

2.5 The Respondent is a party to the fraud to an extent that he has also incorporated a Company with Mr. Swaranjeet Singh in the name of M/s. V.K. Infraplanet Pvt. Ltd. They want to exploit the Banks and the Complainant's firm and make illegitimate profits out of it. By showing losses in M/s. HR Polymers (Partnership Firm), the Respondent is reducing/ eroding the Complainant's capital in the firm whereas on the other hand is showing profits in same firm i.e., M/s. HR Polymers (Sole Proprietorship).

The Board noted that the Director (Discipline) held the Respondent Prima Facie Guilty in respect of the charge specified at 2.1 to 2.4 above and not guilty in respect of the charge specified at 2.5 above. The said view of the Director(Discipline) had been accepted by the Board. Accordingly, the conduct of the Respondent had been examined in respect of the charge specified at 2.1 to 2.4 above.

**BRIEF OF PROCEEDINGS HELD:**

3.1 At the time of hearing held in the case on 18<sup>th</sup> July 2019 wherein the Complainant and Respondent along with their representatives were present, upon consideration of the submissions and documents on record, the Board adjourned the hearing in the case with the following direction:

The Board directed the office to call/ check following documents/ information:

- (i) To check the auditor of M/s. Superson Laminators & Plastic Private limited.
- (ii) To call copy of Form 3CD, Balance Sheet from Income Tax office
- (iii) To call copy of Charge Sheet
- (iv) To call brother of the Complainant Shri Swarnjeet Singh Gandhi as witness in next hearing.
- (v) To call CA. Riti Agrawal as witness in next hearing.

3.2 Thereafter, in the meeting held on 05<sup>th</sup> August, 2019, the Board examined the witness i.e. CA Riti Agarwal, present at the time of hearing. After hearing both the parties and examination of the witness in the matter, the Board adjourned the hearing and directed the office to call/ check following documents/ information:

From UPFC

- (i) To call copy of call financial statement of M/s HR Polymers for financial year 2011-12 onwards.

From Bank of Baroda, Punjab National Bank

- (i) To call copy of application for loan and related documents like Balance sheet of M/s HR Polymers submitted by the applicant and sanction letter from Bank of Baroda, Punjab National Bank.

Further, the Board directed the office

- (i) To issue reminder letter to Income Tax office calling of copy of Form 3CD, audit report, Balance Sheet of M/s HR Polymers for financial year 2011-12.

- (ii) To call copy of charge sheet and also enquire as to who applied bail on behalf of CA. Riti Agrawal.
- (iii) To call brother of the Complainant, Shri Swarnjeet Singh Gandhi as witness in next hearing.

3.3 Thereafter, the Board in the meeting held on 15<sup>th</sup> December 2021 noted that the Complainant and Respondent along with its counsel was present through video conferencing and they confirmed that they have read and understood the contents and modalities and protocols and follow them. Since there was a change in composition of the Board since the last hearing, the Board gave an option to the parties of De-novo enquiry or continue from last proceedings to which they stated that they would continue from last proceedings. Thereafter, the Counsel for Respondent made detailed submissions before the Board. The Respondent was examined by the Board. The Complainant made his counter submissions to substantiate the charges levelled against Respondent. Considering the submissions and documents on record, the Board adjourned the hearing in the case with the direction to the parties to submit the following documents/information with a copy to the other party for their comments thereon, if any:

To the Complainant:-

1. Audited Financial Statement of M/s HR Polymers (partnership firm) for the F.Y.2012-13.
2. Details of auditor of M/s H R Polymers (partnership firm).
3. Letter from Punjab National Bank regarding sanction of loan to M/s HR Polymers (proprietorship firm) which is in his possession as claimed during the hearing.
4. Other documents like Account Opening Form, introducer details, details of proprietor and other documents submitted to Punjab National Bank at the time of sanction of loan to M/s HR Polymers (proprietorship firm).
5. Complete details of financial transaction between the Respondent and the father of the Complainant.
6. A gist of documents to substantiate the allegations alleged against the Respondent.
7. Their comments on the handwriting expert opinion sought by the Board in the alleged matter.

To the Respondent:-

1. Their comments on the handwriting expert opinion sought by the Board in the alleged matter.

2. To establish who has signed Audited Financial Statement of M/s HR Polymers (proprietorship firm) for the F.Y.2012-13 brought on record by the Complainant.

To the Office:

1. To send a reminder to PNB/Bank of Baroda/Income Tax Department seeking the information sought earlier with a copy to the senior Officials.

The Income Tax Department vide letter dated 10.05.2022 informed the Board that through e-filing portal it has been found that the assessee M/s. HR polymers, 113/97, Swaroop Nagar, Kanpur has e-filed its ITR for AY 2012-2013 in ITR -5 vide letter dated 29.09.2012. With the ITR no audit report or financial statement has been filed by the assessee.

- 3.4 Thereafter, the Board in the meeting held on 18<sup>th</sup> July, 2022 noted that the Complainant and the Respondent alongwith his Counsel was present before it through video conferencing. Since there was a change in the composition of the Board since the last hearing, the Board gave an option to the parties as to whether they would like to have a De -Novo enquiry or continue from the last proceedings to which the parties stated that they would like to continue from the last proceedings. Thereafter, the Counsel for the Respondent and the Complainant /his representative made their detailed submissions before the Board. Upon consideration of the submissions and documents on record, the Board adjourned the hearing in the case with the direction to the following to submit following documents/ information with a copy marked to the other party to the case to provide their comments thereon, if any:

To the Respondent:-

1. Copy of his Bank Statement for Nainital Bank Ltd. for the F.Y. 2010-11 to 2012-13.
2. Copy of the complete Income Tax return of Mr. Swaranjeet Singh Gandhi for the relevant year filed by the Respondent together with its P& L account, Balance Sheet, etc.
3. Contact details of Mr. Swaranjeet Singh Gandhi so that he can be summoned on the next date of hearing.

To the Complainant :-

1. Contact details of Mr. Swaranjeet Singh Gandhi so that he can be summoned on the next date of hearing.

To the office:

12

1. Seek from Punjab National Bank, the copy of the application for loan and other documents like the financial statements of M/s HR Polymers(proprietor firm) , PAN Card and address proof of the proprietor, introducer details, etc. which had been submitted by the borrower for getting the loan sanctioned/renewed from them.
  2. Seek from Bank of Baroda, the copy of the application for loan and other documents like the financial statements of M/s HR Polymers(proprietor firm) , PAN Card and address proof of the proprietor , introducer details, etc. which had been submitted by the borrower for getting the loan sanctioned/renewed from them. Also, seek the copy of the sanction letter issued to the said borrower by the bank.
  3. Summon Mr. Swaranjeet Singh Gandhi as a witness on the next date of hearing.
- 3.5 Thereafter, during the hearing held in the case on 6<sup>th</sup> September,2022 the Board noted that the Complainant alongwith his father and brother and the Respondent alongwith his Counsel was present before it. The Board also noted that Summon was issued to a witness in the case namely Shri Swaranjeet Singh Gandhi. However, he was not present before it. Thereafter, the Complainant and the Counsel for the Respondent made their respective submissions before the Board. The Respondent was examined by the Board. The Complainant requested the Board to grant him some time to respond to the submissions made by the Respondent vide his email dated 5<sup>th</sup> September 2022 as he had received the same only a day prior to the hearing.Upon consideration of the submissions and documents on record and keeping in view the request of the Complainant, the Board adjourned the hearing in the case with the direction to the Complainant to provide his counter on the submissions of the Respondent before the next date of hearing with a copy marked to the other party to the case to provide their comments thereon, if any. The Board also directed the office to summon Shri Swaranjeet Singh Gandhi to depose as a witness before it at the next date of hearing on 21<sup>st</sup> September 2022.
- 3.6 Thereafter, the Board in the meeting held on 21<sup>st</sup> September 2022 noted that the Complainant along with his father and brother and the Respondent alongwith his Counsel was present before it. The Board also noted that Summon was issued to a witness in the case namely Shri Swaranjeet Singh. However, he was not present. Subsequent to the last hearing held in the case on 6<sup>th</sup> September 2022, further written submissions of the Complainant had been received. Thereafter, 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 SUBMISSIONS OF THE PARTIES:**

Respondent:

*hr*

The Respondent, in his defense, inter-alia submitted as under:-

- 4.1 As regards the allegation of fake balance sheets of M/s H.R. Polymers (Sole Proprietorship) relating to F.Y. 2012-2013, the Respondent denied that he had not signed any such Balance Sheets. His signatures were fake. He clearly and firmly denied of having signed any such balance sheets.
- 4.2 The Respondent stated that he never prepared /carried out any audit of M/s H.R. Polymers. He had no concern in any manner with the books of accounts / balance sheets/ audits of M/s H.R. Polymers. He had no concern with the bank loans of M/s H.R. Polymers, Swaranjeet Singh Gandhi and the Complainant.
- 4.3 There was an immovable property situated at plot No.1 R.S.PURAM, K Block Kakadeo, Kanpur Nagar standing owned by Shri Saravjeet Singh Gandhi (Father of complainant). The Respondent negotiated the deal with him and settled for Rs.80,00,000/- and paid advance of Rs.5,00,000/- vide DD No. 599209 dated 25.10.2011 issued by Nainital Bank, payable at Delhi. This DD had been encashed by Sri Saravjeet Singh Gandhi (Father of Complainant). The execution of Sale Deed was pending. The payment was open for verification and confirmation from the father of the complainant as well as from the complainant. The complaint had been made for revenge upon refusal of the Respondent to indulge in Complainant's family dispute.
- 4.4 To maintain the funds Respondent had taken unsecured loan from Sri Swaranjeet Singh Gandhi. He had further taken unsecured loan of Rs.2,00,000/- vide RTGS No. BARBH1210505750 date 09.04.2012 from Sri Swaranjeet Singh Gandhi. It was not relevant to him whether the unsecured loans were given by Swaranjeet Singh Gandhi from his personal saving bank accounts or from his business current account. When occasion arose, the Respondent repaid the whole outstanding loan of Rs. 7,00,000/- (Rs 5,00,000/- + Rs. 2,00,000/-) from time to time, outstanding at Rs. 4,90,000/- as on date.
- 4.5 Complete account statement (Confirmed) for the transactions between the Respondent and Sri Swaranjeet Singh Gandhi (Page1 to 8) was provided.
- 4.6 Copy of Certificate of The Nainital Bank Limited along with copy of Respondent's Bank statement with Nainital Bank Limited for the period 22/10/2011 to 19/11/2011 to evidence the transaction of Rs. 500000/- paid to Shri Saravjeet Singh Gandhi (Father of Complainant).
- 4.7 The Respondent was under impression that his personal financial transactions not related within his discharge of professional functions but since occasion has arisen he had disclosed all financial transactions if to relate any proceeding under consideration.
- 4.8 The FIR lodged by the complainant is pending for adjudication.



- 4.9 With reference to charge of manipulation of books of M/s. Superson Laminators & Plastic Private limited, the Respondent stated that he was not concerned with the books of accounts and the balance sheet of M/s. Superson Laminators & Plastic Pvt Ltd., Kanpur. The allegations with regard to maintaining the books of accounts and joining hands with Mrs. Deepika Gandhi was totally baseless and false.
- 4.10 For the charges under Clause (2) of Part IV of the First Schedule, the Respondent submitted that none of the allegations against the Respondent was proved beyond reasonable doubt and as such the question of bringing 'disrepute' to the Institute does not arise.
- 4.11 BoD was directing the Complainant for the last 5 years to share the complete copy of the financial statements of HR Polymers, Partnership concern however, the Complainant failed to produce a single document of HR Polymers being partnership concern for FY 2012-13, let alone share the entire copy of financial statements of the partnership concern. The PFO prepared by the Ld. DD is unsustainable and arbitrary to the extent that the Complainant was not able to furnish its case/complaint in the first place since allegation was taken into consideration without any actual document/evidence to this effect namely- the audited financial statements of the partnership concern of HR Polymers for the FY 2012-13.
- 4.12 The Respondent so as to bring to rest/halt the long-drawn litigation, for being harassed unnecessarily in the matter, had himself strived to fulfil the responsibility entrusted upon the Complainant and managed to secure the original signed/audited financial statements of HR Polymers, partnership concern for FY 2011-12 and FY 2012-13 which was audited by M/s B.D. Gupta & Co. Chartered Accountants.
- 4.13 The allegations cast on the Respondent were made out on surmises, erroneous hypothesis and whimsical grounds without any coherent evidence to this effect.

Complainant:

The Complainant, in his submissions, inter-alia submitted as under:-

- 5.1 Despite the case being highlighted in 2015 the Respondent neither challenged his signature on the balance sheet at bank nor has taken any legal action against Mr. Swaranjeet Singh Gandhi. The Respondent had admitted having received sums from loan account (HR Polymers) of Mr. Swaranjeet Singh Gandhi it is the loan from the same bank where the fake balance sheet signed by the Respondent was submitted.
- 5.2 The Complainant requested the Respondent to submit an agreement to sell with respect to the property since his father had neither met him for any land deal nor has authorised any one to negotiate its sale. In fact, Mr. Swaranjeet Singh Gandhi made the payment to Complainant's father since the Respondent owned money. Now the payment was made through a demand draft, so the complainant's father did not know that the money was routed through the Respondent. While going through the bank statement, it was noticed that the Demand Draft was made from the amount of Rs. 5.00 lacs paid by Mr.

Swaranjeet Singh Gandhi to the Respondent which proved their fraudulent intentions. Complainant believed they were conspiring another fraud, since both Mr. Swaranjeet Singh Gandhi & the Respondent had jointly opened a company by the name and style of M/s V K Infraplanet private limited; its corporate identification Number (CIN) is U45400UP2012PTC050033 and Registration Number is 050033 and its registered address at 24/73-76, Kishori Niwas Birhara Road, Kanpur – 208 001 (same address of M/s CA Vinay Seth & associates). Therefore, the Respondent stating that he only knows Mr. Swaranjeet Singh Gandhi in personal capacity was a lie.

- 5.3 The Respondent in his earlier submission had stated that he had nothing do with M/s HR Polymers however in his submissions he was taking money from Mr. Swaranjeet Singh Gandhi from the proprietorship account of HR Polymers which clearly signified his involvement in this fraud. He was taking money from both Bank of Baroda & PNB (where his signed balance sheet was submitted). The Respondent has separate ledger for HR polymers and money has been flowing into his account since 2011, yet in his earlier response to ICAI stated that he had nothing to do with HR Polymers.
- 5.4 The Respondent helped individuals get illegitimate loans from banks through a series window-dressed balance sheets and fake documents and charged fees post the loans were processed by the Bank. The same was evident from the transactions reflected in bank statements submitted as proof.
- 5.5 The Respondent had stated that he had taken loan from HR Polymers (Partnership), however, no corresponding ledger that he maintains for HR Polymers (Partnership) was brought on record which also signifies that he has lied to the bench regarding it to be simply a loan taken.
- 5.6 In Oct 2011, HR polymers got its loan from Bank of Baroda, and the Respondent got INR 5.00 lacs + INR 2.00 lacs immediately when the loan got sanctioned to H.R. Polymers (Prop.). In Apr 2012, from Punjab National Bank, the Respondent was paid 8.00 lacs (INR 6.00 lacs + INR 2.00 lacs) on 9 April 2012, from PNB. That establishes clearly his intent and friendship with Mr. Swaranjeet Singh Gandhi. He received these payments for rendering unethical and unprofessional services to HR Polymers and from the time the loan at Bank of Baroda got sanctioned, his relationship began with HR Polymers and that was visible in the ledger produced by him. He was fabricating books of accounts to simply take a larger fee amount, got his clients' money that they will be unable to secure from banks naturally and in the process, he had been duping the banks and our nation's money.
- 5.7 In Nov 2014, the Bank had also acknowledged fraud against them, and had also filed a FIR against Swaranjeet Singh Gandhi and CA. Riti Agarwal.
- 5.8 In Feb 2016: A FIR was filed against the Respondent, Swaranjeet Singh Gandhi, CA. Riti Agarwal & CA. B.D. Gupta under section 420, 467, 468, 471, 406 of IPC. On 2 January 2017, post investigation, Police charge sheeted the parties to the fraud and added section 120B in the FIR. Subsequently, the matter was admitted at Hon'ble Court, ACMM (VII) Kanpur Nagar, Case no. 9494/17, under section 420/467/468/ 471/ 120B IPC.

For the given case, he has conveniently not been appearing in the Court. He had been issued a non-bailable warrant and currently he is absconding.

- 5.9 The Respondent had shared with the board that an application U/s 482, for quashing of the FIR registered against the Respondent and for the case registered against him in the Hon'ble Court, Kanpur; were taken up before the Hon'ble Allahabad High court; and what he had shared only the excerpts of the Respondent and CA Riti Agarwal's application to the Court and not the verdict. The matter is still under admission. Furthermore, the Respondent jointly with CA. Riti Agarwal had appealed for this matter together. Why did he appeal along-with CA. Riti Agarwal, what is the connection?
- 5.10 Further clarification is sought, that despite his denial of relationship with HR Polymers, and he had admitted that he had not prepared any books, and that his signatures in the balance sheets were fake, why did he not file complaint against Swaranjeet Singh Gandhi?
- 5.11 Bank Statement submitted to ICAI by the Respondent had been tampered and whitener was applied on Narrations conveniently, the same was done to misguide ICAI, Complainant wants to view the original statement with narration to understand the nature of transaction.
- 5.12 Moreover, in the sanction letter received from PNB, its clearly mentioned that audited balance sheets were submitted for availing loan facility by HR Polymers (Prop). Kindly note: Balance sheet submitted by Bank to the police and later to the court, the same were signed by the Respondent.
- 5.13 During the hearing, the Ld. Counsel has suggested that since the turnover is less than INR 1.00crore, hence there is no need of audit; whereas PNB sanction letter (for HR Polymers renewal for 125.0 lacs) and audited Balance sheets states Turnover of INR 4.5 crores in 2010, INR 5.5 crores in 2011, INR 6.26crores for 2012. So, it clearly implies that Ld. Counsel and the Respondent were lying/misguiding the Board.
- 5.14 The Respondent had produced multiple balance sheets for HR Polymers (Partnership) whereas he had not shared a single audited Balance Sheet for HR Polymers (Prop.); despite being such a close-aid of Mr. Swaranjeet Singh Gandhi.
- 5.15 Complainant agreed that Supersun Laminations & Plastics Pvt. Ltd., was struck off company. Still it did not give a right to the Respondent to sign Balance sheet of a Striked-off company. A company that is Non-operational.

**OBSERVATIONS OF THE BOARD:**

- 6.1 On perusal of the documents and submissions on record, the Board noted the Complainant has alleged that the Respondent along with CA. Riti Agarwal have connived with the Complainant's partner, Mr. Swaranjeet Singh Gandhi, and fabricated the books of accounts including nature of the partnership firm M/s. H.R. Polymers i.e. misrepresented Mr. Swaranjeet Singh Gandhi as the proprietor and M/s. H.R. Polymers as a proprietary firm. They have misrepresented the books and have presented different Balance Sheets in different Banks for the same firm to avail

By

loans from Bank of Baroda and Punjab National Bank. Further, they have manipulated the books of M/s. Supersun Laminations & Plastics Pvt. Ltd., wherein the Complainant's father Mr. Sarvajeet Singh Gandhi is the MD and wife of Mr. Swaranjeet Singh Gandhi Mrs. Deepika Gandhi is the Director, which is a non-operational unit for many years, however, the fake Balance Sheet shows that the Company is operational and earning profits.

6.2 The Board noted that the Respondent raised certain technical objections during the course of hearing and decided to deal with them before arriving at its Findings in respect of the conduct of the Respondent.

(a) As regard the contention of the Respondent that the clauses are not specified in column 5 of Form I, the Board took into view the provisions of Section 21(3) of the Chartered Accountants Act 1949 which provides as under:

*"Where the Director (Discipline) is of the opinion that a member is guilty of **any (emphasis provided)** professional or other misconduct mentioned in the First Schedule\*, he shall place the matter before the Board of Discipline and where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the Second Schedule\*\* or in both the Schedules, he shall place the matter before the Disciplinary Committee."*

Similarly, in Rule 9 of the CA Rules 2007, the word 'any' Misconduct has been used. The complainant has to file complaint in the prescribed Form 'I' where he is expected to specify the 'Clause' of the First/Second Schedule under which the alleged misconduct will fall. However, the CA Rules 2007 are silent in case the same is not specified in Form 'I'. Although, Rule 5(5) of the CA Rules 2007 talks of rectification of a 'defective' complaint, however, what constitutes a 'defect' has neither been expressly provided under the CA Act 1949 nor under the CA Rules 2007. Thus, the Board was of the view that where Act/Rules are silent with respect to the course of action to be followed in case any technical lapse is there, the principle of natural justice has to be taken into view. Thus, the complaint cannot be turned down merely because the Complainant has not specified the exact 'Clause' of the Schedule in which the alleged misconduct of the member falls. In this regard, the Board also took into view the observations of the Hon'ble Supreme Court of India in Appeal (civil) 6701 of 2005 in the matter of Uday Shankar Triyar vs Ram Kalewar Prasad Singh & Anr on 10 November, 2005 as stated hereunder:

*"17. Non-compliance with any procedural requirement relating to a pleading, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates. Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. **Procedure, a hand-maiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use (emphasis provided).** The well recognized exceptions to this principle are :-*

*↳*

*i) where the Statute prescribing the procedure, also prescribes specifically the consequence of non-compliance.*

*ii) where the procedural defect is not rectified, even after it is pointed out and due opportunity is given for rectifying it;*

*iii) where the non-compliance or violation is proved to be deliberate or mischievous;*

*iv) where the rectification of defect would affect the case on merits or will affect the jurisdiction of the Court.*

*v) in case of Memorandum of Appeal, there is complete absence of authority and the appeal is presented without the knowledge, consent and authority of the appellants."*

Further, the onus to formulate a prima facie opinion as to the misconduct rests with the Director (Discipline) and therefore, on the basis of the submissions and documents on record, it is the Director (Discipline) which has to first formulate a prima facie opinion on the alleged misconduct. Therefore, notwithstanding the assertions as to the particular clause of misconduct by a complainant, the Director(Discipline) shall, after perusing the material available, conclude as to existence or otherwise of the misconduct alleged. This is also apparent from the provisions of various sub clauses of Rule 9(2)(a) of the Misconduct Rules, 2007 , which requires the Director(Discipline) to place the matter before the Board of Discipline , if the misconduct alleged falls within the First Schedule and before the Disciplinary Committee , if the alleged misconduct falls within the Second Schedule or both under the First and Second Schedule. This also supports the view that the sifting of the allegations to identify the clauses of misconduct is to be performed by the Disciplinary Directorate. Also, the complainant can be a statutory authority, a member of the Institute who is well versed with the provisions of the Act or even a member of public who may not be familiar with the provisions of the Act. In such a scenario, to give a pedantic interpretation to the provisions of the Act and the Rules making it incumbent on a complainant to specify specific clauses of misconduct would be denying the remedy otherwise available under the statute. If the allegations stated in the complaint do not fall within any specified clauses of professional misconduct, the same may however be a case of "other misconduct" and the ICAI would be within jurisdiction to proceed further on the allegations. Thus, the non-mentioning of clauses pertaining to "misconduct" does not in any manner vitiate the proceedings.

(b) As regard the contention of the Respondent that for the charges under Clause (2) of Part IV of the First Schedule, none of the allegations against him have been proved beyond reasonable doubt and as such the question of bringing 'disrepute' to the Institute does not arise. In this regard, the Board was of the view that the proceedings before the Board of Discipline are quasi-judicial in nature where the misconduct can be proved by preponderance of probabilities having regard to the conduct of the Respondent which is distinct from Criminal proceedings where the commission of offence is required to be proved beyond reasonable doubt. While coming to the said view, the Board took into consideration the

decision of the Hon'ble Supreme Court in the matter of "Ajit Kumar Nag –vs- General Manager (PJ) Indian Oil Corporation Limited-AIR 2005 SC 4217 wherein the Hon'ble Apex Court held as under :-

*"The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rules relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt' he cannot be convicted by a Court of law. In a departmental enquiry penalty can be imposed on the delinquent Officer on a finding recorded on the basis of 'preponderance of probability'."*

Similarly in the matter of Capt. M Paul Anthony –vs- Bharat Gold Mines Limited - AIR....1999 SC 1416 the Hon'ble Supreme Court held as under:-

*"In Departmental proceedings, factors prevailing in the mind of the Disciplinary authority may be many, such as enforcement of discipline or to investigate level of integrity of delinquent or other staff. The standard of proof required in those proceedings is also different from that required in a criminal case. While in Departmental proceedings, the standard of proof is one of preponderance of probabilities, in a criminal case, the Charge has to be proved by the prosecution beyond reasonable doubt."*

- 6.3 As regard the charges specified at Para 2.1 to Para 2.3 above, the Board noted that there are two concerns with the name M/s. H.R. Polymers, one partnership and the other proprietorship. The Complainant is one of the partners of the said firm. He has brought on record, copy of the audited financial statements of both the concerns for the Financial Years 2010-11, 2011-12 & 2012-13, out of which for the financial year 2012-13 (proprietorship concern) has been allegedly signed by the Respondent. The Board further noted that the tax audit report in Form 3CB of M/s. H.R. Polymers (Proprietorship concern) for the period ending 31st March, 2013 along with its annexure contains the seal and signatures of the Respondent. The Board observed that the Respondent denied of having signed the same. Hence, an Expert Opinion was sought from a Handwriting and Fingerprint Expert with respect to the signature on financial statements of M/s HR Polymers(proprietorship) signed by the Respondent. The opinion of the expert dated 6<sup>th</sup> December, 2021 reads as follows:

*"Taking into consideration all the above-mentioned observations and others cumulatively, my considered opinion is that the disputed signatures marked Q-1 to Q-6 had been executed by one and the same person Vinay Kumar Seth, whose comparative signatures are marked A-1 to A-5."*

*Σ*

The Board also noted that no specific reply had been given by the Respondent on the said report of the Handwriting expert concluding that the disputed signatures and the standard signatures are of one and the same person.

6.4 Furthermore, vide letter dated 11<sup>th</sup> September, 2019, Uttar Pradesh Financial Corporation (UPFC) addressed to the ICAI has submitted the financial statement of M/s HR Polymers for the Financial Year 2011-12 and stated that the Firm has not submitted any further financial statement and the unit is closed due to dispute among partners since long time. Attention is drawn to two Form 3CD filed by CA. B.D. Gupta and another one by CA. Riti Agarwal. The PAN No. in both the Form 3CD is different along with the status of the entity. The table below will highlight the said difference:

S.No.	Name of the Tax Auditor	Financial Year	PAN No.	Entity Status
1.	CA. B.D. Gupta	2011-12	AABFH8648C	Partnership Firm
2.	CA. Riti Agarwal	2011-12	ABYPG3222B	Proprietorship

At the time of hearing, the said issue was addressed by the Complainant by stating that HR Polymer partnership was the original entity, so they made the HR Polymers proprietorship and routed their loan through the Partnership Firm to the Proprietorship. The Board opined that the fourth digit of the PAN number shows the status, if it was of partnership firm then it will be F. In the loan application of PNB, the borrower HR Polymers, proprietorship, proprietor Mr. Swarnjit Singh Gandhi, PAN number APYPG, has been mentioned. This indicates that the loan was taken in the name of the Proprietorship and not the Partnership.

6.5 The Board also noted that the Respondent had availed loan from M/s HR Polymers, Partnership Firm (PAN No. AABFH8648C) and a balance of Rs. 6,35,000/- was reflected in the financial statements of the partnership firm for the F.Y. 2011-2012 under the category 'Loans and Advances as on 31<sup>st</sup> March, 2012' and a balance of Rs. 7,40,000/- was reflected in the financial statements of the partnership firm for the F.Y. 2012-2013 under the category 'Loans and Advances as on 31<sup>st</sup> March, 2013'.

6.6 The Board noted that the Respondent did not come out clear about his relationship with Sh. Swarnjeet Singh Gandhi. During the course of his submissions, initially he stated that he had no relationship with Sh. Swarnjeet Singh Gandhi and later on clarified that he had personal relationship with Sh. Swarnjeet Singh Gandhi and executed work for him in his individual capacity. The Board observed that the Respondent had filed the Income Tax Returns of Sh. Swarnjeet Singh Gandhi in his Individual capacity for the Financial Year 2010-11 and 2011-12 wherein the trade name of his proprietorship firm M/s H.R. Polymers was also appearing.

tv

- 6.7 Furthermore, it was also observed by the Board that the ITR of M/s HR Polymers - partnership firm had been filed for the Financial Year 2011-12 by Sh. Swaranjeet Singh Gandhi in the capacity of the Partner of the Firm and the financial statements of M/s HR Polymers -partnership firm had also been authenticated by Sh. Swarnjeet Singh Gandhi as a Partner of the firm.
- 6.8 The Board also noted that loans were renewed by PNB to M/s HR Polymers, proprietorship concern vide letter dated 12<sup>th</sup> March 2013 and copy of the audited financial statements of the proprietary concern for the Financial Years 2012-13 allegedly signed by the Respondent as auditor and Sh. Swaranjeet Singh Gandhi as proprietor had been provided to the bank.
- 6.9 The Board also noted that the Respondent stated that he had no role to play in respect of transactions carried out in the name of M/s. HR Polymers Proprietary firm. He has further mentioned that he used to provide his services to Sh. Swaranjeet Singh Gandhi, but he is unaware whether the same was used for proprietary firm or partnership firm. However, the said plea of the Respondent is not acceptable since as a Chartered Accountant, he is expected to exercise prudence and be aware as to in respect of which entity he is rendering his services.
- 6.10 The Board also noted that Summons were sent to Mr. Sawarnjeet Singh Gandhi who was an essential witness to prove the Respondent's innocence in the matter, however even after sending multiple summons he failed to appear and the Respondent did not seem to put in much effort to ensure his appearance before the Board. This corroborates the fact that both the Respondent and Sh. Swaranjeet Singh Gandhi were working hand in glove with each other. There are Corroborative evidences to prove the existence of Financial Statements of M/s H.R. Polymers - proprietorship firm audited by the Respondent which cannot be denied. Accordingly, the Board held the Respondent guilty in respect of the charges specified at Para 2.1 to Para 2.3 above.
- 6.11 With respect to the charge specified at para 2.4 above, it was observed by the Board that as per the records available on the website of Ministry of Corporate Affairs, M/s. Supersun Laminations & Plastics Pvt. Ltd. is being shown as 'Strike off' in the column of Company Status. The Complainant brought on record copy as well as original Balance Sheet of the said Company for the financial year 2012-13 bearing the signature of the Respondent and stamp of his firm. The Respondent in his defense has denied of having signed any such Balance Sheet. However, an Expert Opinion was sought from a Handwriting and Fingerprint Expert with respect to the signature on financial statements of M/s. Supersun Laminations & Plastics Pvt. Ltd signed by the Respondent. The opinion of the expert dated 6<sup>th</sup> December, 2021 reads as follows:



"Taking into consideration all the above-mentioned observations and others cumulatively, my considered opinion is that **the disputed signatures marked Q-1 to Q-6 had been executed by one and the same person Vinay Kumar Seth, whose comparative signatures are marked A-1 to A-5.**"

Thus, the Board held that it has been proved beyond doubt that the Respondent signed the financials of the said company and there is no basis on which the said financial statements had been signed by him. Accordingly, the Board held the Respondent guilty in respect of the charge specified at para 2.4 above.


**CONCLUSION:**

7. Thus, in conclusion, in the considered opinion of the Board, the Respondent is **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.

Sd/- Sd/- Sd/-  
CA. Prasanna Kumar D. Ms. Dolly Chakrabarty (IAAS, ret'd.) CA. (Dr.) Raj Chawla  
(Presiding Officer) (Government Nominee) (Member)

Date: 10<sup>th</sup> February 2023

सही प्रतिलिपि होने के लिए प्रमाणित  
Certified to be true copy

  
गीता अनिरुध कुमार / GEETHA ANIRUDHA KUMAR  
कार्यकारी अधिकारी / Executive Officer  
अनुशासन शास्त्रक निदेशालय / Disciplinary Directorate  
भारतीय चरितेड अकौण्टेण्ट्स ऑफ इण्डिया  
The Institute of Chartered Accountants of India  
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032  
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032