



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

[PR-422/2019/DD/44/2020/BOD/632/2022]

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. Ravi Shankar (M.No. 507724)**

M/s Ravi Shankar Goel & Co.

Chartered Accountants

Office No. 5, Ground Floor, Nilgiri Apartment

Kaushambi, GHAZIABAD – 201010.

.....Complainant

-Vs-

**CA. Prem Kant Jha (M.No.534615)**

M/s. Prem Jha & Co., New Delhi

Chartered Accountants

C/o Millenium Technology,

5-A, Second Floor, Main Market, Madanpur Khadar, Sarita Vihar,

NEW DELHI– 11007.

.....Respondent

[PR-422/2019/DD/44/2020/BOD/632/2022]

**MEMBERS PRESENT:**

**CA. Rajendra Kumar P, Presiding Officer (in person)**

**Ms. Dolly Chakrabarty (IAAS, rettd.), Government Nominee (through video conferencing)**

**CA. Priti Savla, Member (through video conferencing)**

**Date of Hearing and passing Order: 23<sup>rd</sup> January 2024**

1. The Board of Discipline vide its Findings dated 28<sup>th</sup> December 2023 was of the view that **CA. Prem Kant Jha (M.No.534615)** is **GUILTY** of Professional Misconduct falling within the meaning of Item (8) and Item (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949.
2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against **CA. Prem Kant Jha (M.No.534615)** and communication dated 16<sup>th</sup> January 2024 was addressed to him thereby granting him an opportunity of being heard on 23<sup>rd</sup> January 2024. He vide his e-mail dated 22<sup>nd</sup> January, 2024 informed that he is unable to attend the hearing due to his illness and requested the Board to consider his written representation as his final representation. In his written representation, he reiterated the acceptance of guilt in respect of the first charge. In respect of the second charge, he reiterated the submissions made earlier during the course of hearing. He also requested the Board to take a sympathetic view in the case as it is the first ever case of misconduct against him that too in the early stages of his career as he became a Chartered Accountant in 2014, he is the only earning member in his family, his father has just passed away and his mother is a Cancer Patient since January 2022. He also assured that he will not accept any assignment in future without following the Professional Ethics prescribed by the Institute.
3. Thus, upon consideration of the facts of the case, the consequent misconduct of **CA. Prem Kant Jha (M.No.534615)** and keeping in view his representation before it, **the Board decided to impose a Fine of Rs.25,000/- (Rs. Twenty-Five Thousand only) upon him.**

Sd/-

**CA. Rajendra Kumar P**  
(Presiding Officer)

Sd/-

**Ms. Dolly Chakrabarty (IAAS, rettd.)**  
(Government Nominee)

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

नीलम पुंड्र / Neelam Pundir  
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer  
अनुशासनात्मक निदेशालय / Disciplinary Directorate  
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया  
The Institute of Chartered Accountants of India  
[M.No.534615] विभाग नगर, शाहदरा, दिल्ली-110032  
ICAI Bhawan, Vishwas Nagar, Shahdara, Delhi-110032

Sd/-

**CA. Priti Savla**  
(Member)

CA. Ravi Shankar (M.No. 507724) -Vs- CA. Prem Kant Jha (M.No.534615)

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-422/2019/DD/44/2020/BOD/632/2022]**

**CORAM: (Present in Person)**

**CA. Rajendra Kumar P, Presiding Officer**

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

**In the matter of:**

**CA. Ravi Shankar (M.No. 507724)**

**M/s Ravi Shankar Goel & Co.**

**Chartered Accountants**

**Office No. 5, Ground Floor, Nilgiri Apartment,**

**Kaushambi,**

**GHAZIABAD – 201010.**

**.....Complainant**

**Versus**

**CA. Prem Kant Jha (M.No.534615),**

**M/s. Prem Jha & Co., New Delhi**

**Chartered Accountants**

**C/o Millenium Technology,**

**5-A, Second Floor, Main Market, Madanpur Khadar, Sarita Vihar,**

**NEW DELHI– 110076.**

**..... Respondent**

**DATE OF FINAL HEARING : 17<sup>th</sup> May 2023**

**PARTIES PRESENT (In Person):**

**Complainant : CA. Ravi Shankar**

**Respondent : CA. Prem Kant Jha**

**FINDINGS:**

**Brief Background of case:**

1. The Complainant's Firm was Statutory Auditor of M/s VP Resourcerede India Private Limited (hereinafter referred to as "Company") before the financial year 2015-16.

*VP*

Further, the Respondent was appointed as the Statutory Auditor of the Company and conducted Statutory Audit of the Company for the financial year 2015-16, 2016-17, 2017-18 and 2018-19.

**CHARGES ALLEGED:**

2. The Complainant alleged against the Respondent as under:
  - 2.1 The Respondent conducted Statutory Audit of the Company for the Financial Year 2015-16, 2016-17, 2017-18 and 2018-19 without first communicating in writing with previous auditor (i.e. Complainant).
  - 2.2 The Complainant is having a dispute with Shri Praveen Malik (Director of the Company) due to which he was removed from the position of Auditor of the Company in unlawful manner and the Respondent was appointed as a Statutory Auditor of the Company. The provisions of Section 139 and 140 of the Companies Act, 2013 were not duly complied with.
  - 2.3 The Respondent conducted the Statutory Audit of the Company for the Financial Year 2015-16, 2016-17, 2017-18 and 2018-19 without having examined any documents or books of accounts of the Company which were necessary for such Audit.

The Board noted that the Director (Discipline) in his Prima Facie Opinion held the Respondent prima facie Guilty of Professional Misconduct falling within the meaning of Item (8) and (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949 and the said view had been accepted by the Board. Accordingly, the conduct of the Respondent was examined in respect of Professional Misconduct falling within the meaning of Item (8) and (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949 with respect to the charge specified at para 2.1 and 2.2 above only.

**BRIEF OF PROCEEDINGS HELD:**

3.

S.no.	Date of Hearing(s)	Status of Hearing(s)
1.	17 <sup>th</sup> May 2023	Heard and concluded with the direction to the Complainant to provide a copy of ADT-I filed with the

		ROC in respect of his appointment as the auditor of the Company within 7 days with a copy to the Respondent to provide his comments thereon, if any. The Complainant submitted his response.
2.	4 <sup>th</sup> July 2023	The Board decided on the conduct of the Respondent on the basis of documents and submissions on record.

**BRIEF SUBMISSIONS OF THE PARTIES TO THE CASE:**

**(a) RESPONDENT:**

4. The Respondent in his defence, inter-alia, stated as under:
- a) The Respondent tried his best to communicate with the Complainant personally also but unfortunately couldn't succeed. Due to this he wasn't allowed to file Roc and ITRS till January 2023. He waited for the Complainant from September 2016 to January 2023. On 23rd January, due to extreme pressure by the client and in good faith, ROC returns, ITRS and ADT-1 were filed. He sent a request letter to the previous Auditor for Noc in 2016 through the client for Acknowledgement by hand delivery but Client couldn't arrange any Acknowledgement from the Complainant even after being assured by them (Client). It is true that he couldn't communicate with the previous Auditor, but he waited approx. 2 years for them, and he never had any greed to get their client.
  - b) Filing of ADT-1 and ADT-2 and passing of necessary resolutions is the duty of the company who is appointing Auditors. The Respondent checked that time the previous Auditors were not appointed for 5 years which is evident that no ADT-1 were filed after making it applicable under the Companies Act 2013.
  - c) In F.Y. 2015-16, no resolution was passed in AGM to re-appoint the Complainant as Auditor. Previous Auditors were not available in their office for Audit from F.Y. 2015-16 to 2017-2018. So, it tantamounted to their unwillingness to continue as an Auditor.
  - d) Accordingly, the Respondent's appointment was made to fill a casual vacancy which was according to law and later it was completed in AGM dated 30th September 2016.

**(b) COMPLAINANT:**

5. The complainant made the following submissions to substantiate his case:
- a) Communication took place between the Complainant and the Respondent on 06.12.2019, 07.12.2019 and 01.05.2020. During communication, it was clearly admitted by the Respondent about mistakes made by him.
  - b) The Respondent fabricated back dated documents along with the company eg. regarding copy of letter issued regarding NOC to new directors. The Director of company namely Shri Praveen Malik himself signed a letter on 21.08.2017 and issued to the Complainant in which he requested to communicate to company as not communicable. How can audit be conducted by Respondent even Respondent was not in touch with company at such time for the financial year 2015-16 and financial year 2016-17.
  - c) The Complainant requested ICAI or competent authority to take call details records, call history, location history, mail exchanges, whatsapp chat etc. between Respondent, directors of the company which shall also provide the first date of communication between Respondent and directors of company which shall also clearly show such documents are false, fabricated and signed/made back dated and also reveal the other truth.
  - d) Original records may be called from the Respondent and seized and Forensic of such Original documents lying with Respondent, company, its directors should also be called and investigated to justify the claim that such documents are false, fabricated and made back dated with collusion.
  - e) There was no casual vacancy. Despite that, the Respondent has accepted the appointment and signed the financials and issued the audit report in collusion with management of company and even made backdated documents.
  - f) ADT 1 was filed with Form GNL-2 with Registrar of Companies, Delhi, certified true copy of resolution passed for re-appointment as statutory auditor of the company, to hold office from the conclusion of this annual general meeting (AGM) until the conclusion of the next sixth annual general meeting of the company (i.e. for five years) are also enclosed.

- g) Even in point number 7 of Form GNL-2 form filed, appointment for 5 years is mentioned which is also re-produced hereunder:  
*"Auditor's appointment Letter along with resolution passed in general meeting for such appointment for 5 years as per Section 139 of the Companies Act, 2013 and ADT-1 i.e. Intimation of auditor appointment."*
- h) Complainant denied any letter dated 10.06.2016 is issued and received from the company or letter from Respondent seeking NOC and any communication made by the Respondent.
- i) The Complainant denied that any letter dated 20.05.2016 ,25.05.2016 and 30.05.2016 and is issued and received from the Respondent.
- j) The Complainant denied the various assertions made by the Respondent in his written submissions.

**OBSERVATIONS OF THE BOARD:**

6.1 As regard the first charge that the Respondent accepted appointment as the Statutory Auditor of the Company for the Financial Year 2015-2016 without first communicating in writing with the previous auditor i.e., Complainant, the Board took into view the requirement of Item (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949 which provides as under:

*"A Chartered Accountant in practice shall be deemed to be guilty of Professional Misconduct, if he-  
Accepts a position as auditor previously held by another chartered accountant or a certified auditor who has been issued certificate under the Restricted Certificate Rules, 1932 without first communicating with him in writing."*

The Board observed that there are two essential requirements under Item (8) of Part I of the First Schedule to The Chartered Accountant Act, 1949 which are as follows:

- i. The communication should be prior to the acceptance of the appointment as auditor.
- ii. The communication should be in writing.

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The following Paras of the Code of Ethics- 2009 also merit consideration in this regard:

*“The Council has taken the view that a mere posting of a letter under certificate of posting is not sufficient to establish communication with the retiring auditor unless there is some evidence to show that the letter has in fact reached the person communicated with. A Chartered Accountant who relies solely upon a letter posted under certificate of posting therefore does so at his own risk.*

*Members should therefore communicate with a retiring auditor in such a manner as to retain in their hands positive evidence of the delivery of the communication to the addressee. In the opinion of the Council, communication by a letter sent “Registered Acknowledgement due” or by hand against a written acknowledgement would in the normal course provide such evidence.” (emphasis added)*

- 6.2 The Board noted that the Respondent in his written submissions submitted during the course of hearing stated that he sent a request letter dated 25<sup>th</sup> May 2016 to the Complainant for Noc through the client for acknowledgement by hand delivery. But, the client couldn't arrange any acknowledgement from the Complainant even after being assured by them.
- 6.3 The Board further noted that the Respondent in his oral submissions made during the course of hearing admitted his guilt in respect of the said charge.
- 6.4 In this regard, the Board was of the view that it is the duty of the incoming auditor to communicate with the previous auditor of the Company in writing before acceptance of the audit of the Company and the same cannot be passed on to the auditee. Further, the Respondent could not bring on record any acknowledgement or positive evidence to prove that written communication was delivered to the Complainant being the previous auditor of the Company.
- 6.5 Thus, in the absence of the positive evidence of written communication on the part of the Respondent with the Complainant before accepting the Statutory Audit of the company for the Financial Year 2015-16 together with the admission of guilt on his part with respect to the said charge, the Board held the Respondent guilty in respect of the charge alleged.

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6.6 As regard the second charge that the Respondent carried out the audit for Financial Year 2015-16 (and subsequent years thereto i.e. 2016-17, 2017-18 and 2018-19) and signed the audit report of the Company without verifying the provision of section 139 and 140 of the Companies Act, 2013, the Board took into view the following provisions of Sec 139(8), 139(9) and 140(4) of the Companies Act 2013:-

*" Section 139(8)(i) of the Companies Act, 2013:*

*any casual vacancy in the office of an auditor shall in the case of a company other than a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Board of Directors within thirty days, but if such casual vacancy is as a result of the resignation of an auditor, such appointment shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting"*

*139(9) of the Companies Act 2013:*

*Subject to the provisions of sub-section (1) and the rules made thereunder, a retiring auditor may be re-appointed at an annual general meeting, if— (a) he is not disqualified for re-appointment; (b) he has not given the company a notice in writing of his unwillingness to be re-appointed; and (c) a special resolution has not been passed at that meeting appointing some other auditor or providing expressly that he shall not be re-appointed.*

*Section 140(4) of the Companies Act 2013:*

*(i) Special notice shall be required for a resolution at an annual general meeting appointing as auditor a person other than a retiring auditor, or providing expressly that a retiring auditor shall not be reappointed, except where the retiring auditor has completed a consecutive tenure of five years or, as the case may be, ten years, as provided under sub-section (2) of section 139.*

*(ii) On receipt of notice of such a resolution, the company shall forthwith send a copy thereof to the retiring auditor."*

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The Board also took into view the following Guidelines provided in the Code of Ethics:-

*“Under Clause (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949, the incoming auditor has to ascertain whether the Company has complied with the provisions of the above sections. The word “ascertain” means “to find out for certain”. This would mean that the incoming auditor should find out for certain as to whether the Company has complied with the provisions of Sections 224, 224A and 225 of the Companies Act. In this respect, it would not be sufficient for the incoming auditor to accept a certificate from the management of the Company that the provisions of the above sections have been complied with. It is necessary for the incoming auditor to verify the relevant records of the Company and ascertain as to whether the Company has, in fact, complied with the provisions of the above sections. If the Company is not willing to allow the incoming auditor to verify the relevant records in order to enable him to ascertain as to whether the provisions of the above sections have been complied with, the incoming auditor should not accept the audit assignment.*

9. It is suggested that the incoming auditor should verify the following records of the company:

9.3 *If the appointment is being made to fill a casual vacancy, the incoming auditor should verify as to whether the Board of Directors have powers to fill the casual vacancy and whether the Board of Directors have passed the resolution filling the casual vacancy.*

9.4 *If the vacancy has arisen due to resignation of the auditor, the incoming auditor should see as to whether a proper resolution filling the vacancy has been passed at the General Meeting of the Company.*

9.5 *If the vacancy has arisen as a result of removal of the auditor before the expiry of his term of office, the Incoming auditor should see that proper resolution has been passed at the General Meeting of the Company and that the previous approval of the Central Government has been obtained by the Company*

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9.7 *Where the auditor other than the retiring auditor is proposed to be appointed, the incoming auditor should ascertain whether the provisions of Section 225 have been complied with.*

9.8 *For the purpose of ascertaining whether the Company has complied with the provisions of Section 225 of the Companies Act 1956, incoming auditor should verify the records of the Company in respect of the following matters:-*

- (i) Whether a member of the Company has given special notice of the resolution as required under Section 225(1) at least 14 days before the date of the general meeting. A true copy of this notice should be obtained by the incoming auditor.
- (ii) Whether this special notice has been sent to all the members, of the Company as required under Section 190(2) at least 7 days before the date of the General Meeting.
- (iii) Whether this special notice has been sent to the retiring auditor forthwith as required under Section 225(2).
- (iv) Whether the representation received from the retiring auditor has been sent to the members of the Company as required under Section 225(3).
- (v) Whether the representation received from the retiring auditor has been considered at the general meeting and the resolution proposed by the special notice has been properly passed at the general meeting."

6.7 In the instant case, the Board noted that the Complainant brought on record copy of ADT-I filed with the ROC for his appointment as auditor of the company for the period 2015-2016. Also, on perusal of letter dated 20<sup>th</sup> May, 2016 brought on record by the Respondent, the Board observed that the Respondent had been appointed as statutory auditor for the year ended 31<sup>st</sup> March, 2016 onwards as per Board Meeting which was held on 16<sup>th</sup> May, 2016. The Respondent also stated that there was a casual vacancy due to which the Respondent was appointed as the Statutory Auditor. In this regard it is pertinent to mention that Casual Vacancy of the Auditor means a vacancy caused due to death, resignation, disqualification etc. of the auditor after accepting a valid appointment because of which the auditor ceases to act as auditor of the

company. Whereas it is the case of the Complainant that he never tendered his resignation in the present case.

6.8 Thus, the Board was of the view that the Respondent, being an incoming auditor, was required to ensure that whether necessary formalities as prescribed under Companies Act, 2013 have been complied with for removal of the Complainant from the position of the auditor before the expiry of his term/his resignation, prior to acceptance of audit of the Company for FY 2015-16. However, he did not bring on record documentary evidence to substantiate the same. Thus, the Board held the Respondent guilty in respect of the charge alleged.

**CONCLUSION:**

7. Thus, in conclusion, in the considered opinion of the Board, the Respondent is **GUILTY** of Professional Misconduct falling within the meaning of Item (8) and (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

Sd/-

CA. Rajendra Kumar P  
(Presiding Officer)

Sd/-

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

DATE: 28-12-2023

ठीक प्रतिलिपि होने के लिए प्रमाणित /

Certified to be true copy

  
Pooja Sharma

Senior Executive Officer / Sr. Executive Officer  
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