



भारतीय सनदी लेखाकार संस्थान

(संसदीय अधिनियम द्वारा स्थापित)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

[DISCIPLINARY COMMITTEE [BENCH-IV (2024-2025)]]

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

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

[PR/209/2019-DD/199/2019-DC/1599/2022]

In the matter of:

Sh. Vijay Kumar Verma

B-935, Sector-B, Mahanagar,

Lucknow- 226006

.....Complainant

Versus

CA. Pankaj Dixit (M. No. 506103)

Flat No. 5, Plot No. 110,

Niligiri Lane, Neb Sarai,

New Delhi – 110068

.....Respondent

MEMBERS PRESENT:

- 1. CA. Ranjeet Kumar Agarwal, Presiding Officer (In person)**
- 2. Shri Jiwesh Nandan, I.A.S (Retd.), Government Nominee (In person)**
- 3. Ms. Dakshita Das, I.R.A.S. (Retd.), Government Nominee (Through VC)**
- 4. CA. Mangesh P Kinare, Member (Through VC)**
- 5. CA. Abhay Chhajer, Member (In person)**

DATE OF HEARING : 19th MARCH, 2024

DATE OF ORDER : 16th May, 2024

- 1. That vide Findings dated 05.02.2024 under Rule 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Disciplinary Committee was inter-alia of the opinion that CA. Pankaj Dixit (M. No. 506103) (hereinafter referred to as the Respondent") is GUILTY of Professional and Other Misconduct falling within the meaning of Item (9) of Part I and Item (2) of Part IV of the First**

CA



भारतीय सनदी लेखाकार संस्थान
(संसदीय अधिनियम द्वारा स्थापित)

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

Schedule and Item (7) of Part I and Item (3) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

2. That pursuant to the said Findings, an action under Section 21B(3) of the Chartered Accountants (Amendment) Act, 2006 was contemplated against the Respondent and a communication was addressed to him thereby granting an opportunity of being heard in person/ through video conferencing and to make representation before the Committee on 19th March 2024.

3. The Committee noted that on the date of hearing on 19th March 2024, the Respondent was present through video conferencing. The Respondent stated that the submissions made by him during hearing stage be given due consideration when deciding the punishment. He further stated that it was his first assignment and there was nobody to guide him and requested the Committee to take a lenient view in the matter. The Committee also noted that the Complainant never appeared before it during the hearing(s).

4. The Committee considered the reasoning as contained in Findings holding the Respondent 'Guilty' of Professional and Other Misconduct vis-à-vis verbal representation of the Respondent.

5. Thus, keeping in view the facts and circumstances of the case, material on record including verbal representation of the Respondent on the Findings, the Committee noted that the Respondent's appointment as the Statutory Auditor of the Company for the Financial Year 2017-18 was not valid in accordance with the relevant procedure supposed to be followed. Further, the Respondent had also engaged himself in unethical practices, by submitting fabricated documents and false information to the Directorate, thereby violating professional standards and ethical obligations. The Committee held that the Respondent had signed incorrect financial statements of the Company for the Financial Year 2017-18 which were also not validly approved and signed by or on behalf of its Board of Directors. Hence, the Professional and Other Misconduct on the part of the Respondent is clearly established as spelt out in the Committee's Findings dated 05th February 2024, which is to be read in consonance with the instant Order being passed in the case.

6. Accordingly, the Committee was of the view that the ends of justice would be met if punishment is given to him in commensurate with his Professional and Other Misconduct.

(Signature)



भारतीय सनदी लेखाकार संस्थान
(संसदीय अधिनियम द्वारा स्थापित)
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)

7. Thus, the Committee ordered that the Respondent i.e., CA. Pankaj Dixit (M. No. 506103), New Delhi, be REPRIMANDED, under Section 21B(3)(a) of the Chartered Accountants Act, 1949.

Sd/-

(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

Sd/-

(SHRI JIWESH NANDAN, I.A.S. {RETD.})
GOVERNMENT NOMINEE

Sd/-

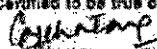
(MS. DAKSHITA DAS, I.R.A.S. {RETD.})
GOVERNMENT NOMINEE

Sd/-

(CA. MANGESH P KINARE)
MEMBER

Sd/-

(CA. ABHAY CHHAJED)
MEMBER

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

वरण सिंह / Charan Singh
कार्यकारी अधिकारी / Executive Officer
अपराधनात्मक नियंत्रण/ Disciplinary Directorate
भारतीय सनदी लेखाकार संस्थान
The Institute Chartered Accountants of India
आईसीआई भवन, विश्वास नगर, एनएच-110032
ICAI Bhawan, Vishwas Nagar, Anandpur, Delhi-110032

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – IV (2023-2024)]

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

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

File No: [PR/209/2019-DD/199/2019-DC/1599/2022]

In the matter of:

Sh. Vijay Kumar Verma

B-935, Sector-B, Mahanagar,

Lucknow- 226006

.... Complainant

versus

CA. Pankaj Dixit (M. No. 506103)

Flat No. 5, Plot No. 110,

Niligiri Lane, Neb Sarai,

New Delhi – 110068

.... Respondent

MEMBERS PRESENT:

CA. Ranjeet Kumar Agarwal, Presiding Officer (In person)

Shri Jiwesh Nandan, I.A.S. (Retd.), Government Nominee (In person)

Ms. Dakshita Das, I.R.A.S. (Retd.), Government Nominee (In person)

CA. Mangesh P Kinare, Member (In person)

CA. Cotha S Srinivas, Member (through video-conferencing mode)

DATE OF FINAL HEARING

: 16th October 2023

PARTY PRESENT

Respondent

: CA. Pankaj Dixit (through VC)



1. **Background of the case:**

The Complainant was one of two directors appointed to the Board of Directors of M/s. Technomaxx Digital Solutions Pvt. Ltd. (hereinafter referred to as the "Company") and was the beneficial owner of 50% shareholding of the Company. The Respondent has audited the financial statements of the Company for the Financial Year 2017-18.

2. **Charges in Brief:**

2.1 The Respondent has audited and signed the financial statements of the Company for the Financial Year 2017-18 without being appointed as its Statutory Auditor in accordance with the provisions of Companies Act 2013.

2.2 The financial statements of the Company audited by the Respondent for the Financial Year 2017-18 were never approved by the Board of Directors and members of the Company.

2.3 The financial statements of the Company audited by the Respondent for the Financial Year 2017-18 were also uploaded with the signature of only one Director i.e., Sh. Parmatma Saran Tiwari which in itself proves the violation of due procedure of law.

2.4 The Respondent was involved in filing incorrect financial statements of the Company for the financial year 2017-18.

3. **The relevant issues discussed in the prima facie opinion dated 27th May 2021 by Director (Discipline) in the matter, in brief, are given below:**

3.1 As regards the first charge that the Respondent had audited and signed the financial statements of the Company for the Financial Year 2017-18 without being appointed as its Statutory Auditor in accordance with the provisions of Companies Act, 2013, it was noted from the submissions of the Respondent that the Board of Directors had recommended the Respondent's name as Company's Statutory Auditor for the Financial Year 2017-18. The same was to fill the casual vacancy that had arisen on account of unwillingness shown by the previous statutory auditor to continue and thereafter, in the

extraordinary general meeting held on 30th May 2018, his appointment was approved. But the Respondent did not provide the copy of resignation letter of the previous auditor. Further, the copy of Form ADT-I filed in respect of appointment of previous auditor namely M/s Dhawan Pandey and Associates filed on 8th October 2017 shows that he was appointed as the Statutory Auditor of the Company for the Financial Years 2017-18 to 2021-22. Furthermore, on perusal of certain documents provided by the Respondent pertaining to his appointment vis-à-vis related documents available at MCA21 portal, it was observed that the documents filed with ROC as an attachment to Form ADT-1 pertaining to appointment of the Respondent were different from those which were submitted by the Respondent before the Directorate. It was also noted that Form ADT-1 pertaining to the appointment of the Respondent was filed in December 2019 after filing of instant complaint in June 2019. It was also noted that the Respondent signed the balance Sheet of the Company for the Financial Year 2017-18 on 6th September 2018 in the capacity of Statutory Auditor which was observed to be done much before the date of letter of consent given by the Respondent to the Company on 30th September 2018 as evidenced by the attachments to Form ADT-1 available at MCA21 portal. It was further noted that the resolution purported to have been passed by the shareholders of the Company appointing Respondent as Statutory Auditor, was signed by Shri Parmatama Sharan Tiwari and Smt. Vijay Lakshami Tiwari. However, it was noted that there was neither any resolution of the appointment of Smt. Vijay Lakshami Tiwari, nor any Form SH-4 / resolution of the Company according consent for the transfer of securities to her, was on record to corroborate the stand taken by the Respondent in his Written Statement that Smt. Vijay Lakshami Tiwari held 50 % beneficial ownership in the Company as on 31st March 2018. It was also noted that the Directorship / ownership of Smt. Vijay Lakshami Tiwari was disputed as an FIR had been lodged by the Complainant with the police Department in Lucknow alleging that Shri Parmatama Sharan Tiwari had appointed his wife, Smt. Vijay Lakshami Tiwari as a director of the Company in an illegal manner without the approval of the Board of Directors / shareholders. Furthermore, it was also evident that the Complainant was a

①

beneficial owner of 50% shares of the Company after he bought the same from Shri Rajneesh Rawat on 4th October 2017. Thus, it was viewed that the Respondent was appointed in a fraudulent manner by flouting the provisions of Companies Act 2013 in vogue at relevant times. Further, he had undoubtedly fabricated the documents to put up his defence in the extant matter before the Directorate which is not expected of a Chartered Accountant as it also brings disrepute to the entire profession.

3.2 As regards the second charge that the financial statements of the Company for Financial Year 2017-18 were never approved by the Board of Directors and members of the Company, the Respondent stated that the financial statements were duly approved by the Board of Directors in their Board Meeting held on 6th September 2018. In this regard, on perusal of copy of the Board Resolution dated 6th September 2018 approving the accounts for the Financial Year 2017-18 submitted by the Respondent, it was noticed that the same was signed by Shri Parmatma Sharan Tiwari and Smt. Vijay Lakshmi Tiwari in their capacity of being Chairman and the Director of the Company respectively. It was already been observed based on available documents that there were doubts on the valid appointment of Smt. Vijay Lakshmi Tiwari as the Director of the Company. Thus, it was viewed that the accounts of the Company for the Financial Year 2017-18 were not approved in an authorized manner as the Complainant who held 50% shares of the Company and was appointed as the whole time Director in the Board Meeting held on 29th September 2017 was not a part of this decision-making process for approval of accounts for reasons beyond comprehension. This gives due weightage to the allegation that the Respondent had signed the unauthorized accounts and was hand in glove with other promoters to suit their ill motives.

3.3 As regards the third charge that the financial statements of the Company audited by the Respondent for the Financial Year 2017-18 were uploaded with the signature of only one Director i.e., Sh. Parmatma Saran Tiwari, the Respondent stated that the said financial statements were signed by one director as he was the Chairman of the meeting where accounts were approved and was authorized by the Board. Upon perusal of said Financial

Statements, it was noted that the same had been approved by Mr. Parmatma Sharan Tiwari only as a Director of the Company and the resolution authorizing Mr. Parmatma Sharan Tiwari to solely sign the said Financial Statements was passed at the Board meeting held on 6th September 2018 which was conducted by Mr. Parmatma Sharan Tiwari and Smt. Vijay Lakshmi Tiwari in the capacity of the Chairman and the Director of the Company respectively. But it has already been observed, based on available documents, that there were doubts on the valid appointment of Smt. Vijay Lakshmi Tiwari as the Director of the Company. Thus, it was viewed that the accounts of the Company for the Financial Year 2017-18 were not signed in an authorized manner as the Complainant who inspite of being appointed as the whole time Director in the Board Meeting held on 29th September 2017, was not the part of decision-making process of approval accorded for signing of accounts as explained by the Respondent.

- 3.4** As regards the fourth charge that the Respondent was involved in filing of incorrect financial statements of the Company for the financial year 2017-18, it was noted that the Complainant had purchased 50% shareholding of the Company i.e., 5000 shares of Rs. 10 each from the previous owner of Company namely Mr. Rajneesh Rawat on 04th October 2017 and the share transfer was approved by the Board of Directors in the Board meeting held on 4th October 2017. On perusal of the Board resolution dated 04th October 2017, it was noted that the share certificate no. 1 and 2 were issued to the Complainant and Shri Parmatma Sharan Tiwari respectively and 5000 shares each of the Company were transferred to both of them correspondingly from Shri Rajneesh Rawat and Smt. Pooja Rawat. But surprisingly, the Respondent had also placed on record the copy of Form SH-1 dated 30th April 2018 for share certificate no. 2 in favour of Mrs. Vijay Lakshmi Tiwari wherein she had been shown as holder of 5000 shares of the Company. However, neither any resolution of her appointment nor any Form SH-4 / resolution of the Company according consent for the transfer of securities, had been brought on record by the Respondent. Moreover, it has already been observed based on available documents that there were doubts on the valid appointment of Smt. Vijay Lakshmi Tiwari as the Director of the

2

Company. Thus, it was viewed that the effect of the share certificate in Form SH-1 issued in the favour of Smt. Vijay Lakshmi Tiwari had been reflected in financial statements of the Company for the Financial Year 2017-18 which seems to be dubious. Thus, the allegation raised by the Complainant assumed strength that the incorrect financial statements of the Company had been signed by the Respondent in connivance with other promoters who adopted wrongful practices to support their ill-motives.

- 3.5. The Director (Discipline) in Prima Facie Opinion dated 27th May 2021 has held that the Respondent is **Guilty** of Professional and Other Misconduct falling within the meaning of Item (9) of Part I of First Schedule, Item (7) of Part I of Second Schedule, Item (3) of Part-II of Second Schedule and Item (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949. The said items of the Schedule to the Act, states as under:

Item (9) of Part I of First Schedule:

"A chartered accountant in practice shall be deemed to be guilty of professional misconduct if he:

(9) accepts an appointment as auditor of a company without first ascertaining from it whether the requirements of Section 225 the Companies Act, 1956 in respect of such appointment have been duly complied with."

Item (7) of Part I of Second Schedule:

"A chartered accountant in practice shall be deemed to be guilty of professional misconduct if he:

(7) does not exercise due diligence or is grossly negligent in the conduct of his professional duties."

Item (3) of Part-II of the Second Schedule:

"A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he:

(3) includes in any information, statement, return or form to be submitted to the Institute, Council or any of its Committees, Director (Discipline), Board of

Discipline, Disciplinary Committee, Quality Review Board, or the Appellate Authority any particulars knowing them to be false."

Item (2) of Part IV of First Schedule:

"A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he:

(2) in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work."

- 3.6 The Prima Facie Opinion formed by Director (Discipline) was considered by the Disciplinary Committee at its meeting held on 10th August 2022. The Committee on consideration of the same, concurred with the reasons given against the charges and thus, agreed with the prima facie opinion of the Director (Discipline) that the Respondent is GUILTY of Professional Misconduct falling within the meaning of Item (9) of Part I of First Schedule, Item (7) of Part I of Second Schedule, Item (3) of Part-II of the Second Schedule and Item (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949 and accordingly, decided to proceed further under Chapter V of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and conduct of Cases) Rules, 2007. The Committee also directed the Directorate that in terms of the provisions of sub-rule (2) of Rule 18, the prima facie opinion formed by the Director (Discipline) be sent to the Complainant and the Respondent including particulars or documents relied upon by the Director (Discipline), if any, during the course of formation of prima facie opinion and the Respondent be asked to submit his Written Statement in terms of the provisions of the aforesaid Rules, 2007.

4. Date(s) of Written Submissions/pleadings:

The relevant details of filing of documents in the instant case by the parties are given below:

①

S. No.	Particulars	Dated
1.	Date of complaint	01 st June 2019
2.	Written Statement filed by the Respondent	23 rd September 2019
3.	Rejoinder of Complainant	20 th November, 2019
4.	Prima facie Opinion by Director (Discipline)	27 th May 2021
5.	Written Submissions by the Respondent after PFO	11 th July 2023

5. Further written submissions filed by the Respondent:

5.1 The Respondent vide his additional submissions dated 11th July 2023 submitted that the Complainant had made an application to the police department on 20th May 2019 which does not bear any receiving or acknowledgment number, to prove the authenticity of the letter. The Respondent stated that it was a letter to the police, but it was termed as a FIR in the prima facie opinion. Further, the subject Company had been struck off and the same was approved by the MCA in January 2022. This outcome occurred as a result of an agreement between the Complainant and other relevant parties.

5.2 The Respondent also stated that the Complainant had incorrectly referenced the financial year 2018-19 in Form-I, implying that it was audited by the Respondent firm while the truth was that the Respondent had not audited for this particular financial year as mentioned in the complaint. The Respondent further stated that as per Section 139(1) of the Companies Act, 2013, the responsibility of filing Form ADT – 1 rests solely with the Company and not on the auditor. Under the Companies Act 2013, companies are mandated to inform the Registrar of Companies about the appointment of an auditor by filing Form ADT – 1. The Respondent further added that there were two instances where Form ADT – 1 was filed by the Company. First, for filing the causal vacancy of an auditor, and second, for the regular appointment of an auditor in the Annual General Meeting and these filings were made in

accordance with the requirements and decisions of the Company's management.

- 5.3 Regarding the share certificate dispute, the Respondent stated that share certificate is a subject matter of proper adjudication among the promoters and the Complainant, and the Respondent cannot be made liable for such dispute. The Respondent further added that as per Sections 134(1) and 134(6) of the Companies Act, 2013 a chairperson can single handedly sign, where he is authorized by the Board of Directors, any financial statements on the behalf of Board of Directors. The Respondent argued that the Complainant made a statement that financials were not approved by him, but it was stated on MCA website that Shri Parmatma Sharan Tiwari and Mrs. Vijay Lakshmi Tiwari were the directors of the Company on the given date, and the financial statements were approved by these two directors out of three-member in the board of directors. Thus, any statement given by the Complainant could not invalidate action taken by other directors.

6. **Brief facts of the Proceedings:**

The details of the hearing(s) fixed and held/adjourned in said matter are given as under:

Particulars	Date of Meeting	Status
1 st time	22 nd May, 2023	Adjourned at the request of the Respondent and in absence of the Complainant.
2 nd time	17 th July, 2023	Part heard and adjourned.
3 rd time	25 th August, 2023	Part heard and adjourned.
4 th time	16 th October 2023	Hearing concluded and decision taken.

- 6.1 On the day of first hearing on 22nd May 2023, the Committee noted that the Respondent vide e-mail dated 15th May 2023 has sought adjournment. The office apprised the Committee that the Complainant was not present and notice of listing of the case had been served upon him. The Committee

o 3

acceded to the adjournment request of the Respondent and adjourned the matter to a later date so as to provide one more opportunity to both the parties to present / defend the charges.

6.2. On the day of second hearing held on 17th July 2023, the Committee noted that the Respondent was present through Video-Conferencing mode for the hearing. The office apprised the Committee that the Complainant was not present and notice of listing of the case had been served upon him. Thereafter, the Respondent was put on oath and the Committee enquired from the Respondent as to whether he was aware of the charges; and the same were read out to him as contained in para 2 above. On the same, the Respondent replied that he is aware about the charges but pleaded Not Guilty on the charges levelled against him. The Respondent submitted that the Company in question was struck off by the Registrar of Companies during January 2022. He further submitted that he obtained the certificate of practice from ICAI in September 2017 and also surrendered the same in October 2019. He stated that he had relied upon the assurance of management regarding communication with previous auditor due to which the management was in touch with the previous auditor; and due to which, he had not directly written to the previous auditor but had spoken to him and had taken his verbal consent. The Respondent further stated that Form ADT-1 relating to his appointment as an Auditor, contained the signatures of one director only. Thereafter, in the absence of the Complainant and in accordance with Rule 18(9) of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee adjourned the case to later date and accordingly, the matter was part heard and adjourned.

6.3 On the day of third hearing held on 25th August 2023, the Committee noted the presence of the Respondent through video-conferencing mode. The Committee asked the Respondent to make submissions on the merits of the case. The Respondent submitted that he was appointed as auditor of the Company to fill casual vacancy that had arisen due to resignation given by previous auditor. He further referred to Section 134 of the Companies Act,

2013 and submitted that the financial statements may be signed by the Chairperson or by two directors of the Company. After recording the submissions of the Respondent, the Committee asked him to file his final submissions, if any, within seven days. The Committee also directed the office to inform the Complainant to appear at the next meeting and in case he remains absent even at the next meeting, the matter will be decided ex-parte, the Complainant.

6.4 Thereafter, on the day of final hearing held on 16th October 2023, the Committee noted the presence of the Respondent through video conferencing mode. The office apprised the Committee that the Complainant was not present, nor any intimation was received from his end. The Committee noted that even at last meeting, the Complainant was not present and subject case was adjourned in his absence, and thereby, he was specifically directed to appear before the Committee while also informing him that in case he fails to attend the next meeting, the case may be decided ex-parte, the Complainant. The Committee decided to proceed ex-parte in the matter in view of repeated absence of the Complainant and lack of any intimation received from him. The Committee then asked the Respondent to make his final submissions. The Respondent submitted that he had already made his written submissions vide letter dated 11th July 2023. He also submitted that the detailed submissions were made by him during last meeting held on 25th August 2023. The Respondent also submitted that the subject Company had been struck off and he had surrendered his Certificate of practice in October 2019, and he was in employment since then.

6.5 After detailed deliberations, and on consideration of the facts of the case, various documents / material on record as well as oral and written submissions of the parties, the Committee concluded hearing in the instant case.

7. **Findings of the Committee:**

7.1 As regards the first charge that the Respondent had audited and signed the financial statements of the Company for the Financial Year 2017-18 without

Handwritten signature

being appointed as its Statutory Auditor in accordance with the provisions of Companies Act 2013, the Committee took note of the submissions of the Respondent that the Board of Directors of the Company had recommended his name as the Company's Statutory Auditor for the Financial Year 2017-18 to fill the casual vacancy that had arisen on account of unwillingness shown by the previous statutory auditor to continue. The Respondent claimed that his appointment was subsequently approved in an extraordinary general meeting on 30th May 2018. The Committee also noted the Respondent's argument that his appointment was valid, primarily based on the provisions outlined in Section 139(8)(i) of the Companies Act 2013 according to which any casual vacancy in the office of an auditor, excluding companies audited by the Comptroller and Auditor-General of India, shall be filled by the Board of Directors within thirty days, but where such vacancy results from the resignation of an auditor, the appointment must be approved by the company at a general meeting convened within three months of the Board's recommendation.

7.2 On perusal of Form ADT-1 filed on 08th October 2017 in respect of the appointment of the previous auditor of the Company, the Committee noted that the previous auditor namely M/s Dhawan Pandey and Associates were appointed as the Statutory Auditor of the Company for the period of five years from 01st April 2017 to 31st March 2022. The Committee also noted that Section 139(8)(i) of the Companies Act 2013 explicitly mentions about the resignation of the previous auditor. In this context, the Committee noted that the Respondent failed to submit the copy of resignation letter of the previous auditor. Thus, the Committee observed that despite the Respondent's claim of being informed about the previous auditor's unwillingness to continue and the specific mention of the resignation of previous auditor under Section 139(8)(i) of the Companies Act 2013, the absence of the resignation letter of the previous auditor raises concerns about the due diligence performed by the Respondent before accepting the appointment.

7.3 Furthermore, the Committee noted that the resolution dated 30th May 2018, passed by the shareholders of the Company at its extra-ordinary general

meeting purportedly appointing the Respondent as the Company's Statutory Auditor, was signed by Shri Parmatma Sharan Tiwari and Mrs. Vijay Lakshmi Tiwari. The Respondent provided a copy of Form SH-1 – 'Share Certificate' dated 30th April 2018 in favor of Mrs. Vijay Lakshmi Tiwari, but he failed to provide Form SH-4 – 'Securities Transfer Form' and the board resolution approving any share transfer to support his contentions that Mrs. Vijay Lakshmi Tiwari was one of the shareholder of the Company holding 5000 shares. This omission raised doubts about Mrs. Vijay Lakshmi Tiwari's status as a shareholder holding 5000 shares, as claimed by the Respondent. Additionally, the Committee noted that the Form SH-1 – 'Share Certificate' was dated 30th April 2018 i.e., it pertained to the Financial Year 2018-19, while the audited financial statements for Financial Year 2017-18 indicated Mrs. Vijay Lakshmi Tiwari as one of two shareholders holding 5000 shares while Shri Parmatma Sharan Tiwari is reported as the other shareholder holding 5000 shares. The Committee also took note of the complaint dated 20th May 2019 filed by the Complainant before the Police Station, Lucknow regarding invalid appointment of Mrs. Vijay Lakshmi Tiwari as director and illegal transfer of shares to her by her husband, Shri Parmatma Sharan Tiwari. Thus, the Committee expressed concerns about the authenticity of the Form SH-1 provided by the Respondent.

7.4 The Committee further considered Form No. SH-4 – 'Securities Transfer Form' dated 04th October 2017 and the board resolution passed in the Company's meeting on the same date, which indicated that the Complainant held 5000 shares of the Company. The Committee noted that these shares were previously owned by Mr. Rajneesh Rawat, a former director and shareholder, and were transferred to the Complainant under Folio No. 01, Certificate No. 01, with distinctive No.(s) ranging from 01 to 5000. Additionally, the Committee observed that the Form No. SH-1 – Share Certificate presented by the Respondent in favor of Mrs. Vijay Lakshmi Tiwari indicated Folio No. 02, Certificate No. 2, and distinctive No.(s) ranging from 5001 to 10000 shares. However, the Committee observed that this information actually corresponded to Shri Parmatma Sharan Tiwari, as per the board resolution passed during the Company's meeting on 04th October

Handwritten marks:
A checkmark and the number '3' are present at the bottom left of the page.

2017. Thus, the Committee observed that the shares mentioned in the Form SH-1 for Mrs. Vijay Lakshmi Tiwari were associated with Shri Parmatma Sharan Tiwari, as per the board resolution passed in the Company's meeting on 04th October 2017.

7.5 The Committee noted that the Respondent had furnished a copy of Form ADT-1 pertaining to his appointment as the Statutory Auditor of the Company for the Financial Year 2017-18, accompanied by its annexures which included: (i) an Appointment Letter dated 1st June 2018, issued by the Company appointing him as the Statutory Auditor, (ii) a copy of the Minutes of the Board of Directors' meeting held on 30th April 2018, and (iii) a Consent Letter dated 18th April 2018, issued by the Respondent to the Company under Section 139 of the Companies Act 2013. In this context, the Committee also considered the Form ADT-1 and its attachments available in the public domain on the MCA-21 portal, which had been preliminarily reviewed by the Director (Discipline) while forming prima facie opinion. The Committee noted disparities between the documents attached to the Form ADT-1 on the MCA-21 portal and those provided by the Respondent. Specifically, the Committee observed that the Consent Letter and Eligibility certificate submitted by the Respondent to the Directorate, pertaining to his appointment as the Statutory Auditor, were dated 18th April 2018. However, the documents filed as attachments to Form ADT-1 on the MCA-21 portal were dated 30th September 2018. Thus, the Committee observed that the documents submitted by the Respondent were different from those filed with the Registrar of Companies by the Company. Consequently, the Committee concluded that the Respondent had submitted false documents and information to the Directorate.

7.6 Subsequently, the Committee observed that the Form ADT-1, related to the appointment of the Respondent, was filed by the Company in December 2019, while the present complaint against the Respondent was lodged in June 2019. The Committee noted the Respondent's argument asserting that, in accordance with Section 139(1) of the Companies Act 2013, the responsibility for filing Form ADT-1 lies exclusively with the Company and not

Q

the auditor. The Committee concurred with this particular point, affirming that the filing of Form ADT-1, concerning the appointment of the Statutory Auditor, falls under the purview of the Company's management. However, the Committee scrutinized the Respondent's submissions and identified two distinct sets of documents viz., letters of consent and eligibility certificates for the Respondent's appointment wherein one set was attached to Form ADT-1 on the MCA21 portal, while the other set was provided by the Respondent. Upon comparison, it became evident that both sets of documents were not similar. This dissimilarity establishes that the documents submitted by the Respondent were fabricated and false. The Committee also took note of the additional submissions made by the Respondent, wherein he stated that the Company had submitted two ADT-1 forms wherein one of these forms was filed to fill a casual vacancy, while the other was filed for a regular vacancy. When specifically questioned about how a regular vacancy arose when the casual vacancy had been filled by the Respondent's appointment, the Respondent asserted that the Company could only answer to the same, as both forms were submitted by the Company itself. However, in view of two distinct copies of letters of consent and eligibility certificates bearing the Respondent's signature attached to these forms, the Committee found the Respondent's statements as an afterthought and not tenable.

- 7.7 The Committee also observed discrepancies in the actions of the Respondent concerning the Company's financial statements for the Financial Year 2017-18. It was specifically noted that the Respondent signed the Balance Sheet on 6th September 2018, in his capacity as the Statutory Auditor. However, the letter of consent submitted to the Company is dated 30th September 2018, as indicated by the attachment to Form ADT-1 downloaded from the MCA portal. Additionally, the Committee noted another inconsistency related to the copy of the resolution supposedly passed by the shareholders of the Company. In this context, the resolution provided by the Respondent is dated 30th May 2018, but it differs from the one attached to Form ADT-1 on the MCA-21 portal, which is actually undated.

3
R

7.8 On consideration of overall facts, submissions, and material, the Committee thoroughly examined the Respondent's actions related to the first charge, which pertains to auditing and signing the financial statements of the Company for the Financial Year 2017-18 without being duly appointed as its Statutory Auditor in accordance with the relevant provisions of the Companies Act 2013. The Committee noted that despite the Respondent's claim that the Board of Directors recommended his name to fill the casual vacancy and that his appointment was subsequently approved in an extraordinary general meeting, several discrepancies and concerns were identified. Firstly, the absence of the resignation letter of the previous auditor, as referred to under Section 139(8)(i) of the Companies Act 2013, raised doubts about the due diligence performed by the Respondent before accepting the appointment. Further, the Respondent's claim of being informed about the previous auditor's unwillingness to continue was not substantiated with proper documentation. Secondly, the Committee also noted the discrepancies regarding the appointment of Mrs. Vijay Lakshmi Tiwari as a shareholder holding 5000 shares, as claimed by the Respondent. The copy of Form SH-1 – 'Share Certificate' provided by the Respondent lacked supporting documents, and the Committee expressed concerns about the authenticity of the information provided by the Respondent. Additionally, discrepancies were identified in the Form No. SH-4 – 'Securities Transfer Form' and the board resolution. The Committee observed that the shares mentioned in the Form SH-1 for Mrs. Vijay Lakshmi Tiwari were associated with Shri Parmatma Sharan Tiwari, raising further concerns about the accuracy of the information provided by the Respondent. Furthermore, the Committee found that the Respondent had submitted false documents and information to the Directorate, as the Consent Letter and Eligibility Certificate submitted to the Directorate differed from those filed with the Registrar of Companies by the Company. Lastly, the Committee noted inconsistencies in the documents attached to the Form ADT-1 on the MCA-21 portal and those provided by the Respondent, specifically concerning the dates of the Consent Letter and Eligibility Certificate. In light of these findings, the Committee concluded that the Respondent's appointment as the Statutory Auditor of the

Company for the Financial Year 2017-18 was not valid in accordance with the relevant procedure supposed to be followed. Further, the Respondent had also engaged himself in unethical practices, by submitting fabricated documents and false information to the Directorate, thereby violating professional standards and ethical obligations. The Committee concluded that these actions of the Respondent were highly unbecoming of a Chartered Accountant. Thus, the Committee held the Respondent **GUILTY** of Professional and Other misconduct falling within the meaning of Item (9) of the Part-I and Item (2) of Part-IV of the First Schedule and Item (3) of Part-II of Second Schedule to the Chartered Accountants Acts, 1949 for this charge.

7.9 As regards the second, third and fourth charges, outlined in Para 2.2 to 2.4 above, alleging that the financial statements of the Company for the Financial Year 2017-18 were never approved by its Board of Directors and members. They were uploaded with the signatures of only single Director while such financial statements were also incorrect. The Committee observed that these three allegations were interrelated. The Committee also observed that all these allegations centered around the issue related to the validity of the appointment of Mrs. Vijay Lakshmi Tiwari as director and shareholder of the Company which resultantly had an impact on the various decisions subsequently taken by the Board. The same has been challenged by the Complainant in his submissions. Consequently, the Committee has addressed and analyzed these charges collectively.

7.10 The Committee took note of the Respondent's arguments asserting that the Company's financial statements for the Financial Year 2017-18 were duly approved by the Board of Directors during their meeting held on 6th September 2018. The Committee considered the Respondent's additional submissions asserting that the Company's financial statements for the Financial Year 2017-18 were duly approved since Shri Parmatma Sharan Tiwari was the Chairman and had the authority to sign them on behalf of the board of directors, as authorized by the board itself. This claim was primarily



based on the provisions outlined in Section 134(1) and 134(6) of the Companies Act 2013. In this context, upon examining the financial statements for the Financial Year 2017-18, audited by the Respondent, the Committee noted that Shri Parmatma Sharan Tiwari had signed them solely in his capacity as the 'Director' of the Company. Additionally, the Committee scrutinized the resolution passed during the annual general meeting on 29th September 2017, where both the Complainant and Shri Parmatma Sharan Tiwari were appointed as whole-time Directors of the Company. Besides these documents, the Committee noted that the Respondent provided the board resolution dated 6th September 2018 arguing that Shri Parmatma Sharan Tiwari was authorized in the said meeting to sign the financial statements. However, the Committee considered the Complainant's submissions, stating that as a board member, he had not sanctioned any notice for convening a board meeting, and no such meeting ever occurred on 6th September 2018 for the approval of financial statements. Further, upon scrutiny of the Board Resolution dated 6th September 2018, the Committee noted that Shri Parmatma Sharan Tiwari and Smt. Vijay Lakshmi Tiwari signed it as the Chairman and Director, respectively. In this context, the Committee raised concerns about the exclusion of the Complainant, who held a 50% stake in the Company and was appointed as the whole-time Director in the Board Meeting on 29th September 2017, from the decision-making process concerning the approval of the Company's financial statements. Furthermore, concerns had been raised on the validity of appointment of Mrs. Vijay Lakshmi Tiwari as the director and shareholder of the Company citing lack of supporting documents. Thus, the Committee observed substantial issues concerning the valid approval of the financial statements for the Financial Year 2017-18.

7.11 The Committee further considered the Respondent's assertions regarding the shareholding structure of the Company during the Financial Year 2017-18. According to the Respondent, Shri Parmatma Sharan Tiwari held 50% of the total shares, and the remaining 50% belonged to his wife, Mrs. Vijay Lakshmi Tiwari which was also reflected in the Financial Statements for the same

period. However, the Committee observed that the Complainant had acquired 50% of the Company's shareholding (5000 shares of Rs. 10 each) from the previous owner, Mr. Rajneesh Rawat, on 4th October 2017. The said share transfer was duly approved by the Board of Directors in a meeting held on the same date. But the Respondent failed to provide any documentation proving the transfer of these shares to Mrs. Vijay Lakshmi Tiwari. Additionally, the Committee noted that although the Respondent submitted a copy of Form SH-1 (Share Certificate) dated 30th April 2018, in favor of Mrs. Vijay Lakshmi Tiwari, crucial documents such as Form SH-4 (Securities Transfer Form) and the board resolution approving the share transfer, were not provided. These omissions cast doubt on the Respondent's claim of holding of 5000 shares of the Company by Mrs. Vijay Lakshmi Tiwari's which was reported in the financial statements as well. The Committee also noted that the Form SH-1 – 'Share Certificate' in favour of Mrs. Vijay Lakshmi Tiwari provided by the Respondent dated 30th April 2018 and it pertained to the Financial Year 2018-19, while she was reported as one of the shareholders in the audited financial statements for Financial Year 2017-18 along with Shri Parmatma Sharan Tiwari as other shareholder. This led the Committee to believe that the Respondent had signed incorrect financial statements for the Company during the Financial Year 2017-18.

- 7.12 On consideration of overall facts, submissions, and material, the Committee thoroughly examined the Respondent's arguments regarding the approval of the Company's financial statements for the Financial Year 2017-18. The Committee took note of the Respondent's claim arguing that Shri Parmatma Sharan Tiwari, being the Chairman, was authorized by the board of directors to sign the financial statements on the behalf of the Board. In this context, the Committee observed that the financial statements, audited by the Respondent, indicated that Shri Parmatma Sharan Tiwari had signed them solely in his capacity as a 'Director' of the Company and not as the 'Chairman' as outlined in the relevant provisions of the Companies Act 2013. The Committee also scrutinized the resolution from the annual general meeting on 29th September 2017, where the Complainant and Shri

P

Parmatma Sharan Tiwari were appointed as whole-time Directors. The Complainant also contested the board resolution dated 6th September 2018, authorizing Shri Parmatma Sharan Tiwari to sign the financial statements, asserting that he had not sanctioned any notice for a board meeting, and no such meeting occurred on the specified date. Furthermore, the exclusion of the Complainant from the decision-making process, despite holding a 50% stake in the Company and being appointed as a whole-time Director, raised additional concerns about the validity of the approval of the financial statements. The Committee also noted that no substantive evidence has been brought on record to corroborate the fact that the appointment of Mrs. Vijay Lakshmi Tiwari as a director and shareholder was valid. In light of these substantial issues, the Committee concluded that the Respondent had signed incorrect financial statements for the Company during the Financial Year 2017-18 which were also not validly approved and signed by or on behalf of its Board of Directors. Thus, the Committee held the Respondent **GUILTY** of Professional and Other misconduct falling within the meaning of Item (2) of Part-IV of the First Schedule and Item (7) of Part-I of Second Schedule to the Chartered Accountants Acts, 1949 for these charges.

8. **Conclusion**

In view of the findings stated in above paragraphs, vis-à-vis material on record, the Committee gives its charge-wise findings as under:

Charge(s) (as per PFO)	Findings	Decision of the Committee
Para 2.1 as above	Para 7.1 to 7.8 as above	Guilty – Item (9) of Part I and Item (2) of Part IV of First Schedule and Item (3) of Part II of Second Schedule
Para 2.2, 2.3 and 2.4 as above	Para 7.9 to 7.12 as above	Guilty – Item (7) of the Part I of Second Schedule and Item (2) of Part IV of First Schedule

9. In view of the above observations, considering the oral and written submissions of the Respondent and documents on record, the Committee held the Respondent **GUILTY** of Professional and Other Misconduct falling within the meaning of Item (9) of Part I and Item (2) of Part IV of the First Schedule and Item (7) of Part I and Item (3) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

3

Sd/-
(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

Sd/-
(SHRI JIWESH NANDAN, I.A.S. {RETD.})
GOVERNMENT NOMINEE


Sd/-
(MS. DAKSHITA DAS, I.R.A.S. {RETD.})
GOVERNMENT NOMINEE

Sd/-
(CA. MANGESH P KINARE)
MEMBER

Sd/-
(CA. COTHA S SRINIVAS)
MEMBER

DATE:05/02/2024
PLACE: New Delhi

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


नीलम पुंडीर / 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
आईसीएआई भवन, विरवास नगर, शाहपुरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nager, Shahdra, Delhi-110032