



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

PR-192/2020-DD/194/2020/DC/1520/2021

[DISCIPLINARY COMMITTEE [BENCH-II (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-192/2020-DD/194/2020/DC/1520/2021]**

**In the matter of:**

**CA. Virendra Kumar Pamecha (M.No. 073313),  
213, Silver Mall, Block-B, 2<sup>nd</sup> Floor,  
8/A, R.N.T Marg,  
Indore-452001.**

....Complainant

**Versus**

**CA. Anand Joshi (M. No. 145091)  
B-307, Prakrati Corporate,  
18/2 Y/N Road,  
Indore-452003.**

....Respondent

**Members Present:-**

**CA. Ranjeet Kumar Agarwal, Presiding Officer (in person)  
Mrs. Rani S. Nair, (IRS (Retd.)), Government Nominee (through VC)  
Shri Arun Kumar, (IAS (Retd.)), Government Nominee (through VC)  
CA. Sanjay Kumar Agarwal, Member (in person)  
CA. Cotha S Srinivas, Member (in person)**

**Date of Hearing : 28<sup>th</sup> March, 2024**

**Date of Order : 17<sup>th</sup> May, 2024**

1. That vide Findings 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. Anand Joshi (M. No. 145091), Indore** (hereinafter referred to as the 'Respondent') is **GUILTY** of Professional Misconduct falling within the meaning of Item (1) 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 opportunity of being heard in person / through video conferencing and to make representation before the Committee on 28<sup>th</sup> March 2024.

3. The Committee noted that on the date of the hearing held on 28<sup>th</sup> March 2024, the Respondent was present through video conferencing and made his verbal representation on the Findings of the Disciplinary Committee, inter-alia, stating that before taking the audit assignment, he asked the previous auditor for the no-objection. However, he was not in receipt of his audit fee. The previous auditor failed to file any civil case/suit for recovery of his fees rather he cast this responsibility on the Respondent by imposing the condition that he will issue no objection only when his fees will be duly paid by the client. The Respondent made several communications with the client/association to ensure repayment of the outstanding fee of the previous auditor, but he got the reply that his work was unsatisfactory.

CA. Virendra Kumar Pamecha -Vs- CA. Anand Joshi (M. No. 145091)



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

5. Keeping in view the facts and circumstances of the case, material on record including verbal representation on the Findings, the Committee observed that the amount of Rs. 7000/- reflected in the financial statements for the F.Y. 2015-16 signed by the Complainant under the head 'Current Liabilities & Provisions' as 'Audit Fees Payable' to the Complainant was clearly undisputed as per 'Explanantion-1' of Central Council Guidelines 2008. Thus, when the audit fee of the Complainant (being the previous auditor) for the FY 2015-16 was still outstanding, and such payment was also undisputed at the time of acceptance of audit of the Association for the FY 2016-17 by the Respondent, the Committee viewed that the Respondent should not have accepted the audit of the Association till such undisputed outstanding Audit Fees of the Complainant was paid by the Association as prescribed under Central Council Guidelines, 2008.

5.1 Hence, professional misconduct on the part of the Respondent is clearly established as spelt out in the Committee's Findings dated 7<sup>th</sup> 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 ends of justice will be met if punishment is given to him in commensurate with his professional misconduct.

7. Thus, the Committee ordered that CA. Anand Joshi (M.No.145091), Indore (Madhya Pradesh) be Reprimanded and also a Fine of Rs. 15,000/- (Rupees Fifteen Thousand only) be imposed upon him payable within a period of 60 days from the date of receipt of the Order.

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

sd/-  
(MRS. RANI S. NAIR, IRS RETD.)  
GOVERNMENT NOMINEE

sd/-  
(SHRI ARUN KUMAR, IAS RETD.)  
GOVERNMENT NOMINEE

sd/-  
(CA. SANJAY KUMAR AGARWAL)  
MEMBER

sd/-  
(CA. COTHA S SRINIVAS)  
MEMBER

सही प्रतिलिपि होने के लिए प्रमाणित  
Certified to be true copy

*Bish*  
बिषा नाथ तिवारी / Bishwa Nath Tiwari  
कार्यकारी अधिकारी / Executive Officer  
अनुरासनात्मक निदेशालय / Disciplinary Directorate  
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया  
The Institute of Chartered Accountants of India  
आईसीएआई भवन, विद्यास नगर, शाहदरा, दिल्ली-110032  
ICAI Bhawan, Vishwas Nagar, Shahdara, Delhi-110032

CA. Virendra Kumar Pamecha -Vs- CA. Anand Joshi (M. No. 145091)

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (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-192/2020-DD/194/2020/DC/1520/2021]

In the matter of:

CA. Virendra Kumar Pamecha (M.No. 073313),

213, Silver Mall, Block-B, 2<sup>nd</sup> Floor,

8/A, R.N.T Marg,

Indore-452001

.... Complainant

Versus

CA. Anand Joshi (M. No. 145091)

B-307, Prakrati Corporate,

18/2 Y/N Road,

Indore-452003

.....Respondent

MEMBERS PRESENT:

CA. Ranjeet Kumar Agarwal, Presiding Officer (Present in person)

Smt. Rani Nair, I.R.S. (Retd.), Government Nominee (Present in person)

CA. Sanjay Kumar Agarwal, Member (Present in person)

CA. Sridhar Muppala, Member (Present in person)

DATE OF FINAL HEARING : 30.05.2023 (Through Physical/ video conferencing Mode)

PARTIES PRESENT

Complainant : CA. Virendra Kumar Pamecha (Through VC)

Respondent : CA. Anand Joshi (Through VC)

**BACKGROUND OF THE CASE: -**

1. The brief background of the case is as under:
  - a. The Complainant was the Statutory Auditor of 'M/s Association of Industries (hereinafter referred to as an 'Association') and signed the financial statement of the association for the Financial Year 2015-16.
  - b. The Respondent vide letter dated 22<sup>nd</sup> March 2017 made communication with the Complainant in respect to the audit of the Association for the Financial year 2016-17.
  - c. In reply to the same, the Complainant vide his letter dated 5<sup>th</sup> April 2017, informed the Respondent that his undisputed audit fee of last year was outstanding.
  - d. Despite the verbal assurance of the Respondent, the outstanding audit fee of the Complainant was not paid, and the Respondent conducted the audit of Association for the Financial Year 2016-17.

**CHARGES IN BRIEF: -**

2. The Committee noted that following charges were levelled against the Respondent which are as under:
  - a. That the Respondent accepted the appointment as an auditor of the Association despite the fact that the undisputed audit fee of the Complainant had not been paid for the previous year by the Association.
  - b. That the Respondent had failed to determine whether his appointment was proper as the Complainant had not resigned as the auditor of the Association.
3. The Committee noted the Respondent in his reply at the stage of Prima-facie opinion had inter-alia, mentioned as under: -
  - a. That consensus had arrived between the Complainant and the Association before accepting the audit by the Respondent that the outstanding audit fees would be paid to the Complainant shortly.

Accordingly, he gave his confirmation for conducting the audit of the Association.

- b. After accepting the audit of the Association, he requested the Association several times to make the outstanding payment to the Complainant. However, the Association did not make the payment because the Income Tax Returns for the Financial years 2014-15 and 2015-16 of the Association were not filed by the Complainant due to which the Association could not claim income tax refund for those periods.
  - c. That the Association sought clarification from the Complainant on such negligence, but the Complainant was reluctant to answer their queries.
  - d. As regards second allegation, the Respondent stated that in his communication letter dated 22<sup>nd</sup> March 2017, he had specifically stated that his appointment had been made in view of Complainant's resignation as the Auditor of the Association. The Complainant in response to the same, vide letter dated 5<sup>th</sup> April 2017 mentioned his objection only regarding the outstanding fees. This in turn implied that the Complainant had agreed on to the Respondent's appointment as the Auditor of the Association.
4. The Complainant in his rejoinder stated that the Respondent was aware of non-payment of outstanding undisputed audit fee of the Complainant by the Association, but despite the same the Respondent accepted the audit of the Association for the Financial Year 2016-17.
5. The Director (Discipline) in his Prima Facie Opinion dated 19<sup>th</sup> August 2021, observed as under:
- 5.1 As regards **First Allegation**, the Director (Discipline) on perusal of financial statements for the Financial Year 2015-16 noted that 'Audit Fees Payable' to the Complainant was duly disclosed for Rs. 7,000/- under the head 'Current Liabilities & Provisions'.

- 5.1.1 Further, the Complainant vide his letter dated 5<sup>th</sup> April 2017 had informed the Respondent about his outstanding audit fees of Rs. 7,000/-.
- 5.1.2 Since the provision for 'Audit Fee Payable' was created / disclosed in the audited financial statements of the Association as at 31.03.2016, thus, the amount of audit fee payable to the Complainant was clearly undisputed.
- 5.1.3 Thus, the Respondent should not have accepted the audit of the Association till such undisputed outstanding audit fee of the Complainant was paid by the Association as prescribed under Central Council Guidelines, 2008.
- 5.1.4 Accordingly, the Director (Discipline) held the Respondent prima facie Guilty of Professional Misconduct falling within the meaning of Item (1) of Part-II of the Second Schedule to the Chartered Accountants Act, 1949 for contravening the provisions of guidelines issued by the Council.
- 5.2 As regards **Second Allegation**, the Director (Discipline) observed that in the letter dated 22<sup>nd</sup> March 2017 wherein the Respondent had sought no objection from the Complainant by mentioning that he is informed by the Association that his appointment had been made in view of the resignation of the Complainant.
- 5.2.1 The Association has submitted a letter dated 8<sup>th</sup> January 2021 wherein it was stated by the Association that regarding the appointment of the Respondent, it had taken verbal/oral confirmation from the Complainant and thus, the Respondent was appointed in the Annual General Meeting of the Association.
- 5.2.2 Thus, it was amply clear that no written resignation was given by the Complainant to the Association and the Respondent had completely relied on the information provided to him by the management of the Association and failed to exercise due diligence in respect of his appointment as the Association's Statutory Auditor for the Financial Year 2016-17.

- 5.2.3 Also, though the Association has stated that the appointment of the Respondent as the Statutory Auditor was made in its Annual General Meeting, but the copy of any such resolution approving the appointment of the Respondent had not been submitted on record.
- 5.2.4 The Complainant also submitted a letter dated 5<sup>th</sup> May 2017 addressed to the President of the Association with a copy marked to the Respondent specifically informing therein that he had not resigned as the Auditor of the Association and had gave his consent to the Association to continue as their Auditor. The Complainant had also asked the Respondent to verify the formalities of his appointment before proceeding further.
- 5.2.5 That the Respondent had also failed to submit any documentary evidence in his defense in the instant matter to prove that appropriate steps were taken by him to ensure that his appointment as the Statutory Auditor of the Association for the FY 2016-17 was valid.
- 5.2.6 The Director (Discipline) observed that though the alleged professional misconduct against the Respondent falls under Item (9) of Part-I of the First Schedule to the Chartered Accountants Act 1949 for not ensuring that his appointment as the Auditor of the Association was proper, yet it is pertinent to mention that Item (9) of Part-I of First Schedule to the Chartered Accountants Act 1949 refers the provisions of Section 224 and 225 of Companies Act 1956 (Section 139 and 140 of Companies Act 2013) and thus in the instant matter, wherein the auditee is not a Company but an Association / Society, the provisions of this clause may not be strictly applicable here.
- 5.2.7 However, it is viewed that the Respondent had failed to ensure that appropriate procedures as per the applicable laws of the Association were followed by them in respect of Respondent's appointment as their Statutory Auditor for the FY 2016-17 where such an act of the Respondent is unbecoming of a Chartered Accountant.
- 5.2.8 Accordingly, the Director (Discipline) hold the Respondent prima facie guilty of 'Other' Misconduct falling within the meaning of Item (2) of Part-IV of the First Schedule to the Chartered Accountants Act, 1949.
6. Accordingly, the Director (Discipline) in terms of Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional Misconduct and

Conduct of Cases) Rules, 2007, held the Respondent Prima facie guilty of Professional and Other Misconduct falling within the meaning of Item (1) of Part II of the Second Schedule and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949. The said clauses to the Schedule to the Act, states as under:

**Clause (1) 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-

*(1) contravenes any of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council."*

**Clause (2) of Part IV of the 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.*

**BRIEF FACTS OF THE PROCEEDINGS:-**

7. The Committee noted that the instant case was fixed for hearing on following dates:

S.No.	Date	Status of Hearing
1.	12.05.2023	Part Heard and Adjourned
2.	30.05.2023	Heard and concluded.

8. On the day of first hearing held on 12<sup>th</sup> May 2023, the Committee noted that the Respondent was present through Video Conferencing Mode. The



Committee further noted that neither the Complainant was present, nor any intimation was received from his side.

- 8.1 The Respondent was administered on Oath. Thereafter, the Committee enquired from the Respondent as to whether he was aware of the charges. On the same, the Respondent replied in the affirmative and pleaded Not Guilty to the charges levelled against him.
- 8.2 The Committee, looking into the fact that this was the first hearing, decided to adjourn the hearing to a future date. With this, the hearing in the matter was partly heard and adjourned.
9. On the day of second and final hearing dated 30<sup>th</sup> May 2023, the Committee noted that both parties were present through Video Conferencing Mode. The Complainant was administered on Oath.
- 9.1 The Respondent during his submissions had inter-alia stated as under:
- a. That before accepting the audit he had duly communicated with the Complainant.
  - b. That the Complainant instead of filing civil suit against the Association, regarding his pending fee, chose to file a complaint against him with ICAI.
  - c. That there was some communication gap between the Complainant and Association.
  - d. That the Complainant fee is paid by the client.
- 9.2 Thereafter the Complainant was asked to make his submission. He in his submissions had inter-alia stated as under:
- a. That he accepts the prima-facie opinion made by the Director (Discipline).
  - b. In response to communication regarding no objection, he had informed the Respondent to abstain from accepting the audit till the pending dues are paid.
  - c. But despite the same, the Respondent conducted the audit and due to same, his fee remained unpaid for several years.

d. On a specific question whether he had received his fee, he submitted that his outstanding fees is now paid by the client.

9.3 The Committee posed certain questions to both parties to understand the issue involved and the role of the Respondent in the case.

9.4 Thereafter, the Committee, looking into the submissions of the both the parties vis-à-vis documents on record decided to conclude the hearing.

### **FINDINGS OF THE COMMITTEE**

#### **First Charge:**

10. As regards to the **first charge** of acceptance of the audit without ensuring that the outstanding audit fees of the previous auditor had not been paid, the Committee noted that the Complainant, in response to the communication letter regarding no objection from the Respondent, vide his letter dated 5<sup>th</sup> April 2017 had mentioned as under:

**We have no objection to your accepting the appointment as the auditor of ASSOCIATION OF INDUSTRIES, M.P. INDORE for the year ended 31/03/2017 except that our following Bills are still pending for payment:  
AUDIT FEES FOR THE YEAR ENDED 31.03.2016 Rs. 7000/-  
CERTIFICATION FEES (INV. NO. 78 Dated 15/10/2015) Rs. 5000/-**

10.1 The Committee hence noted that the Complainant had specifically raised his concern to the Respondent regarding his pending dues.

10.2 The Committee observed that in this regard, Chapter VII of Council Guidelines No. 1-CA (7)/02/2008, dated 8<sup>th</sup> August, 2008 states as under:

*"A member of the Institute in practice shall not accept the appointment as auditor of an entity in case the undisputed audit fee of another Chartered*

Accountant for carrying out the statutory audit under the Companies Act, 1956 or various other statutes has not been paid:

**Provided** that in the case of sick unit, the above prohibition of acceptance shall not apply.

**Explanation 1:**

For this purpose, the provision for audit fee in accounts signed by both - the auditee and the auditor shall be considered as "undisputed" audit fee.

**Explanation 2:**

For this purpose, "sick unit" shall mean where the net worth is negative."

The Committee observed that Explanation 1 states that provision of audit fee in accounts signed by both the auditee and the auditor shall be considered as "undisputed" audit fee. The Committee on perusal of the financial statements for the F.Y. 2015-16 signed by the Complainant noted that 'Audit Fees Payable' to the Complainant was disclosed for Rs. 7,000/- under the head 'Current Liabilities & Provisions. The same is reflected as under:

CURRENT LIABILITIES & PROVISION AS ON 31.03.2016		SCHEDULE-III
PARTICULARS	CURRENT YEAR (2016)	
Audit Fees Payable		7000
Contribution for Kho-2 Championship A/c		11000
Contribution received for Dhruva Germany Tour A/c		400000
ITR Filing Charges A/c		10000
Reimbursement of Claim for China plus 2013 Recd. From MSME Ministry		828020
Reimbursement of Claim for All in Print China 2014 Recd. From MSME Ministry		489744
Reimbursement of Claim for Hannover Messe Germany 2015 Recd.		400000
Development Fund		260000
Sangthan Shakti Kosh Contri & Exp A/c	109015	
Less- Legal and Professional Expenses during the year	62600	46415
<b>TOTAL</b>		<b>2452179</b>

The Committee hence observed that the amount of Rs. 7000/- as audit fee payable to the Complainant was clearly undisputed as per 'Explanation-1' of Central Council Guidelines 2008.

- 10.3 Thus, in the instant matter, wherein the audit fee of the Complainant (being the previous auditor) for the FY 2015-16 was still outstanding, and such payment was also undisputed at the time of acceptance of audit of the Association for the FY 2016-17 by the Respondent, it is viewed that the Respondent should not have accepted the audit of the Association till such undisputed outstanding audit fees of the Complainant was paid by the Association as prescribed under Central Council Guidelines, 2008.
- 10.4 The Committee noted that the in final hearing the Respondent also submitted that the client (Association) told him that they would take care of the Complainant fees, and he may start the audit. It clearly shows that on management assurance the Respondent started the audit, and it is admitted fact that the audit fees of the Complainant remained outstanding.
- 10.5 Looking into the clear violation of Council guidelines issued by the Institute. The Committee hold the Respondent Guilty of Professional Misconduct falling within the meaning of Item (1) of Part-II of the Second Schedule to the Chartered Accountants Act, 1949.

### Second Charge

11. In respect of **second charge**, that the Respondent had failed to determine whether his appointment was proper as the Complainant had not resigned as the auditor of the Association, noted that the Respondent vide his letter dated 22<sup>nd</sup> March 2017 had requested for no objection from the Complainant by mentioning as under:

This is to inform you that we have been appointed as the Auditor of ASSOCIATION OF INDUSTRIES MADHYA PRADESH, INDORE for the financial year 2016-2017 at the Annual General Meeting of the members of the Society .We have been informed that the said appointment has been made in view of your resignation as the Auditor of the Society. Accordingly this is to seek your No objection in writing in our favour so as to enable us to accept the said appointment as Auditor of the Society. In case if we do not hear from you within 15 days from the date of this letter then we shall presume that you do not have any objection to our acceptance of the appointment as auditor of the said Society. Your early response shall be appreciated.

- 11.1 The Committee on perusal of the same noted that the Respondent had specifically mentioned that his appointment was made in view of the resignation of the Complainant. The Committee noted that despite that the Complainant in reply to this letter, vide his letter dated 5<sup>th</sup> April 2017, had merely mentioned that he had no objection to the appointment of the Respondent subject to clearance of his outstanding fee.
- 11.2 The Committee was of the view that the Complainant was required to inform the Respondent about the correct position regarding his resignation in his letter dated 5<sup>th</sup> April 2017 itself. Moreover the auditee is an association for which no specific rules are made regarding resignation of the auditor. Hence, based on the reply of the Complainant the Respondent accepted the position as auditor of the Association.
- 11.3 The Committee was of view that the Respondent accepted the audit in good faith as the Complainant had not contradicted his resignation in his letter dated 5<sup>th</sup> April 2017. The Committee, accordingly, decided to give benefit in favour of the Respondent and exonerated the Respondent on this charge. Accordingly, the Respondent is held Not Guilty of 'Other' Misconduct falling within the meaning of Item (2) of Part-IV of the First Schedule to the Chartered Accountants Act, 1949.

### CONCLUSION

12. In view of the above findings stated in above paras vis a vis material on record, the Committee gives its charge wise findings as under:

Charge	Findings (para ref.)	Decision of the Committee
Acceptance of appointment for audit despite undisputed audit fee of the Complainant was pending	10 to 10.5	<b>Guilty</b> - Item (1) of Part II of the Second Schedule
Validity of appointment	11 to 11.3	Not Guilty - Item (2) of Part IV of the First Schedule

13. In view of the above observations, considering the submissions of the Respondent and documents on record, the Committee held the Respondent **GUILTY** of Professional Misconduct falling within the meaning of Item (1) of Part – II of the Second Schedule to the Chartered Accountants Act, 1949.

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

SD/-  
(MRS. RANI NAIR, I.R.S. RETD.)  
GOVERNMENT NOMINEE

SD/-  
(CA. SANJAY KUMAR AGARWAL)  
MEMBER

SD/-  
(CA. SRIDHAR MUPPALA)  
MEMBER

DATE : 07<sup>TH</sup> FEBRUARY, 2024

PLACE: NEW DELHI

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मीनू गुप्ता / Meenu Gupta  
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer  
अनुशासनात्मक निदेशालय / Disciplinary Directorate  
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया  
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