



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

PR-107/2022-DD/100/2022/DC/1752/2023

[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-107/2022-DD/100/2022/DC/1752/2023]

In the matter of:

CA. Chandan Khandelwal (M. No. 423728)
Partner, M/s A K Agarwal & Associates
Chartered Accountants
SJ-7, 2nd Floor, Muneshwari Bhawan, Road No.2,
Contractors Area, Bistupur,
Jamshedpur (Jharkhand) – 831001.

...Complainant

versus

CA. Rajiv Ranjan (M. No. 416937)
Partner, M/s A K ARYA & Co.
Chartered Accountants
H No. 97, Netaji Road, Tata Foundary, Bidyapati Nagar,
Jamshedpur (Jharkhand)- 831017.

...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 : 28th March, 2024
Date of Order : 17th 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. Rajiv Ranjan (M. No. 416937), Jamshedpur (hereinafter referred to as the 'Respondent') is **GUILTY** of Professional Misconduct falling within the meaning of Item (8) and (9) of Part I of the First Schedule and Item (7) and (8) of Part I 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 28th March 2024.

3. The Committee noted that on the date of the hearing held on 28th 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 the audit in the instant matter was done at the request of the director of the Company within a short time frame. The Respondent further added that the mistake on his part was that he failed to obtain the no-objection from the Complainant before accepting the audit as during that time, Corona pandemic was ongoing in the Country and everything was shut down. He visited the

CA. Chandan Khandelwal (M. No. 423728) Vs. CA. Rajiv Ranjan (M. No. 416937), Jamshedpur



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

PR-107/2022-DD/100/2022/DC/1752/2023

Complainant office's as well, but it was closed. The Respondent also added that he was still conducting the audit of the Company.

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 noted that the Respondent failed to verify or obtain any of the documents as required in terms of the Code of Ethics to ascertain as to whether the requirements of Section 139 and Section 140 of the Companies Act, 2013 were complied. In the Code of Ethics, it is clearly mentioned that only a Certificate from the management will not be sufficient and the Respondent has himself admitted that he has relied on the letter of the Company dated 22nd September 2021 which is a clear case of violation of Code of Ethics.

5.1 The Committee further noted that any communication of the Respondent with CA. Suman Chaudhary does not hold any relevance since she was not the previous auditor, and the communication of CA. Suman Chaudhary with the Complainant cannot be treated as a substitute of the communication which was required to be done by the Respondent with the Complainant. The Committee noted that the Respondent failed to obtain sufficient and appropriate evidence to express an opinion on the financial statements of the Company, whether they are giving a true and fair view or not. The Committee also noted that the Respondent followed a very casual approach while auditing the financials of the Company and was grossly negligent in discharge of his professional duties as Statutory Auditor of the Company for FY 2020-21.

5.2 Hence, professional misconduct on the part of the Respondent is clearly established as spelt out in the Committee's Findings dated 7th 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. Rajiv Ranjan (M.No.416937), Jamshedpur be Reprimanded and also a Fine of Rs. 25,000/- (Rupees Twenty Five 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

अरुण कुमार / Arun Kumar

वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer

अनुसंधान विभाग - दिल्ली / Investigation Department (M)

इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया

The Institute of Chartered Accountants of India

आईसीएआई भवन, विभास नगर, शाहदरा, दिल्ली-110032

ICAI Bhawan, Vishwas Nagar, Shahdara, Delhi-110032

CA. Chandan Khandelwal (M. No. 423700) vs. CA. Rajiv Ranjan (M. No. 416937), Jamshedpur

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-107/2022-DD/100/2022/DC/1752/2023]

In the matter of:

CA. Chandan Khandelwal (M. No. 423728)
Partner, M/s A K Agarwal & Associates
Chartered Accountants
SJ-7, 2nd Floor,
Muneshwari Bhawan, Road No.2,
Contractors Area, Bistupur,
Jamshedpur (Jharkhand) - 831001

...Complainant

versus

CA. Rajiv Ranjan (M. No. 416937)
Partner, M/s A K ARYA & Co.
Chartered Accountants
H No. 97, Netaji Road,
Tata Foundary, Bidyapati Nagar,
Jamshedpur (Jharkhand)- 831017

...Respondent

MEMBERS PRESENT:

CA. Ranjeet Kumar Agarwal, Presiding Officer (Present in person)
Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee (Present in person)
Shri Arun Kumar, I.A.S. (Retd.), Government Nominee (Present in person)
CA. Sanjay Kumar Agarwal, Member (Present in person)

DATE OF FINAL HEARING : 09.01.2024

DATE OF JUDGEMENT : 23.01.2024

PARTIES PRESENT :

Complainant : CA Chandan Khandelwal (Through Video Conferencing Mode)

Respondent : Not Present

Counsel of Respondent : CA Kishan Garg (Present in person)

BACKGROUND OF THE CASE:

1. The brief background of the case is as under:
 - a. As per the Complainant, he was appointed as the Statutory Auditor of **M/s Rameshwari Engicon Private Limited** [hereinafter referred to as the "**Company**"] in the year 2017-18 for the period from FY 2017-18 to 2021-22 i.e., for 5 years.
 - b. The Complainant was also re-appointed as the Statutory Auditor of the Company for FY 2020-21 in the AGM of the Company held on 02nd November 2020.
 - c. However, the audit of the Company for the FY 2020-21 was conducted by the Respondent even though the Complainant had neither resigned, nor was he removed by the Company.
 - d. It is also stated that Company had proposed the appointment of Respondent as new auditor for F.Y. 2020-21 in the AGM held on 26th September 2021 which was duly accepted by the Respondent. Further, the Company again conducted its Annual General Meeting on 2nd December, 2021 for approval of financial statements for FY 2020-21 as reflecting in Form AOC-4 (Form for filing financial statements and other documents with the Registrar).

CHARGES IN BRIEF:-

2. The Committee noted that the charges against the Respondent were as under:
 - a. That the Respondent being an incoming auditor accepted the appointment without ascertaining whether the Company has complied with the provisions of Sections 139 and 140 of the Companies Act, 2013 (erstwhile Section 225 of Companies Act, 1956).
 - b. That the Respondent failed to communicate with the outgoing auditor before taking the audit assignment of the Company for FY 2020-21 as
OK

provided in Clause (8) of Part-I of the First Schedule to the Chartered Accountants Act, 1949.

- c. That there were certain discrepancies in the Financial Statements of the Company for FY 2020-21 audited by the Respondent which are as under:
- (i) Balance of Reserve and Surplus were not justified.
 - (ii) The value of fixed assets was appreciated but there was no addition to assets.
 - (iii) The amount received from the Director, Mr. Abhinaw Kumar Jalan, was repaid 5 Lakhs during the year in the month of March 2021, but the audited financial statements showed the different figures.
 - (iv) The Balance of Cash & Cash Equivalent in Note no. 2.20 was Rs. 3,24,229.13/- which was different from the bank statement submitted by the Company.

3. The Committee noted that the Respondent in his reply at the stage of PFO had, inter-alia, mentioned as under:

- a. That Mr. Ratan Kumar Sharma (Director of the Company) had come to him with lot of pressure to conduct the audit for the financial year 2020-21.
- b. That in respect of obtaining No objection Certificates from the Complainant, it was stated that the Respondent continuously called the Complainant for 5 days, but no response was received from him. Thereafter, the Respondent sent his staff to visit the office of the Complainant, but the office was found closed.
- c. That the Director informed the Respondent that the Complainant had not handed over the audit report for the financial year 2019-20 and the period of audit for financial year 2020-21 was nearby. The Director also stated that he was not satisfied with the service of the Complainant, and he had also faced the financial loss due to the work of the Complainant.
- d. That the Respondent had audited the books of accounts of the Company for the financial year 2020-21 based on data produced to him. There were several records and papers of last year which were not handed over to the

OK

Company by the Complainant. Thus, he had relied upon the bank statement, Form 26AS and the director's statements.

- e. That the reason for the difference in the balance of cash and cash equivalent as compared to the bank statement was due to a cheque amounting to Rs. 1,29,989.89/- which was issued for payment on 31st March, 2021, but the same was not presented in the bank for the payment.
- f. That Mr. Abhinaw Kumar Jalan (Director of the Company) was repaid Rs. 5 lakhs during the year but in the audited financial statements, it was not reduced as the opening balance was not available but later on, it was informed to the Director to reduce his balance.

4. The Director (Discipline) had, in his Prima-facie opinion dated 14th February 2023, noticed that with respect to **first charge**, the Respondent being the incoming auditor was required to verify the relevant records of the Company for ensuring the compliance with the provisions of Sections 139 and 140 of the Companies Act, 2013 by the Company, however, the Respondent had admittedly relied merely on the letter dated 22nd September 2021 which had been received by him from the directors of the Company wherein the directors had informed certain issues pertaining to professional services of the Complainant as Statutory Auditor of the Company.

4.1 It was also noted that the Respondent failed to provide the copy of minutes of AGM of the Company for his appointment as the Auditor of the Company when specifically asked for under Rule 8(5). Further, on perusal of ADT-1, it was noted that only the relevant extract of Board resolution dated 22nd September 2021 was attached with Form ADT-1 which creates a doubt that false information pertaining to appointment of Respondent as Statutory Auditor of the Company was given in Form ADT-1. Thus, the Respondent was opined as *prima facie* **Guilty** of professional misconduct falling within the meaning of Item (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

4.2 With respect to the **second charge** regarding non-communication with outgoing auditor, it was observed by the Director (Discipline) that the Respondent failed to bring on record any copy of letter seeking no objection from the Complainant.

Further, it was also noted that the Respondent failed to do communication with the Complainant by a letter sent through "Registered Acknowledgement due" as prescribed under Para 2.14.1.8(x) of Code of Ethics (Revised 2020). Looking into the various submissions on record, it appeared that the Respondent had no intention of doing any communication with the Complainant before accepting the position of Statutory Auditor of the Company for FY 2020-21. Accordingly, the Respondent was held *prima facie* Guilty of Professional Misconduct falling within the meaning of Item (8) of Part-I of First Schedule to the Chartered Accountants Act, 1949.

4.3 As regards the **third charge**, it was noted that the Complainant had informed four instances of deviations in the financial statements of the Company for FY 2020-21 which had been dealt as under:

4.3.1 In respect of the first instance, it was noted that the Respondent failed to make any comment / submission in his Written Statement. Further, on perusal of Note 2.2 to the financial statements, it was noted that profit for the current year (i.e., FY 2020-21) added to the opening balance of Reserve & Surplus was Rs. 4,50,000/- however, on perusal of Statement of Profit & Loss for the said period, it was noted that the surplus of only Rs. 1,93,462/- was reported by the Company. Thus, it was amply clear that wrong balance of Reserves & Surplus was shown by the Company in its audited financial statements.

4.3.2 In respect of the second instance, it was noted that the Company showed an appreciation of Rs. 1,07,754/- in the value of fixed assets. It was noted that value of fixed asset could be appreciated either due to upward revaluation or purchase of new fixed asset. However, it was noted that no addition to fixed assets was shown in Note 2.12 – Fixed Assets and also, no revaluation reserve was shown in Note 2.2 – Reserve & Surplus. Thus, it was amply clear that wrong balance of Fixed Assets had been shown by the Company in its audited financial statements.

4.3.3 In respect of the third instance, the Respondent in his Written Statement, had admitted that Mr. Abhinaw Kumar Jalan had been repaid Rs. 5 lakhs during the FY 2020-21 but in the audited financial statements, it was not reduced. The outstanding loan was 24 lakhs and after payment of Rs 5 lakhs, Rs 19 lakhs were left. However, it was noted that the Company had reported the amount of Rs. 24 lakhs as both opening and closing balances as on 31st March 2020 and 31st March 2021 respectively under 'Short-Term Borrowings'. It was also noted that the said amount of Rs. 24 lakhs had been shown wrongly in the name of Mr. Abhishek Jalan instead of Mr. Abhinaw Kumar Jalan. Thus, it was amply clear that wrong balance of Short-Term Borrowings has been shown by the Company in its audited financial statements.

4.3.4 In respect of fourth instance, it was viewed that certain differences in the bank balances as shown in the bank passbook and cash book maintained by the entity may exist. However, it was noted that the Respondent had failed to provide the copy of bank reconciliation statement, if any prepared by the Company or the bank statement of the Company for the later dates to prove his defense / submission that the cheque amounting to Rs. 1,29,989.89/- had been issued but was not presented till 31st March 2021. Thus, it was amply clear that wrong balance of Cash and Cash equivalent had been shown by the Company in its audited financial statements.

4.3.5 With respect to above instances mentioned in 4.3.1 to 4.3.4, the Director (Discipline) observed that the Respondent has failed to report these deviations in his audit report. It was also noted that the Respondent had taken the defence that he did not get complete records from the management of the Company as those were not handed over to the management by the Complainant being the previous auditor. However, nothing in this regard, had been reported in the audit report of the Respondent. Under Point 8 - 'Board's Comment on the Auditor's Report' of the Board's Report of the Company dated 02nd December 2021 for the same period, it was clearly stated that the audit report issued by the Respondent did not call for any comments from which it was also clear that the Respondent had issued the clean audit report to the Company despite various deviations mentioned above. Thus, it was evident that the Respondent was grossly

negligent and failed to exercise due diligence in the conduct of his professional duties as Statutory Auditor of the Company for FY 2020-21. It was also evident that the Respondent had conducted the audit of financial statements of the Company for FY 2020-21 and expressed his opinion in his audit report without obtaining sufficient information from the management of the Company. Accordingly, it was viewed that the Respondent was *prima facie* **Guilty** of Professional Misconduct falling within the meaning of Item (7) and (8) of Part-I of First Schedule of the Chartered Accountant Act, 1949.

5. Accordingly, the Director (Discipline) in terms of Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, held the Respondent *Prima-facie* **Guilty** of Professional Misconduct falling within the meaning of Item (8) and (9) of Part-I of First Schedule and Item (7) and (8) of Part-I of Second Schedule to the Chartered Accountants Act, 1949. The said item(s) in the Schedule to the Act states as under:

Item (8) of Part I of the First Schedule:

“A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he –

(8) 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”.

Item (9) of Part I of the 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 of the Companies Act, 1956 (erstwhile Section 225 of Companies Act, 1956) in respect of such appointment have been duly complied with”.

Item (7) of Part I of the 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 (8) of Part I of the Second Schedule:

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

(8) fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion

BRIEF FACTS OF THE PROCEEDINGS:

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

S.No.	Date	Status of Hearing
1.	09.06.2023	Part-Heard and Adjourned
2.	23.08.2023	Part-Heard and Adjourned
3.	04.10.2023	Adjourned on request of the Respondent
4.	13.12.2023	Deferred due to paucity of time
5.	09.01.2024	Concluded and Judgment Reserved
6.	23.01.2024	Final Decision taken on the case

7. On the day of the first hearing held on 09th June 2023, the Committee noted that the Respondent was present through video conferencing mode and was administered on Oath. The Committee further noted that the Complainant vide email dated 05th June 2023 sought adjournment by expressing his inability to appear due to a pre-scheduled family trip. 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. Thereafter, looking into the fact that this was the first hearing, the Committee decided to adjourn the hearing to a future date. With this, the hearing in the matter was partly heard & adjourned.

8. On the day of second hearing held on 23rd August 2023, the Committee noted that the Complainant was present through Video Conferencing Mode. The Committee further noted that the Respondent was physically present at Delhi Office.

8.1 Thereafter, the Complainant was asked to submit his charges. The Complainant/ in his submissions had, inter-alia, submitted as under:

- a. He reiterated his earlier submissions and stated that the Respondent did not take NOC from him, and the balance sheet submitted by the Respondent was different from his working papers.
- b. He also stated that the Balance sheet signed by the Respondent is created with copy paste and contained multiple errors and the way of doing audit is incomprehensible.

8.2 Thereafter, the Respondent was asked to give his submissions. The Authorized Representative of the Respondent in his defence, inter-alia, stated as under: -

- a. CA. Suman Chaudhary of M/s Suman Chaudhary & Co. was appointed by the Company in place of the Complainant. CA. Suman Chaudhary also sent email for NOC & resignation from the Complainant, but he did not reply within time. CA. Suman Chaudhary is a professional friend and colleague of the Respondent who gave the assignment to the Respondent of taking over the statutory audit of the Company.
- b. The Respondent met the director, Mr. Ratan Kumar Sharma who expressed all the situation to the Respondent regarding the issues faced by him with the previous statutory auditor i.e., the Complainant.
- c. The Respondent had obtained NOC from CA. Suman Chaudhary. After obtaining the NOC, the Respondent also visited the Complainant's office physically as it was located nearby. However, he failed to answer the

- question of the Committee that he should have dropped a mail or should have sent by registered post since it was Covid time.
- d. On being asked by the Committee that how they arranged for the resignation letter required to be attached with ADT – 1, he stated that the Company prepared a letter on its letter head citing reasons as to why they are appointing the Respondent.

The Committee posed certain questions to the Respondent to understand the issue involved and the role of the Respondent in the case. On consideration of the same, the Committee gave directions to the Respondent to submit the following documents/ submissions in next 7 days with the copy to the Complainant.

- a. Copy of communication with previous auditor.
- b. Copy of ADT-1 (with its annexures)
- c. Copy of notices and extracts of minutes of AGM, Board Resolution regarding his appointment as Auditor.

The Complainant was also directed to submit his submissions on the Respondent's response on receipt of the same. With the above, the matter was partly heard and adjourned.

9. On the date of third hearing held on 4th October, 2023, the Committee noted that the Respondent vide email dated 4th October, 2023 sought adjournment on ground of preoccupied assignments before Income Tax and MCA to comply the required statutory compliances of clients. The Committee informed the Complainant about the same. The Committee, looking into the fact that the Respondent had sought adjournment for the first time, decided to accede to his request. Accordingly, the matter was adjourned on the request of the Respondent to a future date.
10. On the date of fourth hearing held on 13th December 2023, the Committee deferred the case due to paucity of time. However, the following submissions dated 13th December 2023 of the Respondent were taken on record:

- a. That the Company had duly appointed previously the auditor, CA Suman Chaudhary for conduct of its audit for FY 2020-21.
 - b. For the purpose of seeking NOC, CA Suman Chaudhary mailed on 27.09.2021 to remove auditor, the Complainant in this case, whereas the Complainant did not send any reply.
 - c. During the course of audit, CA Suman Chaudhary approached the Respondent to appoint himself and conduct audit of the Company due to her being preoccupied in other assignment and directed the Company to comply with all the formalities regarding the appointment of Respondent for FY 2020-21.
 - d. CA Suman Chaudhary assured the Respondent about her mail communication with the Complainant and that no reply was received from him till 14.12.2021.
 - e. Company appointed the Respondent in December 2021 but in the appointment letter due to MCA compliance for AGM had mentioned September 2021.
 - f. That name Avart Media & Marketing Pvt. Ltd. (*sic, in place of Company's name*) was typed mistakenly while giving the confirmation by the Respondent to the Company.
 - g. That the Respondent had completely relied on CA Suman Chaudhary as he was approached by her, and she also mailed her NOC to the Respondent, hence, there is no violation of rules.
 - h. It was also pointed out that the Complainant's wife had given loan to the said Company wherein there was dispute due to which her wife had sent legal notice to the Company, against which the Company had also replied that the Complainant was replaced due to absence from his office for long time and non-providing of CA services on due time.
11. On the day of final hearing held on 09th January 2024, the Committee noted that the Complainant was present through Video Conferencing Mode. The Committee further noted that the Respondent's Counsel was physically present.

CA

- 11.1 Thereafter, the Committee asked the Respondent to make his submissions. The Respondent in his submissions had, inter-alia, submitted as under:
- a. He reiterated his earlier submissions and stated that the Respondent had relied upon the NOC given by CA. Suman Chaudhary as the Respondent was actually approached by him and the previous auditor in this case is CA. Suman Chaudhary.
 - b. That there was no proper communication between the Complainant and the Company despite the Complainant being approached many a times by the Company and the Company had already approached CA. Suman Chaudhary for the audit. But due to her pre-occupancy, she gave her assignment to the Respondent.
 - c. That the Respondent relied upon a letter of the Company wherein it was mentioned that CA. Suman Chaudhary is the auditor of the Company and he will provide the copy of the letter.

- 11.2 Thereafter, the Committee asked the Complainant to make his submissions. The Complainant in his submissions, inter- alia, stated as under: -
- a. That his wife had given loan to the Company as it was demanded by the Company for some financial difficulties and the loan given was interest free and according to him, there is no non- compliance in it.
 - b. That he never refused any work for the Company and NOC was demanded from him by CA. Suman Chaudhary and he was instructed to file ADT-3. That it was the responsibility of the Company to inform him if he was removed as the auditor of the Company.

Thereafter, the Committed noted that Respondent's Counsel submitted his defence in detail by reiterating his earlier submissions. He further submitted that CA Suman Chaudhary was the previous auditor of the Company instead of Complainant and therefore, he communicated with CA Suman Chaudhary for seeking NOC and completed the formalities as per the rules. The Respondent's Counsel further submitted that since CA Suman Chaudhary had assured him of her mail communication with the Complainant, he relied on her statement. Thereafter, the Committee posed certain questions to both

OK

the parties to understand the issue involved and the role of the Respondent in the case.

On consideration of the case, the Committee gave directions to the Respondent to submit any further papers he wanted to submit within the next seven days.

With this, the hearing in the matter was concluded and judgement was reserved.

12. Thereafter, this matter was placed in meeting held on 23rd January, 2024 for consideration of the facts and arriving at a decision by the Committee. The Committee noted pursuant to its direction given in the hearing held on 9th January, 2024, Respondent had not submitted any further documents. Accordingly, keeping in view the facts and circumstances of the case, the material on record and the submissions of the parties, the Committee passed its judgment.

FINDINGS OF THE COMMITTEE

13. The Committee noted that the **first charge** against the Respondent was that the Respondent being an incoming auditor accepted the appointment without ascertaining that the Company has complied with the provisions of Sections 139 and 140 of the Companies Act, 2013.
- 13.1 The Committee from the perusal of Form ADT-1 filed for appointment of Complainant noted that the said form was filed for 5 years i.e., from 2017-18 to 2021-22 which means that the Complainant was appointed as the auditor of the Company for the financial year 2020-21 also. Further, from perusal of ADT-1 filed for appointment of Respondent, it is noted that the said form was filed for FY 2020-21 which means that the Respondent was appointed as auditor of the Company for same period for which the Complainant was already appointed as the auditor.

OK

- 13.2 The Committee noted that as per the Complainant, he never resigned and was never removed from the Company. Also, the Respondent failed to bring on record any evidence that the Complainant had resigned/removed from the Company, hence, the contention of the Complainant is tenable.
- 13.3 The Committee noted that Section 139 of the Companies Act, 2013 contains several provisions in the matter of appointment of auditors in different circumstances and situations. Also, Section 140 of the Companies Act, 2013 states as under:

“140. Removal, resignation of auditor and giving of special notice:

(1) The auditor appointed under section 139 may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner:

Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard”.

- 13.4 The Committee observed that **Para 2.14.1.9(xxvii) of Revised Code of Ethics (2020)** reads as under:

“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 139 and 140 of the Companies Act, 2013. 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.”

The Committee also noted that **Paras 2.14.1.9(xxxiv) and 2.14.1.9(xxxvi) of Revised Code of Ethics (2020)** reads as under:

“For the purpose of ascertaining whether the Company has complied with the provisions of Section 140 of the Companies Act, the incoming auditor should verify the records of the Company in respect of the following matters:

- a. Whether a member of the Company has given special notice of the resolution as required under Section 140(4) of the Companies Act, 2013. The notice shall be sent by members to the company not earlier than three months but at least fourteen days before the date of the meeting at which the resolution is to be moved, exclusive of the day on which the notice is given and the day of the meeting. A true copy of this notice should be obtained by the incoming auditor.*
- b. Whether this special notice has been sent to all the members, of the Company as required under Section 115 of Companies Act, 2013 at least 7 days before the date of the General Meeting.*
- c. Whether this special notice has been sent to the retiring auditor forthwith as required under Section 140(4).*
- d. Whether the representation received from the retiring auditor has been sent to the members of the Company as required under Section 140(4).*
- e. 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.”*

“2.14.1.9(xxxvi) A copy of the relevant minutes of the general meeting where the above resolution is passed duly verified by the Chairman of the meeting should also be obtained by the incoming auditor for his records.”

- 13.5 On perusal of abovementioned provisions, the Committee noted that an auditor can only be removed before expiry of his term by passing a Special Resolution after obtaining previous approval of the Central Government.
- 13.6 The Committee noted that the Respondent failed to bring on record any resolution passed by the Company or any approval obtained by the Company from Central Government for removing the Complainant from the post of auditor before expiry of his term.
- 13.7 The Committee also noted the Respondent being the incoming auditor was required to verify the relevant records of the Company to ascertain whether the Company has complied with the provisions of Sections 139 and 140 of the Companies Act, 2013, however, the Respondent has admittedly relied merely on the letter dated 22nd September, 2021 which has been received by him from the directors of the Company wherein the directors have informed certain issues pertaining to professional services of the Complainant as Statutory Auditor of the Company.
- 13.8 The Committee on perusal of the documents further noted that the Respondent also failed to provide the extract of Minutes of AGM of the Company dated 26th September 2021 appointing him as the Auditor of the Company for financial year 2020-21. The Committee also noted that only the relevant extract of Board resolution dated 22nd September 2021 had been attached with Form ADT-1 and no resolution in respect of appointment of the Respondent passed in AGM of the Company has been attached to the said Form.
- 13.9 Looking into the various documentary evidence available on record, the Committee noted that the Respondent failed to verify or obtain any of the documents as required in terms of the code of ethics to ascertain as to whether the requirements of Section 139 and Section 140 of the Companies Act, 2013 were complied. It was also noted that in the code of ethics, it is clearly mentioned that only a certificate from the management will not be sufficient and the Respondent has himself admitted that he has relied on the

letter of the Company dated 22nd September 2021 which is a clear case of violation of code of ethics.

- 13.10 Accordingly, the Committee held the Respondent **GUILTY** of Professional Misconduct falling within the meaning of Item (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949.
14. The Committee noted that the **second charge** against the Respondent was non-communication with the previous auditor as per the provisions of Clause (8) of Part-I of the First Schedule to the Chartered Accountants Act, 1949.
- 14.1 The Committee noted that the Respondent failed to provide any letter sent by him asking for NOC from the Complainant. The Committee noted that during the course of hearings, the authorized Representative of the Respondent stated that the Company previously appointed CA. Suman Chaudhary to conduct audit for the FY 2020-21 and CA. Suman Chaudhary also requested for NOC from the Complainant vide email dated 27th September 2021 which remained unanswered till 14th December 2021. CA. Suman Chaudhary, being preoccupied with some other assignment and being friend of the Respondent referred this assignment to him informing him about the email to the Complainant which remained unanswered. In this regard, some documents were also sought by the Committee from the Respondent and on perusal of the documents received, the Committee noted as under:
- a. The date of email sent by CA Suman Chaudhary to the Complainant was 27th September 2021 and the date of offer letter sent by the Company to the Respondent was 22nd September 2021 and his appointment has been shown in AGM dated 26th September 2021. However, the letter dated 22nd September 2021 nowhere mentions anything about CA. Suman Chaudhary, which proves it to be an afterthought.
- b. The Respondent failed to submit any letter sent by him asking for NOC from the Complainant. It is further noted that the Respondent has submitted an unsigned NOC request dated 25th September 2021 requesting NOC from CA

Suman Chaudhary for the FY 2021-22 whereas the year under dispute in this case is FY 2020-21.

- c. The Respondent failed to submit a copy of notices of minutes of the meeting specifically sought by the Committee except for a copy of resolution of Board meeting dated 22nd September 2021 earlier provided by him.
- d. In the written statement, the Respondent has stated that he had sent his staff to visit Complainant's office, but his office was found closed whereas at hearing stage, the authorized representative of the Respondent stated that the Respondent himself visited the Complainant's office since it was nearby. Both the statements are not in alignment with each other. However, no evidence of any communication whatsoever could be produced as required in terms of the code of ethics.

14.2 The Committee, in this regard, also observed that para **2.14.1.8(xvii) of Code of Ethics (Revised 2020)**, reads as under: -

- *The term "previous auditor" means the immediately preceding auditor who held the same or similar assignment comprising same/similar scope of work. For example, a Chartered Accountant in practice appointed for an assignment of physical verification of inventory of raw materials, spares, stores and finished goods, before acceptance of appointment, must communicate with the previous auditor being a Chartered Accountant in practice who was holding the appointment of physical verification of inventory of raw materials, stores, finished goods and fixed assets. The mandatory communication with the previous auditor being a Chartered Accountant is required even in a case where the previous auditor happens to be an auditor for a year other than the immediately preceding year.*

14.3 The Committee on perusal of the above guidelines noted that as per the definition of previous auditor in the Code of ethics, the previous auditor will be the one who held the same or similar assignment comprising same/similar scope of work, who in this case, happens to be the Complainant. The Committee further noted any communication of the Respondent with CA. Suman Chaudhary does not hold any relevance since he was not the previous

auditor, and the communication of CA. Suman Chaudhary with the Complainant cannot be treated as a substitute of the communication which was required to be done by the Respondent with the Complainant.

14.4 Accordingly, the Committee held the Respondent **GUILTY** of Professional Misconduct falling within the meaning of Item (8) of Part I of First Schedule to the Chartered Accountants Act, 1949.

15. The Committee noted that the **third charge** against the Respondent was related to the discrepancies in the financial statements of the Company for FY 2020-21 audited by the Respondent. The Committee noted that the Respondent himself has admitted that since many records and papers were not handed over to the Company by the Complainant being previous auditor, he had relied merely on bank statement, Form 26 AS and the Statements of directors.

15.1 The Committee noted that there were following discrepancies in the financial statements of FY 2020-21 audited by Respondent and observed as under: -

S.N.	Charges	Defense taken by the Respondent	Observation of the Committee	
1.	Balance of Reserve & Surplus not justified	The Respondent chose to remain silent on this charge.	Closing Balance of Reserve & Surplus	Amount
			FY 2019-20	4,36,467.27
			FY 2020-21	8,86,467.27
			Difference	4,50,000.00
			Thus, profit for FY 2020-21 is added as 4,50,000 whereas the profit as per Profit & Loss account is Rs. 1,93,462/-	

2.	Value of fixed assets as shown in the audited financial statements was appreciated but there was no addition to assets	The Respondent chose to remain silent on this charge.	<table border="1"> <thead> <tr> <th>Closing Balance of Net Fixed Assets</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td>FY 2019-20</td> <td>1,37,806.14</td> </tr> <tr> <td>FY 2020-21</td> <td>2,45,560.14</td> </tr> <tr> <td>Difference</td> <td>1,07,754.00</td> </tr> </tbody> </table> <p>Thus, the fixed assets have been shown increased to the extent of Rs. 107754 whereas as per Note 2.12 there is no addition in Fixed assets, and as per Note 2.2 there is no Revaluation reserve.</p>	Closing Balance of Net Fixed Assets	Amount	FY 2019-20	1,37,806.14	FY 2020-21	2,45,560.14	Difference	1,07,754.00
Closing Balance of Net Fixed Assets	Amount										
FY 2019-20	1,37,806.14										
FY 2020-21	2,45,560.14										
Difference	1,07,754.00										
3.	Repayment of loan taken by director, Mr. Abhinaw Kumar Jalan amounting to Rs. 5 lacs not considered in financial statements but evident from financial statements	The Respondent accepted that the payment was made during the year but not reflected in financial statement of FY 2020-21	<p>The amount of loan from the director was shown as under: -</p> <table border="1"> <thead> <tr> <th>Closing Balance of Loan repayable on demand from Mr. Abhishek Jalan</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td>FY 2019-20</td> <td>24,00,000</td> </tr> <tr> <td>FY 2020-21</td> <td>24,00,000</td> </tr> <tr> <td>Difference</td> <td>Nil</td> </tr> </tbody> </table> <p>On perusal of the bank statement, it is noted that Rs. 5 lacs were repaid on 22.03.2021 which were not taken into consideration by the Respondent leading to overstatement of borrowings by Rs. 5 lacs. The name of director was also wrongly mentioned as Abhishek Jalan in both the years FY 2019-20 and FY 2020-21.</p>	Closing Balance of Loan repayable on demand from Mr. Abhishek Jalan	Amount	FY 2019-20	24,00,000	FY 2020-21	24,00,000	Difference	Nil
Closing Balance of Loan repayable on demand from Mr. Abhishek Jalan	Amount										
FY 2019-20	24,00,000										
FY 2020-21	24,00,000										
Difference	Nil										

4.	Balance of Cash & Cash Equivalent as shown in the balance sheet of the Company was Rs. 3,24,229.13/- which was different as per the bank statement submitted by the Company	The Respondent stated that the difference was due to a cheque amounting to Rs. 1,29,989.89/- which was issued for payment on 31.03.2021 but later on, the same cheque was not presented in the bank for the payment.	The Committee noted that certain differences in the bank balances as shown in the bank passbook and cash book maintained by the entity may exist and the entities generally prepare a bank reconciliation statement (BRS) on a particular date / at the end of financial year in order to match the bank balances indicated in the cash book with the balance shown in the bank's passbook. However, it was noted that the Respondent failed to provide the copy of Bank Reconciliation statement if any prepared by the Company to support his defense.
----	---	--	--

15.2 The Committee noted that the Respondent failed to report the above deviations in his audit report. The Committee noted the submission of the Respondent that the financial statements of the last year were not available to him and observed that his contention does not stand as there was no difference in the closing balance of various heads in FY 2019-20 and corresponding opening balance of the various heads in FY 2020-21. It was noted that discrepancies pointed out pertain to the balances/ transactions of FY 2020-21 only in which the onus of obtaining sufficient and appropriate evidence to check their accuracy was on the Respondent. Thus, it was noted that the Respondent failed to obtain sufficient and appropriate evidence to express an opinion on the financial statements of the Company, whether they are giving a true and fair view or not. The Committee also noted that the Respondent followed a very casual approach while auditing the financials of the Company and was grossly negligent in discharge of his professional duties as Statutory Auditor of the Company for FY 2020-21.

15.3 Accordingly, the Committee held the Respondent **GUILTY** of Professional Misconduct falling within the meaning of Item (7) and Item (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

CONCLUSION

16. In view of the findings stated in the above paragraphs vis-a-vis material on record, the Committee, in its considered opinion, holds the Respondent **GUILTY** of Professional Misconduct falling within the meaning of Item (8) and Item (9) of Part I of the First Schedule and Item (7) and Item (8) of Part I 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/-
(SHRI ARUN KUMAR, I.A.S. RETD.)
GOVERNMENT NOMINEE

Sd/-
(CA. SANJAY KUMAR AGARWAL)
MEMBER

DATE:07/02/2024

PLACE: NEW DELHI

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy
Charan Singh
चरण सिंह / Charan Singh
कार्यकारी अधिकारी, Executive Officer
अनुशासनात्मक विदेशालय / Disciplinary Directorate
भारतीय सनदी लेखाकार संस्थान
The Institute Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shadra, Delhi-110032