

# भारतीय सनदी लेखाकार संस्थान

(संसदीय अधिनियम द्वारा स्थापित)

# THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

PR/216/2019-DD/223/2019-DC/1515/2021

[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/216/2019-DD/223/2019-DC/1515/2021]

In the matter of:
Shri Mayank Raaj,
Sr. Manager (HR),
M/s Orchid Medical Centre Pvt. Ltd.,
H.B. Road, Ranchi,
Jharkhand – 834001.

.....Complainant

Versus

CA. Anita Kumari (M. No. 520668)
Flat No. 1A, Sinha Apartment,
Jatin Chandra Road,
Lalpur, Ranchi,
Jharkhand – 834001.

....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 (in person)
CA. Sanjay Kumar Agarwal, Member (in person)
CA. Cotha S Srinivas, Member (through VC)

**Date of Hearing** 

: 10<sup>th</sup> April, 2024

Date of Order

: 28<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. Anita Kumari (M.No.520668) (hereinafter referred to as the Respondent") is GUILTY of Professional and Other Misconduct falling within the meaning of Item (4) of Part II of the Second Schedule and Item (2) of Part IV of the First 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 her thereby granting opportunity of being heard in person / through video conferencing and to make representation before the Committee on 10<sup>th</sup> April 2024.
- 3. The Committee noted that on the date of hearing held on 10<sup>th</sup> April 2024, the Respondent was not present before it and vide email dated 21<sup>st</sup> February 2024 submitted her written

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Shri Mayank Raaj Vs. CA. Anita Kumari (M. No. 520668)



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representation on the Findings of the Committee. Keeping in view the provisions of Rule 19(1) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee was of the view that the Respondent has nothing more to represent before it and thus, decided to consider her case for award of punishment on the basis of material available on record. The Committee noted that the Respondent in her written representation on the Findings of the Committee, inter-alia, stated as under:-

- (a) The Respondent has already paid the money on 20.02.2018 and 21.02.2018.
- (b) The confession letter was written under pressure.
- (c) The TDS return was not deposited by her on her mother's PAN. The TDS deposit/return task was done by Mr. Akash Saha, relative of the directors. TDS return is done in bulk and not singly.
- (d) For the Government doctors and a few staff working at the Company during those 3 years, TDS was deposited on their mother, father, and relatives' PAN after instruction of directors.
- (e) TDS deposited on Respondent's mother's PAN was returned by her only in good faith and not in acceptance of any wrongdoing. The amount return responsibility was on her mother and not her. She did not take the refund in her account.
- (f) All payments of vendor, staff, doctors, TDS, GST, pharmacy, etc. were done by the directors and Mr. Akash Saha. An interest of Rs.40,000/- was also charged by the Company from the Respondent.
- (g) The Professional Fee for February 2018 was approx. Rs. 34,000/- which was not received by the Respondent as it was not given by the Company. Thus, the advance due was not Rs.44,604/- as calculated in Para 14.3 of the Findings. The Company recovered more than the actual amount from her.
- 4. The Committee considered the reasoning as contained in Findings holding the Respondent Guilty of Professional Misconduct vis-à-vis written representation of the Respondent. On consideration of the representation of the Respondent, the Committee was of the view that the same were basically a reiteration of the submissions made by the Respondent during the course of hearing, due cognizance of which has already been taken by the Committee before arriving at its Findings in the instant case.
- 5. Keeping in view the facts and circumstances of the case, material on record including written representation on the Findings, the Committee noted that the Respondent in her submissions submitted that the Company after discussions accepted that the TDS credited will be adjusted while crediting the consultancy fees and that the Company also adjusted the same. The Respondent brought on record a reconciliation statement to establish her stand. The Respondent accordingly mentioned that amount of advance given to her was Rs. 25,661/-. However, the Committee noted from the same reconciliation sheet that TDS appearing in Form 26AS of the Respondent/ her firm was Rs. 1,16,887/-. Hence, the Committee viewed that advance due to the Respondent should be Rs. 44,604/- (Rs.10,24,044 Rs. 9,79,440 (gross receipts) received by the Respondent and not Rs. 25,661/- as claimed by the Respondent. By including the figure of Rs. 25,661/-, the Respondent submitted that the amount claimed by the Company was Rs.1,18,761/- The Respondent submitted copy of her Bank Statement account to substantiate her claim.



5.1 The Committee noted that the receipt of the amount is not disputed by the Complainant. The Respondent during her submissions submitted that the confession letter was written by her under



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pressure of management of Complainant Company. The Respondent failed to bring any documentary evidence on record regarding her retraction for such confession letter. The Respondent brought on record a copy of Form 26AS for the financial year 2016-17 of her mother namely Mrs. Usha Singh wherein Rs. 53,100/- has been deposited as TDS during F.Y. 2016-17 on different dates during October 2016 to March 2017 which was returned in February 2018. The Income Tax return of Ms. Usha Singh was filed on 25<sup>th</sup> July 2017. The Committee hence observed that the amount of Rs. 53,100/- was illegally retained by the Respondent during 2017 which proves her ill intentions.

- 5.2 Hence, professional and other 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 her in commensurate with her professional and other misconduct.
- 7. Thus, the Committee ordered that CA. (Ms.) Anita Kumari (M. No.520668), Jharkhand be Reprimanded under Section 21B(3)(a) of the Chartered Accountants Act 1949.

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

सीए अंशुल मुनीर/CA. Anshul Kumar सहायक निदेशक / Assistant Director सहायक निदेशक / Assistant Directorate सनुसासनात्मक निदेशालय / Disciplinary Directorate सनुसासनात्मक निदेशालय / Disciplinary Directorate सन्दर्भ सन्दर्भ तिस्तास नगर शाहदण, दिल्ली—1003 प्राप्तास सन्दर्भ विश्वास नगर शाहदण, दिल्ली—1003

## 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/216/2019-DD/223/2019-DC/1515/2021]

### In the matter of:

Shri Mayank Raaj,

Sr. Manager (HR), M/s Orchid Medical Centre Pvt Ltd., H.B. Road, Ranchi, Jharkhand – 834001

.....Complainant

Versus

CA. Anita Kumari (M. No. 520668)

Flat No. 1A, Sinha Apartment, Jatin Chandra Road, Lalpur, Ranchi, Jharkhand – 834001

.....Respondent

# **MEMBERS PRESENT:**

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

Smt. Rani S. Nair, Govt. Nominee (Present In person)

Shri Arun Kumar, Govt. Nominee (Present In person)

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

CA. Sridhar Muppala, Member (Through Video Conferencing Mode)

**DATE OF FINAL HEARING: 17.11.2023** 

DATE OF JUDGEMENT: 14.12.2023

# **PARTIES PRESENT:**

Complainant: Not Present

Respondent: CA. Anita Kumari (Through Video Conferencing Mode)

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## **BACKGROUND OF THE CASE:**

- 1. The brief background of the case is as under:
  - a. That the Complainant is an authorized representative of M/s Orchid Medical Centre Private Limited (hereinafter referred as to the "Company") engaged in the business of healthcare in Ranchi, Jharkhand.
  - b. The Respondent, on the other hand, was an employee in the Complainant's Company.
  - c. The Complainant has filed a Complaint in Form-I dated 15<sup>th</sup> July 2019 alleging that the Respondent misappropriated money belonging to the Complainant Company.
  - d. The Complainant submitted confession letter of the Respondent in this regard.
  - e. The Respondent in the said letter admitted that the alleged conduct on her part happened by mistake and she had returned the amounts to the Company to compensate it.

# **CHARGES IN BRIEF:-**

- 2. The Committee noted that the Complainant had alleged that the Respondent misappropriated the money belonging to the Complainant Company by transferring such TDS/ funds to the credits of her own and that of her relatives' Permanent Account Numbers (PANs) during the financial year 2016-17 and 2017-18. To substantiate his claim, the Complainant has brought on record the working calculation of TDS showing the details of TDS deposited in the PANs of several parties allegedly belonging to her own and that of her relatives etc.
- 3. The Committee noted that the Respondent in her reply at the stage of PFO had, inter-alia, mentioned as under:
  - a. That the confession letter submitted by her was secured by the directors of the Complainant Company by putting pressure upon her.



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- b. This letter was given under threat and was not given by her consent in a free will.
- c. That the alleged deposit of TDS in her relatives PAN including that of her own was executed by Mr. Akash Saha, a relative of the Directors.
- d. That after this incident, she had reimbursed the entire amount of TDS as deposited to the credit of her and her relatives PAN to the Company for which she brought on record her Bank statement as evidence.
- e. That even if the so-called TDS amount in question was deposited to the credit of PAN of her relatives, it did not automatically mean that she was liable for such conduct.
- f. Thus, she denied the allegations of the Complainant outrightly and sought relief in the matter.
- 4. The Committee noted that the Director (Discipline) had, in his Prima-facie opinion dated 28<sup>th</sup> July, 2021, noticed as under:
  - a. That the genuineness of confession letter given by the Respondent under her signature has not been challenged by her at any forum.
  - b. The only major defence taken by her is that such confession letter under her signature was procured by the Complainant Company by force and threat, though, she remained failed to substantiate such stand with any corresponding documentary evidence to show that she took any retractive action to refute such confession letter despite the fact that it was specifically called for from her by Disciplinary Directorate.
  - c. Further, she has admitted of refunding the entire TDS amount to the Company later on.
  - d. Thus, in the absence of evidences, it is clear that her conduct was not as per the ethics and conduct expected from her under the Chartered Accountants Act, 1949.
- 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-



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facie Guilty of Professional and Other Misconduct falling within the meaning of Item (4) 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 items in the Schedule to the Act states as under:

# 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."

# Item (4) of Part II of Second Schedule

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

"(4) defalcates or embezzles moneys received in his professional capacity."

## SUBMISSIONS OF THE PARTIES ON THE PRIMA-FACIE OPINION

- 6. The Committee noted that the Respondent in written submissions dated 7<sup>th</sup> November, 2021 had inter-alia, submitted as under:
  - a. That she had already informed the Institute that alleged forceful confession letter written by her was under pressure of management of Orchid Medical Center Pvt. Ltd. because of personal threat to her and her family member.
  - b. That Mr. Akash Shah (Relative of the Director Mr Raj Kumar Agarwal) shares very close sitting position in the office along with her and other office staff and on several occasions while discussing she has revealed PAN No of her and her family which all are in sequential order. The Details are as under:

i. BAWPS6891Q- USHA SINGH(Mother)

ii. BAWPS6892P- ANITA KUMARI(Respondent)

iii. BAWPS6893N- SEEMA SINGH(Sister)

iv. BAWPS6894M- ANURADHA SINGH(Sister)

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- c. This clearly shows that anyone can use this sequential reference to know her mother's PAN No.
- d. That the Company asserted in their complaint that they had received Rs. 65,350/- upto July, 2019 from the Respondent. However, she had transferred and credited to OMC's account Rs. 1,18,760 upto April 2018.

# **BRIEF FACTS OF THE PROCEEDINGS:**

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

S.No. Date		Status of Hearing	
1.	31.05.2023	Part heard and Adjourned	
2.	23.06.2023	Adjourned at request of the Respondent	
3.	11.07.2023	Adjourned at request of the Respondent	
4.	17.11.2023	Concluded & Judgement Reserved	
5.	14.12.2023	Final decision taken on the case.	

- On the day of the first hearing held on 31st May 2023, the Committee noted that the Respondent was present through Video Conferencing Mode. The Committee further noted that the Complainant vide email dated 22nd May 2023 requested that the Committee may proceed further and that the decision of the Committee would be honoured by the Complainant. In the absence of the Complainant, the Respondent was administered on Oath. Thereafter, the Committee enquired from the Respondent as to whether she was aware of the charges. On the same, the Respondent replied in the affirmative and pleaded Not Guilty to the charges levelled against her. 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 and adjourned.
- 9. On the day of the second hearing held on 23<sup>rd</sup> June, 2023, the Committee noted that the Complainant was not present; however, the Complainant vide



email dated 22<sup>nd</sup> May 2023 submitted that the Committee may proceed further and that the decision of the Committee would be honoured by the Complainant. The Committee further noted that the Respondent, vide email dated 16<sup>th</sup> June, 2023, sought adjournment on medical grounds. Thereafter, the Committee on account of natural justice decided to adjourn the case to a future date.

- 10. On the day of the third hearing held on 11<sup>th</sup> July, 2023, the Committee noted that the Respondent vide email dated 03<sup>rd</sup> July 2023 sought adjournment on the medical grounds relating to gynecological and her Pregnancy issues. The Committee noted that neither the Complainant was present nor any intimation was received, despite notice/email duly served upon him. The Committee also noted that the Complainant in an earlier hearing vide email dated 22<sup>nd</sup> May 2023 stated that the Committee may proceed as per the records available. The Committee looking into the grounds of natural justice acceded to the adjournment request made by the Respondent, and accordingly, the case was adjourned.
- 11. On the day of the final hearing held on 17<sup>th</sup> November, 2023, the Committee noted that the Complainant was not present, however the Complainant vide email dated 9<sup>th</sup> November 2023 stated that the Committee may proceed further with the documents on record, and they will honor the decision of the Committee. The Respondent was present through Video conferencing mode. In the absence of the Complainant, the Committee directed the Respondent to submit her defence.
- 11.1 The Respondent presented her line of defence, inter-alia, stating as under:
  - a. That she had submitted her written submission dated 7<sup>th</sup> November 2021 that confession letter was written by her under pressure of management of Complainant Company.



- b. That the issue in the instant case is related to TDS which was refunded by her as soon as it came to her knowledge. However the Complainant Company did not disclose this fact to the ICAI.
- 11.2 The Committee posed certain questions to Respondent Counsel to understand the issue involved and the role of the Respondent in the case. Thereafter, the Committee considering the facts of the case gave directions to the Respondent to submit within 15 days the following documents with a copy to the Complainant:
  - a. Details of her income and her Income tax return for three financial years including the alleged period of A.Y. 2017-18.
  - b. Detail of her mother's income and the Income tax return of her mother for three financial years including the alleged period of A.Y. 2017-18.
  - c. Details of TDS as per 26AS for her and her mother.
  - d. Treatment of the extra amount of TDS (transfer by the Company) in her/ Her's relatives' accounts.
  - e. The statement of accounts showing the period for which the amount/money transferred to Complainant Company.
  - f. Bifurcation of amounts refunded related to her/proprietorship and relatives.

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With the above directions, the Committee concluded the hearing by reserving its judgement.

12. Thereafter, this matter was placed in meeting held on 14<sup>th</sup> December, 2023 wherein the same members, for consideration of the facts and arriving at a decision by the Committee. The Committee noted that pursuant to its directions given in the meeting held on 17<sup>th</sup> November, 2023, the Respondent had submitted the desired documents.

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12.1 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 judgement.

# FINDINGS OF THE COMMITTEE

- 13. The Committee noted that charge against the Respondent is that she had misappropriated the money belonging to the Complainant Company by transferring such TDS/ funds to the credits of her own and that of her relatives' Permanent Account Numbers (PANs) during the financial year 2016-17 and 2017-18.
- 14. The Committee noted that the Respondent vide various submissions submitted that the Company after discussions accepted that the TDS credited will be adjusted while crediting the consultancy fees and that the Company also adjusted the same. The Committee noted that the Respondent had brought on record a reconciliation statement (which she had prepared based on account statement, consultancy fees & 26AS) to establish her stand.

## (A) Fees of the Respondent / her Firm

Particulars	Amount (in Rs.)
Respondent	9,79,440
Respondent's Proprietorship Concern	*
Gross Fee	9,79,440
Less: TDS calculated as per the Respondent	97,944
Net Fee to be credited in Respondent/ Respondent's Proprietorship Concern	8,81,496

- (B) Total Amount credited in Bank account : Rs. 9,07,157
- 14.1 The Committee observed that the Respondent accordingly mentioned that amount of advance given to her was Rs. 25,661/- ((B)- (A)).

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14.2 However, the Committee noted from same reconciliation sheet that TDS appearing in Form 26AS of the Respondent/ her firm was Rs. 1,16,887/-. Hence, the Committee viewed that amount received by the Respondent/ her firm from the Company should be as under:-

Particulars	Amount (Rs.)
(A)Fees accepted as received in Bank by the Respondent	9,07,157
(B) TDS shown in her / Firm account	1,16,887
Total Gross receipts of the Respondent/ Firm (A+B)	10,24,044

- 14.3 Accordingly, the Committee viewed that advance due to the Respondent should be Rs. 44,604 (Rs.10,24,044 Rs. 9,79,440(gross receipts)) has been received by the Respondent and not Rs. 25,661/- as claimed by the Respondent.
- 15. The Committee noted by including the figure of Rs. 25,661/- , the Respondent submitted that the amount claimed by the Company was as under:

Particulars	Amount (in Rs.)
Advance not adjusted	25,661.00
TDS deposited in account of Ms. Usha Singh	53,100.00
(Mother of the Respondent)	
Interest informed by the Company	40,000.00
Total	1,18,761.00

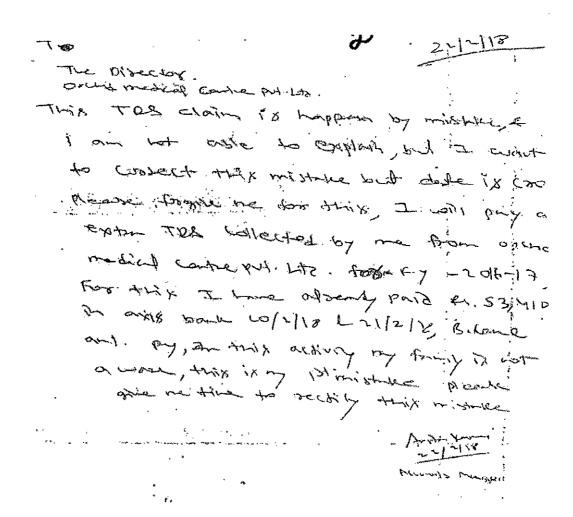
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15.1 The Committee noted that the above amounts were returned by the Respondent on following dates:-

Date	Amount
19.02.2018	40,000.00
20.02.2018	13,410.00
19.04.2018	40,000.00
19.04.2018	25,350.00
Total	1,18,760.00



- 15.2 The Committee noted that the Respondent had submitted copy of her bank statement account to substantiate her claim. The Committee noted that the Complainant through various communications submitted that the Committee may proceed further and that the decision of the Committee would be honoured by the Complainant. The Committee hence noted that receipt of the amount is not disputed by the Complainant.
- The Committee noted that the Respondent had also given confession letter to the Company as under:



- 16.1 The Committee on perusal of the same noted that the Respondent in the confession letter had, inter-alia, admitted that:
  - a. TDS claim happened by mistake.
  - b. She wanted to correct/rectify the mistake and was ready to pay extra TDS by her.

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- c. She had already paid Rs. 53,410/- from her Axis Bank account for this appropriation.
- 16.2 The Committee noted that the Respondent during her submissions before it had submitted that the confession letter was written by her under pressure of management of Complainant Company. The Committee in this regard noted that the Respondent failed to bring any documentary evidence on record regarding her retraction for such confession letter. Further, on the contrary she had returned the amount of such TDS to the Company which infact proves the charges made by the Complainant.
- 16.3 The Committee further noted that the Respondent has brought on record a copy of Form 26AS for the financial year 2016-17 of her mother namely Mrs. Usha Singh where in Rs. 53,100/- has been deposited as TDS during the F.Y. 2016-17 on different dates during October 2016 to March 2017. The Committee further noted that the ITR of Ms. Usha Singh was filed on 25th July 2017. The Committee further noted that as per details given in para 15.1 above, this amount was returned in February 2018. The Committee hence observed that the amount of Rs. 53,100/- was illegally retained by the Respondent during 2017 which proves her ill intentions.
- 16.4 The Committee further noted that the ethical requirements of any accountancy body should be based on integrity, objectivity, independence, confidentiality, high technical standards, professional competence and, above all, on ethical behaviour. The Committee found that as a Chartered Accountant, the Respondent was required to maintain these high standards of conduct in her professional capacity. A professional has to also live upto the expectation of trust and dignity as reposed in the Chartered Accountant by the Society at large. The Respondent was duty bound to follow the Professional ethics encompassing the personal and corporate standards of behaviour expected from a Chartered Accountant. But her acts prove that she failed to maintain the high standards of conduct in this profession and had consequently brought disrepute to the profession.

Anto- note



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# CONCLUSION

17. In view of the above observations, considering the submissions of the Respondent and documents on record, the Committee holds the Respondent GUILTY of Professional and Other Misconduct falling within the meaning of Item (4) of Part II of the Second Schedule and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949.

SD/-

# (CA. RANJEET KUMAR AGARWAL) PRESIDING OFFICER

A S

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

SD/-

(CA. SRIDHAR MUPPALA)
MEMBER

DATE: 07.02.2024 PLACE: New Delhi

राही प्रतिशिषि होने के लिए जमाणित Contilled to be true copy

विशा नाम तिवारी/Bishwa Nath Thread कार्यकारी अधिकारी/Executive Officer अनुसासनात्मक निदेशालय/Disciplinary Disciplinary अनुसासनात्मक निदेशालय/Disciplinary Disciplina इस्टिट्यूट ऑफ चार्ट प्रकाउटेंट्स ऑफ इंडिया The Institute of Osaband Accountants of India आईसीएआई भवन, विशास नम्स, शाहदस, दिल्ली-110032 ICAI Blainian, Visinias Magas, Shahdra, Deihi-110032