



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

PR-162/2017-DD/169/2017/DC/1486/2021

[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-162/2017-DD/169/2017/DC/1486/2021]

In the matter of:

Ms. Priyanka Sharma,  
424, Phase 6, Pavan Vihar,  
Bareilly-243006.

.... Complainant

Versus

CA. Sanjay Kumar Agarwal (M. No. 072331)  
Agarwal Kuti, 315-A  
Madhuvan Colony, Near Chhatri Chauraha,  
Pilibhit-262001.

.....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 (in person)

Date of Hearing : 28<sup>th</sup> May 2024

Date of Order : 26<sup>th</sup> June 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. Sanjay Kumar Agarwal (M. No. 072331), Pilibhit (hereinafter referred to as the 'Respondent') is GUILTY of Professional and Other Misconduct falling within the meaning of Item (11) of Part I of the First Schedule, Item (2) of Part IV of the First Schedule and Item (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.



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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> May 2024.

3. The Committee noted that on the date of the hearing held on 28<sup>th</sup> May 2024, the Respondent was present through video conferencing and made his verbal representation on the Findings of the Disciplinary Committee, inter-alia, stating, that he had a fair record as a professional since the year 1979 when he started his practice. He further stated that he was not involved in the day-to-day activities of the Company. On behalf of the Company, he represented in the capacity as a Chartered Accountant and not as the Director of the Company and for that he did not charge any fees also.

3.1 The Committee also noted that the Respondent in his written representation on the Findings of the Committee, inter-alia, stated as under: -

(a) The Respondent requested the Committee to review its decision. He stated that while rendering the Judgment, the Committee has introduced additional grounds without affording the Respondent an opportunity to present his case.

(b) The composition of the Committee has undergone changes. The Committee responsible for adjudicating the Respondent guilty and the Committee tasked with providing the final opportunity to the Respondent to be heard now consists of different members.

(c) Despite the final hearing on 10<sup>th</sup> August 2023, a subsequent judgment was issued on 25<sup>th</sup> August 2023. On 25<sup>th</sup> August 2023, during the proceedings, several additional grounds were discussed in the absence of the Respondent. This absence resulted in the Respondent being found guilty and the case being decided ex-parte.

(d) He had submitted all the documents asked for by the Committee in the previous hearing held on 23<sup>rd</sup> June 2023. He had submitted copies of the Notice of AGM and copies of financials signed by two directors i.e. Mr. Aditya Prakash Bats and Mr. Ashok Khandelwal to prove that he has not signed any documents and has acted only as a Director-Simplicitor.

(e) He was the first director of the Company. Hence, no resolution was passed for his appointment.



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(f) There is no documentary evidence which the Complainant can produce to prove his role as an Executive Director of the Company.

(g) The status of the Company is inactive at present.

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

4.1 On consideration of the representation of the Respondent, the Committee informed the Respondent during the meeting that the final hearing in the case took place on 10<sup>th</sup> August 2023 wherein he along with his Counsel was present. The Committee, on consideration of the submissions made by the Respondent, concluded the hearing in the case on the said date and directed the Respondent to submit the documents regarding the present status of the Company. Accordingly, the decision on the conduct of the Respondent was kept reserved. Thereafter, the Respondent vide letter dated 16<sup>th</sup> August 2023 submitted his response. Subsequently, the Committee at its meeting held on 25<sup>th</sup> August 2023, on the basis of submissions and documents on record, decided on the conduct of the Respondent. Thus, no hearing in the case took place on 25<sup>th</sup> August 2023.

4.2 Further, the Committee was of the view that the request of the Respondent to review the decision of the Disciplinary Committee is not maintainable as there is no provision under the Chartered Accountants Act 1949 and the Rules framed thereunder to review or recall the Order/Findings of the Disciplinary Committee. Also, the Committee arrived at its Findings only in respect of the charges alleged against the Respondent and no additional grounds/charges were alleged against him.

4.3 As regard the submission of the Respondent that there has been a change in the composition of the Committee, keeping in view the following observations of the **Honorable Appellate Authority in para 8 of its Order dated 14<sup>th</sup> June 2021 passed in Appeal no. OS/ICAI/2020 in the matter of Devki Nandan Gupta –vs- ICAI and others** on the same issue, the Committee was of the view that there is no merit in the contention of the Respondent:

*"We find no substance in the appellant's plea that due to change in the composition of DC who had passed the order dated 08.02.2018 the new DC with changed members could not have passed the final order dated 07.11.2019....."*

*We are of the view that no prejudice whatsoever was caused to the appellant due to change in the composition of the DC who had held him guilty of 'professional misconduct'*

*M*



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*under Clause 7 of Part – I of the Second Schedule and the one who had finally awarded punishment vide order dated 07.11.2019. In fact, the changed DC was not expected or required to hear arguments afresh on merits to find if the appellant was guilty of 'professional misconduct'. The said findings had already been recorded by the previous DC in its order dated 08.02.2019 and attained finality qua the changed DC. The changed DC was required only to hear the appellant on the quantum of punishment/penalty and for that, the appellant was afforded reasonable opportunity of being heard."*

5. Keeping in view the facts and circumstances of the case, material on record including verbal and written representation on the Findings, the Committee with respect to the first charge was of the view that the documents brought on record by the Complainant such as emails written by the Respondent to the accountant of the Company, representation by Respondent before Income Tax Authorities on behalf of the Company, the copy of tickets to Manila for attending convention on behalf of the Company, etc. prove beyond doubt that the Respondent was involved in day to day affairs of the Company as Executive Director without obtaining permission from the Council of ICAI.

5.1 As regard the use of professional address of Respondent by the Company as its Registered Office, the Committee noted that the Respondent merely submitted that operational activities were consistently carried out from the Corporate Office address situated at Bareilly but failed to provide any evidence for the same.

5.2 With respect to the second charge, the Committee noted that as per Section 173(3) of Companies Act, 2013, the Notice of the meeting shall be given to every Director of the Company at his address registered with the Company. However, in the present case, the Respondent did not give Notice to all the Directors as required under the provisions of the Companies Act 2013.

5.3 In this regard, the Respondent submitted that since neither the accounts of the Company were presented by the Executive Director of the Company nor any formal meetings were convened till 2016 due to which, he initiated dialogues with the Managing Director of the Company aggressively in April 2016 to have the past accounts of the Company. He held a meeting amongst three Directors of the Company on 3<sup>rd</sup> August 2016 with an intent to prevent the single signatory operation of the Company's Bank Account. However, the Respondent failed to bring on record any evidence that Notice of the said meeting was served on all the Directors of the Company. Thus, the Respondent flouted the provisions of the Companies Act 2013 with the intention of gaining control over the banking operation of the Company.



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5.4 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 him in commensurate with his Professional and Other misconduct.

7. Thus, the Committee ordered that CA. Sanjay Kumar Agarwal (M. No. 072331), Pilibhit be Reprimanded under Section 21B(3)(a) of the Chartered Accountants Act 1949.

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Sd/-

(CA. RANJEET KUMAR AGARWAL)  
PRESIDING OFFICER

Sd/-

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

Sd/-

(SHRI ARUN KUMAR, IAS RETD.)  
GOVERNMENT NOMINEE

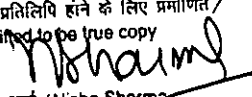
Sd/-

(CA. SANJAY KUMAR AGARWAL)  
MEMBER

Sd/-

(CA. COTHA S SRINIVAS)  
MEMBER

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

  
निशा शर्मा / Nisha Sharma  
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer  
अनुशासनात्मक निदेशालय / Disciplinary Directorate  
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया  
The Institute of Chartered Accountants of India  
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032  
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

**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-162/2017-DD/169/2017/DC/1486/2021]**

**In the matter of:**

**Ms. Priyanka Sharma,  
424, Phase 6,  
Pavan Vihar,  
Bareilly-243006**

**.... Complainant**

**Versus**

**CA. Sanjay Kumar Agarwal (M. No. 072331)  
Agarwal Kuti, 315-A  
Madhuvan Colony, Near Chhatri Churaha,  
Pilibhit-262001**

**.....Respondent**

**MEMBERS PRESENT:**

**CA. Ranjeet Kumar Agarwal, Presiding Officer (Present in person)  
Smt. 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 : 10.08.2023**

**DATE of Judgement : 25.08.2023**

**PARTIES PRESENT**

**Complainant : Not Present  
Respondent : CA. Sanjay Kumar Agarwal (In person)  
Counsel for Respondent : CA. Ankit Maheshwari (In person)**

**BACKGROUND OF THE CASE:-**

1. The brief background of the case is as under:
  - a. That the Complainant had filed complaint in form I dated 29<sup>th</sup> May 2017 against the Respondent
  - b. The Complainant was a shareholder of M/s Coral Fund Solutions Private Limited (hereinafter referred to as "**Company**") and her husband was the Managing Director of the Company.
  - c. The Respondent, despite being in practice, is also a shareholder and Executive Director of the Company in clear violation of ICAI norms.
  - d. Certain dispute arose between the directors.
  - e. The Complainant mentioned that while holding the position of Director, the Respondent had acted against the provisions of law, and he is unreasonably interfering in the operation of the Company by filing baseless police complaints.

**CHARGES IN BRIEF: -**

2. The Committee noted that the charges against the Respondent were as under:
  - a. The Respondent has not obtained permission from the Council of ICAI before accepting appointment as Executive Director of Company as per the requirement of Regulation 190A which is in clear violation of provisions laid under Item (11) of Part I of the First Schedule to Chartered Accountants Act, 1949. Further, the registered office of the Company is situated at the office of the Respondent.
  - b. The Respondent has acted against the provisions of law and with the malicious intention and ulterior motive, he tried to gain control over the Management of the Company and created hurdles in the smooth functioning of company by convening an illegal and secret meeting on 3<sup>rd</sup> August, 2016 alongwith his wife Mrs Poonam Agarwal and daughter Ms. Kanu Agarwal (both directors of Company) without giving notices to the other directors and shareholders of the Company as required under the

provisions of Companies Act 2013 and the Articles of Association of the Company and secretarial standards issued by the ICSI (The Institute of Company Secretaries of India) with respect to board meetings. It is also alleged that the meeting was convened with a motive to change the mode of operations of the bank accounts of Company and to freeze the banking operations of 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 the Complainant is the proxy and wife of Aditya Prakash Bats, the Managing Director who has been running the Company since its incorporation in 2008 and who is responsible for present crisis in Company.
  - b. He denied his association with the Company in a professional capacity, in providing advice on finance, legal and taxation matters of the company but accepted his role as a Director who had given advice with an objective of helping the Company in framing appropriate policies and procedures and in ensuring compliances of law.
  - c. He submitted that his address was used only for the purpose of registration of Company and the Company was in fact running its affairs under the control of the Managing Director, Sh. Aditya Prakash Bats from Head office of the Company at Bareilly.
  - d. He also mentioned that he did not seek permission from the Council of the ICAI prior to joining as Director because being a Non-Executive director of Company, the permission from ICAI was not required.
  - e. That Company was formed in April, 2008 but neither accounts of the Company were presented by Executive Director nor any formal meetings were convened till 2016.
  - f. Out of no choice, he initiated dialogues with MD aggressively in April 2016 to have accounts of the Company of the past and held a meeting among three directors on 3<sup>rd</sup> August, 2016 with intent to prevent the single signatory operation of the Company Bank Account.



- g. He further submitted that if, as a shareholder/director of company, he was aggrieved of its management, it was natural for him to take appropriate action against the offenders in personal capacity.
- h. The meeting in question was a desperate act by the aggrieved shareholders. So, with or without a board meeting, remedial action was necessary from side of affected shareholders.
4. The Director (Discipline) had, in his Prima-facie opinion dated 4<sup>th</sup> June 2021, noted that the as per Regulation 190A of Chartered Accountants Regulations, 1988, a member in practice is allowed to be a director simplicitor of the Company without specific permission of Council of ICAI, however, in the present case the role of the Respondent is more than of director simplicitor, because
- a. The Respondent had written numerous mails to the accountant of the Company advising him on all account related matters of the Company.
- b. The Respondent has also represented the Company before Income tax Authorities in many scrutiny matters.
- c. The Respondent has also travelled on behalf of the Company.
- 4.1 Thus, despite being a member in practice, he was not only involved in the formation of the Company but was also assisting the Company in carrying out its day to day business activities and defacto handling the affairs of the Company by performing various managerial roles without obtaining specific approval of the Council of ICAI in terms of Regulation 190A and also allowed the Company to use his professional address as registered address of the Company.
- 4.2 Further, he was trying to gain control over the operations of the Company by convening a Board Meeting without sending any notice to the Complainant thereby flouting the provisions of Companies Act, 2013 and with the intention to gain control over the banking operations of the Company in an illegal manner which makes his ill intensions quite clear.

- 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 (11) of Part I of the First Schedule, Item (1) of Part II of Second Schedule and Item (2) of Part IV to the First Schedule to Chartered Accountants Act, 1949. The said items in the Schedule to the Act states as under

**Clause (11) of Part I of First Schedule:**

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

*(11) engages in any business or occupation other than the profession of chartered accountants unless permitted by the Council so to engage"*

**Clause (2) of Part IV of First Schedule:**

"A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional 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"*

**Clause (1) of Part II of 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"*

6. The Committee noted that the Respondent in his submissions dated 11<sup>th</sup> May, 2023 after Prima Facie Opinion had, inter-alia, mentioned as under:

a. That the Complainant is a shareholder only in the company, and she is the wife of Mr. Aditya Prakash Bats, who has been actively involved in

the Company's operations since its inception in 2008 and is accountable for the current crisis.

- b. That the Respondent had no involvement in the company's day to day working & affairs.
- c. That all directors of the company, inclusive of the female directors, who were operationally inactive, were also erroneously designated as Executive Directors in form 32 filed with MCA. This misclassification was a direct consequence of erroneous guidance provided by the Company Secretary, Mr. Ankit Agarwal, who failed to inform the Respondent and other directors about the possibility of assuming the role of non-executive directors.
- d. That throughout the existence of the Company, there was only one instance when the Income Tax case for the Assessment Year 2011-12 was selected for scrutiny and on request of the Managing Director, he represented as the Authorized Representative (not as a director) before the Assessing Officer. The Respondent did not accept any form of remuneration for fulfilling this representation.
- e. It is self-evident from email dated 8<sup>th</sup> December 2015 that the Respondent had no involvement whatsoever in the maintenance of books of accounts, the audit process, income tax matters, statutory compliances, or other legal matters.
- f. The Respondent's role within the Company was limited to that of a Director Simplicitor.
- g. That mere act of seeking information about the company's compliance status cannot be interpreted as being actively engaged in the day-to-day business activities of the company.
- h. The Complainant, without the knowledge or consent of the Respondent, proceeded to open a bank account with IDBI Bank. This action by the complainant was carried out with malicious intent and demonstrates a deliberate attempt to act in a manner that is detrimental to the Respondent's interests. When the Respondent questioned the Complainant regarding this unauthorized action, the Complainant ceased all communication, further indicating her wrongful intentions. In addition to the aforementioned actions, it has come to light that the Complainant

in a clear act of impropriety, illegally issued shares to one of their relatives.

- i. Convening a meeting with other affected individuals is a legitimate course of action and does not give rise to any wrongdoing. Assertions claiming non-compliance with procedural requirements for the meeting are merely attempts to find fault with the Respondent.
- j. Further the Complainant's assertion that the meeting was convened without sending notice to her, it is seen that as per section 173(3) of the Companies Act, 2013, notice should be given to all directors of the Company and since the Complainant is not a director, she is not entitled to receive any notice pertaining to the board meeting.

**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.	23.06.2023	Part- Heard and Adjourned in the absence of Complainant
3.	10.08.2023	Concluded and Judgement Reserved.
4.	25.08.2023	Consideration of Judgment.

8. On the day of the first hearing, held on 12<sup>th</sup> May 2023, the Committee noted that the Respondent was present through Video Conferencing mode. The Committee noted that from the Complainant side, Mr. Ravish, Advocate was physically present at ICAI Bhawan New Delhi. The Respondent was administered on Oath. The Committee enquired from the Respondent as to whether he is aware of the charges The Respondent replied in the affirmative and pleaded Not Guilty to the charges levelled against him. 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 hearing, held on 23<sup>rd</sup> June, 2023, the Committee noted that the Respondent and his Counsel, CA. Ankit Maheshwari were present through Video Conferencing Mode. The Committee noted that the Complainant was not present. The Office informed the Committee that the notice to the Complainant was returned back undelivered and that no further contact details of the Complainant are available with the office.

9.1 Thereafter, the Respondent was asked to make his submissions. The Respondent in his submissions had, inter-alia, submitted as under:

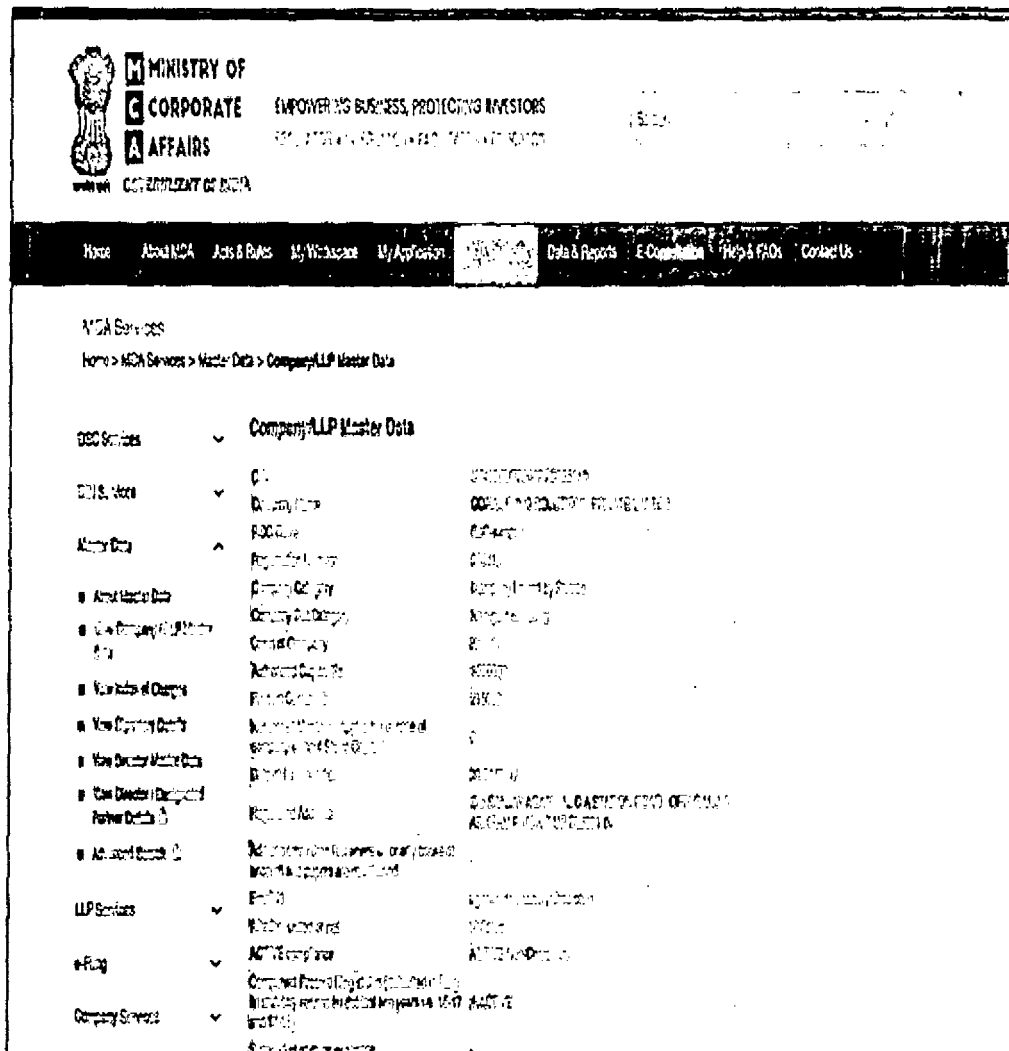
- a. That the Complainant is only a shareholder in the Company and is wife of the MD of the Company i.e. Mr. Aditya Prakash Bats.
- b. That the Respondent has been oppressed by multiple reasons and eventually he decided to convene the meeting and had also filed a complaint before NCLT which is pending.
- c. That he holds 2100 shares in the Company and is the Director Simplicitor in the Company.
- d. That he holds a vested interest in the Company and was expected to ask questions from the management of the Company.
- e. That besides attending the board meeting he did not take any operational charge in the Company and further does not take any remuneration from the Company.
- f. That he does not have the signing authority in the bank accounts of the Company.

9.2 Thereafter, the Committee, after consideration of submissions of the Respondent directed him to provide the following documents/ information and present the same in the next hearing:

- a. Documentary evidence to establish that the Respondent is a director simplicitor and not a full-time director of the Company.
- b. Submissions on the fact that, as per the ROC form, the Respondent is an executive director.

- c. Submissions on the fact that his address and the address of the Company are the same.
10. On the day of final hearing held on 10<sup>th</sup> August, 2023, the Committee noted that the Respondent and his Counsel, CA. Ankit Maheshwari were present physically at Delhi Office. The Committee further noted that the Complainant vide her email dated 10<sup>th</sup> August 2023 mentioned that she had already submitted all the documents and accordingly her appearance is not required. She further submitted that the Committee may proceed with facts/documents on record and decide the matter on its merits.
- 10.1 Thereafter, the Committee asked the Respondent to make his submissions. The Respondent in his submissions had, inter-alia, submitted as under:
- a. That he has submitted all the documents asked for by the Committee in the previous hearing held on 23<sup>rd</sup> June 2023.
  - b. That he has submitted copies of the notice of AGM and copies of financial signed by two directors i.e. Mr. Aditya Prakash Bats and Mr. Ashok Khandelwal to prove that he has not signed any documents and acts only as a director simplicitor.
  - c. That he was the first director, hence no resolution is passed for his appointment.
  - d. That there is a complaint against CA. Kanu Agarwal (daughter of the Respondent and one of the director of the Company) before ICAI on the same ground.
  - e. That there is no documentary evidence which the Complainant can produce to prove his role as an executive director.
  - f. That the status of the Company is inactive at present.
- 10.2 On consideration of the same, the Committee directed the Respondent to submit the documents regarding the present status of the Company within next 7 days. Thereafter, the Committee, looking into the Respondent's submissions against the charges leveled, recorded his plea and decided to conclude the hearing by reserving its judgement.

11. Thereafter, this matter was placed in a hearing held on 25th August 2023 wherein the same members, who heard the case earlier, were present for consideration of the facts and arriving at a decision by the Committee. The Committee noted that the Respondent, in response to documents sought from him in the hearing held on 10th August 2023 had submitted the enclosed screenshot vide letter dated 16<sup>th</sup> August 2023 of an inquiry through the Ministry of Corporate Affairs portal to establish that the status of the company is INACTIVE.



11.1 Accordingly, keeping in view the facts and circumstances of the case, material on record and submissions of the parties the Committee passed its judgement.

**FINDINGS OF THE COMMITTEE:**

12. The Committee as regards to the **charge relating to not obtaining permission from the Council of ICAI** before accepting appointment as Executive Director of the Company, observed that in this regard Regulation 190A of Chartered Accountants Regulations, 1988, which deals with the provision for Chartered Accountants in practice not to engage in any other business or occupation. The relevant contents of the same are as under:

*"A chartered accountant in practice shall not engage in any business or occupation other than the profession of accountancy, except with the permission granted in accordance with a resolution of the Council".*

- 12.1 Further, the permissible categories of engagements approved by the Council under Regulation 190(A) are available in Appendix No. 9 to the Chartered Accountants Regulations, 1988 and Appendix 'F' of Code of Ethics, Eleventh Edition, 2009. It is further noted that the Council of ICAI has considered and decided the question of permitting members in practice to become a Director, Promoter/Promoter- Director, subscriber to the Memorandum and Article of Association of any Company \* which is reproduced as under:

***"a) Director of a Company***

- (i) *the expression 'Director Simplicitor' shall be used for an ordinary/simple Director*
- (ii) *A member in practice is permitted generally to be a Director simplicitor in any Company including a Board-Managed Company and as such he is not required to obtain any specific permission of the Council in this behalf unless he or any of his partners is interested in such Company as an auditor, irrespective of whether he and/or his relatives hold substantial interest in that Company*

***b) Promoter/Promoter-Director***

*There is no bar for a member to be a Promoter/Signatory to the Memorandum and Articles of Association of any Company. There is also no bar for such a*



*promoter/signatory to be a Director Simplicitor of that Company irrespective of whether the objects of the Company include areas which fall within the scope of the profession of Chartered Accountants. Therefore, members are not required to obtain specific permission of the Council in such cases."*

*\* (Pg. 213 of Code of Ethics , Eleventh Edition, 2009)*

- 12.2 On perusal of the above provisions, it is observed that a Chartered Accountant in practice shall not engage in any business or occupation other than the profession of accountancy, except with the permission granted in accordance with a resolution of the Council.
- 12.3 The Committee noted from the Form 32 filed with ROC for the appointment of the Respondent as director in the Company. The Respondent in the said form is shown as executive director however the Respondent is denying the same by stating that all directors of the company, inclusive of the female directors, who were operationally inactive, were also erroneously designated as Executive Directors and this misclassification was a direct consequence of erroneous guidance provided by the Company Secretary, Mr. Ankit Agarwal, who failed to inform the Respondent and other directors about the possibility of assuming the role of non-executive directors
- 12.4 The Committee noted that even if the contention of the Respondent is accepted that he is mistakenly classified as executive director in official documentation of the Company, he failed to take necessary steps to rectify the same. Further, the documents brought on record by the Complainant such as emails written by the Respondent to the accountant of the Company, representation by Respondent before Income Tax Authorities on behalf of the Company, the copy of tickets to Manila for attending convention on behalf of the Company, etc. proves beyond doubt that the Respondent was involved in day to day affairs of the Company as executive director without obtaining permission from the Council of ICAI.

- 12.5 The Committee noted that the plea of the Respondent that he had not signed the financial statements of the Company does not absolve him from charge of his participation in day to day affairs of the Company.
- 12.6 As regards to **use of professional address of Respondent by the Company**, the Committee noted that the Respondent has not placed on record any evidence to prove his bonafides whereas it is seen from the submissions of the Complainant that all the documents, papers, books of accounts, statutory registers, contracts, agreements and other legal documents of the Company has been maintained at the registered office of the Company i.e. the professional address of the Respondent hence the contention of the Respondent that the Company was not operational from his professional address and was operating from Bareilly which was 50 km away from Pilibhit is not tenable and it can very well be inferred that the Respondent was not only involved in the formation of the Company but was also assisting the Company in carrying out its day today business activities. The Respondent merely submitted that operational activities were consistently carried out from the corporate office address situated at Bareilly but failed to provide any evidence. Thus, the contention of the Respondent is not tenable, and he is held **guilty** of professional misconduct falling within the meaning of under Item (11) of Part I of the First Schedule to Chartered Accountants Act, 1949.
13. With regards to charge **that the Respondent was trying to gain control over the management of the Company**, the Committee observed that the Respondent had convened a meeting on 3<sup>rd</sup> August, 2016 along with his wife Mrs. Poonam Agarwal and daughter Ms. Kanu Agarwal (both directors of the Company) without giving notices to the other directors and shareholders of the Company.
- 13.1 The Committee in this regard observed that section 173(3) of the Companies Act, 2013 states as under:  
*A meeting of the Board shall be called by giving not less than seven days' notice in writing to every director at his address registered with the company*

*and such notice shall be sent by hand delivery or by post or by electronic means.*

*Provided that a meeting of the Board may be called at shorter notice to transact urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting.*

*Provided further that in case of absence of independent directors from such a meeting of the Board, decisions taken at such a meeting shall be circulated to all the directors and shall be final only on ratification thereof by at least one independent director, if any.*

- 13.2 On perusal of the above provisions, the Committee noted that the notice of the meeting shall be given to every director of the Company at his address registered with the Company, however in the present case, the Respondent has not given notice to all the directors as required under the provisions of Companies Act 2013. In this regard, the Respondent submitted that since neither accounts of the Company were presented by the Executive Director nor any formal meetings were convened till 2016 and hence out of no choice, he initiated dialogues with MD aggressively in April 2016 to have accounts of the Company of the past and held a meeting among three directors on 3<sup>rd</sup> August, 2016 with an intent to prevent the single signatory operation of the Company Bank Account. The Committee in this regard noted that the Respondent failed to bring on record any evidence that notice of the meeting was served to all the Directors. The Committee noted that the Respondent flouted the provisions of the Companies Act 2013 with the intention of gaining control over the banking operation of the Company.
- 13.3 Hence, the Committee in considered opinion held the Respondent **guilty** of Professional and Other Misconduct falling within the meaning of Item (1) of Part II of Second Schedule and Item (2) of Part IV of First Schedule to Chartered Accountants Act 1949 for this charge.

**CONCLUSION:**

14. In view of the above observations, considering the submissions of the Respondent and documents on record, the Committee held the Respondent **GUILTY** of Professional and Other Misconduct falling within the meaning of Clause (11) of Part I and Clause (2) of Part IV of the First Schedule and Clause (1) of Part II of Second Schedule to the Chartered Accountants Act, 1949.

Sd/-

(CA. RANJEET KUMAR AGARWAL)  
PRESIDING OFFICER

Sd/-

(SMT. RANI NAIR, I.R.S. RETD.)  
GOVERNMENT NOMINEE

Sd/-

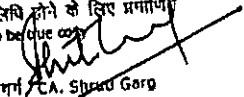
(SHRI ARUN KUMAR, I.A.S, RETD.)  
GOVERNMENT NOMINEE

Sd/-

(CA. SANJAY KUMAR AGARWAL)  
MEMBER

DATE: 07<sup>th</sup> February, 2024

PLACE: New Delhi

सही प्रतिलिपि होने के लिए प्रमाणित  
Certified to be true copy  
  
सीए युक्ति वर्ग / C.A. Shyam Garg  
सहायक निदेशक / Assistant Director  
अनुशासनशास्त्रिका निदेशालय / Disciplinary Directorate  
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया  
The Institute of Chartered Accountants of India  
आईसीएआइ भवन, विश्वास नगर, शाहदरा, दिल्ली-110032  
ICAI Bhawan, Vishwas Nagar, Shahdara, Delhi-110032