



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

[DISCIPLINARY COMMITTEE [BENCH-I (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/421/2018/DD/46/2019/DC/1534/2022]

In the matter of: -

CA. Pawan Kumar Jain,
Flat No. C-502-503, Express City,
Empress Royal Residency,
Near Ghandhi Sagar Lake,
Mahatma Fule Bazar,
Nagpur – 440018

.....Complainant

-Vs-

CA. Pawan Kumar Agrawal (M. No. 055451),
M/s. Agrawal Jain and Bardia,
Chartered Accountants,
Trihari Sadan, Road No. 3,
Near Government Hospital,
Kantabanji (Odisha) – 767039

.....Respondent

MEMBERS PRESENT: -

CA. Charanjot Singh Nanda, Presiding Officer
Shri Jugal Kishore Mohapatra, IAS (Retd.) (Government Nominee)
CA. Chandrashekhar Vasant Chitale, Member
CA. Gyan Chandra Misra, Member

Date of Hearing : 2nd April 2024

Date of Order : 26.06.2024

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



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THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

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noted that CA. Pawan Kumar Agrawal (M. No. 055451) (hereinafter referred to as the Respondent) was held GUILTY of professional misconduct falling within the meaning of Item (4) (8 & (11) of Part I of 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 communication was addressed to him thereby granting opportunity of being heard in person / through video conferencing and to make written & verbal representation before the Committee on 2nd April 2024.

3. The Committee noted that on the date of the hearing held on 2nd April 2024, the Respondent was present through video conferencing, and he made his verbal submission on the findings of the Disciplinary Committee.

4. In his verbal submission the Respondent inter alia stated that he has already given his written submission and requested bench to be lenient on him.

5. The Committee considered the reasoning as contained in the findings holding the Respondent Guilty of professional misconduct vis-à-vis verbal/ written submissions of the Respondent.

6. Keeping in view the facts and circumstances of the case, material on record including verbal & written submissions of the Respondent, the Committee is of the view that professional misconduct on the part of the Respondent is established. Accordingly, the Committee ordered that a fine of Rs. 25,000/- (Rupees Twenty-five Thousand only) be imposed upon the Respondent i.e. CA. Pawan Kumar Agrawal (M. No. 055451) to be paid within 90 days of receipt of the Order. If the Respondent fails to pay the fine within the stipulated period, his name be removed from the Register of Member for a period of thirty days.

Sd/-

(CA. CHARANJOT SINGH NANDA)
(PRESIDING OFFICER)

Sd/-

(SHRI JUGAL KISHORE
MOHAPATARA), I.A.S. (RETD.),
(GOVERNMENT NOMINEE)

Sd/-

(CA. CHANDRASHEKHAR VASANT
CHITALE)
(MEMBER)

Sd/-

(CA. GYAN CHANDRA MISRA)
(MEMBER)

DATE: 26.06.2024

PLACE: New Delhi

प्रमाणित सत्य प्रतिलिपि / Certified True Copy

Anju Grover

अंजू ग्रोवर / ANJU GROVER

सहायक सचिव / Assistant Secretary

अनुशासनात्मक निदेशालय / Disciplinary Directorate

भारतीय सनदी लेखाकार संस्थान

The Institute of Chartered Accountants of India

आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032

ICAI Bhawan, Vishwas Nagar, Shahdara, Delhi-110032

Order - CA. Pawan Kumar Agrawal (M. No. 055451), Kolkata

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – I (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

Ref. No. – [PR/421/2018/DD/46/2019/DC/1534/2022]

In the matter of:

**CA. Pawan Kumar Jain,
Flat No. C-502-503, Express City,
Empress Royal Residency,
Near Gandhi Sagar Lake,
Mahatma Fule Bazar,
Nagpur 440 018
Maharashtra**

.....Complainant

Versus

**CA. Pawan Kumar Agrawal (M. No. 055451),
M/s. Agrawal Jain And Bardia,
Chartered Accountants,
Trihari Sadan, Road No. 3,
Near Government Hospital,
Kantabanji 767 039
Odisha**

.....Respondent

MEMBERS PRESENT: -

- i) CA. Aniket Sunil Talati, Presiding Officer
- ii) Shri. Jugal Kishore Mohapatra, IAS (Retd.) (Government Nominee)-
Through Online Mode
- iii) Shri Prabhash Shankar, IRS (Retd.), (Government Nominee)
- iv) CA (Dr). Rajkumar Satyanarayan Adukia, Member
- v) CA. Gyan Chandra Misra, Member

CA. Pawan Kumar Jain -Vs- CA. Pawan Kumar Agrawal (M. No. 055451)

Ar

Jain

DATE OF FINAL HEARING : 31-10-2023
PLACE OF FINAL HEARING : New Delhi / Through Video Conferencing

Parties Present: -

Respondent : CA. Pawan Kumar Agrawal
Counsel of Respondent : CA. A.P. Singh & CA. Utsav Hirani

1- BRIEF OF THE DISCIPLINARY PROCEEDINGS: -

(i)- Brief of Proceeding held on 31st OCT 2023:

On the day of the final hearing held on 31st Oct 2023, the Committee noted that the Respondent along with his Counsel was present through VC. Thereafter, the hearing in the matter continued from the stage where it was left in last hearing. The Counsel for the Respondent made his submissions on the charges. Thereafter, the Committee also posed questions to the Counsel for the Respondent. After hearing the submissions of both the parties, the Committee **decided to conclude the hearing** in the above matter.

(ii)- Brief of Proceeding held on 14th Sept 2023:

During the hearing held on 14th Sept 2023, at the outset, the Committee noted that the Respondent was present through VC. The Respondent made his brief submissions on the allegation. The Committee also posed questions to the Respondent. After hearing the submissions, the Committee decided to adjourn the hearing in the matter. With this, the hearing in the matter was **part heard & adjourned**.

(iii)- Brief of Proceeding held on 06th July 2023:

During the first hearing held in the above matter on 6th July 2023, the Committee noted that the Respondent and his Counsel were present through VC. Thereafter, the Respondent was put on oath and on being enquired as to whether he is aware of the charges levelled against him and whether he pleads himself guilty or not; he replied that he is aware of the charges and pleaded himself not guilty. Thereafter, the Counsel for the Respondent made brief submissions on the allegation. The Committee also posed questions to the Respondent. After hearing the submissions, the Committee decided to **adjourn the hearing in the matter**.

1- BRIEF BACKGROUND OF THE MATTER: -

The Complainant and the Respondent were partners in the Respondent firm namely M/s. Agrawal Jain & Bardia (FRN 320259E) formed in the year 1991 (formerly known as PKA & Associates). Both partners were working in two different

locations of the Firm, the Complainant was working at Nagpur Branch and the Respondent was working at Head Office of his firm at Kantabanji Odisha.

2- CHARGES IN BRIEF: -

The Complainant has made various allegations against the Respondent, out of which the Director (Discipline) has held him guilty in respect of following allegations.

i)- That the Respondent entered into partnership with unqualified person i.e., person other than a person qualified to be a member of the Institute and formed a partnership firm namely M/s. Trihari Fuels (PAN No. AAFT3082F) with his wife and a copy of income tax returns of M/s. Trihari Fuels signed by the Respondent as partner of the Firm for the A.Y.2012-13 to A.Y.2016-17 has also been submitted by the Complainant.

ii)- That the Respondent was engaged in the business of trading of petrol & diesel as well as in real estate business in the name and style of M/s Trihari fuels & M/s Trihari Infrastructure Pvt. Ltd respectively despite being a practicing Chartered Accountant.

iii)- That the Respondent used to accept audit assignments without first communicating with the previous auditors and during his practice of 27 years, Respondent never communicated with any of the previous auditors. The Complainant further submitted that the Respondent accepted statutory branch audit of SBI (Kantabanji, Titlagarh and Rourkela Branch) without first communicating with the previous auditor.

iv) That the Respondent being appointed as statutory auditor of M/s MNH Shakti Limited for the financial year ended March 2014 and March 2015 participated in tender of Mahanadi Coal Field Limited for the financial year 2014-15. The Complainant submitted that MNH Shakti Limited is wholly owned subsidiary of Mahanadi Coal Field Limited and the Respondent has also done internal audit and accepted fees for that period and official complaint was filed by the Company before the office of C&AG for this misconduct.

SUBMISSIONS OF THE PARTIES

It is observed that the Respondent during the course of hearing and/ or through his written statement has inter-alia made the following submissions in his defense:

- (i) The Respondent in respect to charge pertaining to entering into partnership in Trihari Fuels with a non-member, has submitted that he was not the partner in his individual capacity and his HUF namely "**Pawan Agrawal & Sons and Harikishan Pawan Kumar**" was the partner in the said firm, and he was acting in the representative capacity of Karta HUF. He further submitted that the HUF is not inherited, and the Respondent has himself created this own HUF and did not take any income from this partnership firm.
- (ii) In respect to second charge of Non communication with previous auditor, the Respondent has submitted that the Bank Audit was allotted in March ends and due to hectic schedule, he made tele conversation with the previous auditor and obtained his concurrence and even the previous auditor has given his confirmation on his letter head wherein he clearly mentioned that he has no objection on the appointment of the Respondent and thus the requirement of making the communication has been complied with.
- (iii) In respect to the charge pertaining to holding directorship in Trihari Infrastructure Pvt Ltd, the Respondent submitted that he incorporated the said company, but the Company could not function, and its name was struck off in 2013. Further, that the Respondent was the director simplicitor and has not been involved in any managerial capacity. Further, there were only two directors of the Company viz. the Respondent and Ms. Savita Agrawal.
- (iv) In respect of allegation pertaining to acceptance/participation in tender for an assignment of both Internal audit & Statutory audit of Holding and Subsidiary Companies, the Respondent submitted that he immediately had sent mail to CAG intimating him about the same and that he has not conducted the said assignment as an Internal Auditor of M/s Mahanadi Coalfields Ltd. and the Respondent himself came up outrightly to bring out the said fact with his genuine intent. The Respondent also submitted that the tender participation in Mahanadi Coal Assignment was made by the Complainant at the time he was the partner of the firm.

6- FINDINGS OF THE COMMITTEESS

Before giving findings in the matter, the Committee noted the following background about the facts which are given here-in-below:

6.1 In respect of the first allegation of partnership with unqualified person i.e., formation of partnership firm namely M/s. Trihari Fuels, the Committee noted that Respondent has himself created his own HUF, and it was not an inherited HUF

wherein the benefit of becoming the partner would have been extended to the Respondent. The Committee also observed that the resignation w.e.f. 31st March 2017 does not wipe out the misconduct on the part of the Respondent since he has remained a partner of Trihari Fuels while he was holding full time COP during such period. The Committee also perused Clause (4) of Part I of the First Schedule which read as follows: -

A member in practice shall be deemed to guilty of professional misconduct if he: -

"enters into partnership, in or outside India, with any person other than a chartered accountant in practice or such other person who is a member of any other professional body having such qualifications as may be prescribed, including a resident who but for his residence abroad would be entitled to be registered as a member under clause (v) of sub-section (1) of Section 4 or whose qualifications are recognized by the Central Government or the Council for the purpose of permitting such partnerships"

From above, it is amply clear that the Respondent by entering into the partnership with his wife in a partnership firm namely M/s. Trihari Fuels (irrespective of the capacity as Karta of his HUF) without taking any permission from ICAI, has violated the provisions of Chartered Accountants Act and its Regulation and hence the Committee decided to hold him **Guilty** of professional misconduct falling within the meaning of Items (4) of Part I of First Schedule to the Chartered Accountants Act, 1949.

6.2 Regarding second allegation about the Respondent's Directorship in M/s Trihari Infrastructure Private Limited, the Committee noted that a member in practice shall be permitted to be a Director (Director Simplicitor only), Promoter/Promoter Director, Subscriber to the Memorandum and Articles of Association of any company including a Board Managed Company. 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 irrespective of whether he and/or his relatives hold substantial interest in that Company. Further, Appendix - 9 of CA Regulations, 1988 specifies the categories where a **specific and prior permission of the Council** is required for the members in practice before engaging in any business and occupation. Further, Members Manual of ICAI specifies that a member in practice is required to seek prior permission for engagement in any business or occupation other than profession of accountancy and for that he needs to submit within 30 days from the date of joining employment or occupation, an intimation containing details of seeking permission. In the case of family business,

Managing Director or whole time Director, the member is required to file information in the prescribed form while seeking permission.

From the above provisions, it is clear from the perusal of Company Master Data of Trihari Infrastructure Private Limited submitted by the Respondent, it is observed that the said company was incorporated on 23/11/2013, at time the Respondent was simultaneously holding the COP and later on it was struck off from ROC. It is also noted that the Respondent failed to bring anything on record to exhibit that he was not acting as a Whole Time Director or Managing Director of the Company or acting as Director Simplicitor of the Company, or he obtained any kind of permission of the Council either general or special. Hence, the Respondent has completely disregarded the provisions of CA Regulations. Accordingly, the Committee decided to hold the Respondent **Guilty** of professional misconduct falling within the meaning of Item (11) of Part I of First Schedule to the Chartered Accountants Act, 1949.

6.3 In respect of the allegation regarding non communication with previous auditor, it is noted that as per the provision of Chartered Accountants Act, 1949 read with Code of Ethics – 2009, it is mandatory for incoming auditor before accepting audit of any entity, to communicate **in writing** with the previous auditor of that entity. In this regard the Council of ICAI has further laid down the detailed guidelines as mentioned in Code of Ethics, 2009 and Para-7 of such guidelines reads as below:

“Although the mandatory requirement of communication with previous auditor being Chartered Accountant applies, in uniform manner, to audits of both government and non-government entities, yet in the case of audit of government Companies/banks or their branches, if the appointment is made well in time to enable the obligation cast under this clause to be fulfilled, such obligation must be complied with before accepting the audit. However, in case the time schedule given for the assignment is such that there is no time to wait for the reply from the outgoing auditor, the incoming auditor may give a conditional acceptance of the appointment and commence the work which needs to be attended to immediately after he has sent the communication to the previous auditor in accordance with this clause. In his acceptance letter, he should make clear to the client that his acceptance of appointment is subject to professional objections, if any, from the previous auditors and that he will decide about his final acceptance after taking into account the information received from the previous auditor.

In the above guideline the Council has clarified that even in case of banks too the communication is mandatory for the incoming auditor before accepting his appointment and at the same time the relaxation has also been given in case of shortage of time for the acceptance of such appointment, that the incoming auditor after sending his written communication to the outgoing auditor without waiting for its reply may give conditional acceptance to bank. However, in any case written communication is required as per the highest standard of ethics.

In the instant matter, it is noted that the Respondent before accepting the audit of branches of SBI had not communicated with the previous auditors in writing, however he pleads before the Committee that he has obtained concurrence from the previous auditor over telecall. He also produced letters from previous auditors on this count wherein they have confirmed /mentioned that they had received such phone call from the Respondent about his appointment as statutory auditor of respective branches of SBI.

However, in light of the above-mentioned guidelines of Council, it is viewed that the Respondent was ethically required to communicate with both the previous auditors of branches of SBI in writing only and these guidelines does not give any relaxation, even if the Respondent had secured telephonic acceptance from the previous auditors.

Accordingly, the Committee decided to hold the Respondent **Guilty** of professional misconduct within the meaning of Item (8) of Part I of First Schedule to the Chartered Accountants Act, 1949.

6.4 With regards to the allegation that the Respondent being appointed as statutory auditor of M/s MNH Shakti Limited for the financial year ended March 2014 and March 2015 has participated in tender of internal audit of Mahanadi Coal Field Limited for the financial year 2014-15 and "MNH Shakti Limited" is wholly owned subsidiary of Mahanadi Coal Field Limited. The Committee based on written and verbal submissions of the Respondent and on perusal of the documents on record observed that the Respondent though has participated in the tender process, he subsequently tendered his resignation from his position of statutory auditor of M/s MNH Shakti and did not conduct internal audit of the holding company M/s Mahanadi Coal Field Ltd. The Committee took a lenient view considering the fact that the Respondent has not met any professional obligations as he has neither performed Internal audit of the holding Company "Mahanadi Coal field" nor he performed Statutory audit of the subsidiary Company "MNH Shakti Ltd." Accordingly, the Committee decided to hold the Respondent **Not Guilty** of

Professional and other misconduct falling within the meaning of Item (2) of Part - IV of First Schedule of the Chartered Accountants Act, 1949

7- CONCLUSION: -


Thus, in the considered opinion of the Committee, the Respondent is **GUILTY** of Professional and Other Misconduct within the meaning of Items (4) (8) and (11) of Part I of First Schedule to the Chartered Accountants Act, 1949.

Sd/-
(CA. Aniket Sunil Talati)
PRESIDING OFFICER

Sd/- Sd/-
Sh. Jugal Kishore Mohapatra, IAS (Retd.) (Shri Prabhash Shankar, I.R.S (Retd.))
GOVERNMENT NOMINEE GOVERNMENT NOMINEE

Sd/- Sd/-
CA (Dr). Rajkumar Satyanarayan Adukia (CA. Gyan Chandra Misra)
MEMBER MEMBER

PLACE: NEW DELHI
DATE: 08.02.2024

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

अरुण कुमार / Arun Kumar
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनिक विभाग / Discipline Grievance
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
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ICAI Bhawan, Vidhaya Nagar, Section - 4, Con. 110032

Jain