



**THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA**  
(Set up by an Act of Parliament)

[PR/294/15/DD/36/2016/BOD/375/2017]

**ORDER UNDER SECTION 21A (3) OF THE CHARTERED ACCOUNTANTS ACT, 1949  
READ WITH RULE 15 (1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF  
INVESTIGATIONS OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT  
OF CASES) RULES, 2007**

**IN THE MATTER OF:**

**Shri Vinod K. Kala**

Director, M/s Windforce Management Services Pvt. Ltd.

"Vatika Professional Point"

11<sup>th</sup> Floor, Sector-66, Golf Course Extension Road

**Gurgaon.....Complainant**

**Versus**

**CA. Munish Mehta (M. No. 098142)**

Partner, M/s G M R & Co., Chartered Accountants

3/31, First Floor, West Patel Nagar

**New Delhi.....Respondent**

**[PR/294/15/DD/36/2016/BOD/375/2017]**

**MEMBERS PRESENT (IN PERSON):**

**CA. Rajendra Kumar P, Presiding Officer**

**Ms. Dolly Chakrabarty (IAAS, Retd.), Government Nominee**

**CA. Priti Savla, Member**

**Date of hearing and passing of Order: 29<sup>th</sup> July 2025**

1. The Board of Discipline, vide its Findings dated 11<sup>th</sup> February 2021 was of the view that CA. Munish Mehta (M. No. 098142) is **GUILTY** of Other Misconduct falling within the meaning of Item (2) of Part IV of the First Schedule under the Chartered Accountants Act, 1949.
2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against CA. Munish Mehta (M. No. 098142) and communication dated 16<sup>th</sup> July 2025 was addressed to him thereby granting him an opportunity of being heard on 29<sup>th</sup> July 2025 which was exercised by him by being present through video conferencing. He confirmed receipt of the findings of the Board.
3. The Board takes judicial notice of the fact that the Hon'ble High Court of Delhi, vide its interim order dated 17<sup>th</sup> March 2021, passed in W.P.(C) No. 3365/2021 along with CM APPLs. 10233-34/2021, titled *CA Munish Mehta v. Board of Discipline of the Institute of Chartered Accountants of India*, granted an interim stay on the findings rendered by the Board of Discipline.

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Subsequently, vide final order dated 5<sup>th</sup> December 2024, the Hon'ble High Court vacated the said interim stay and issued specific directions to the Respondent to pass final order in the matter. The relevant extract of the said order is reproduced herein for clarity and due compliance:

*"(a) The Respondent is hereby directed to pass the final order in respect of the proceedings initiated against the Petitioner under Section 21A of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007."*

4. When asked by the Board whether he wished to proceed in accordance with the observations made by the Hon'ble Delhi High Court in its aforementioned Order, the Respondent stated that he did not wish to insist upon those observations. He requested the Board to conclude the proceedings by passing its Final Order awarding the appropriate punishment. Additionally, the Respondent urged the Board to adopt a lenient approach, considering his loss of professional work and assignments, as well as his adverse economic and medical conditions.
5. Consequently, after due consideration of the facts and circumstances of the case, the nature and gravity of the misconduct committed by CA. Munish Mehta (M. No. 098142), coupled with the representation tendered by him, the Board of Discipline, in exercise of powers conferred under the Chartered Accountants Act, 1949, read with applicable Rules, decided to impose a monetary penalty of **Rs. 10,000/- (Rupees Ten Thousand only)** upon him.

Sd/-

CA. Rajendra Kumar P  
(Presiding Officer)

Sd/-

Ms. Dolly Chakrabarty (IAAS, Retd.)  
(Government Nominee)

Sd/-

CA. Priti Savla  
(Member)

प्रमाणित होने के लिए प्रमाणित / Certified to be True Copy

गीता अनिता कुमार / Goshal Anindita Kumar  
कार्यकारी अधिकारी / Executive Officer  
अनुशासनिक विभाग / Disciplinary Directorate  
भारतीय प्रमाणित हितकारी संस्थान  
The Institute of Chartered Accountants of India  
आई.सी.ए.आई. भवन, सी-1, सेक्टर-1, नोडा-201301 (उ.प्र.)  
ICAI Bhawan, C-1, Sector-1, Noida-201301 (U.P.)

CONFIDENTIAL

BOARD OF DISCIPLINE

Constituted under Section 21A of the Chartered Accountants Act 1949

Findings under Rule 14(9) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007

File No. : [PR-294/15-DD/36/2016/BOD/375/2017]

CORAM:

CA. Prasanna Kumar D., Presiding Officer

(In Person)

Mrs. Rani Nair (IRS, Retd.), Government Nominee

(Through Video Conferencing)

In the matter of:

Shri Vinod K. Kala,  
Director, M/s Windforce Management Services Pvt. Ltd.  
"Vatika Professional Point"  
11th Floor, Sector-66  
Golf Course Extension Road  
Gurgaon-122 001

.....Complainant

-Vs.-

CA. Munish Mehta (M. No. 098142),  
Partner, M/s G M R & Co.  
Chartered Accountants  
3/31, First Floor,  
West Patel Nagar  
New Delhi-110008

.....Respondent

DATE OF FINAL HEARING : 8<sup>th</sup> February, 2021

PLACE OF HEARING : New Delhi Office / through video conferencing

PARTIES PRESENT: (Through Video Conferencing)

Counsel for the Complainant : CA. C. V. Sajan



Respondent : CA. Munish Mehta  
Counsel for the Respondent : CA. Arun Saxena

**FINDINGS:**

**Brief Background of the case:**

1. The Brief background of the case is as under:-
  - a. The Respondent firm was appointed as the auditor of the Complainant Company from the conclusion of the Annual General Meeting (AGM) of the Company held in the year 2009 and was re-appointed at subsequent AGMs held each year. The Respondent was last reappointed by the members of the Company on 27<sup>th</sup> September, 2013 effective from the conclusion of the AGM held on that day till the conclusion of AGM to be held for the Financial Year 2013-14. The Board of Directors of the Company at its meeting held on 27<sup>th</sup> June, 2015 had recommended the re-appointment of the Respondent for another term of five years starting from the conclusion of the AGM for the Financial Year 2014 till the conclusion of the AGM to be held in the year 2019. However, the shareholders at the Annual General Meeting held on 29<sup>th</sup> September, 2014 unanimously resolved not to re-appoint the Respondent as auditor and thus rejected the proposal of the Board of Directors of the Company in this regard.
  - b. The Chairman of the Complainant Company thereafter adjourned the meeting till further notice pending the appointment of auditors. Subsequent to the adjournment of the AGM, the Company received a special notice/ proposal dated 21<sup>st</sup> November, 2014 from a shareholder for appointment of new auditor in place of the Respondent firm. The Board initiated action for holding an adjourned AGM to appoint new auditor. The Company apprised the Respondent over phone after the AGM about the decision of the shareholders at AGM resolving not to re-appoint him and subsequently in writing on 7<sup>th</sup> January 2015. The Company also gave special notice of Shareholders proposal to appoint new auditor, to the Respondent alongwith notice of convening adjourned AGM and included in the communication dated 7<sup>th</sup> January, 2015. Agreeing to the proposal of new auditor's name received from a shareholder, the Board recommended to the Shareholders of the Company the appointment of M/s MZSK & Associates as the new auditors of the Company. The Respondent neither responded to the Company's special notice about the appointment of new auditor in their place nor attended the adjourned AGM.
  - c. The adjourned AGM of the Company was held on 16<sup>th</sup> January, 2015 and new auditor was appointed. However, the Respondent did not attend the adjourned

AGM. On the contrary, the Respondent sent an email to the Company on 20<sup>th</sup> January, 2015 stating that he did not receive the notice of AGM. Since the Special Notice and letter dated 7th January, 2015 were dispatched in a single cover and that the Respondent had acknowledged receipt of one of the letters on 13th January, 2015, so the position of the Respondent that he had not received the Special Notice of the adjourned AGM held on 16th January, 2015 was deliberate, dishonest and untruthful.

- d. The Company continued with its efforts with the Respondent during February and March 2015 to accept the reality that shareholders of the Company did not want to continue with the Respondent as the Auditor and that the Company was well within its right to appoint a new Auditor. However, the Respondent showed a resistant approach. Ultimately, in the month of April 2015, Company decided to file ADT1 and to go ahead with the new Auditors. The new Auditors M/s MZSK & Associates, consequently, sent their communication dated 26th May, 2015 to the Respondent in order to take up the assignment.
- e. The Respondent showed all kinds of resistance and protested the appointment of new Auditors. The new auditors informed Company that through strongly worded e-mail and telephone calls the Respondent attempted to discourage new Auditors from taking up the assignment. As a point of unpaid bills came up in the communication with the new Auditors, the Company examined all the accounts and found that some negligible amounts that were not approved were outstanding. To buy peace, the Company paid off even those bills and tried for settlement.
- f. Unfortunately, the Respondent continued his belligerent approach still claiming that he had not been given opportunity to present his case before the Company and refused to allow new auditors to start the work. On the contrary, he once again sent a letter dated 02nd September, 2015 addressed to M/s. MZSK & Associates, threatening the new Auditors to discourage them from starting the Audit of the Company. Frustrated by the events of stonewalling their appointment by the Respondent, M/s MZSK & Associates, the new auditors resigned with effect from 1<sup>st</sup> September, 2015.
- g. As a result, the post of auditors became vacant and the Company could not get its accounts audited as per the statutory requirement. The Board of Directors of the Company at its meeting held on 19th October, 2015 filled the Casual Vacancy



created due to resignation of M/s. MZSK & Associates, by appointing M/s Jitendra K Agarwal & Associates, Chartered Accountants as new auditors of the Company. M/s Jitendra K Agarwal & Associates, Chartered Accountants wrote to both the previous auditors for seeking their concerns and the Respondent once again wrote an e- mail that the matter is subjudice and hasn't been resolved. The Respondent's act once again proves that his only intention is to discourage the new auditors from carrying out the Statutory Audit and consequently, the Company and its directors being exposed to financial and legal obligations. Evidences in the form of communications received from the Respondent prove that he resorted to the following unethical acts, practices and misconduct that is not expected from a Chartered Accountant and thus, has committed Professional Misconduct.

**Charges alleged :**

2. The following charges were alleged against the Respondent:-
  - a. The Respondent raised false claims of outstanding amount on the Company whereas no audit or other fees were pending after the Respondent's services were not engaged and discontinued.
  - b. Misguiding and creating sense of fear, litigation etc. in the minds of the new auditors and threatening them from starting the audit of the Company for the period ended 31st March, 2015. Blackmailing the Company and soliciting illegitimate business by asking opportunity costs for five years in the event of not reappointing the Respondent Firm. Threatening Mr. Jami Hossain, Director of group Company through calls and various other professionals associated with the group Companies.
  - c. Misrepresenting to M/s MZSK & Associates, new auditors of the Company that the Respondent is already appointed as auditor of the Company and there were some misrepresentations in the annual accounts of the Company for the year 2013-14 although it was attested by the Respondent firm without any qualification.

**Proceedings held:**

3. In the aforesaid case, the Board noted that the Counsel for the Complainant and the Respondent alongwith his Counsel were present before it through video conferencing.



Subsequent to the hearing held in the case on 20th November 2020, wherein the Board directed the Respondent / Complainant to provide the following clarifications/ documents:

(a) The Respondent :

(i) The misrepresentation in the previous audits as referred to in his email dated 6<sup>th</sup> July, 2015 addressed to the incoming auditor and copy marked to ROC.

(ii) Any documentary evidences for their appointment as auditor of the Company for the years 2014-2019.

(iii) Claim of opportunity cost in their email dated 20<sup>th</sup> July, 2015 and other submissions to defend the charges alleged against him.

(b) The Complainant :

(i) Appointment of the Respondent firm as auditor of the Company for the years 2014-2019 and any other submissions to substantiate the charges against the Respondent.

The Board noted that further clarifications/submissions from both the Complainant and the Respondent had been received. Thereafter, the Counsel for the Respondent and the Complainant made their respective submissions before the Board. The Respondent was examined by the Board. The Board concluded the proceedings in the case and decided to keep the decision on the conduct of the Respondent reserved. Thereafter, the Board at its meeting held on 11th February, 2021, on consideration of the documents and submissions on record, took a decision on the conduct of the Respondent.

**Submissions of the Respondent:**

4. The brief of the submissions of the Respondent are as under:-

- a. If the email dated 20<sup>th</sup> July, 2015 is reconsidered the total outstanding amount is Rs. 1,08,818/- for various constituents company of the Group. Since huge dues were pending therefore it was the duty of the Respondent as statutory auditor to inform about the same to the incoming auditor. The said fee has been rejected by the Complainant on Aug 21, 2015, hence the question of consultation fees having been charged does not arise and same can be corroborated from the e- mail dated 21/08/2015 . As a matter of right, the Respondent just informed the new auditor about the status of their pending dues and also about the fact that principle of natural justice and proper procedure was not followed by the Company as mentioned in the provisions of Sec 140 (4) of the Companies Act, 2013.

- b. The Respondent never raised any invoice or sent any reminder for the amount mentioned in Annexure 2 and 3 of the email dated 20<sup>th</sup> July 2015. Therefore, the amount shown in Annexure 2 and 3 of the email dated 20<sup>th</sup> July 2015 cannot be termed as claim.
- c. Even indication of opportunity cost in the email dated 20<sup>th</sup> July 2015 was given by the Respondent on the request from the office of Complainant Company. It is the complainant company, who was asking for details of outstanding payments from Respondent in July, 2015. The reply mentioning opportunity cost was sent in July 15 and neither in the month of October 2014 (next month of AGM) nor January 2015 (when intimation for change in auditor was received).
- d. The first line of the e-mail dated 20<sup>th</sup> July, 2015 of Ms. Kanika Goyal, starts with the word "as required by you" which means details given in the said e-mail were required by the complainant. Thereafter, on the basis of the e-mail dated 20<sup>th</sup> July, 2015, the outstanding amount was paid by the Complainant on 21<sup>st</sup> August, 2015 and thereafter, no reminder or claim was made by the Respondent for any outstanding dues.
- e. So far as opportunity cost is concerned, the Respondent submitted that according to the letter of the Complainant dated 04.10.2013, the Respondent was appointed as statutory auditor of 5 group companies of Complainant and necessarily Respondent complied with the provisions of section 141 (3)(g) of Companies Act 2013 (accepting the audit of 15 remaining companies). The Complainant Company and all group companies without following the procedure under the Companies Act 2013 removed the Respondent in illegal meeting held on 16.01.2015 by which the opportunity of Respondent to opt 5 more companies lapsed.
- f. In the email dated 6<sup>th</sup> July, 2015 it was mentioned by the Respondent to the incoming auditor as under –  
*"You are requested and suggested not to proceed"*.  
This cannot be termed as misrepresentation or threatening to incoming auditors.
- g. Regarding the charge of misrepresentation, the Respondent submitted that he came to lucknow after the completion of audit of FY 2013-14 and on verbal instructions, the Respondent started the review exercise of financial statement of other Group Companies. During the review process in December 2014 the Respondent came to know that Complainant has misrepresented to the Respondent during the course of audit of the Financial Year 2013-14 of the Complainant Company. Therefore, the Respondent had no occasion to revise his





audit report but Respondent had informed to the management of the Complainant Company about the misrepresentation.

- h. The AGM held on 29<sup>th</sup> Sep, 2014 is itself in non-compliance with the provisions of Companies Act, 2013 as the notice required to be sent to the statutory auditor (herein to the Respondent) was not received by him. The Complainant failed to provide the copy of the minutes of the meeting held on 29 September 2014 as well as adjourned AGM dated 16.01.2015. Therefore it is the removal of the auditor before expiry of his term. The letter dated 7<sup>th</sup> Jan, 2015 of the Complainant is not tenable in the eyes of law and the same is fabricated because it discloses the facts about the forthcoming Board Meeting scheduled to be held on December 24, 2014. Therefore informing about the said previous events in January 2015 again creates doubt.
- i. The refusal of re-appointment was intimated to Respondent after more than 3 months vide letter dated 7<sup>th</sup> January 2015, whereas the Respondent was in contact with the management of the company on continuous basis from October, 2014 to December, 2014, while doing other work exercise along with reviewing financials of group companies. The company has not complied with the procedure for reappointment/non re-appointment under section 139(9), since the company has not passed any **special resolution** to appoint new auditor in place of Respondent.
- j. The company to avoid the cumbersome procedure for removal of auditor under section 140 of the Companies Act, 2013, in January 2015 created an antedated document dated 7th January, 2015, through which the company informed the Respondent of his non-reappointment, which, on face of it, appears after an afterthought and antedated document.
- k. Another letter dated 7th January, 2015 and letter dated 21st November, 2015 are also fabricated and antedated and which are certainly contrary to each other. The letter dated 21st November, 2015 is not relevant and not related to letter 7th January, 2015 on its face. Therefore, these letters should not have been considered by the Board of Directors and shareholders of the company for passing any resolution.
- l. The Company did not issue any formal appointment letter to the Respondent.
- m. Since there are several documents which are apparently fabricated and antedated, the Respondent be allowed to cross examine the following persons in accordance with the powers given to the Board under section 21C of Chartered Accountant Act 1949:

1. Mr. Vinod Kumar Kala
2. Ms. Navneet Kaur

3. Ms. Srishti Bali
4. Ms Shubhmagla Kala

**Submissions of the Complainant:**

5. A brief of the submissions of the Complainant is as under:

(a) In the communication by the company vide letter dated 7th Jan 2015 a categorical message was given to the Respondent that their firm was not reappointed. The Respondent having been offended by this message had sought confirmation vide email dated 13th Jan 2015. The appointment of new auditors had taken place only on 16th January 2015. These documents sufficiently prove that the allegation of back dating regarding appointment of new auditors was contrary to evidences on record.

(b) The consent letter was given by the Respondent to the company on 27th June 2014, long before the date of AGM held on 29th Sep 2014. The reply from the company staff on 29th Sep 2014 was in the background that the shareholders were going to consider the reappointment of the Respondent in the meeting to be held. However, when the meeting took place the shareholders did not pass the resolution of reappointment of the Respondent.

(c) The future course regarding appointment of auditors was not clear and it was not finalized in that meeting. This fact had been in the knowledge of the Respondent's office right since the day the AGM took place from telephone calls between company officers and Respondent's team. It was in this background a new mail was sent by the Respondent's office on 6th Oct 2014, seeking copy of AGM notice. As their intent was to insist for reappointment as clear to the company officers, they had nothing more to respond except suggesting that the Respondent's office can again ask for (seek) re-appointment, with appropriate documents. This was in the back ground that no new auditor's name had been decided till then despite non-reappointment of the Respondent in the AGM that was held on 29th Sep 2014.

(d) In the meantime the company continued its efforts to bring the Respondent to discussion table, as evident from the email dated 11th Nov 2014. Having failed to achieve an amicable separation the company moved on with future course of action and the notice dated 21st Nov 2014 was the evidence to this effect.

(e) As regards the comment of the Respondent in the letter dated 27<sup>th</sup> May 2015 - "*Further huge dues are pending with the company and their respective group companies*" , the Complainant submitted that there were '**no dues**' pending from the company. The Complainant provided a copy of the bank statement against all invoices where payments

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were made. Till that time, the Respondent firm had not submitted any other details to the Complainant regarding their claim of dues.

(f) The Respondent vide letter dated 27<sup>th</sup> May, 2015 makes the following claims to the new auditors: *"This is to inform you that we have already (been) appointed in the annual general meeting held on Sep 29th 2014....."*.

It was gross misrepresentation of what actually happened.

(g) Further, in their email dated 6<sup>th</sup> July 2015 the Respondent stated as under:

*"If in this way, an auditor can be changed then there is no meaning for the ICAI regulation...."*.

*"There were some misrepresentation in previous audits which we can explain in the personal meeting in our office and not by email. The matter was raised with the management in December, and by trick they changed the auditor by way of the adjourned meeting. The matter was affecting the revision of the audit report issued in the previous year. The matter has been raised at the relevant forum and the results are awaited"*.

*"In case you do so (accept the position of the auditor), you will do so at your own risk and cost"*

The Respondent vide email dated 2<sup>nd</sup> September, 2015, inter-alia, communicated to the new auditor MZSK & Associates, as under:

*"This is to inform you that your appointment as auditors is strictly unlawful"*.

The continued threats resulted in the new appointed auditor resigning on Sep 9 2015, just after receiving the last threatening mail.

#### **Observations and Findings of the Board:**

6. At the foremost, the Board considered the application of the Respondent for examination of the witnesses. The Board observed that the entire premise of the defence of the Respondent is based on the plea that he had been improperly removed from the position of the auditor of the Company. The Board noted that the last audited financial statement of the company by the Respondent were for the F.Y. 2013-14 wherein an unqualified audit report had been issued by him on 27<sup>th</sup> June 2014. The Respondent did not have a formal letter of appointment to substantiate

that he had been appointed as the auditor of the Company for the F.Y. 2014-15. The company resolved not to appoint the Respondent as the auditor of the company in their annual general meeting held on 29<sup>th</sup> September 2014 and the said fact was communicated to the Respondent vide letter dated 7<sup>th</sup> January 2015. The company thereafter appointed M/s MZSK & Associates as the statutory auditor of the company who communicated with the Respondent vide letter dated 25<sup>th</sup> May 2015 seeking their no-objection prior to acceptance of appointment. In a series of communication thereafter between the Complainant Company, the Respondent and the incoming auditor, certain facts were presented by the Respondent to the incoming auditor as well as the Complainant Company in a manner which were allegedly not befitting the ethics of the profession. The Board was of the view that in the instant case, the charge to be examined is not whether the removal/non-re-appointment of the Respondent was as per the prescribed procedure under the Companies Act 2013 for the redressal of which appropriate legal remedy is available but to examine whether the conduct of the Respondent in communicating with the incoming auditor and the Complainant company, i.e. the auditee was such as to bring disrepute to the profession. Thus, the Board was not inclined to accept the request of the Respondent for examination of the witnesses in exercise of powers under Section 21C of the Chartered Accountants Act 1949.

7. The Board also observed the following seriatim of events in the instant case on the basis of documents, emails and other submissions of parties on record:-

Date	Event
04/10/2013	Letter issued by the Complainant company to the Respondent firm informing about their appointment in the AGM held on 27/09/2013 to hold office from the conclusion of this AGM till the conclusion of next AGM.
27/06/2014	Audit report issued by the Respondent in respect of the Complainant company for the F.Y. 2013-14
27/06/2014	Letter of Respondent Firm addressed to Board of Directors of the Complainant company on Certificate under Section 139(1) of the Companies Act, 2013 and Rule Companies (Audit and Auditors) Rules, 2014 regarding meeting of eligibility for appointment
02/08/2014	Invoice raised by the Respondent on the Complainant company for the Statutory audit fees for the F.Y. 2013-14
29/09/2014	AGM held wherein it was resolved not to re-appoint the Respondent Firm as Statutory Auditors of the Complainant company.
21/11/2014	Letter by one of the shareholders of the Complainant company addressed to the Complainant company giving notice for appointment of M/s MZSK &

	Associates Associates instead of the Respondent firm as auditors of the Complainant company
13/12/2014	Invoice raised by the Respondent on the Complainant company for Consolidated audit for the F.Y. 2013-14
07/01/2015	Letter by the Complainant company addressed to the Respondent Firm with respect to intimating Respondent Firm about non approval of their reappointment as Statutory Auditor of the Company for the period of five years viz. 2014-15 to 2018-19.
07/01/2015	Letter by the Complainant company addressed to the Respondent Firm enclosing copy of notice received from one of the shareholders of the Company under Section 140(4) read with Section 115 of the Companies Act regarding notice for appointment of M/s. MZSK & Associates, Chartered Accountants.
16/01/2015	Copy of Special Resolution passed at adjourned AGM held on 16/01/2015 by the shareholders of the Complainant company for appointment of M/s. MZSK & Associates, Chartered Accountants to hold the office from the conclusion of this meeting until the conclusion of AGM of the Company for the year 2019.
25/05/2015	Letter by M/s. MZSK & Associates, Chartered Accountants (incoming auditor) addressed to Respondent Firm (previous auditor) seeking their no objection prior to acceptance of their appointment as auditors of the Complainant company.
27/05/2015	Email by Ms. Kanica Goyal (Manager of Respondent Firm) addressed to M/s. MZSK & Associates, with a copy marked to management of the Company, Registrar of Companies, Delhi (ROC), Officers working in the Disciplinary Directorate of ICAI with respect to the irregular appointment of M/s. MZSK & Associates without following relevant provisions of the Companies Act and huge dues were pending from the Complainant company and their respective group companies.
23/06/2015	Letter by the Complainant company addressed to the Respondent Firm addressing issues of appointment and payments made to Respondent Firm in line with terms agreed.
06/07/2015	Email by M/s. MZSK & Associates, Chartered Accountants (incoming auditor) addressed to the Respondent Firm again requesting for NOC.
06/07/2015	Email from Respondent addressed to M/s. MZSK & Associates (incoming auditor) with a copy marked to ROC (Delhi), Officers working in the Disciplinary Directorate of ICAI, management of the Complainant company raising various objections of outstanding dues, NOC, misrepresentations in previous audits etc.
20/07/2015	Email from Respondent Firm addressed to management of the Complainant company intimating the details/ annexures of outstanding dues with respect all group companies alongwith respective particulars of services rendered by

	Respondent Firm to respective company and also seeking opportunity cost for 5 years of Rs. 7,85,000/-.
06/08/2015	Reminder email alongwith clarification for annexures of outstanding dues from Respondent Firm addressed to management of the Complainant company requesting release of payment asap.
21/08/2015	Email from management of the Complainant company addressed to Respondent Firm intimating release of undisputed due payments along with cheque no., date and amount wise details.
26/11/2015	Letter by Respondent Firm addressed to ROC, Delhi office on unjustified removal of Respondent Firm and non-compliance of Section 225(3) of Companies Act, 1956/ Section 140(4) of Companies Act, 2013 requesting registration of complaint against M/s. MZSK & Associates and M/s Jitendra K Agarwal & Associates
15/12/2015	Complaint filed by the Respondent with the Committee on Ethical Standards and Unjustified Removal of Auditors (CESURA) against M/s. MZSK & Associates and M/s. Jitendra K Agarwal & Associates.

8. As regards the first charge, the Board observed that in the audited financial statement of the complainant company for the F.Y. 2013-14, Rs. 50, 000/- had been recognised as an expense under the head audit fees with respect to statutory audit and an invoice for statutory audit to the tune of Rs. 33,708/- had been raised on 8<sup>th</sup> August 2014 by the Respondent. Further, an invoice had been raised on 13<sup>th</sup> December 2014 by the Respondent with respect to consolidated audit fee in respect of the Complainant company for the F.Y. 2013-14 to the tune of Rs. 24,719/-. The Board also noted the submission of the respondent in this regard that in the case of the Complainant company, the request for services were used to be made on oral communication basis and the invoices were raised only when the work was accepted. The Board noted that the details of outstanding dues in respect of the Complainant Company vide email dated 20<sup>th</sup> July 2015 had been raised by the Respondent only subsequent to the communication from the incoming auditor seeking his no objection. Infact, in response to the letter dated 25<sup>th</sup> May 2015 from the incoming auditor seeking the Respondent's no-objection, the Respondent vide communication dated 27<sup>th</sup> May 2015 stated that huge dues are pending with the company and their respective companies whereas there is no documentary evidence to show that the exorbitant fees being claimed as due in the email dated 20<sup>th</sup> July 2015 had been claimed as due any time earlier. Further, it is also evident from the records that the Respondent did not raise the bills claiming the fees from the respective company till the date of appointment of new/ incoming auditor. The Board was also not

convinced with the submission of the Respondent that the invoices were raised only when the work was accepted by the Complainant Company. In common business parlance, invoices are raised on rendering of the services and not its acceptance by the client. A professional charges his fees on the basis of the exercise of his professional acumen which cannot be made to be dependent upon the acceptance of professional work by the client. Negotiation in the professional fees is justified but the same happens prior to acceptance of appointment and not subsequent to the rendering of the professional services by the professional. Such a conduct on the part of the Respondent is clearly unbecoming of a Chartered Accountant. Accordingly, the Respondent is held guilty of Other Misconduct falling within the meaning of Item (2) of Part IV of the First Schedule to the Chartered Accountants Act 1949 in respect of the first charge.

9. As regards the second charge, the Board noted that in their email dated 23<sup>rd</sup> June 2015 addressed to the incoming auditor with a copy marked to the Registrar of Companies, Delhi (ROC), Officers working in the Disciplinary Directorate of ICAI alongwith the management of the Complainant company, the Manager of the Respondent firm stated as hereunder:

*"Besides, the matter is being raised with relevant statutory authorities. In case you act, the necessary action will be taken."*

The Board also perused the contents of the email dated 6<sup>th</sup> July 2015 addressed by the Respondent to the incoming auditor with a copy marked to the Registrar of Companies, Delhi (ROC), Officers working in the Disciplinary Directorate of ICAI alongwith the management of the Complainant company and noted the following stated therein:

*"If in this way, an auditor can be changed then there is no meaning for the ICAI regulation....".*

*"There were some misrepresentation in previous audits which we can explain in the personal meeting in our office and not by email. The matter was raised with the management in December, and by trick they changed the auditor by way of the adjourned meeting. The matter was affecting the revision of the audit report issued in the previous year. The matter has been raised at the relevant forum and the results are awaited".*

*"Yours is a firm of repute and it is expected that you won't compromise on the standards prescribed by ICAI and the other statutory bodies and will not try to do something which affects the professional reputation as such. Further, you are requested to read the professional ethics prescribed & issued by ICAI. You are requested and suggested not to proceed. In case u do so, you will do at your own risk and cost.....".*



The Board also took into view the contents of the letter dated 2<sup>nd</sup> September, 2015 addressed by the Respondent to the incoming auditor M/s MZSK & Associates, as under:

*"This is to inform you that your appointment as auditors is strictly unlawful".*

10. The Board also noted that the new auditor resigned from the position of the auditor of the Complainant Company with effect from 1<sup>st</sup> September 2015. Upon perusal of the contents of the aforesaid emails/letter, the Board was of the view that the tone and tenor of such communication was clearly with an intent to threaten the incoming auditor. The Board was of the view that in case the Respondent was aggrieved of his removal/non-reappointment by the Complainant Company, he should have availed the appropriate legal remedy for the same instead of marking a copy of his communication with the incoming auditor to the officials of ICAI and the Registrar of Companies, Delhi (ROC) and Officers working in the Disciplinary Directorate of ICAI which clearly shows that it had been done with the motive of creating unnecessary and unwarranted pressure on the fellow professional not to accept statutory audit and further to make the clients go from pillar to post for appointment of auditors for their companies. The Board held that the conduct of the Respondent in dealing with his professional brothers and his client is certainly not in good taste and needs to be condemned.
11. The Board further noted that the Complainant placed on record an e-mail dated 20/07/2015 wherein below Annexure-2 Note 2 provides *"The above fees are only for the one year, but the opportunity costs for the 5 year is Rs. 7,85,000."* On perusal of such email, the Board observed that the Respondent raised such bills only to create unnecessary pressure on the Client and exaggerated the bill amount only to complicate the issues for the client for engaging other members of the Institute for audit of its group entities. The Board was of view that a professional who has rendered his services has every right to claim for the services rendered, but no provision of law gives him right to claim opportunity cost from his client and such an action on the part of the Respondent is clearly derogatory and unbecoming of a Chartered Accountant. Accordingly, the Respondent is held guilty of Other Misconduct falling within the meaning of Item (2) of Part IV of the First Schedule to the Chartered Accountants Act 1949 in respect of the second charge.

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12. As regards the third charge, the Board noted that the Board of Directors of the Company at its meeting held on 5<sup>th</sup> September, 2014 had recommended for reappointment of Respondent firm but shareholders at the AGM held on 29<sup>th</sup> September, 2014 unanimously resolved not to re-appoint the Respondent firm as auditor and thus rejected the proposal of Board of Directors of the Company. The Respondent vide communication dated 27<sup>th</sup> May, 2015 addressed to M/s MZSK & Associates stated that the Company had appointed him in AGM held on 29<sup>th</sup> September, 2014 from the conclusion of the AGM to be held in the year 2018-19 as mentioned in Director's Report which is filed by the Company in Registrar of Companies dated April 22, 2015 which is incorrect as proved by the Complainant. Moreover, the Respondent was never issued any appointment letter by the Complainant Company in respect of audit for five years. Thus, it is clearly evident that the Respondent misrepresented to the incoming auditor as regards his appointment as the auditor of the company which ultimately led to the resignation of the incoming auditor from the position of the auditor of the Complainant Company with effect from 1<sup>st</sup> September 2015.
13. The Board also noted that the Respondent filed Complaint with the Disciplinary Directorate against the incoming auditor of the Complainant Company in the matter reference no. PR-161-2016-DD/180/2016 wherein the respective incoming statutory auditor was held prima facie not guilty of professional misconduct falling within the meaning of Item 8 and 9 of Part I of First Schedule to the Chartered Accountants Act, 1949, on the appreciation of evidence submitted on record and the Respondent herein failed to prove the charge of non-communication on the part of statutory auditor of the Complainant Company and non-compliance of section 224 and 225 of the Companies Act 1956 and the said opinion of the Director(Discipline) had been accepted by the Board. The Board was of the view that in case the Respondent was not satisfied with the process followed for his removal, he ought to have approached the appropriate forum for redressal of the same instead of creating hurdles and hardship for the incoming auditor.
14. The Board also observed that the Respondent had filed an application dated 15<sup>th</sup> December, 2015 for his unjustified removal with Ethical Standards Board as well as MCA vide dated 26th November 2015 but till date the same were pending as informed by him.
15. Further, as regards misrepresentation in the annual accounts of the company for the F.Y. 2013-14, the Respondent submitted that Company had received an advance of

Rs. 3,52,80,000 from M/s Suzlon Energy Limited in year 2011 and shown in current liabilities. It was suggested by the Respondent to the Company during the October to December, 2014 that since it is outstanding more than 3 years, this amount need to be refunded to the customer or written back in the balance sheet of 2015 and will be considered as income of the Company. Since the management did not want to accept any such suggestion, it had removed the Respondent illegally as explained herein above. The above said events are only reason for which the management removed Respondent illegally. This has been shown in exceptional items in the Financial Year ending 2016, which is wrong treatment to avoid the tax liability.

16. In this respect, the Board noted that the Respondent had issued an unqualified audit report in respect of the Financial Statement of the Complainant company for the F.Y. 2013-14. The Board further perused the audited financial statements of the company for the F.Y. 2015-16 and noted that following Note had been provided with respect to the Schedule no.3 of Other Non-Current Liabilities:

*"The company has received advances from M/s Suzlon Energy Limited for giving security deposit to Tangedco against project of 110/33 KV sub station with erection of 75MVA 110/33 KV transformers, which has now been forfeited."*

The Board also noted that following was shown under Exceptional Items along with the following disclosure in Note no. 21.1:

Particulars	Ref.No.	1 <sup>st</sup> April 2015 to 31 <sup>st</sup> March 2016 (Rs.)	1 <sup>st</sup> April 2014 to 31 <sup>st</sup> March 2015 (Rs.)
<b>21 Exceptional Items</b>			
Security Deposit with Tamilnadu Generation and Distribution Corporation Ltd.	21.1	52,500,000	
Advance received from M/s. Suzlon Energy Ltd. Towards Security deposits to Tamilnadu Electricity Board as above	21.1	(35,280,000)	
Advance given to Tamilnadu Generation and Distribution Corporation Ltd. for extension	21.1	3,000,000	

Advance/loan given to High-Wind  
Energy Pvt. Ltd. (Wholly owned Subsidiary)

For execution of above project including

Interest thereon	21.2	40,602,899
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Advance/Loan including interest thereon

and investment written off	21.3	14,664,290
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		75,487,189
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21.1 "The Company had entered into a Memorandum of Understanding (MOU) dated October 12, 2011 with Suzlon Energy Limited (Suzlon) for development of 50.4 MW Wind Power Project on the land to be provided by Highwind Energy Privat Limited (a wholly owned subsidiary). Thereafter, Company had received Power Evacuation approval (PE Approval) from Tamilnadu Generation and Distribution Corporation Ltd. (TANGEDCO) for development of 75 MW Wind Power Project. As per the requirement of the PE Approval, the Company was initially required to pay Security Deposit of Rs. 7 lacs per MW for 75 MW for construction of substation for 75 MW. Pursuant to the MOU, Company alongwith security deposit of Rs. 3,52,80,000 from Suzlon had paid Security Deposit of Rs. 5,25,00,000 to TANGEDCO. The Security Deposit of Rs. 5,25,00,000 was refundable on completion of the construction of the substation for evacuation of Power. Since Suzlon could not proceed as per the terms of the MOU, the Company could not complete the construction of substation as per TANGEDCO approval. Consequently, TANGEDCO wrote to the Company that the said Security Deposit of Rs. 5,25,00,000 shall be forfeited. in case the Company does not start the construction of substation immediately and show progress. The Company in turn wrote to Suzlon to release the payments under the MOU for construction of substation. Since Suzlon did not respond inspite of regular follow up by the Company, the Management in view of non-recoverability of the security amount had decided to write off the Security Deposit of Rs. 5,25,00,000 along with advance of Rs 30,00,000 given for extension. Finally, in June 2016 TANGEDCO cancelled the PE Approval and forfeited the entire amount due to non construction of substation under the said approval."

The Board was of the view that in case the Complainant Company was not in agreement with the viewpoint of the Respondent as an auditor then he had every right to revise the audit report issued for such year. Raising such issues in correspondence with the incoming auditor is certainly devoid of professionalism and



not expected of a Chartered Accountant. In view of the above, the Respondent is held guilty of Other Misconduct falling within the meaning of Item (2) of Part IV of the First Schedule to the Chartered Accountants Act 1949 in respect of the third charge.

17. Thus, having regard to the attendant circumstances, the evidence put forth during the proceedings and the submissions of the Complainant and the Respondent on record, the Board is of the considered view that the Respondent had created unwarranted issues of pendency of previous dues, misrepresentation in previous year audits, NOC, removal of Respondent Firm raising claim for opportunity costs etc. to create hurdles for management of the Company for appointment of new auditor and misused the legal machinery by marking a copy of his communication with the incoming auditor to the regulatory authorities instead of writing directly to them raising their grievance and such acts on the part of the Respondent are clearly unbecoming of a chartered accountant and have clearly brought disrepute to the profession.

Thus, the Respondent is guilty of "Other Misconduct" falling within the meaning of Item (2) of Part IV of the First Schedule to the Chartered Accountants Act 1949 read with Section 22 of the said Act.

**CONCLUSION:**

18. The Board of Discipline, in view of the above, is of the considered opinion that the Respondent is **Guilty** of "Other Misconduct" falling within the meaning of Item (2) of Part IV of First Schedule to the Chartered Accountants Act 1949 read with Section 22 of the said Act.

Sd/-  
CA. PRASANNA KUMAR D.  
(PRESIDING OFFICER)

DATE: 11 Feb 2021

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

नीलम पुंडीर / Neeiam Pundir  
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer  
अनुशासनात्मक निदेशालय / Disciplinary Directorate  
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया  
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