

**BOARD OF DISCIPLINE (BENCH-II)**

**(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**

**CA. Abdul Hamid Bhati, Mumbai**

**-Vs-**

**CA. Jayant Saumitra Ajinkya (M.No.047667), Mumbai**

**[PR/49/2016/DD/91/16/BOD/435/2018]**

**CORAM:**

**CA. Atul Kumar Gupta, Presiding Officer  
Shri Arun Kumar (Government Nominee)**

**In the matter of:**

**CA. Abdul Hamid Bhati**

Shop No. 15, Nav Jeevan Welfare Society  
Linking Road, Extn.,  
Near Juhu Garden  
Santacruz (W)  
**MUMBAI – 400 054**

**.....Complainant**

**Versus**

**CA. Jayant Saumitra Ajinkya (M.No. 047667)**

E/18, Rizvi Park  
2nd Floor, S V Road  
Santacruz West  
**MUMBAI – 400 054**

**.....Respondent**

**DATE OF HEARING: 10.04.2019**

**PLACE OF HEARING: MUMBAI**

**PARTIES PRESENT:**

**Complainant : CA Abdul HaminBhati  
Respondent : CA Jayant Saumitra Ajinkya  
Counsel for Respondent : Shri S. H. Gokhale, Advocate**

*BD*

## Findings:

1. The Board noted that the charge on which the Respondent has been held guilty by the Director (Discipline) of Professional Misconduct falling within the meaning of Clause (8) of Part 1 of the First Schedule of the Chartered Accountants Act, 1949 is that he accepted and conducted Tax Audit of M/s Stylized i.e. the Firm for financial Year 2009-10 without communicating with the previous auditor i.e. the Complainant.
2. The Board heard the submissions made by the both the parties and duly considered the submissions/documents available on record.
3. The Board noted that the letter dated 4<sup>th</sup> August, 2010 seeking NOC was itself posted on 23<sup>rd</sup> September, 2010 by the Respondent and was received by the Complainant on 25<sup>th</sup> September, 2010. Further, the wordings of the said letter were, *"In case if we do not hear from you within 15 days from the date of this letter then we shall presume that you do not have any objection to our acceptance of appointment as tax auditor of the said firm."*
4. The Board noted that since the letter was posted belatedly, therefore the same is *'fate accompli'*.
5. The Board on perusal of Balance sheet noted that the undisputed amount ought to be paid to the Complainant was Rs. 2,34,196/- whereas according to the Respondent the Firm had paid Rs. 75,000/- against annual fee. As regards the remaining amount, the Respondent failed to give any cogent reply.
6. The Board also viewed that the Respondent should not to accept the audit till the undisputed fee as appearing in the financial statement is paid.

7. The Board also viewed that the Respondent failed to bring on record and positive evidence to establish that he accepted the audit only after receipt of letter from the Complainant.
  
8. The Board noted that in case of *S.N. Johri vs. N.K. Jain - Page 1042 of Vol.IV of the Disciplinary Cases - decided on 13th, 14th & 15th September, 1973* it was held that  
“A chartered Accountant commenced the work of audit on the very day he sent letter to the previous auditor - Held, he was guilty of professional misconduct under the clause. The appointment could be accepted only when the outgoing auditor does not respond within a reasonable time.”
  
9. The Board viewed that although every client has an inherent right to choose his auditor; also that he may, subject to compliance with the statutory requirements in the case of limited Companies, make a change whenever he chooses, whether or not the reasons which had impelled him to do so are good and valid.
  
10. The Board viewed that as a matter of prudence the provision of Clause (8) was inserted with one specific objective that not only the accounts of the Company reflects true and fair and there is no fraud whose unveiling had caused change in auditorship but sometimes the root cause of an auditor being changed is existence of a dispute as regards the fees. This would not constitute valid professional reasons on account of which an audit should not be accepted by the member to whom it is offered. However, in the case of an undisputed audit fees for carrying out the statutory audit under the Companies Act or various other statutes having not been paid, the incoming auditor should not accept the appointment unless such fees are paid. In respect of other dues, the incoming auditor should in appropriate circumstances use his influence in favour of his predecessor to have the dispute as regards the fees settled.



11. Thus, the Board looking into fact decided to hold the Respondent Guilty for non-communicating with previous auditor before acceptance of audit more so when the fee of previous auditor was pending.

**CONCLUSION:**

12. Thus, the Board concluded that the Respondent is held **GUILTY** of Professional Misconduct falling within the meaning of Clause (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

**-Sd/-**

**(ATUL KUMAR GUPTA)  
PRESIDING OFFICER**

**-Sd/-**

**(ARUN KUMAR)  
GOVERNMENT NOMINEE**

**DATE: 10.04.2019**

**PLACE: Mumbai**



Certified True Copy



R.S. Srivastava  
Assistant Secretary  
Disciplinary Directorate  
The Institute of Chartered Accountants of India  
ICAI Bhawan, I.P. Marg, New Delhi-110 002



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(Set up by an Act of Parliament)

**ORDER UNDER SECTION 21 A(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.**

**CA. Abdul Hamid Bhati, Mumbai**

**.....Complainant**

**-VS-**

**CA. Jayant Saumitra Ajinkya (M.No.047667), Mumbai**

**.....Respondent**

**[PR/49/2016/DD/91/16/BOD/435/2018]**

**CORAM:**

**CA. Atul Kumar Gupta, Presiding Officer  
Shri Arun Kumar (Government Nominee)  
CA. Prasanna Kumar D, Member**

1. That vide findings dated 10<sup>th</sup> April, 2019 the Board of Discipline held CA. Jayant Saumitra Ajinkya GUILTY of Professional Misconduct falling within the meaning of Clause (8) of Part 1 of the First Schedule to the Chartered Accountants Act, 1949.
2. That an action under Section 21A(3) of the Chartered Accountants Act, 1949 was contemplated against CA. Jayant Saumitra Ajinkya and communication dated 2<sup>nd</sup> August, 2019 was addressed to him thereby granting him an opportunity to make written representation. Further, vide letter dated 27<sup>th</sup> September, 2019, CA. Jayant Saumitra Ajinkya was granted an opportunity to represent himself in person before Board on 20<sup>th</sup> October, 2019.
3. As per the findings of the Board dated 10<sup>th</sup> April, 2019, CA. Jayant Saumitra Ajinkya was found guilty under the charges that he accepted and conducted Tax Audit of M/s Stylized i.e. the Firm for financial Year 2009-10 without communicating with the previous auditor i.e. the Complainant.
4. That CA. Jayant Saumitra Ajinkya appeared before the Board on 20<sup>th</sup> October, 2019 wherein he submitted his submission in support of his defence that he received a letter from the client related to payment of Rs.75,000/- to the previous auditor and thereafter he started the audit of M/s Stylized.
5. The Board noted that the letter dated 4<sup>th</sup> August, 2010 seeking NOC was posted on 23<sup>rd</sup> September, 2010 by the Respondent and the same was received by the Complainant on 25<sup>th</sup> September, 2010 which shows that the letter was posted belatedly.



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6. The Board on perusal of Balance sheet noted that the undisputed amount ought to be paid to the Complainant was Rs.2,34,196/- whereas according to the Respondent, the Firm had paid Rs.75,000/- against annual fee.

7. The Board further noted the submission of the Respondent wherein he submitted that a letter has been received by him from the client relating to the payment of Rs.75,000/- to the previous auditor and thereafter he started the audit of M/s Stylized. The Board reviewed the entire case file and found that out of Rs.2,34,196/- only Rs.75,000/- was paid by the auditee to the previous auditor. The Board also noted that clarification was not given by the Respondent in respect of payment of total dues towards the fee of the statutory auditor before accepting the audit of M/s Stylized.

8. Upon consideration of the facts of the case, the misconduct of CA. Jayant Saumitra Ajinkya, and keeping in view of his oral as well as written submissions, the Board was of the view that the Respondent has failed to ensure whether the pending amount has been paid or not to the Complainant by M/s Stylized. The Board was of further view that the ends of justice shall be met if reasonable punishment is awarded to the Respondent.

9. Accordingly, the Board ordered to reprimand CA. Jayant Saumitra Ajinkya (M. No. 047667) and further imposed a fine of Rs.25,000/- (Rs. Twenty Five Thousand Only) including GST, which shall be payable by him within 60 days of receipt of the Order.

Sd/-  
(ATUL KUMAR GUPTA)  
PRESIDING OFFICER


Sd/-  
(ARUN KUMAR)  
GOVERNMENT NOMINEE

Sd/-  
(PRASANNA KUMAR D)  
MEMBER

DATE : 20<sup>th</sup> October, 2019

PLACE : Mumbai

DD

  
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Manoj Saxena  
Deputy Secretary  
Disciplinary Directorate  
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