

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. Ajay Jain of M/s. Jain & Jain, Chartered Accountants, Mumbai

-Vs-

CA. Manish Kumar D. Desai (M.No.045241) of M/s M.D. Desai & Company, Chartered Accountants, Mumbai

[PR-212/2017-DD/15/2018/BOD/450/2018]

CORAM:

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

In the matter of:

CA. Ajay Jain

**Partner, M/s Jain & Jain,
601, Jolly Bhavan no. 2
51, New Marine Lines,
Churchgate,
Mumbai-400020**

.....Complainant

Versus

**CA. Manish Kumar D. Desai
M/s M.D Desai & Company,
Chartered Accountants,
A/4, 111, Tree Shade Chs,
Jeeva Mahale Road,
Andheri(East)
Mumbai-400069**

.....Respondent



DATE OF HEARING: 04.06.2019

PLACE OF HEARING: MUMBAI

PARTIES PRESENT:

Counsel of Complainant : CA. Niranjan Jain

Respondent : CA. Manish Kumar D. Desai

Findings:

1. The Board noted that the Respondent was held guilty by the Director (Discipline) of professional misconduct falling within the meaning of Clauses (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949 because did not communicate with the Complainant before accepting the audit assignment of M/s Renaissance Interiors Private Ltd. for the financial year 2015-16.
2. The Board noted that the Respondent had accepted his mistake before it and further submitted that he tried to resolve the dispute between the client company and the Complainant, but was unsuccessful.
3. The Board also noted that there was pending fee of Rs. 1.85 lacs. But since, this was not the allegation as per Form I dated 29.12.2017 filed by the Complainant hence the case against the Respondent is limited to allegation as per Form I.
4. The Board also noted that in terms of the Code of Ethics, Incoming Auditor should always communicate with the retiring auditor in such a manner as to retain in his hands positive evidence of the delivery of the communication to the addressee. The Board noted that as per guidelines given by the Council a communication is mandatorily required for all types of audit/report where the previous auditor is a Chartered Accountant.
5. The Board further observed that in the case of R.M. Singhai & Associates vs. R.V. Agarwal - Page 155 of Vol.VI(2) of Disciplinary Cases - decided on 15th, 16th and 17th December, 1988, it is held that the requirements of Clause (8) of Part I of the first Schedule can be considered to have been complied with only:
 - (i) if there is evidence that a communication to the previous auditor had been by R.P.A.D.
 - (ii) if there was positive evidence about delivery of the communication to the previous auditor.





In the absence of both, the member should be found to have contravened this Clause.

6. 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.
7. The Board also noted that the Respondent accepted his mistake that he has not communicated with the Complainant. The Board accordingly opined that fundamental requirement of communication has not been complied with by the Respondent and accordingly he is held guilty for non-communicating with previous auditor before acceptance of audit.

CONCLUSION:

8. 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.

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-Sd/-
(ATUL KUMAR GUPTA)

PRESIDING OFFICER

DATE : 04.06.2019

PLACE : Mumbai

-Sd/-
(ARUN KUMAR)

GOVERNMENT NOMINEE

-Sd/-
(PRASANNA KUMAR D)

MEMBER

Certified True Copy

Handwritten signature

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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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. Ajay Jain of M/s Jain & Jain, Chartered Accountants, Mumbai

.....Complainant

-Vs-

**CA. Manish Kumar D. Desai (M.No.045241) of M/s M.D. Desai & Company,
Chartered Accountants, Mumbai**

.....Respondent

[PR-212/2017-DD/15/2018/BOD/450/2018]

CORAM:

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

1. That vide findings dated 4th June, 2019, the Board of Discipline held CA. Manish Kumar D. Desai GUILTY of Professional Misconduct falling within the meaning of Clause (8) of Part I 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. Manish Kumar D. Desai and communication dated 23rd August, 2019 was addressed to him thereby granting him an opportunity to make written representation. Further, a letter dated 27th September, 2019 was sent to CA. Manish Kumar D. Desai granting him an opportunity to represent himself in person before Board on 20th October, 2019.
3. That CA. Manish Kumar D. Desai did not appear before the Board on 20th October, 2019. In his absence, the Board has carefully gone through the facts of the case.
4. As per the findings of the Board dated 04th June, 2019, CA. Manish Kumar D. Desai was found guilty on the grounds that he did not communicate with the Complainant before accepting the audit assignment of M/s Renaissance Interiors Private Ltd. for the financial year 2015-16.
5. The Board observed that CA. Manish Kumar D. Desai has accepted his mistake before the Board at the time of hearing that he has not communicated with the Complainant before accepting audit assignment of M/s Renaissance Interiors Private Ltd. for the financial year 2015-16.

Ob

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(Set up by an Act of Parliament)

6. The Board also noted that in terms of the Code of Ethics, Incoming Auditor should always communicate with the retiring auditor in such a manner that positive evidence of the delivery of the communication to the addressee is with the Incoming Auditor.
7. The Board further noted that as per guidelines given by the Council a communication is mandatorily required for all types of audit/report where the previous auditor is a Chartered Accountant but in the instant case CA. Manish Kumar D. Desai has failed to do so.
8. Upon consideration of the facts of the case and the consequent misconduct of CA. Manish Kumar D. Desai, the Board was of the view that ends of justice shall be met if reasonable punishment is awarded to him.
9. Accordingly, the Board ordered to reprimand CA. Manish kumar D. Desai (M.No.045241) and further imposed a fine of Rs.20,000/- (Rs. Twenty Thousand Only) including GST upon him, which shall be payable by him within a period of 60 days from the receipt of the Order.

Sd/-
(ATUL KUMAR GUPTA)
PRESIDING OFFICER

Sd/-
(ARUN KUMAR)
GOVERNMENT NOMINEE

Sd/-
(PRASANNA KUMAR D)
MEMBER

DATE : 20th October, 2019

PLACE : Mumbai

GD

Certified True Copy

Mukesh Kumar Mittal
Assistant Secretary
Disciplinary Directorate

Institute of Chartered Accountants of India
Bhawan, I.P. Marg, New Delhi-110 002