



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

[PR-72/16/DD/234/2016/BOD/503/2019]

**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.**

In the matter of:-

CA. Rakesh Agarwal (M.No.061525)
of M/s. Rakesh Ram & Associates,
Chartered Accountants,
23A, Netaji Subhash Road,
10th Floor, Room No. 10
Kolkata- 700001

.....Complainant

-Vs-

CA. Kishore Kumar Daga (M.No.67969)
M/s. K. Daga & Company,
Chartered Accountants,
133, Canning Street Chopra House,
Kolkata- 700001
[PR-72/16/DD/234/2016/BOD/503/2019]

....Respondent

MEMBERS PRESENT:

CA. Prasanna Kumar D, Presiding Officer
Mrs. Rani Nair, (IRS, Retd.), Government Nominee
CA. Durgesh Kumar Kabra, Member

Date of final hearing: 10th September, 2020(through video conferencing)

1. The Board of Discipline vide Report dated 25th September, 2019 was of the opinion that **CA. Kishore Kumar Daga** is guilty of Professional Misconduct falling within the meaning of Clauses (8) and (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against **CA. Kishore Kumar Daga** and communication dated 2nd September 2020, was addressed to them thereby granting them an opportunity of being heard in person and/or to make written representation before the Board on 10th September, 2020.

CA. Rakesh Agarwal (M.No.061525), Kolkata –vs- CA. Kishore Kumar Daga (M.No.67969), Kolkata



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3. **CA. Kishore Kumar Daga** appeared before the Board through video conferencing and made his oral representation.
4. The Board has carefully gone through the facts of the case along with the oral representation of **CA. Kishore Kumar Daga**.
5. The Board was of the view that, as per the findings of the Board as contained in its report, it has already been conclusively proved that **CA. Kishore Kumar Daga** is Guilty of Professional Misconduct falling within the meaning of Clauses (8) and (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949.
6. Upon consideration of the facts of the case, the consequent misconduct of **CA. Kishore Kumar Daga** and keeping in view his oral representation before it, the Board decided to Reprimand **CA. Kishore Kumar Daga (M.No.67969)**.

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

Certified to be true copy

R.S. Srivastava
Assistant Secretary,
Disciplinary Directorate

The Institute of Chartered Accountants of India,
ICAI Bhawan, Vishwas Nagar, Shahrda, Delhi-110032

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 Rakesh Agarwal, Kolkata

-Vs-

CA. Kishore Kumar Daga (M. No. 067969), Kolkata

[PR-72/2016-DD/234/16/BOD/503/2019]

CORAM:

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

In the matter of:

CA Rakesh Agarwal (M. No. 061525)

M/s Rakesh Ram & Associates

23A, Netaji Subhash Road

10th Floor, Room No. 10

Kolkata-700001

.....Complainant

Versus

CA. Kishore Kumar Daga (M. No. 067969)

M/s K. Daga & Company (FRN 327776E)

133, Canning Street

Chopra House

Kolkata-700001

.....Respondent

DATE OF FINAL HEARING : 25.09.2019
PLACE OF HEARING : KOLKATA

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PARTIES PRESENT:

Complainant : CA. Rakesh Agarwal
Respondent : CA. Kishore Kumar Daga
Counsel of the Respondent : CA. A.P. Singh

Findings:

1. The Board noted that in present case the charge levelled is that the Respondent failed to communicate with previous auditor i.e. the Complainant before accepting the audit of M/s Shravya Marketing Private Limited for the year ended 31-03-2015. It is further charged that the Respondent failed to adhere the provisions relating to his appointment.
2. The Respondent in respect of adherence of Section 140 submitted that the Complainant had voluntarily resigned from the office. The Board noted that the Respondent in this regard failed to submit resignation letter of the Complainant.
3. The Board in this regard noted that vide letter dated 31st December, 2014 **(D-3)** the Respondent specifically stated that he is appointed as statutory auditor due to removal of the Complainant.
4. The Board further noted that the Respondent vide written statement dated 06.10.2016 submitted that he is appointed in EOGM held on 30.12.2014 and his appointment has been made in view of Section 140(1) of the Companies Act, 2013. The Board in this regard noted the provision of Section 140(1) which states as under:

“The auditor appointed under section 139 may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner:

Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard.”

The Board accordingly noted that the said section related to removal of auditor.

5. Hence, the Board noted that the version of the Respondent that he was appointed due to resignation of the Complainant is not correct. The Board also noted that even in case of resignation, the Respondent was required to check the compliance of provisions of appointment mentioned in Companies Act. Looking into the failure of the Respondent, the Board decided to hold him Guilty under Clause (9) of Part-I of First Schedule to the Chartered Accountants Act, 1949.
6. As regards compliance of provision relating to correspondence, the Respondent has drawn attention to letter dated 5th January, 2015 (D-4) issued by the Complainant to him wherein the Complainant gave no objection. The Complainant denied of issuing such letter.
7. The Board noted that the Respondent failed to submit any positive proof of delivery of his communication to the Complainant. The Board 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.

8. The Board opined that fundamental requirement of communication has not been complied with by the Respondent and accordingly decided to hold him guilty for non-communicating with previous auditor before acceptance of audit. Accordingly, the Board hold the Respondent Guilty of Professional Misconduct

falling within the meaning of Clause (8) of Part-I of First Schedule to the Chartered Accountants Act, 1949.

CONCLUSION:

9. Thus, the Board concluded that the Respondent is **GUILTY** of Professional Misconduct falling within the meaning of Clause (8) and (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

Sd/-
(ATUL KUMAR GUPTA)
PRESIDING OFFICER

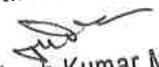
Sd/-
(ARUN KUMAR)
GOVERNMENT NOMINEE

Sd/-
(PRASANNA KUMAR D)
MEMBER

DATE : 25.09.2019
PLACE : KOLKATA

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Certified True Copy


Mukesh Kumar Mittal
Assistant Secretary
Disciplinary Directorate
The Institute of Chartered Accountants of India
Bhawan, I.P. Marg, New Delhi-110 002