



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

PR- 288/15-DD13/2016/BOD/265/17

**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:-

CA. Ajay Kumar Gupta, Gurgaon

-Vs-

CA. Sudhir Kumar Singh (M. No. 067280), Gurgaon

[PR- 288/15-DD13/2016-BOD/265/2017]

MEMBERS PRESENT:

CA. Prasanna Kumar D., Presiding Officer

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

CA. Durgesh Kumar Kabra, Member

Date of Hearing - 9th March 2020

1. The Board of Discipline vide Report dated 6th January, 2020 was of the opinion that **CA. Sudhir Kumar Singh (M. No. 067280)** 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. Sudhir Kumar Singh** and communication dated 26th February, 2020 was addressed to him thereby granting him an opportunity of being heard in person and/or to make written representation before the Board on 9th March, 2020.

3. Neither **CA. Sudhir Kumar Singh** appeared before the Board on 9th March, 2020 despite the due service of the notice for award of punishment nor was there any intimation as regards his non-appearance. However, since his written representation had been received, keeping in view the provisions of Rule 15 of Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Board decided to consider his case for award of punishment.

4. **CA. Sudhir Kumar Singh**, in his written representation, inter-alia submitted that admission of a mistake does not amount to admission of professional misconduct. He further submitted that the Board of Discipline has not appreciated larger principles enunciated in the Code of Ethics regarding change of auditors. Instead, it has interpreted the meaning of clauses 8 and 9 in letter rather than in spirit. He requested to show justice on him and oblige.

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5. The Board has carefully gone through the facts of the case and the submissions/documents already on record.
6. As per the findings of the Board as contained in its report, it has already been conclusively proved that **CA. Sudhir Kumar Singh** is Guilty of Professional Misconduct falling within the meaning of Clauses (8) and (9) of Part I of the First Schedule of the Chartered Accountants Act, 1949.
7. Upon consideration of the facts of the case, the consequent misconduct of **CA. Sudhir Kumar Singh** and keeping in view his written representation before it, **the Board decided to reprimand CA. Sudhir Kumar Singh (M. No. 067280).**

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

Certified Copy
Prasanna
Assistant Secretary
Disciplinary Directorate
The Institute of Chartered Accountants of India
(CAI Bhawan, I.P. Marg, New Delhi-110 002)

BOARD OF DISCIPLINE (BENCH- I)

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- 288/15-DD13/2016-BOD/265/2017

QUORUM:

CA. Sushil kumar Goyal , Presiding Officer

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

CA. Durgesh Kabra, Member

In the matter of:

CA. Ajay Kumar Gupta,

M/s Agarwal Ramesh K & Co.,

Chartered Accountants,

302, AKD Tower,

Sector-14

Gurgaon-122 001

.....Complainant

Versus

CA. Sudhir Kumar Singh (M. No. 067280)

M/s H K Joon & Company (FRM No.022932N)

Chartered Accountants,

C-126 A, Sector-14,

Old DLF,

Gurgaon-122 001

.....Respondent

DATE OF HEARING

:

16th December, 2019

PLACE OF HEARING

:

New Delhi

PARTIES PRESENT:

Complainant

:

CA. Ajay Kumar Gupta

Respondent

:

CA. Sudhir Kumar Singh

Counsel of the Respondent

:

Sh. Kunal Singh

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FINDINGS:

1. The Board noted the charge, that is, the Respondent firm accepted an appointment as an auditor of the Company M/s Mindtrek Edutech Private Limited (hereinafter referred to as the 'company') for F.Y. 2014-15 without first ascertaining compliances of Section 140 of the Companies Act 2013 (Section 225 of the erstwhile Companies Act 1956). The Respondent also conducted the audit without first communicating with the Complainant firm in writing.

2. The Board noted that the Complainant and the Respondent along with his counsel were present before it at the time of hearing. The Board duly considered the submissions made by the Complainant and the Respondent along with the documents available on record.

3. The Board considered the following submissions of the Respondent as stated hereunder:-

(a). It was informed to him by the Company that the Complainant firm had expressed their inability to continue and hence there was a casual vacancy to be filled urgently to complete the audit for Financial Year 2014-15. A formal request sent by the Company to the Respondent to sought his consent to be appointed as the auditor. The Respondent also submitted that the Director of the Company assured that he would undertake the responsibility of collecting no objection letter from the Complainant and also file ADT-1 with ROC.

(b) Due to preoccupation in many professional works he failed to check whether all formalities as required have been completed or not. He has noticed while signing the Audit report that the promises given to him were not fulfilled by the Company.

(c) The Respondent accepted his mistake and submitted that it is a case of misrepresentation of facts made by the company to him. He has accepted the appointment of the Company in good faith.

4. The Board on consideration of the submission of the Respondent was of the view that Clause (8) of Part I of the First Schedule imposes obligation on the incoming auditor to seek no objection from the outgoing auditor and such obligation cannot be shifted by the incoming auditor on to the auditee. In view of the above, and also self-

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admission of the guilt by the Respondent, the Board held the Respondent guilty in respect of Clause of (8) of Part I of the First Schedule of Chartered Accountants Act, 1949.

5. Further, as regards Clause (9), the Board noted that as per Code of Ethics, for the purpose of ascertaining whether the Company has complied with the provisions of Section 225 of the Companies Act, 1956 incoming auditor should verify the records of the Company in respect of the following matters:-

- (i) *Whether a member of the Company has given special notice of the resolution as required under Section 225(1) at least 14 days before the date of the general meeting. A true copy of this notice should be obtained by the incoming auditor.*
- (ii) *Whether this special notice has been sent to all the members, of the Company as required under Section 190(2) at least 7 days before the date of the General Meeting.*
- (iii) *Whether this special notice has been sent to the retiring auditor forthwith as required under Section 225(2).*
- (iv) *Whether the representation received from the retiring auditor has been sent to the members of the Company as required under Section 225(3).*
- (v) *Whether the representation received from the retiring auditor has been considered at the general meeting and the resolution proposed by the special notice has been properly passed at the general meeting.*

The Board noted that similar provisions have been provided under Section 140 of the Companies Act 2013. However, in view of the self-admission by the Respondent that due to pre-occupation he failed to ensure the required compliances, the Board held him guilty under Clause (9) of Part I of First Schedule of the Chartered Accountants Act, 1949

6. The Board also observed that although the Balance sheet of the Company for the F.Y. 2014-15 is signed by CA. Abhilasha Bhardwaj as auditor of the Company, but the Respondent Firm has declared the name of the Respondent as member

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answerable which he also accepted and accordingly is held guilty in respect of the aforesaid charges.

CONCLUSION:

7. Thus, in conclusion, in the considered opinion of the Board, the Respondent is held **GUILTY** of Professional Misconduct falling within the meaning of Clauses (8) and (9) of Part I of First Schedule to the Chartered Accountants Act, 1949.

Sd/-
CA. SUSHIL KUMAR GOYAL
(PRESIDING OFFICER)

Sd/-
MRS. RANI NAIR (IRS, RETD.)
(GOVERNMENT NOMINEE)

Sd/-
CA. DURGESH KUMAR KABRA
(MEMBER)

DATE: 6TH JANUARY, 2020
PLACE: NEW DELHI

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