



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

PR-292/2014-DD/304/14/BOD/338/17

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:-

Shri Shyam Sunder Dengla, Jaipur Complainant

-Vs-

CA. Vinod Kumar Gupta, (M. No.070737), Jaipur Respondent
[PR-292/2014-DD/304/14/BOD/338/2017]

MEMBERS PRESENT:

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

Date of hearing: 09th March, 2020

1. The Board of Discipline vide Report dated 18th July, 2019 was of the opinion that **CA. Vinod Kumar Gupta** is guilty of "Other Misconduct" falling within the meaning of Clause (2) of Part-IV of the First Schedule of the Chartered Accountants Act, 1949 read with Section 22 of the said Act.
2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against **CA. Vinod Kumar Gupta** and communication dated 29th January 2020 and 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 09th March, 2020.
3. **CA. Vinod Kumar Gupta** did not appear before the Board on 09th March, 2020 despite the due service of the notice for award of punishment. Since the written representation of the Respondent on the findings of the Board was already on record, the Board decided to proceed ahead with the award of punishment.
4. The Board noted that **CA. Vinod Kumar Gupta**, in his written representation, inter-alia, submitted as under:-

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- (a) The Respondent had paid the complainant through cash as the Respondent was facing severe financial crisis, as a consequence of which his cheque got dishonoured. The Respondent wanted to pay the Complainant through any other instrument but as his cheque got dishonoured, the Complainant lost faith in him and demanded payment in cash. The Respondent had already faced huge losses as some frauds have been done to him, for which he is currently fighting in Hon'ble High Court, Jaipur and Hon'ble NCLT, Jaipur. He is facing financial problems due to such frauds that have resulted in the auction of his own residential house forcing him to live as a tenant.
- (b) The Respondent has this practice as the only source of income which is also limited hardly enough to survive. The Respondent even struggles for the payment of daily legal expenses in order to fight for the cases he has filed.
- (c) The Respondent had no other intention in not repaying the Complainant's amount. He wants to repay and will definitely repay in the future after winning the cases he had been fighting in the Hon'ble High Court, Jaipur and Hon'ble NCLT, Jaipur.

5. The Board has carefully gone through the facts of the case and also the written representation of **CA. Vinod Kumar Gupta**.

6. As per the findings of the Board as contained in its report, it has already been conclusively proved that **CA. Vinod Kumar Gupta** is Guilty of Other Misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule of the Chartered Accountants Act, 1949 read with Section 22 of the said Act.

7. Upon consideration of the facts of the case, the consequent misconduct of **CA. Vinod Kumar Gupta** and keeping in view his written representation before it, the Board decided to impose a fine of **Rs. 5,000/- (Rupees Five Thousand only)** on **CA. Vinod Kumar Gupta (M. No. 070737)** payable within a period of **60 days** from the date of receipt of the Order.

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

Certified Copy

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Assistant Secretary

Disciplinary Directorate
Institute of Chartered Accountants of India
New Delhi-110 002

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

Shri Shyam Sunder Dengla, Jaipur

-vs-

CA. Vinod Kumar Gupta, Jaipur

[PR-292/2014-DD/304/14/BOD/338/2017]

CORAM:

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

In the matter of:

**Shri Shyam Sunder Dengla
Plot No. 1216-1217, Flat No.S-4
Shri Shyam Excellency
Shri Radha Govind Mandir Marg
Rani Sati Nagar, Kings Road, Ajmer Road
JAIPUR – 302 019**

.....Complainant

Versus

**CA. Vinod Kumar Gupta ... (M.No.070737)
No.203, Shyam Anukampa
O-11, Ashoka Marg, C-Scheme
JAIPUR – 302 001**

.....Respondent

DATE OF FINAL HEARING: 18.07.2019

PLACE OF HEARING: NEW DELHI

PARTIES PRESENT:

Respondent : CA. Vinod Kumar Gupta

Findings:

1. The Board noted that the Respondent was held guilty by the Director (Discipline) of Other Misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of said Act on the charge that the Respondent embezzled the amounts given as loan to him by the Complainant and his family members.
2. The Board noted that the Complainant did not appear before it despite due service of notice. The Board in this regard took reference to Rule 14 of the aforesaid Rules relating to "Procedure to be followed by the Board of Discipline" whereby as per sub rule (7) it is mentioned as under:

"(7) On the date of hearing, if the respondent, inspite of the service of notice, under sub rule (6) does not appear either in person or through his authorised representative the Board of Discipline may proceed ex-parte and pass such orders as may think fit or direct fresh notice to be served.

Provided that such adjournment shall not be given more than one stage at any stage of the proceedings."

The Board noted that these provisions apply to the Complainant also hence decided to take up the matter ex-parte the Complainant.

3. The Board noted that the Respondent during the course of hearing submitted as under:
 - a. He was not doing any finance broking business and was practising as Chartered Accountant only.
 - b. The Complainant was not his client and money was given to him by the Complainant to earn interest.
 - c. The Complainant was working with 'O.K. Plus Group' and was having surplus money which the Complainant wanted to lend on interest and the Respondent was paying regular interest on the money borrowed from the Complainant.
 - d. That he has repaid the Cash loan which was borrowed by him and on cheque loan the Respondent paid interest to the Complainant up to September, 2013.
 - e. That his financial position is weak and his home is about to be auctioned and due to this reason he is unable to pay the money back to the Complainant.

- f. That he is not denying to repay the money back to the Complainant but due to financial crunch he needs sometime rather by the end of next year he will be in a position to repay whole of the amount back to the Complainant.
4. The Board noted that the Respondent accepted loan in cash which is violation of provisions of Section 269SS of Income Tax Act. The Respondent also confirmed that he has repaid the loan taken in cash which is also violation of provisions of Section 269T of Income Tax Act. Further, the Respondent is neither repaying the principal amount to the Complainant nor interest on such amount from September 2013 till date. The Board noted that due to which the Complainant had suffered loss of his money and interest for more than 6 years.
5. Further, the Board noted that a matter is pending before the Session Court under Section 138 of Negotiable Instrument Act as the cheque issued by the Respondent got bounced due to insufficient funds.
6. The Board noted that the Complainant was not given back the principal and not paid interest on such money borrowed. The Board also noted that taking money in cash and also repaying in cash by the Respondent is also not legally permissible under the law. The Respondent being a professional failed to ensure compliance of the Law. The Board also noted that the Complainant has given money to the Respondent on his professional face value being a Chartered Accountant as the Respondent himself accepted that the Complainant is not his client. Accordingly, the Board concluded that the act of the Respondent is not expected of from a professional and his acts proves of unbecoming of a Chartered Accountant.

CONCLUSION:

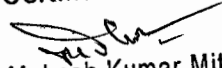
7. Thus, the Board concluded that the Respondent is **GUILTY** of "Other Misconduct" falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with section 22 of the said Act.

Sd/-
(ATUL KUMAR GUPTA)
PRESIDING OFFICER

Sd/-
(ARUN KUMAR)
GOVERNMENT NOMINEE

Sd/-
(PRASANNA KUMAR D)
MEMBER

DATE : 18.07.2019
PLACE : NEW DELHI

Certified True Copy

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

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