



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

PR-359/14-DD/02/2015/BOD/246/17

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:-

Shri Nawal Kishore Mahato, Partner, M/s NPVR & Co., Chartered Accountants, Jamshedpur

-Vs-

CA. Suman Kumar Choudhary (M. No. 419818), Jamshedpur

[PR-359/14-DD/02/2015/BOD/246/2017]

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 29th April, 2019, was of the opinion that **CA. Suman Kumar Choudhary** (M. No. 419818) is 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. An action under Section 21A(3) of the Chartered Accountants Act, 1949 was contemplated against **CA. Suman Kumar Choudhary** 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. **CA. Suman Kumar Choudhary** did not appear before the Board on 09th March, 2020 despite the due service of the notice for award of punishment. However, since his written representation on the findings of the Board was already on record, the Board decided to proceed ahead with the award of punishment.

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4. **CA. Suman Kumar Choudhary** in his written representation reiterated his earlier submissions that he had communicated with the Complainant by simple post and also talked over telephone to him. He accepted his mistake that he has not followed the right process of communication with the Complainant i.e. by Regd. Post AD and requested to take a lenient view in the matter.
5. The Board has carefully gone through the facts of the case and the written representation of the Respondent.
6. As per the findings of the Board as contained in its report, it has already been conclusively proved that **CA. Suman Kumar Choudhary** is Guilty of Professional Misconduct falling within the meaning of Clause (8) 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. Suman Kumar Choudhary** and keeping in view his written representation before it, **the Board decided to reprimand CA. Suman Kumar Choudhary (M. No. 419818).**

Sd/-

CA. PRASANNA KUMAR D.
(PRESIDING OFFICER)

Certified Copy

Prasanna
Assistant Secretary
Disciplinary Directorate
The Institute of Chartered Accountants of India
ICAI Bhawan, I.P. Marg, 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 Nawal Kishore Mahato, Partner, M/s NPVR & Co., Chartered Accountants, Jamshedpur

-Vs-

CA. Suman Kumar Choudhary (M. No. 419818), Jamshedpur

[PR-359/14-DD/02/2015/BOD/246/2017]

CORAM:

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

In the matter of:

**CA. Nawal Kishore Mahato,
Partner, M/s NPVR & Co.,
Chartered Accountants,
Flat No. 401, 4th Floor,
K C Apartment, 137, Ambagan Road,
Sakchi (Jharkhand)
Jamshedpur-831 001**

.....Complainant

Versus

**CA. Sumar Kumar Choudhary,
Choudhary Bhawan,
H.No. 210, Teachers Colony,
Dimna Road, Mango
JAMSHEDPUR-831 012**

.....Respondent

DATE OF HEARING: 29.04.2019

PLACE OF HEARING: NEW DELHI



PARTIES PRESENT:

Complainant : Nil
Respondent : CA. Suman Kumar Choudhary

Findings:

1. The Board noted that the Respondent was held guilty of professional misconduct falling within the meaning of Clauses (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949 because he accepted and completed audit of M/s Aditya Tiwary and Associates Private Limited, Jamshedpur for the financial year 2013-14 without communicating with the Complainant.
2. The Board noted that the Complainant did not appear before it despite due service of notice. Further there was no intimation from the Complainant. The Board also noted that hearing in this case was earlier held on 8th January, 2019 and the hearing was adjourned on the request of the Respondent. Looking into absence of the Complainant and the fact there is no intimation from him, the Board decided to take up the matter ex-parte.
3. The Board noted that the Respondent had submitted before it that he had communicated by simple post and also talked over telephone to Complainant.
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. In the opinion of the Council, communication by a letter sent "*Registered Acknowledgement due*" or by hand against a written acknowledgement would in normal course provide such evidence. The Council has taken the view that a mere posting of a letter under certificate of posting is not sufficient to establish communication with the retiring auditor unless there is some evidence to show that the letter has in fact reached the person communicated with.
5. The Board observed that in matter 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 decided 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. (B)



- (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 noted that the Respondent accepted his mistake that he has not followed the right process of communication i.e. by Regd. Post AD. The Board accordingly opined that fundamental requirement of communication has not been complied with by the Respondent and accordingly he is Guilty of the charge alleged.

CONCLUSION:

7. 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

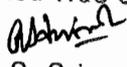
Sd/-
(ARUN KUMAR)
GOVERNMENT NOMINEE

Sd/-
(PRASANNA KUMAR D)
MEMBER

DATE :29.04.2019

PLACE :New Delhi



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