THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

[PR/185/17-DD/192/2017/BOD/440/2018]

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. Manoj Dagha
1, Purnima, ist Floor, H.N Compound,
Next to next India Co- operative Bank,
M. G Road, Goregaon West,
Mumbai- 400 062 ..... **Complainant**

-Vs-

CA. De Parimal Kumar (M.No.003115),
M/s P. K de & Associates,
Chartered Accountants,
B H 175, salt lake city, Sec- 2
Kolkata - 700 091 ..... **Respondent**
[PR/185/17-DD/192/2017/BOD/440/2018]

MEMBERS PRESENT(through Video Conferencing):
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

1. The Board of Discipline vide Report dated 16th August, 2019 was of the opinion that **CA. De Parimal Kumar** 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. De Parimal Kumar** and communication dated 02nd September 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 10th September, 2020.

3. **CA. De Parimal Kumar** appeared before the Board through video conferencing and made his oral representation thereat. The Board also noted that the Respondent had also submitted his written representation in the matter.

4. The Board noted that **CA. De Parimal Kumar** , in his written representation, inter-alia, submitted as under:-

(a) The Respondent was based in Kolkata and his intention was not to poach any client in Mumbai. The Respondent referred to the correspondence with respect to inherent dispute between the Complainant and Mr. Emraan Hashmi and Mr. Hashmi stood to loose several crores and face prosecution.

(b) The Respondent denied the allegation contained in Form I and the conclusion contained in the PFO and referred to commentary contained in Code of Ethics with respect to Clause (8) of Part I of First Schedule as under:-

"It must be pointed out that professional courtesy alone is not the major reason for requiring a member to communicate with the existing accountant who is a member of the Institute or a certified auditor. The underlying objective is that the member may have an opportunity to know the reasons for the change in order to be able to safeguard his own interest, the legitimate interest of the public and the independence of the existing accountant. It is not intended, in any way, to prevent or obstruct the change. When making the enquiry from the retiring auditor, the one proposed to be appointed or already appointed should primarily find out whether there are any professional or other reasons why he should not accept the appointment.

It is important to remember that every client has an inherent right to choose his accountant; also that he may, subject to compliance with the statutory requirements in the case of limited Companies, make a change whenever he chooses, whether or not the reasons which had impelled him to do so are good and valid. The change normally occurs where there has been a change of venue of business and a local accountant is preferred or where the partner who has been dealing with the clients affairs retires or dies; or where temperaments clash or the client has some good reasons to feel dissatisfied. In such cases, the retiring auditor should always accept the situation with good grace."

(c) Clause (8) of Part I of First Schedule does not require any NOC to be obtained at the time of the change of the auditor. The entire concept of obtaining an NOC by the incoming auditor from the outgoing auditor is alien to the Code of Ethics prescribed by ICAI, and there is no obligation cast upon the incoming auditor under the said Clause (8) to obtain such NOC.

(d) There are various provisions/ restrictions with respect to change of auditor of body corporates and as such no restriction is applicable in the case of individuals.

(e) The Respondent reiterated that the Complainant failed repeatedly in complying with the statutory obligations resulting in Income Tax demand amounting to Rs. 1,44,46,015/- over the years. The Respondent submitted table containing year-wise details of outstanding demand raised by the Department in the matter of Mr. Emraan Hashmi. The principal reason discovered for this demand was that Complainant had filled up the IT Challans for Tax payment with a wrong PAN No. and as a professional he could have easily discovered his own mistake and corrected the same.

(f) With the intervention of the Respondent, the assesse/ Complainant had cleared all the issues and the assesse will get refund and reinstate his reputation as a good and honest taxpayer. The Respondent's assistance was sought by Mr. Emraan Hashmi upon receiving a demand of Rs. 1.44 Crores from the Income Tax Department and the said demand relates to Assessment Years 2006-07 to 2015-16. The Respondent also submitted screenshot of Income Tax E-filing to support his claim. The Respondent also submitted copy of Notice regarding verification of Service Tax payment – Shri Emraan Hashmi dated 10/06/2017 issued by Deputy Commissioner (Anti Evasion), Service Tax-IV, Mumbai.

(g) While dealing with the demand for tax payments, the Respondent was required to contact the Complainant at the instructions of the client. On each occasion, the Respondent got no reply from the Complainant. The Respondent received the Power of Attorney from the client to appear before the Income Tax Authorities on or around Sept 2016 and the appointment as the Tax Auditor for the financial year 2015-16 at the same time. The Respondent informed the Complainant about his appointment as the tax auditor and got no response from him once again.

(h) The Respondent has been a member of ICAI for more than 60 years and held Certificate of Practice as a Fellow Member since 1980. During the course of 39 years as a member in practice, there has been no lapse amounting to professional misconduct by the Respondent.

5. The Board has carefully gone through the facts of the case and also the written and oral representation of **CA. De Parimal Kumar** . Keeping in view the same, the Board was of the view that it has been rightly pointed out by the Respondent that Clause (8) of Part I of First Schedule does not require any NOC to be obtained at the time of the change of the auditor.The specific requirement of the said clause is that the incoming auditor should communicate with the retiring auditor

in writing prior to acceptance of the appointment as an auditor which in the instant case has not been done by the Respondent and as per the findings of the Board as contained in its report, it has already been conclusively proved that **CA. De Parimal Kumar** 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.

6. Upon consideration of the facts of the case, the consequent misconduct of **CA. De Parimal Kumar and keeping in view his oral and written representation before it, the Board decided to Reprimand CA. De Parimal Kumar (M.No.003115).**

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

Certified to be true copy
CA. Harleen Bhalla
Assistant Secretary,
Disciplinary Directorate
The Institute of Chartered Accountants of India,
ICAI Bhawan, Vishwas Nagar, Shahdra, 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. Manoj Dagha, Mumbai

-Vs-

CA. De Parimal Kumar (M.No.003115), Kolkata

[PR/185/17-DD/192/2017/BOD/440/2018]

CORAM:

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

In the matter of:

CA. Manoj Dagha
1, Purnima, 1st Floor, H. N. Compound,
Next to Next India Co-operative Bank,
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Versus

CA. De Parimal Kumar
M/s. P. K. De & Associates,
Chartered Accountants,
B H 175, Salt Lake City, Sector – 2,
Kolkata – 700 091 **.....Respondent**

DATE OF FINAL HEARING : 16.08.2019
PLACE OF HEARING : KOLKATA

PARTIES PRESENT:

Counsel of Complainant : CA. Nikunj Daga
Respondent : CA. De Parimal Kumar
Counsel of Respondent : CA. A.P. Singh

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 he did not communicate with the Complainant before accepting the audit assignment of Mr. Emraan Hashmi for the financial year 2015-16.

2. The Board noted that the Counsel of the Respondent on specific question as to whether the Respondent sent written communication or not, submitted that there was verbal communication only.

3. 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 where the previous auditor is a Chartered Accountant.

4. 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.

5. In case undisputed audit fees for carrying out the statutory audit under the Companies Act or various other statutes has not been paid, the incoming auditor should not accept the appointment unless such fees is 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.

6. The Board also noted that the Respondent had accepted that he had not made any written communication 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:

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/-	Sd/-	Sd/-
(ATUL KUMAR GUPTA)	**(ARUN KUMAR)**	**(PRASANNA KUMAR D)**
PRESIDING OFFICER	**GOVERNMENT NOMINEE**	**MEMBER**

DATE : 16.08.2019

PLACE : KOLKATA

Certified True Copy

Mukesh Kumar Mittal
Assistant Secretary
Disciplinary Directorate
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