



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

[PR/203/2015/DD/191/2015/BOD/332/17]

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. Bhagwant Singh Rajput, Bengaluru

.... Complainant

-Vs-

CA. Chandan Kanyalal Dhanani (M.No. 117268), Bengaluru

.... Respondent

[PR/203/2015/DD/191/2015/BOD/332/17]

MEMBERS PRESENT:

CA. Prasanna kumar D., Presiding Officer (physically at ICAI Bhawan, Vishwas Nagar, New Delhi)

Mrs. Rani Nair, (IRS, RETD.), Government Nominee (attended through VC)

CA. Durgesh Kumar Kabra, Member (physically at ICAI Bhawan, Vishwas Nagar, New Delhi)

Date of final hearing: 18th January, 2021

1. The Board of Discipline vide Report dated 6th January, 2020 was of the opinion that CA. Chandan Kanyalal Dhanani (M.No. 117268) is guilty of **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.

2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against CA. Chandan Kanyalal Dhanani and communication dated 6th January, 2021 was addressed to him thereby granting him an opportunity of being heard in person and/or to make written representation before the Board on 18th January, 2021.

3. CA. Chandan Kanyalal Dhanani made his written representation vide letter dated 16th January, 2021 and also appeared through video conferencing before the Board on 18th January, 2021 and made his oral submissions thereat.

4. CA. Chandan Kanyalal Dhanani in his written representation reiterated the submissions made at the time of hearing and further submitted that the Board of M/s PREMURA FRAGRANCE PRIVATE LIMITED had appointed the Complainant as Statutory Auditor who was the auditor of the



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

PR/203/2015/DD/191/2015/BOD/332/17

company since inception and was holding the office till the last AGM of the company held in 2018. Thereafter, no other CA, including CA. Chandan Kanyalal Dhanani had been appointed as Auditor, since the Complainant refused to give no Objection certificate. The closure of the company was approved by the Registrar of Companies on 14/11/2014. No Statutory Auditor was appointed under section 224 and 225 of the Companies Act 1956. The last audit report was filed by the Complainant for the Financial Year 2007-08. During the Financial year 2008-09, the company was liable to file Vat Audit report under Karnataka Commercial Taxes. The Respondent performed the VAT audit and prepared the financials for VAT audit purpose after taking the letter from the company that the Respondent only performed the VAT Audit and not Statutory Audit.

5. The Board has carefully gone through the facts of the case and also the oral and written representation of CA. Chandan Kanyalal Dhanani. While arriving at its findings as contained in its report, the Board noted that the Respondent signed the audited Balance Sheet & Profit & Loss Account of the company on 2nd September, 2009. The Respondent also mentioned in his report, "As per our report of even date attached" which signifies that the audit was conducted by the Respondent. Further, the date of signing i.e. 2nd September, 2009 is the same date on which the Respondent had sent a letter to the Company forwarding the Statement of Profit & Loss Account and Balance Sheet prepared by him. The Board also noted that the Respondent gave the following certification in the Form VAT- 240 dated 28.12.2009 with a similar certification for the year ending 31.03.2010:

"Certified that I being a Chartered Accountant have audited the accounts of PREMURA FRAGRANCE PRIVATE LIMITED, No. 73, 5th Cross, 5th 'A' Main, RPC Layout, Vijaynagar, Bangalore – 560040, having registration No. (TIN) 29860720346 for the year ending 31.03.2009....."

6. Thus, the Board was of the view that the documents brought on record by the Respondent such as letter dated 18th October, 2010 from the Company requesting to appoint him as auditor and the denial of the Respondent vide letter dated 15th November, 2010 are afterthought and the Respondent had not communicated with the previous auditor i.e. Complainant before accepting the appointment as statutory auditor of the company for the year ending 31st March, 2009 as communication with the previous auditor was done after he signed the Balance Sheet and Profit & loss Account of the Company and thus, the case of the Respondent squarely falls within the provisions of Professional Misconduct falling within the meaning of Clause (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949. Also, the Respondent did not bring on record any



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

[PR/203/2015/DD/191/2015/BOD/332/17]

evidence to show that he had ensured compliance with the provisions of Section 224 and 225 of the Companies Act, 1956 and his mere denial that he has not conducted the audit of the Company is not acceptable as the facts are contrary to the same.

7. Thus, as per the findings of the Board as contained in its report, it has already been conclusively proved that **CA. Chandan Kanyalal Dhanani** is 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.

8. Upon consideration of the facts of the case, the consequent misconduct of **CA. Chandan Kanyalal Dhanani** and keeping in view his oral and written representation before it, the Board decided to reprimand **CA. Chandan Kanyalal Dhanani (M.No. 117268)**.

13

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

Certified to be true copy
Certified to be true copy
M. S. Bhatta
CA. Harleen Bhatta
Assistant Secretary,
Disciplinary Directorate
The Institute of Chartered Accountants of India,
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032. 110032

CAI Bawan, Vishwas nagar, Bhopal Distt. - 460002
The Institute of Chartered Accountants of India
Disciplinary Director
Assistant Secretary
CA. Hareesh Bhatia
Certified to be true copy

BOARD OF DISCIPLINE

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/203/2015/DD/191/2015/BOD/332/17

QUORUM:

CA. Sushil kumar Goyal , Presiding Officer
Mrs. Rani Nair (IRS, Retd.), Government Nominee
CA. Durgesh Kabra, Member

In the matter of:

CA. Bhagwant Singh Rajput

M/s Gautam & co.

Chartered Accountants

No. 49 Second Stage, Second Phase

West of Chord, Mahalaxmipuram

BENGALURU- 560086

..... Complainant

Versus

CA. Chandan Kanyalal Dhanani (M.No. 117268)

C009, Celestral Greens

C V Rama Nagar

Bennagana Galli

BENGALURU- 560093

.....Respondent

DATE OF HEARING : 18th July, 2019

PLACE OF HEARING : BENGALURU

PARTIES PRESENT:

Respondent : CA. Chandan Kanyalal Dhanani

Counsel for the Respondent : Mr. Madhu. N Rao, Advocate

Bs
13

Complainant

:

CA. Bhagwant Singh Rajput

FINDINGS:

1. The Board noted the charge against the Respondent that he has accepted the audit assignment of M/s Premura Fragrance Pvt. Ltd (hereinafter referred to as the 'company') for the year ending 31st March, 2009 without ensuring compliance of section 224 and 225 of the Companies Act, 1956 and he did not communicate with the previous auditor i.e the Complainant before accepting the assignment.
2. The Board noted that the Complainant and the Respondent along with his Counsel were present before it at the time of hearing and duly considered the submissions made by them.
3. The Board also noted that the Respondent made an application before the Board under proviso to sub rule (3) of Rule 14 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 at the time of hearing. As regards the application of the Respondent under proviso to sub rule (3) of Rule 14 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Board noted that the communication regarding the case having been referred for enquiry had been sent to the Respondent way back on 25th September 2017 and the intimation dated 12th June 2019 as regards the present hearing had been sent on the address from where the Respondent had last communicated. Further, on the receipt back of the letter dated 12th June 2019, an email dated 12th July 2019 was sent to the Respondent enclosing a copy of the said intimation. Thus, the Board was of the view that adequate opportunity had been given to the Respondent to defend his case. The Board concluded the hearing in the case with the direction to the Respondent to make his submission as to in compliance with which provisions, the audit report as enclosed at C6-C11 of the prima facie opinion has been issued by him and also to make any further written submissions in the matter within 10 days along with a copy to the Complainant. Thereafter, the Board at its meeting held on 11th September 2019 noted that subsequent to that an email dated 30th July 2019 was received from the Respondent stating that the written statement will be submitted by 10th August 2019 and requested to consider his request. However, the same was not received.
4. The Board considered the submission of the Respondent made at the time of hearing that due to some personal disputes with the director of the company, the Complainant was not ready to sign the Balance Sheet only then the audit was assigned to him. He also stated

85
12

that he verbally talked to the Complainant to sign the balance sheet but he also refused for the same.

5. The Board noted that there was no pending fees against the Complainant. The Complainant had also admitted that he had received his full fees and the case is only for non-communication with him.

6. The Board noted that the Respondent had sent a letter dated 23rd October, 2010 to the Complainant firm seeking their no – objection before accepting the statutory audit assignment of the Company. The Complainant vide letter dated 27th October, 2010 communicated their objection towards the appointment of the Respondent as auditor of the Company on account of the following which are worth consideration:-

- a) As per the resolution passed by the Company in the second annual general meeting held on 02.09.2008, the Complainant was appointed as auditor from the conclusion of that (AGM held on 02.09.2008) until the conclusion of the next AGM.
- b) Further, the Complainant pointed out the following flaws in the letter seeking no objection sent by the Respondent:-
 - i. Date of appointment is not mentioned.
 - ii. In which meeting the Respondent's appointment has taken place is not known.
 - iii. From which year the Respondent is appointed is not known.

7. The Board also noted that the Respondent denied conducting the statutory audit of the Company on account of non-receipt of clear NOC from the previous auditor i.e. the Complainant. The Board also perused the letter dated 25th August, 2009 sent by the Company to the Respondent requesting him to compile financial statements of the Company. The Board also perused the letter dated 2nd September, 2009 sent by the Respondent to the Company forwarding the Profit & Loss Accounts & Balance Sheet prepared by him for the period from April 01, 2008 to March 31, 2009 and the letter dated 18th October, 2010 sent by the Company to the Respondent requesting him for appointment as Statutory Auditor to which the Respondent vide letter dated 15th November, 2010 expressed his inability in view of non-receipt of No-Objection Certificate from the Complainant's firm. The Board also considered the submission of the Respondent that he had conducted the VAT audit of the company and not the statutory audit.

2/8

1/17

8. The Board also perused the Balance Sheet & Profit & Loss Account for the year ending 31st March, 2009 and observed that the same bore the membership number and signatures of the Respondent and the same has been signed by him on 2nd September, 2009. At the place of signature, the Respondent has also mentioned, "As per our report of even date attached" which signifies that the audit was conducted by the Respondent. Further, the date of signing i.e. 2nd September, 2009 is the same date on which the Respondent had sent a letter to the Company forwarding the Statement of Profit & Loss Account and Balance Sheet prepared by him.

9. The Board also perused the Form VAT- 240 dated 28.12.2009 filed before the VAT Authorities signed by the Respondent wherein he has given the following certification,

"Certified that I being a Chartered Accountant have audited the accounts of PREMURA FRAGRANCE PRIVATE LIMITED, No. 73, 5th Cross, 5th 'A' Main, RPC Layout, Vijaynagar, Bangalore – 560040, having registration No. (TIN) 29860720346 for the year ending 31.03.2009....."

10. The Board also perused the Form VAT- 240 dated 27.12.2010 wherein the similar certification as observed above has been given by the Respondent for the year ending 31.03.2010.

11. Thus, the Board was not convinced and did not accept the contention of the Respondent that he has not conducted the statutory audit of the Company and was only its VAT auditor as the Respondent did not bring on record any appointment letter in respect of VAT audit. The Board observed that the Respondent has signed the financial statements of the Company in the year 2009 itself. However, later on when he realized his mistake of non-communication with the previous auditor, he has tried to cover up the same by sending letter seeking no-objection to the Complainant on 23rd October, 2010. Also, the documents brought on record by the Respondent such as letter dated 18th October, 2010 from the Company requesting to appoint him as auditor and the denial of the Respondent vide letter dated 15th November, 2010 also seems to be an afterthought.

12. The Board opined that the Respondent had not communicated with the previous auditor i.e. Complainant before accepting the appointment as statutory auditor of the company for the year ending 31st March, 2009 as communication with the previous auditor was done after he has signed balance sheets and profit & loss Account of the Company and thus, the case of the Respondent squarely falls within the provisions of Professional

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

13. As regards the charge that the Respondent accepted audit assignment of the Company without ensuring compliance with the provisions of the Section 224 and 225 of the Companies Act, 1956, 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.*

14. In this regard, the Board observed that the Complainant has brought on record copy of notice dated 02.09.2008 wherein it is mentioned as under:

"The retiring auditor M/s Gautam & Co., Chartered Accountants, are eligible for reappointment".

However, no documentary evidences have been brought on record by the Respondent to show that he had ensured compliance with the provisions of Section 224 and 225 of the Companies Act, 1956 and his mere denial that he has not conducted audit of the Company is not acceptable as the facts are contrary to the same. Accordingly, the Board was of the

view that the Respondent did not ensure compliance with the provisions of Section 224 and 225 of the Companies Act, 1956 before accepting the audit assignment of the Company.

CONCLUSION:

15. 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.

Bf
m

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. Nair
Assistant Secretary
Chartered Accountants of India
New Delhi-110 002

The Ins
10/1/20