



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

[PR-10/18/DD/32/2018/BOD/504/2019]

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. Satish Laddhad (M.No.039831), Nagpur Complainant

-Vs-

CA. Ashish Nathmal Agrawal (M.No.131960), Nagpur Respondent

[PR-10/18/DD/32/2018/BOD/504/2019]

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: 27th October, 2020

1. The Board of Discipline vide Report dated 20th October, 2019 was of the opinion that CA. Ashish Nathmal Agrawal (M.No.131960) 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.

2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against CA. Ashish Nathmal Agrawal and communication dated 9th October, 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 27th October, 2020.

3. CA. Ashish Nathmal Agrawal made his written representation vide letter dated 13th October, 2020 and also appeared through video conferencing before the Board and made his oral representation thereat.

4. CA. Ashish Nathmal Agrawal, in his written representation inter-alia, questioned the existence of the two Benches of the Board of Discipline during the year 2019-20 as the Chartered Accountants Act 1949 allows only one Board of Discipline to be set up and further stated that thus, the entire procedure and proceedings conducted by ICAI in the matter at the time of the consideration of the Prima Facie Opinion and during the subsequent hearings are bad in law. The cardinal principle of Law is that an accused person has the right to have his case decided by a judge

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who has heard the whole of it. A person who hears the entire evidence must give judgement. The instant case was considered by the Board of Discipline-Bench II and now the punishment is sought to be awarded by the Board that will be composed of different members. Thus, all the members of the bench would not be aware of the facts and the materials upon which the finding of guilt was recorded and would be in no position to pass the fair and impartial judgement, being unaware of the materials upon which the earlier Board had come to its findings.

The Respondent further submitted that the Complainant has on record accepted that he had sent a text message to the accountant of the three entities whose financial statements have been audited by the Respondent clearly stating that the complainant was not interested in continuing with the engagement and that he wanted all documents lying in his office to be taken away by the management of the three entities. The Complainant never denied having sent this text message, in fact such denial could never be sustained because of the digital footprints of old text messages.

5. **CA. Ashish Nathmal Agrawal** further submitted that the Complainant has denied having had telephonic discussions with the Respondent, but that hardly makes any difference, considering the fact that the text message of the complainant to the accountant of the three entities is available on record. When there is no denial by the complainant that he had relinquished the position of the tax auditor of all three entities, and that message from the complainant was in possession of the Respondent, and further when the Respondent had taken due care to forward written communication to the previous auditor, that too in a case where there is no pending fee of any qualification of the reports, holding the Respondent to be guilty of professional misconduct is too harsh, to say the least, and is against the tenets of natural justice.

6. The Board has carefully gone through the facts of the case and also the oral and written representation of **CA. Ashish Nathmal Agrawal**.

7. As far the objection of the Respondent as to denial of natural justice i.e. passing of punishment Order by the Bench which had not heard the matter is concerned, the Board was of the view that although the plea seems to be appealing at the first instance but on an in-depth examination of the Chartered Accountants Act 1949 and the Rules framed thereunder, it is clear that the same is devoid of any merit, hence, unsustainable. The Board viewed that the Chartered Accountants Act 1949 and the Rules framed thereunder envisage for two separate stages of proceedings before the Board of Discipline. The first stage is the determination of guilt (the initial part of Section 21A (3) of the aforesaid Act read with Rule 14 of the aforesaid Rules) and the second



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stage is to pass punishment Order (the latter part of Section 21A (3) read with Rule 15(1) of the Rules). The purpose of the first stage is to consider the submissions and evidences on record for determining whether a member is guilty of any professional or other misconduct as provided under the aforesaid Act. Once the guilt has been established, the second stage is to determine the quantum of punishment for the same. The purpose of second stage is to consider the severity of the misconduct and to take into consideration any mitigating circumstances so as to accord corresponding punishment. It is to be noted that at the punishment stage, the Board of Discipline does not re-hear the matter as the guilt has already been established as provided in its findings/report.

In the instant case, the uniform procedure prescribed under the aforesaid Act and the Rules framed thereunder has been followed while arriving at a finding of guilt on the part of the Respondent falling within the meaning of Clause (8) of Part-I of the First Schedule of the Chartered Accountants Act, 1949. Further, considering the scheme and requirements of the Act and the Rules, an opportunity of being heard which is a pre-requisite for award of the punishment under Section 21A(3) has also been provided to the Respondent.

8. Further, as far as the objection of the Respondent as to constitution of two Benches of the Board is concerned, the Board viewed that two Benches of the Board of Discipline were constituted with an avowed object to accelerate the disposal of disciplinary cases and the administrative Ministry i.e. Ministry of Corporate Affairs had also nominated the members as required under Section 21A (1)(b) to the Board of Discipline. On a conjoint reading of the provisions of the General Clauses Act, 1897 (which explicitly states that the words in singular shall include the plural, and vice versa) with the provisions of the Section 21A(1) of the Chartered Accountants Act, 1949(as amended) it is clear that there was no infirmity in the constitution of more than one bench of Board of Discipline. The Benches so constituted carried out its functions inter-alia by conducting hearings and awarding punishments in disciplinary cases falling within their respective jurisdictions during the relevant period. Besides, the Respondent failed to place any material to show that the constitution of two benches caused any prejudice to him. Furthermore, the Respondent who had participated in the hearing and submitted to the jurisdiction of the Board of Discipline did not raise any objection as regards the validity/legality of constitution of the said Board of Discipline at that time. The challenge made by the Respondent as to the constitution of more than one Board of Discipline subsequently is not bonafide and a clear after thought. Also, the Board of Discipline was of the view that it is not the appropriate forum to challenge the constitution of its two Benches.



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9. As regards the grounds raised by the Respondent with respect to the merits of the case, the Board while arriving at its findings as contained in its report, noted that the Respondent handed over the letter(s) relating to NOC to the client on 3rd November, 2017 and on the next day i.e. 4th November, 2017 signed the financials of the entity. The Respondent also accepted that he did not communicate with the Complainant in writing before acceptance of audit and thus, as per the findings of the Board as contained in its report, it has already been conclusively proved that **CA. Ashish Nathmal Agrawal** 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.

10. Upon consideration of the facts of the case, the consequent misconduct of **CA. Ashish Nathmal Agrawal** and keeping in view his oral and written representation before it, the Board decided to reprimand **CA. Ashish Nathmal Agrawal (M.No.131960)**.

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

Certified to be true copy
Harleen Bhalla
CA. Harleen Bhalla
Assistant Secretary,
Disciplinary Directorate
The Institute of Chartered Accountants of India,
ICAI Bhawan, Vishwas Nagar, Shahdara, 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. Satish Laddhad (M.No.039831) of M/s. Satish Laddhad & Co.,
Chartered Accountants Nagpur**

-Vs-

**CA. Ashish Nathmal Agrawal (M.No.131960) of M/s. Ashish N. Agrawal &
Associates Chartered Accountants, Nagpur**

[PR-10/18/DD/32/2018/BOD/504/2019]

CORAM:

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

In the matter of:

**CA. Satish Laddhad,
M/s Satish Laddhad & Co,
Laddhad House, J B Thakar Marg, In Side Lane,
Opp. GS Commerce College, Gorepeth,
Nagpur-440010**

.....Complainant

Versus

**CA. Ashish Nathmal Agrawal,
M/s Ashish N. Agrawal & Associates,
Plot No. 1, Near Boodh Vihar,
Hiwari Nagar,
Nagpur-440 008**

.....Respondent

DATE OF FINAL HEARING : 20.10.2019

PLACE OF HEARING : MUMBAI

PARTIES PRESENT:

**Complainant : CA. Satish Laddhad
Respondent : CA. Ashish Nathmal Agrawal
Counsel for the Respondent : CA. A.P. Singh**

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Findings:

1. The Board noted that the Respondent was 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 by the Director (Discipline) on the charge that the Respondent has accepted the appointments as an Auditor of M/s G.B. Enterprises, M/s Laxminarayan Enterprises, M/s Shree Ganesh Enterprises for the financial year 2016-17 without first communicating with previous auditor (i.e., Complainant) in writing.
2. The Board noted that the Respondent/his Counsel had submitted as under
 - (i) The Complainant was duly informed and was in the knowledge about the appointment of new auditor by the client and he has expressly communicated his inability to conduct the audit before his acceptance of the same.
 - (ii) The Complainant was duly asked by the Accountant Mr. Taori to issue NOC, for which undeniable proof is available and duly submitted with my earlier reply.
 - (iii) The essence of Clause 8, is communication with the previous auditor, which was duly taken care of by the Respondent. However, since the same was done telephonically, the Respondent is unable to substantiate or produce a proof of that.
 - (iv) Looking into the exigency and urgency to complete the audit work before the due date, as the time available for completing the work was very less and due date for completion of audit and filing of income tax return was approaching very shortly, the NOC was handed over to the client and this fact was informed to the Complainant.
3. The Board further noted that Respondent/his Counsel accepted that no written communication was made with the Complainant by the Respondent.
4. The Complainant in this regard mentioned that the Respondent never contacted him. The Board also noted the Complainant had submitted that he had no pending fees from these entities.
5. The Board also noted that it is evident that the Respondent handed over the letter(s) relating to NOC to the client only (D-6 to D-9) on dated 3rd November, 2017. It is also seen that the Respondent on the next day i.e. 4th November, 2017 had signed the financials of the entities (C-3, C-9 & C-14). Hence, it is evident that Respondent Auditor had relied upon the statement of client(s) and failed to adhere the provision of the Code of Ethics in relation to communication.

6. Further, the Board 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.
7. 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.

8. The Board viewed that as a matter of prudence the provisions of Clause (8) was inserted with one specific objective that not only the accounts of the Company reflects true and fair and there is no fraud whose unveiling had caused change in auditors. The Board also noted that the Respondent accepted that he has not communicated with the Complainant in writing. 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:

9. 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

DATE : 20.10.2019
PLACE : MUMBAI

Sd/-
(ARUN KUMAR)
GOVERNMENT NOMINEE

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PARVESH BANSAL
Deputy Secretary
Disciplinary Directorate

The Institute of Chartered Accountants of India
ICAI Bhawan, I.P. Marg, New Delhi-110 002

Sd/-
(PRASANNA KUMAR D)
MEMBER

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