



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

PR-32/18/DD/109/2018/BOD/507/2019

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. Pradeep Kumar Gaur (M.No.084398)
Ms P.K. Gaur & Associates (FRN. 005311N)
New Delhi

...Complainant

-Vs.-

CA. Shalin Poddar (M. No. 515616)
Greater Noida

...Respondent

[PR-32/18/DD/109/2018/BOD/507/2019]

MEMBERS PRESENT:

CA. Prasanna Kumar D., Presiding Officer

(Physically at ICAI Bhawan, IP Marg,
New Delhi)

Mrs. Rani Nair, (IRS, Retd.), Government Nominee

(Through video conferencing)

Date of Final Hearing: 6th August, 2021

1. The Board of Discipline vide Report dated 11th February, 2021 held that CA. Shalin Poddar (M. No. 515616) is guilty of "Professional Misconduct" falling within the meaning of Item (8) and (9) 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. Shalin Poddar and communication dated 29th July, 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 6th August, 2021.
3. CA. Shalin Poddar appeared before the Board through video conferencing and made his oral representation.
4. CA. Shalin Poddar in his written representation dated 22nd June, 2021, inter-alia, submitted that it was never his intension of hurting Complainant. The Respondent further extended his apology to the Complainant and the Institute for spending their precious time in the proceedings. The management has also settled the full and final settlement of Complainant and also obtained resignation from him as well, which was to be done much before but it got late and in the meanwhile Complainant had made complaint against him. The Respondent further submitted that due to Covid-19 pandemic, small practitioners like him are also facing various mental and financial crises.
5. The Board has carefully gone through the facts of the case and also the oral and written representation of CA. Shalin Poddar.



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6. As per the Findings of the Board as contained in its report, **CA. Shalin Poddar** admitted his mistake for not communicating with the previous auditor i.e. the Complainant prior to acceptance of appointment as auditor of M/s. PEC Projects & Engineering Private Limited and M/s. PEC Projects And Systems Private Limited for the FY 2016-17. The Board also noted that due compliance of the Company law procedure was not ensured by the Respondent prior to acceptance of his appointment as the procedure to be followed in case of removal of auditor before the expiry of his term is different from the procedure to be followed in case of resignation by the auditor before the expiry of his term. Thus, it has already been held that **CA. Shalin Poddar** is Guilty of Professional Misconduct falling within the meaning of Item (8) and (9) 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. Shalin Poddar** and keeping in view his oral and written representation before it, **the Board decided to Reprimand CA. Shalin Poddar (M. No. 515616) and also imposed a fine of Rs.20,000/- (Rs. Twenty thousand only) upon him payable within a period of 60 days from the date of receipt of the Order.**

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

Date: 10th January, 2022

सही प्रतिलिपि होने के लिए प्रमाणित /
Certified to be true copy


नीलम पुंडीर / Neelam Pundir
कार्यकारी अधिकारी / Executive Officer
अनुशासनान्तक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

CONFIDENTIAL

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-32/18/DD/109/2018/BOD/507/2019]

CORAM:

CA. Prasanna Kumar D., Presiding Officer (Physically present at Vishwas Nagar, Delhi Office)
Mrs. Rani Nair (IRS, Retd.), Government Nominee (Present through video conferencing)
CA. Durgesh Kumar Kabra, Member (Physically present at Vishwas Nagar, Delhi Office)

In the matter of:

CA. Pradeep Kumar Gaur (M.No.084398)
M/s P.K. Gaur & Associates (FRN. 005311N),
Suite# 4G Uppal's, M6 Plaza,
Jasola District Centre,
New Delhi-110025

....Complainant

-Vs-

CA. Shalin Poddar (M. No. 515616)
519A, 5th Floor, S.L. Tower,
Alfa 1 Commercial Belt,
Greater Noida-201308

....Respondent

DATE OF FINAL HEARING : 20th January, 2021
PLACE OF HEARING : Vishwas Nagar, Delhi/ Through video conferencing

PARTIES PRESENT (Through video conferencing):

Complainant : CA. Pradeep Kumar Gaur
Respondent : CA. Shalin Poddar

Findings:

Background of the case:

1. The Respondent was associated with M/s P.K. Gaur & Associates (hereinafter referred to as the "Complainant firm") for about four years and carried out the audit of various clients in the capacity of the partner. The Respondent soon after departing from the Complainant's firm established his own firm in the name of M/s Shalin Poddar and Associates (hereinafter referred to as the "Respondent firm"). Thereafter, the Respondent accepted the position of statutory auditor of M/s. PEC Projects & Engineering Private Limited and M/s. PEC Projects And Systems Private Limited for the FY 2016-17 which was earlier held by the Complainant.

Charge alleged:

2. The Board noted the charges alleged against the Respondent as under:-
- a. The Respondent accepted appointment as Statutory Auditor of M/s. PEC Projects & Engineering Private Limited and M/s. PEC Projects And Systems Private Limited for the FY 2016-17 without first communicating with the previous auditor i.e. the Complainant in writing.
 - b. Further, the Respondent solicited/poached the Complainant's clients without even informing /communicating with the Complainant.
 - c. The Complainant was removed from his office before the expiry of his term without being given a reasonable opportunity of being heard. Thus, the Respondent accepted an appointment as Statutory Auditor of said companies without first ascertaining from it whether the requirements of Section 139/ 140 of the Companies Act, 2013 in respect of such appointment have been duly complied with.
- The Board noted that in the Prima Facie Opinion formed by the Director(Discipline), the Respondent had been held prima facie guilty of Professional Misconduct within the meaning of Item (8) and (9) of Part I of First Schedule to the Chartered Accountants Act, 1949 with respect to charge specified at (a) and (c) above and the said view had been accepted by the Board. Accordingly, the Respondent had been examined in respect of these two charges during the proceedings.

Proceedings held:

3. During the proceedings held on 20th January, 2021 both the Complainant and the Respondent duly appeared before the Board through video conferencing and made their submissions. The Respondent admitted his guilt in respect of the charges alleged against him.

Brief of Submissions:

4. The Respondent vide letter dated 09/09/2019 submitted as under:-
- a) The said mistake was not done by him wilfully. Being a new practitioner, the Respondent forgot to obtain NOC from the Complainant.
 - b) The owner of the companies himself contacted the Respondent for the said assignment.
 - c) The Company has also obtained resignation from the Complainant vide two separate letters both dated 16/03/2018 with respect to both companies and also settled all his dues. The Respondent also submitted Settlement Agreement dated 16/03/2018 between M/s. PEC Projects & Engineering Private Limited and the Complainant.
5. The Complainant vide letter dated 21/09/2019 submitted as under:-
- a) The Complainant Firm was the Statutory Auditor of M/s. PEC Projects And Systems Private Limited since incorporation of the Company. The Respondent had audited and signed the financials of the Company for Financial Years 2009-10, 2010-11 and 2011-12.
 - b) The Company claimed they had removed the Complainant Firm w.e.f. 10/08/2017 but no such letter of removal was served on the Complainant Firm at any point of time. The Complainant further pointed out various discrepancies in the procedure adopted by the Company/ Respondent in removal of the Complainant Firm and consequent appointment of the Respondent as Statutory Auditor of the Company.
 - c) The Respondent Firm has also sent reply cum apology letter dated 09/09/2019 with a copy to the Complainant. The Respondent has taken NOC from the Company that he has never approached the Company for any assignment of audit and other taxation work dated

22/09/2018, however, the appointment of the Respondent was made on 13/08/2017. The same shows that Respondent has taken NOC to escape from the disciplinary proceedings of the Institute.

- d) The Company also filed Form ADT-2 vide SRN G67694307 dated 29/11/2017 and subsequently, the Company approached the Complainant Firm to settle the matter and avoid further litigations amicably.

Observations and findings of the Board:

6. The Board on consideration of the submissions of the parties and documents available on record, observed as under:

- 6.1 As regards the charge under Item (8) of Part I of First Schedule, the Respondent admitted his mistake vide his submissions dated 09/09/2019 and also reiterated his admission for not communicating with the previous auditor i.e. the Complainant prior to acceptance of appointment as auditor of the said companies during the hearing before the Board on 20th January, 2021. The Board noted that Complainant has submitted the documents with respect to his removal before expiry of his term with M/s. PEC Projects And Systems Private Limited and the appointment of the Respondent with M/s. PEC Projects And Systems Private Limited for FY 2016-17. Further, the Respondent has not challenged the submissions of the Complainant and further not disputed the facts/ documents available on record. Thus, on account of clear cut act and specific admission of the guilt by the Respondent, it is conclusively held that Respondent is Guilty for the charge levelled against him.
- 6.2 As regards the Charge under Item (9) of Part I of First Schedule, the Board observed that Respondent did not make any submissions in his Written Statement on the said charge at Prima Facie Opinion stage, however, during enquiry, the Respondent filed his further written submissions vide letter dated 09/09/2019. On consideration of further written submissions of the Respondent, the Board noted as under:-
- a) The Respondent filed Form No. MGT-14 (C-10 to C-12) on behalf of M/s. PEC Projects And Systems Private Limited for removal of auditor before expiry of his term under Section 140(1) of the Companies Act, 2013 wherein the date of dispatch of notice for passing of resolution was shown as 03/08/2017 and the date of passing of Resolution was shown as 21/08/2017 and the copy of resolution of Extra Ordinary General Meeting held on 14/08/2017 (C-13) attached with the said e-Form mentions as under:
"...Mr. P. K. Gaur of M/s P.K. Gaur & Associates, Chartered Accountants, Delhi has been removed from the post of Statutory Auditor of the Company on 10/09/2017..."
 The Respondent also attached letter for Removal from post of auditor before expiry of term dated 10/08/2017 addressed to the Complainant Firm alongwith the said e-Form MGT-14.
- b) The Board further noted that M/s. PEC Projects And Systems Private Limited filed Form No. ADT-1 (Information to the Registrar by the Company for appointment of auditor) for appointment of Respondent Firm vide its resolution dated 16/08/2017.
- c) Thus, it is clearly made out the compliances as required to be done with respect to the appointment of Respondent and removal of Complainant was not as per the procedure as provided under the Company Law.
- d) The Board also took into view the following provisions of the Companies Act, 2013 and the Companies (Audit and Auditors) Rules, 2014 as reproduced herein below:-
Section 140 (1) of the Companies Act, 2013 - Removal, resignation of auditor and giving of special notice

*(1) The auditor appointed under section 139 may be removed from his office before the expiry of his term only by a **special resolution** of the company, after obtaining the **previous approval of the Central Government** (powers are delegated to concerned Regional Director) in that behalf in the prescribed manner:*

Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard.

Rule 7 of the Companies (Audit and Auditors) Rules, 2014 - Removal of the auditor before expiry of his term

*(1) The application to the Central Government for removal of auditor shall be made in **Form ADT-2** and shall be accompanied with fees as provided for this purpose under the Companies (Registration Offices and Fees) Rules, 2014.*

*(2) The application shall be made to the Central Government **within thirty days** of the resolution passed by the Board.*

*(3) The company shall hold the general meeting **within sixty days** of receipt of approval of the Central Government for passing the special resolution.*

- e) Thus, for removal of auditor of the Company before expiry of his term, the Company has to pass Special Resolution and obtain prior approval of the Regional Director in the prescribed manner as per Section 140(1) of the Companies Act, 2013 read with Rule 7 of the Companies (Audit and Auditors) Rules, 2014. Further, the reasonable opportunity of being heard has to be given to the auditor before removing him from the position of Statutory Auditor of the Company.
- f) The Board noted that the Respondent has not filed any response on the allegation that Complainant was not provided with reasonable opportunity of being heard before being removed from the position of Statutory Auditor of the Company. Further, the Respondent submitted Settlement Agreement dated 16/03/2018 between M/s. PEC Projects & Engineering Private Limited and the Complainant wherein it is mentioned that the Company filed a petition before the Regional Director, Northern Region (RD) u/s. 140 of Companies Act, 2013 for removal of Statutory Auditor of the Company and after few hearings before the Ld. RD, the Company approached the Complainant to settle the matter amicably on the terms specified therein. The relevant terms of the Settlement Agreement are reproduced herein for ready reference:-
- "2. SETTLEMENT AMOUNT. In consideration for this settlement and release, the COMPANY agrees to pay the outstanding dues of AUDITOR as his full and final settlement amount as mutually agreed upon, subject to the terms and conditions of this Agreement.*
- 3. ISSUE OF NO OBJECTION CERTIFICATE AND RESIGNATION LETTER**
- AUDITOR agrees to issue a no objection certificate to the COMPANY for appointment of another auditor for F.Y. 2016-2017 and will also gives its resignation letter in support of the same subject to fulfillment of condition as mentioned in point no.2 of the Agreement."*
- g) The Respondent also filed two resignation letters both dated 16/03/2018 issued by the Complainant to M/s. PEC Projects & Engineering Private Limited and M/s. PEC Projects And Systems Private Limited consequent upon the Settlement Agreement dated 16/03/2018 which in itself shows that the due compliance of the company law procedure was not ensured by the Respondent prior to acceptance of the appointment as the procedure to be followed in case of removal of auditor before the expiry of his term is different from the procedure to be followed in case of resignation by the auditor before the expiry of his term

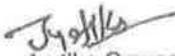
7. Having regard to the attendant circumstances, the evidence and submissions put forth by the Complainant and the Respondent, the Board is of the considered view that the Respondent has committed an act of Professional Misconduct falling within the meaning of Item (8) and (9) of Part I of First Schedule to the Chartered Accountants Act, 1949 for accepting appointment with the aforesaid companies without communicating with the Complainant and for not complying with procedures prescribed under the Companies Act, 2013 as deliberated herein above.

Conclusion:

8. Thus, the Board of Discipline, in view of the above, is of the considered opinion that the Respondent is GUILTY of Professional Misconduct falling within the meaning of Item (8) and (9) of Part I of First Schedule to the Chartered Accountants Act 1949.

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

Certified to be true copy


Jyotika Grover
Assistant Secretary,
Disciplinary Directorate

The Institute of Chartered Accountants of India,
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