



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

PR-219/18/DD/237/2018/BOD/518/19

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. Shambhu Nath Sharma, Delhi

...Complainant

-Vs.-

CA. Jattashankar Prasad (M.No.543029)  
M/s. Kushwaha & Associates,  
Chartered Accountants, Delhi

...Respondent

[PR-219/18/DD/237/2018/BOD/518/19]

MEMBERS PRESENT: (Through video conferencing)

CA. Prasanna Kumar D., Presiding Officer  
Mrs. Rani Nair, (IRS, Retd.), Government Nominee  
CA. Satish Kumar Gupta, Member

Date of Final Hearing: 5<sup>th</sup> October, 2021

1. The Board of Discipline vide Report dated 11<sup>th</sup> February, 2021 held that CA. Jattashankar Prasad (M.No.543029) is guilty of Professional and Other Misconduct falling within the meaning of Item (8) and (9) of Part I and Item (2) of Part IV of the First Schedule of the Chartered Accountants Act, 1949 read with Section 22 of the said Act.

2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against CA. Jattashankar Prasad and communication dated 16<sup>th</sup> September, 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 5<sup>th</sup> October, 2021.

3. CA. Jattashankar Prasad appeared before the Board on 5<sup>th</sup> October, 2021 through video conferencing and made his oral representation thereat.

4. The Board has carefully gone through the facts of the case and also the oral representation of CA. Jattashankar Prasad.

5. As per the Findings of the Board as contained in its report, the sequence of events and documents available on record clearly depicts the misconduct on the part of Respondent as both the date of resignation letter and the date of signing the audited Balance Sheet of M/s. Mahamritunjaya Communication Private Limited (Company) contains same date i.e. 29<sup>th</sup> September 2017 and the letter seeking no-objection of the Complainant was dated 10<sup>th</sup> October 2017 i.e. after the date of



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signing of the audited Balance Sheet of the Company i.e. after the completion of the audit. Further, on perusal of the letter dated 10<sup>th</sup> October 2017 allegedly written by the Respondent seeking the no-objection of the Complainant with respect to his appointment as the auditor of the company, it is noted that it bears the receiving along with stamp of the Complainant firm which the Complainant has alleged to be forged and the Respondent has failed to bring on record any other evidence about the delivery of the communication with the Complainant seeking his no-objection prior to his appointment as auditor of the Company. The Board also viewed that glaring discrepancies in the date of the appointment/communication clearly reflect that due compliance of the provisions of Companies Act 2013 was not ensured by the Respondent before accepting appointment. The Board also viewed that the Respondent has also admitted his guilt during the hearing before it and thus, it is evident that in order to show compliance of provisions of Companies Act 2013 and Rules framed thereunder he has helped in creating fake documents which clearly shows the malafide intent on the part of the Respondent for seeking his appointment as auditor of the Company for the FY 2016-17. The said act of the Respondent by accepting position as auditor previously held by another auditor without first communicating with him in writing and without ascertaining the compliance of requirements of Section 139 (8), Section 140 of the Companies Act, 2013 read with Rule 8 of the Companies (Audit and Auditors) Rules, 2014 in respect of his appointment, the act of accepting fake documents by the Respondent is clearly unbecoming of a Chartered Accountant and has also brought disrepute to the profession and the Institute. Thus, it has already been held that CA. Jattashankar Prasad is Guilty of Professional and Other Misconduct falling within the meaning of Item (8) and (9) of Part I and Item (2) of Part IV of the First Schedule of the Chartered Accountants Act, 1949 read with Section 22 of the said Act.

6. Upon consideration of the facts of the case, the consequent misconduct of CA. Jattashankar Prasad (M.No.543029) and keeping in view his oral representation before it, the Board decided to remove the name of CA. Jattashankar Prasad (M.No.543029) from the Register of Members for a period of 15 (fifteen) days and also imposed a fine of Rs. 5,000/- (Rupees Five 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: 10<sup>th</sup> January, 2022

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

  
नीलम पुंडीर / Neelam Pundir  
कार्यकारी अधिकारी / Executive Officer  
अनुशासनात्मक निदेशालय / Disciplinary Directorate  
इंस्टिट्यूट 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/219/18/DD-237/18/BOD/518/2019]**

**CORAM: (Through Video Conferencing)**

**CA. Prasanna Kumar D., Presiding Officer**

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

**CA. Durgesh Kumar Kabra, Member**

**In the matter of:**

**CA. Shambhu Nath Sharma (M.No.097334)**

**A-139, Basement, Gali No.1,**

**Choudhary Complex,**

**Madhu Vihar**

**DELHI 110092.**

**.....Complainant**

**-Vs.-**

**CA. Jattashankar Prasad Kushwaha (M.No. 543029)**

**M/s. Kushwaha & Associates**

**FRN 030600N**

**D-156, Gali Number 6 ,Laxmi Nagar**

**DELHI -110092.**

**.....Respondent**

**DATE OF FINAL HEARING**

**19<sup>th</sup> December, 2020**

**PLACE OF HEARING**

**Through video conferencing**

**PARTIES PRESENT:**

Complainant : CA. Shambhu Nath Sharma  
Respondent : CA. Jattashankar Prasad Kushwaha

**Brief background of the case:**

1. The Complainant was appointed as Statutory Auditor of M/s. Mahamritunjaya Communication Private Limited (hereinafter referred to as the "Company") for a term of 5 years from FY 2014-15 to FY 2018-19 and he conducted the audit of the Company till 31/03/2016. The Company neither sent him an intimation with respect to appointment of the Respondent as the auditor of the Company nor did the Company / Client discuss any updates about the due dates of TDS/GST/Audit and pending fees with the Complainant. On 10/05/2018, the Complainant came to know through the MCA portal that the Respondent Firm was appointed as Statutory Auditor of the Company for FY 2016-17 at the EGM of the Company which was held on 06/10/2017. Thus, without getting any no-objection and resignation letter from the Complainant, the Respondent was appointed as auditor of the Company which is non-compliance under Section 139 and 140 of the Companies Act, 2013.

**Charges alleged :**

2. The Board noted the charges alleged against the Respondent as stated here under:-

- a) The Respondent submitted the resignation letter dated 29/09/2017 of the Complainant containing fake signature and stamp on a forged letter head/ rubber stamp for his appointment as statutory auditor of the Company for FY 2016-17. The resignation letter of the Complainant was dated 29.09.2017 and the Balance Sheet was also signed on 29.09.2017 i.e. on the same date.
- b) The letter dated 10.10.2017 seeking the no-objection of the Complainant also contains fake signature and stamp.
- c) The Complainant further submitted the chain of e-mails between the Respondent and the staff of the Complainant with respect to instructions to



file e-Form ADT-3 (Notice of resignation by the auditor) as the Complainant had never filed ADT-3 and the Respondent affixed his DSC on ADT-3 without the consent/ authorisation of the Complainant.

**Proceedings held:**

3. During the proceedings held on 19<sup>th</sup> December, 2020, both the Respondent and the Complainant were present before the Board through video conferencing and made their respective submissions. The Respondent admitted that the documents were received by him through his staff through email and that his appointment was done due to mistake. The Respondent further admitted that he failed to communicate his appointment as Statutory Auditor of the Company for FY 2016-17 with the Complainant due to mistake of his staff.

**Observations and Findings of the Board:**

4. The Board took into view the provision of Item (8) of Part I of First Schedule to the Chartered Accountants Act, 1949 which provides as under:-

*"(8) accepts a position as auditor previously held by another chartered accountant or a certified auditor who has been issued certificate under the Restricted Certificate Rules, 1932 without first communicating with him in writing"*

5. With regard to the above charge under Item (8) of Part I of First Schedule, the Board observed that the sequence of events and documents clearly depicts the misconduct on the part of Respondent as both the date of resignation letter and the date of signing the audited Balance Sheet of the Company was 29<sup>th</sup> September 2017 and the letter seeking no-objection of the Complainant was dated 10<sup>th</sup> October 2017 i.e. after the date of signing of the audited Balance Sheet of the Company i.e. after the completion of the audit. Further, on perusal of the letter dated 10<sup>th</sup> October 2017 allegedly written by the Respondent seeking the no-objection of the Complainant with respect to his appointment as the auditor of the company, it is noted that it bears the receiving along with stamp of the Complainant firm which the Complainant has alleged

to be forged and the Respondent has failed to bring on record any other evidence about the delivery of the communication with the Complainant seeking his no-objection prior to his appointment as auditor of the Company. Further, on account of specific admission of the guilt by the Respondent during the proceedings it was held that the Respondent is guilty in respect of the said charge.

6. The Board during the proceedings noted that Item (9) of Part I of First Schedule to the Chartered Accountants Act, 1949 was also alleged by the Complainant against the Respondent. Although, observations with respect to the said charge were made in para 11.4 to 11.6 of the Prima Facie Opinion, however, inadvertently, the said item was not referred to in the concluding part of the Prima Facie Opinion. But, since the non-compliance of Section 139 and 140 of the Companies Act, 2013 and the Rules framed thereunder was also apparent as per the facts of the case the Board also took into view the relevant provisions of the Companies Act, 2013 and Companies (Audit and Auditors) Rules, 2014 which provides as under:-

**Companies Act, 2013**

Section 139(8):

*"any casual vacancy in the office of an auditor shall in the case of a company other than a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Board of Directors within thirty days, but if such casual vacancy is as a result of the resignation of an auditor, such appointment shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting."*

Section 140 - Removal, resignation of auditor and giving of special notice

*"(2) The auditor who has resigned from the company shall file within a period of thirty days from the date of resignation, a statement in the prescribed form with the company and the Registrar, and in case of companies referred to in sub-section (5) of section 139, the auditor shall also file such statement with the Comptroller and Auditor-General of India, indicating the reasons and other facts as may be relevant with regard to his resignation."*

**Companies (Audit and Auditors) Rules, 2014**



*"8. Resignation of auditor. —For the purposes of sub-section (2) of section 140, when an auditor has resigned from the company, he shall file a statement in Form ADT-3."*

7. With regard to the above charge, the Board noted that date of resignation of the Complainant from the position of the auditor of the company and the date of signing the audited Financial Statement of the company were the same i.e. 29<sup>th</sup> September 2017. The Board also observed that the copy of the Board's resolution showing the Respondent's appointment as the auditor of the company was undated and the letter seeking no-objection of the Complainant as regards Respondent's appointment as the auditor of the company was dated 10<sup>th</sup> October 2017 i.e. after the date of signing of Balance Sheet of the Company i.e. after the completion of the audit. Further, the Complainant brought on record copy of the Notice of the AGM to be held on 29<sup>th</sup> September 2017 to ratify the appointment of the Respondent as the statutory auditor of the company. Whereas as per Form ADT-1 and the copy of the resolution for convening the EGM, the date of the EGM in which Respondent's appointment was ratified is 6<sup>th</sup> October 2017. The Board was of the view that these glaring discrepancies in the date of the appointment/communication clearly reflect that due compliance of the provisions of Companies Act 2013 was not ensured by the Respondent before accepting appointment and thus, he is guilty of Professional Misconduct falling within the meaning of Item (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

8. The Board also noted that the Complainant alleged that the Respondent affixed his digital signatures on e-Form ADT-3 (Notice of Resignation by the auditor) without the consent/ authorisation of the Complainant wherein the ground of the resignation was mentioned as *"Due to pre occupied of other assignments, we are not in position to devote our time to the affairs of the company"*.

The Board also observed that as per email dated 3<sup>rd</sup> November, 2017 the Respondent's firm is advising Mr. Mahendra (ex- staff as confirmed by the Complainant and further supported by the written statement of the Respondent that he received resignation letter, NOC, ADT-3, USB Token from the Complainant's office) to fill up Form ADT3 with details of the Complainant with attachment of DSC for filing with MCA. This supports the statement of the Complainant that his DSC on ADT-3 was affixed without his consent /authorisation. Further, the Board perused the e-mail dated 10<sup>th</sup> June, 201 and 11<sup>th</sup> March, 2017 and observed that appointment letter, resignation letter, Form ADT- 3 ,



Form ADT-1 was e mailed by Mr. Mahendra Kumar (staff of the Complainant) and not by the Complainant himself to the Respondent pointing towards the complicity of the Respondent with Mr. Mahendra Kumar.

9. The Board also noted that the Respondent admitted his guilt during the hearing and thus, it is evident that in order to show compliance of above provisions of Companies Act 2013 and Rules framed thereunder he has helped in creating fake documents which clearly shows the malafide intent on the part of the Respondent for seeking his appointment as auditor of the Company for the FY 2016-17. Accordingly, the Board viewed that such conduct on the part of Respondent is clearly unbecoming of a chartered accountant and has brought disrepute to the profession. Thus, the Board viewed that the Respondent is guilty of Other Misconduct falling within the meaning of Item (2) of Part IV of the First Schedule.

10. Having regard to the attendant circumstances, the evidences and the submissions on record, the Board is of the considered view that the Respondent has committed an act of Professional and Other Misconduct falling within the meaning of Item (8) and (9) of Part I and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 for accepting appointment as auditor of the Company without communicating with the previous auditor, not ensuring compliance with the provisions of the Companies Act 2013 as regards such appointment and for assisting in creation of fake documents to justify his appointment.

**CONCLUSION:**

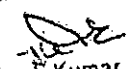
11. Thus, in conclusion, in the considered opinion of the Board of Discipline, the Respondent is **Guilty** of Professional and Other Misconduct falling within the meaning of Item (8) and (9) of Part I and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act.

Sd/-

**CA. PRASANNA KUMAR D.  
(PRESIDING OFFICER)**

DATE: 11<sup>th</sup> February, 2021

Certified to be true copy

  
Mukesh Kumar Mittal  
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