



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

PR/23/18/DD-38/18/BOD/500/2019

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. (Dr.) Girish B. Gundesha (M.No.042885)
M/s Gundesha & Associates (FRN.125485W)
Pune

...Complainant

-Vs.-

CA. Rupesh Prakash Lohade (M.No.152854)
M/s. Pash Lohade & Associates (FRN: 146094W)
Pune

...Respondent

[PR/23/18/DD-38/18/BOD/500/2019]

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)

CA. Satish Kumar Gupta, Member

(Through video conferencing)

Date of Final Hearing: 6th August, 2021

1. The Board of Discipline vide Report dated 11th February, 2021 held that CA. Rupesh Prakash Lohade (M.No.152854) is guilty of "Professional Misconduct" falling within the meaning of Item (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. Rupesh Prakash Lohade 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. Rupesh Prakash Lohade appeared before the Board through video conferencing and made his oral representation.
4. The Board has carefully gone through the facts of the case alongwith oral representation of CA. Rupesh Prakash Lohade.
5. As per the Findings of the Board as contained in its report, CA. Rupesh Prakash Lohade has committed an act of Professional Misconduct for accepting Statutory/Tax audit of Fossil Hotels Pvt. Ltd. and M/s Ishanya Financial Services for FY 2016-17 without first communicating with the Complainant in writing and thus, it has already been held that CA. Rupesh Prakash Lohade is Guilty of Professional Misconduct falling within the meaning of Item (8) of Part I of the First Schedule of the Chartered Accountants Act, 1949.



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6. Upon consideration of the facts of the case, the consequent misconduct of **CA. Rupesh Prakash Lohade** and keeping in view his oral representation before it, the Board decided to Reprimand **CA. Rupesh Prakash Lohade (M.No.152854)**.

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

Date: 10th January, 2022

सहा प्रमाणित 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, Shahdara, 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/23/18/DD-38/18/BOD/500/2019]

CORAM:

CA. Prasanna Kumar D., Presiding Officer	(In Person)
Mrs. Rani Nair (IRS, Retd.), Government Nominee	(Through Video-Conferencing)
CA. Durgesh Kumar Kabra, Member	(In Person)

In the matter of:

CA.(Dr.) Girish B.Gundesha (M.No.042885)
M/s Gundesha & Associates, (FRN.125485W)
303, Khopkar Heights
Opp. YMCA Club,
383, New Rasta Peth,
PUNE 411011

....Complainant

-Vs-

CA. Rupesh Prakash Lohade (M.No.152854)
M/s Pesh Lohade & Associates (FRN: 146094W)
Floor No.2, Vaibhav Building,
Maharashtra Co Operative Housing Society,
Pune-Satara Road,
PUNE 411009

....Respondent

DATE OF FINAL HEARING : 29th January, 2021
PLACE OF HEARING : Mumbai Office/ Through Video Conferencing

PARTIES PRESENT (Through video Conferencing):

COMPLAINANT	:	CA.(Dr.) Girish B.Gundesha
RESPONDENT	:	CA. Rupesh Prakash Lohade

FINDINGS:

1. The Board noted the charge against the Respondent that he accepted the position as Tax/Statutory Auditor of the following firms/ companies for the FY 2016-17 without first communicating in writing with the Complainant, being the previous auditor of the said firms/ companies:
 - (a) Fossil Estate,
 - (b) Fossil Hotels Pvt. Ltd.,
 - (c) Ishanya Motors LLP and
 - (d) Ishanya Financial Services

2. The Board heard the submissions of both the Complainant and the Respondent who were present before it through video conferencing and duly considered the documents available on record.

3. During the course of enquiry, the Complainant stated that the Prima Facie Opinion does not cover Clause (1) of Part-II of the Second schedule whereas payment of his audit fees was still pending.

4. The Board noted that the Respondent, in his defence, submitted as under:
 - (a) The said appointment was deemed to be in the knowledge of the Complainant as he received the documents from the office of the Complainant itself for conduct of audit, there were exchange of emails between them.
 - (b) After mutual consent between the client and the Complainant, the audit work was handed over to the Respondent over an implied consent.
 - (c) The Respondent orally communicated with the Complainant before the acceptance of audit.
 - (d) The Respondent was earlier appointed as internal auditor for one of the firms of the client. The Respondent was giving services to the client since last 3-5 years and also came in contact with the Complainant. For FY 2016-17, when the work was allotted to him for filing of Balance Sheet and submission of the ITR for the first time, the Respondent communicated with the Complainant also and the client told him to do the necessary work. Later on, after whole audit was completed, the Respondent came to know that from 2011 to 2016, no bill for professional services rendered by the Complainant was raised on the client. Further, only in the Balance Sheet the fee was booked and the client was signing the same. The said pending fees dispute was never known to the Respondent unless he signed the Balance Sheet.
 - (e) The Respondent was doing job with the Complainant from day one and he never intended for poaching of clients of the Complainant.

5. On perusal of the documents and submissions on record, as regards the contention of the Complainant to consider applicability of Clause (1) of Part II of the Second Schedule, the Board noted that the Complainant in his complaint in Form 'I' made allegations against the Respondent only with respect to Clause (8) of Part I of First Schedule. Since the charges alleged against the Respondent cannot be extended, the said contention of the Complainant was not accepted and accordingly, the Respondent has not been examined in this respect.
6. The Board also noted that the Complainant brought on record documentary evidences to establish that the Respondent was the Tax and Statutory auditor of only the following respective entities for the Assessment Year 2017-2018:
(a) Fossil Hotels Pvt. Ltd
(b) Ishanya Financial Services
No documentary evidence was on record to show that the Respondent accepted the audit of the following entities without prior written communication with the Complainant:
(a) Fossil Estate,
(b) Ishanya Motors LLP
7. Further from the copies of email correspondence brought on record by both the parties, the Board observed that there was exchange of emails between the Complainant and the Respondent alongwith the auditee, but, they were in respect of some other entity and not the entities in respect of which allegation is made against the Respondent.
8. The Board took into view Code of Ethics (Reprint December, 2010 Edition) and as per same "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.
(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)
In the instant case, the Board observed that it can be clearly made out that the Respondent did not communicate with the Complainant prior to acceptance of the audit. The Board was of the view that inherent knowledge of the incoming auditor of the auditee to the retiring auditor does not absolve the incoming auditor of the

responsibility cast upon him to communicate as stipulated under Item (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

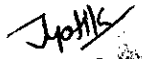
9. Having regard to the attendant circumstances, the evidence on record and the submissions of the parties, the Board is of the considered view that the Respondent has committed an act of Professional Misconduct falling within the meaning of Item (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949 for accepting Statutory/Tax audit of Fossil Hotels Pvt. Ltd. and M/s Ishanya Financial Services for FY 2016-17 without first communicating with the Complainant in writing.

CONCLUSION:

10. 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) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

Sd/-

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

Certified to be true copy

Jyoti K. Grover
Assistant Secretary,
Disciplinary Directorate
The Institute of Chartered Accountants of India,
ICAI Bhawan, Vishwas Nagar, Shandra, Delhi-110032