

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/17/2018/DD/74/18/BOD/532/2019]

CORAM:

CA. Prasanna Kumar D., Presiding Officer (physically at Vishwas Nagar, Delhi)
Mrs. Rani Nair (IRS, Retd.), Government Nominee (through video conferencing)

In the matter of:

Shri Pankaj Kumar Kedia
President, All Tax Professionals Association
89 Beadon Street,
KOLKATA 700006Complainant

-Vs.-

CA. Sonu Jain (M.No. 060015)
M/s. Jain Sonu & Associates,
23A Gurupada Haldar Road,
1st Floor,
KOLKATA 700026Respondent

DATE OF FINAL HEARING : 24th March, 2021
PLACE OF HEARING : Vishwas Nagar, Delhi/ Through video conferencing

PARTIES PRESENT:

Respondent : CA. Sonu Jain(through video conferencing)

Findings:

Charge alleged:

1. The Complainant alleged following charges against the Respondent:-
 - a. The Respondent solicited work by personal communication i.e. through an email dated 27th June, 2016 highlighting her expertise in the field of conducting Statutory Audit, Internal Audit, Revenue Audit, Stock Audit, Snap Audit, Migration Audit, Tax Audit & Other works.
 - b. The Respondent used the designation other than Chartered Accountant i.e. Company Secretary in the said email communication which is not allowed to be used by practising Professionals of the Institute.

Brief of Proceedings held:

2. During the hearing held on 24th March, 2021, the Board noted that the Respondent was present before it through video conferencing. The Board also noted that neither the Complainant/his authorised representative were present before the Board nor was there any intimation as regards his non-appearance. Thus, the Board proceeded ahead with the hearing in the case. The Respondent made her detailed oral submissions before the Board and was examined by the Board.

On consideration of the documents and submissions on record, the Board decided to conclude the proceedings in the case with the direction to the Respondent to provide the following documents and also provide a copy of the same to the Complainant to provide his comments thereon, if any:

- (a) Copy of e-mail sent by the Respondent to CA. Kamal Bhagrodia in the alleged matter.
- (b) Copy of e-mail sent by the Respondent to UCO Bank in the alleged matter.

Accordingly, the decision on the misconduct of the Respondent was kept reserved by the Board.

In compliance of the above directions, the Respondent vide emails dated 24/03/2021 and 24/06/2021 submitted her response. Thereafter, her response was shared with the Complainant for his comments thereon, if any. However, no response was received from the Complainant.

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- 2.1 Thereafter, the Board at its meeting held on 30th July 2021, on consideration of the submissions and documents on record decided on the conduct of the Respondent.

Submissions of the Respondent:

3. The brief of the submissions of the Respondent is as under:-
- a. The Complainant has relied upon an email dated 27th June, 2016 wherein the Respondent has used the designation of Company Secretary. In this regard, the Respondent submitted that the said email appears to be a message forwarded by some individual to some other individual and the Respondent never had any communication with the Complainant entity or the individual representing the same. The Respondent further stated that the said email may be fabricated or be procured through inappropriate means and used out of context by the Complainant. Further, the said email was addressed to some General Manager without mentioning the name of the concerned business entity.
 - b. The junior employee of the Respondent had at one point of time drafted an email of the nature as specified. The said email drafted by junior employee was not dispatched to any business entity or person to seek professional work and upon discovery of the fact that such note was drafted, it surfaced that the said draft had been shared with a personal friend of the Respondent.
 - c. The Respondent is a qualified Chartered Accountant and a Company Secretary. Further, the Respondent holds a Certificate of full time Practice and does not hold a Certificate as a practicing Company Secretary.
 - d. The Respondent further vide her email dated 14/11/2019 and 24/03/2021 submitted as under:-
 - i. The Respondent in response to allegation under Clause (6) submitted that CA can make application for empanelment for allotment of audit and other professional work. The Government Departments, Government companies/Corporations, Courts, Co-operative Societies & banks and other similar institutions prepare panel of Chartered Accountants for allotment of audit and other professional work. Where the existence of such a panel is within the knowledge of a member, he is free to write to the concerned organisation with a request to place his name on the panel. Further, the email-copy which is not containing any receiver mail ID was drafted for this particular purpose only.

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Although the credentials put there by office bearer of the Respondent was wrong, it should have been in the name of Chartered Accountant not Company Secretary. The format from where it was copied had Company Secretary mentioned on it. The same was copied without making necessary modifications in professional capacity upon work being allotted to the Respondent by PSU i.e. UCO Bank.

- ii. In response to allegation under Clause (7), the Respondent submitted that the work "Company Secretary" is erroneously typed by her office bearer. The Respondent had been appointed as Scrutinizer in the AGM of UCO Bank and had given the report as practicing CA not as CS. If the error would have been done intentionally then there would have been Company Secretary written over the document. The Respondent submitted copy of the same as annexure to her submissions.
- iii. The Respondent further referred to Section 108 of the Companies Act, 2013 read with Rule 20 of Companies (Management and Administration) Rules, 2014 and stated that following person may be appointed as Scrutinizer:-
 - A Company Secretary in Practice, or
 - Any other professional from other Institutes as prescribed,The Scrutinizer should not be in employment of the Company and should be a person of repute.
Therefore, applying for the opportunity in response to their tender as Scrutinizer was lawfully correct.
- iv. The extant complaint was lodged out of some personal grudge against her. The Respondent further had also communicated the receiver to not to consider the e-mail as it was erroneously drafted and mistakenly sent.
- v. The Complainant had fabricated the email and had tried to misuse her communication in collusion with other people.
- vi. The Respondent had already submitted her Tax files stating her source of income. The same shows that she neither had practiced as Company Secretary nor had any COP of the same.
- e. The Respondent further during the hearing dated 24/03/2021 submitted that through her e-mail ID on 27th June, 2016 the e-mail was sent to CA. Kamal Bhagrodia and he is doing his own practice. The said raw email was by mistake drafted and sent by her assistant and she had made an affidavit with respect to this fact that this email was sent by mistake to one CA. Kamal Bhagrodia. On knowledge of the same, the Respondent personally talked to CA. Kamal Bhagrodia to "*Please withdraw this mail because this mail was a raw mail partly*

drafted and partly not drafted, by mistake it has been sent it. I am withdrawing this mail and you please do not proceed and delete from your account"

- f. CA. Kamal Bhagrodia is not the General Manager, he is not in the Head Office. He is the person who is doing practice in individual name i.e. Kamal Bhagrodia & Associates. The Respondent further showed the profile of CA. Kamal Bhagrodia to the Board during hearing. The Respondent had never submitted her profile to CA. Kamal Bhagrodia to whom the drafted email was served. The Respondent further stated that she received an email from the UCO Bank and the meeting was scheduled for 29th June, 2016 with the AGM of the UCO Bank and the Respondent had also shown document to substantiate the said fact.

Observations and Findings of the Board:

4. The Board on consideration of the submissions and documents on record observed as under:-

- 4.1 The prime and the sole document on the basis of which allegations are made against the Respondent is the alleged email dated 27th June 2016 from the email id of the Respondent with the subject: Application for appointment as a Scrutinizer in AGM/EGM showing the Respondent as a Company Secretary and also showing her qualifications as 'FCA,ACS,DISA(ICAI),DIRM(ICAI),DBM amongst other things. The Respondent has brought on record an Affidavit in Service from Ms. Nitu Jain, one of her staff members to the following effect:

"That had been employed at Jain Sonu & Associates. I had worked under the partner CA. Sonu Jain.

1. *I had her E-Mail access at the Office and I was allotted to empanel firm as scrutinizer in Banks. I had copied the matter to seek empanelment from some pre-written text from interest.*
2. *Due to lack of knowledge, I was not aware of the carefulness of the professional degree which was supposed to be mentioned and I had also not shown to my employer also after drafting the same. Mistakefully I had sent without correction and getting it signed by the partner CA. Sonu Jain."*

The Board thus observed that although the Respondent ought to have been more careful with the use of her email-id, however, evidently there was no role of the Respondent in having the email issued. Further, the Respondent had issued her report in the capacity of the Scrutiniser of the UCO Bank on 29th June 2016. Thereafter, vide email dated 13th July 2016, the bill for rendering her

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professional services as a Scrutiniser was sent by the Respondent to the UCO Bank. She also brought on record a communication made vide email dated 27th June 2016 from one of the Officers of the UCO Bank informing her the date of the meeting as 29th June 2016. The Board thus observed that at the time when the alleged email had been issued, the Respondent had already been appointed as the Scrutiniser of UCO Bank. She also brought on record an apology message sent to CA. Kamal Bargodia on 30th June 2016 as regards sending of the alleged email.

Thus, the Board observed that there is nothing on record to suggest that she solicited clients or professional work by advertisement or personal communication. Accordingly, the Board viewed that Respondent is Not Guilty against the said charge.

- 4.2 With respect to the second charge of use of designation other than Chartered Accountant on professional documents, the Board observed that the Respondent was not practicing as a Company Secretary and the Complainant has also not submitted any other document other than the alleged email to substantiate that the Respondent has used both the said designations simultaneously. The Respondent in this regard also submitted an Affidavit of Service of Ms. Nitu Jain wherein she apologised for the use of said matter in the email under question without the approval of her employer (Respondent).
5. Considering the above, the Board viewed that the conduct of the Respondent cannot be stretched upon on the basis of one email forwarded by her junior employee and that too after receipt of confirmation from the UCO Bank for her engagement and that the Complainant has not brought on record any other professional document wherein the Respondent has used both the designations simultaneously. Accordingly, the Board held the Respondent Not Guilty in respect of the said charge.
6. Thus, having regard to the attendant circumstances, the evidence put forth during the proceedings and the submissions of the parties on record, the Board is of the considered view that the Respondent is Not Guilty of Professional Misconduct falling within the meaning of Item (6) and (7) of Part I of the First Schedule to the Chartered Accountants Act 1949.

CONCLUSION:

7. The Board of Discipline, in view of the above, is of the considered view that the Respondent is **Not Guilty** of Professional Misconduct falling within the meaning of Item (6) and (7) of Part I of First Schedule to the Chartered Accountants Act 1949.

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Accordingly, the Board passed Order for closure of the case in terms of the provisions of Rule 15(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

Sd/-

CA. PRASANNA KUMAR D.
(PRESIDING OFFICER)

DATE:01st February 2022

प्रमाणित सत्य प्रतिलिपि / Certified true copy

मुकेश कुमार मिश्रा / Mukesh Kumar Mittal
सहायक सचिव / Assistant Secretary
अनुशासनात्मक निदेशालय / Disciplinary Directorate
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