



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

PR-252/2017-DD/261/2017/BOD/559/2020

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. Rashmikant C. Thakkar (M.No. 040078)
M/s R.C. Thakkar & Associates, Vadodara

...Complainant

-Vs.-

CA. Abhay Mukesh Sharma (M. No. 154732)
Vadodara

...Respondent

[PR-252/2017-DD/261/2017/BOD/559/2020]

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. Abhay Mukesh Sharma (M. No. 154732) is guilty of "Professional Misconduct" falling within the meaning of Item (6) and (7) 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. Abhay Mukesh Sharma 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. Abhay Mukesh Sharma appeared before the Board through video conferencing and made his oral representation.
4. CA. Abhay Mukesh Sharma in his written representation dated 17th June, 2021 inter-alia submitted as under:-
 - a. The Complainant was well aware of the fact that he would not succeed in the issue regarding no-objection, so, he has raised all the issues right from the Respondent firm's constitution date to the use of abbreviation. The main base of the complaint was the issue of no-objection for which he has already been held Not Guilty. The other matters are ancillary, so, a considerate view should be taken.
 - b. The complaint was used by Complainant as a tool to threaten him and bring disrepute to his image. When NOC was denied by the Complainant, Respondent had refused the

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- appointment and intimated the same to the Complainant also. Further, the Complainant himself resigned from the assignment and did this complaint. If the Complainant was right, why he had resigned ?
- c. This complaint is not against Respondent but against every young Chartered Accountant who by fair means and hard work bring clients and senior Chartered Accountants use such kind of complaint as tool to threaten them.
- d. The Respondent further reiterated the fact that abbreviation which he had used was in line of his name and no attempt to steal or morph anyone's identity or any publicity was done by him. The abbreviation is nowhere near to Complainant's name. Further, the Respondent has stopped the use of abbreviation from the date of complaint.
- e. The Respondent has worked hard to earn whatever reputation he has and had not done any kind of financial fraud or brought any disrepute to Institute or any professional colleague.
5. The Board has carefully gone through the facts of the case along with the oral and written representation of **CA. Abhay Mukesh Sharma**.
6. As per the Findings of the Board as contained in its report, use of logo by **CA. Abhay Mukesh Sharma** on the letter head of his firm as well as the website is not in consonance with the prescribed requirements and thus, it has already been held that **CA. Abhay Mukesh Sharma** is Guilty of Professional Misconduct falling within the meaning of Item (6) and (7) 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. Abhay Mukesh Sharma** and keeping in view his oral and written representation before it, the Board decided to Reprimand **CA. Abhay Mukesh Sharma (M. No. 154732)**.

Sd/-

CA. PRASANNA KUMAR D.
(PRESIDING OFFICER)

Date: 1st February, 2022

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

अरुण कुमार / Anun Kumar
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक 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, 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/252/2017/DD/261/2017/BOD/559/2020]

CORAM:

CA. Prasanna Kumar D., Presiding Officer Mumbai)	(attended physically from ICAI, BKC,
Mrs. Rani Nair (IRS, Retd.), Government Nominee	(attended through video conferencing)
CA. Durgesh Kumar Kabra, Member	(attended physically from ICAI, BKC, Mumbai)

In the matter of:

CA. Rashmikant C. Thakkar (M.No. 040078)
M/s R.C. Thakkar & Associates, Gujarat

....Complainant

-vs-

CA. Abhay Mukesh Sharma (M. No. 154732) in Re:
302/1, Ujjwal Complex,
Near Akota stadium,
Akota, Vadodara
Gujarat-390020

....Respondent

DATE OF FINAL HEARING : 29th January, 2021
PLACE OF HEARING : Physically/ through video conferencing

PARTIES PRESENT (through video conferencing)

Complainant	:	CA. Rashmikant C. Thakkar (M.No. 040078)
Respondent	:	CA. Abhay Mukesh Sharma (M.No. 154732)

FINDINGS:

1. The Board noted the following charges against the Respondent:

- (a) The Respondent did not ensure compliance with the provisions of Section 140 of the Companies Act, 2013 before being appointed as the statutory Auditor of M/s Super Scientific Glass Industries Pvt. Ltd (hereinafter to be referred to as the "said Company") and before sending letter of NOC to the Complainant.
- (b) The Respondent acted in collusion with the Directors of the said company in securing the professional work allegedly with the support of a person who is not his partner or has secured the work by personal communication with the company.

Further, the Respondent got the professional work through his father who was a VAT Consultant of the said Company and he is being shown as an 'Associate' in the Respondent's firm. Moreover, the Complainant alleged that the accountant of the said company had delivered the letter of Respondent seeking NOC from the Complainant and was not directly sent by the Respondent himself; it indicates collusion of Respondent with the Company and solicitation of work.

- (c) The Respondent misrepresented the facts relating to the "resignation of the Complainant" (existing Auditor of the said company) in his letter dated 08.06.2017 and hence, he has violated the Code of Ethics. The Respondent did not check whether the Complainant (existing Auditor) has resigned or not and has simply accepted appointed as the new Auditor of the said company.
- (d) The Respondent violated Institute's guidelines, among others, relating to use of logo on the websites, not mentioning Membership Number (MRN), Firm Registration Number (FRN) and Firm's address on the letter seeking No Objection Certificate from the other Auditor.
- (e) The Respondent misrepresented in showing the fact of constitution of Respondent's firm as 1963.

The Respondent had not been held prima facie guilty with respect to charges specified at (a), (b), (c) and (e) above by the Director(Discipline). He was found prima facie guilty with respect to charge specified at (d) above falling within the meaning of Item (6) and (7) of Part I of First Schedule to the Chartered Accountants Act, 1949 and the said view had been accepted by the Board of Discipline. Accordingly, the Respondent has been examined during enquiry in respect of the said charge.

- 2. The Board heard the submissions of the Respondent and Complainant who were present through video conferencing and duly considered the documents available on record.
- 3. The Board noted that the Respondent in his defence, inter-alia, submitted as under:
 - (a) "AMS" is not a logo and merely an abbreviation that is being used by him. The Logo is neither defined in the ethics nor is defined under any Act. Wherever acronym was mentioned, the firm name was also mentioned. Further, this abbreviation is not registered anywhere and cannot tantamount to 'Logo'.
 - (b) The Respondent referring to Page 158 of Code of Ethics submitted that the legislative intent behind this ban was to stop certain firms that were using Logo that was not connected to their firm name and were advertising the same. The Institute had also observed certain members/firms by themselves or through engineered name had been seeking to obtain firm name approval based on the name of the partner/s selected in the manner that Logo of the firm would be identical to the firm name which would have not been otherwise permissible as firm name under Regulation 190. Hence, the Institute wanted to stop such kind of members/firms that were trying to steal the identity or to morphed the identity of some other member/firm/or some any other person or network. By using this abbreviation, the Respondent had not tried to steal or morph anyone else's identity.
 - (c) His abbreviation was nowhere near to the name of the Complainant or Complainant's Firm.
 - (d) The Respondent has not tried to promote this acronym anywhere anytime.

4. The Board noted that the Council at its 212th meeting held in January, 2001 approved the 'Website Guidelines' for posting the particulars on website by CAs in practice and firms of CAs in practice. Few amendments were made in such guidelines by the Council in its 235th meeting held in July, 2003 and then again in its 345th meeting held in August, 2015. As per the revised guidelines, since, the Chartered Accountants and the firms of Chartered Accountants are not permitted to use logo with effect from 1st July, 1998, they cannot use logo on the website also.
5. The Board also observed that though earlier, the use of logos by members which were unconnected with the first letter of the name of the firm or its partners or proprietors only were not permitted, yet, the subsequent experience of the Institute in cases was also considered where registration of firm used to have been secured in circumvention of the provisions contained in the Regulation 190 of the Chartered Accountants Regulations, 1988. The members/firms by themselves or through engineered name had been seeking to obtain firm name approval based on the name of the partner/s selected in the manner that logo of the firm would be identical to the firm name which would have not otherwise been permissible as firm name under Regulation 190. In order to ensure compliance with the Regulations, the Council at its meeting held in December 1997, therefore, decided that the use of logo/monogram of any kind/form/style/design/colour etc. whatsoever on any display material or media e.g. paper stationery, documents, visiting cards, magnetic devices, internet, sign board, by the members in practice and/or the firm of Chartered Accountants, be prohibited. Further, use/printing of member/firm name in any other manner tantamount to logo/monogram was also prohibited (Page 159 of Code of Ethics).
6. Thus, the Board was of view that use of logo by the Respondent on the letter head of his firm as well as the website is not in consonance with the prescribed requirements and violative of Item (6) and (7) of Part I of First Schedule to the Chartered Accountants Act 1949.

CONCLUSION:

7. 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 (6) and (7) 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
Jyotika Grover
Assistant Secretary,
Disciplinary Directorate
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