



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

PR-111/2015-DD/115/2015/BOD/273/2017

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. Sunil Kumar (M.No.515659), New Delhi**

**...Complainant**

**-Vs.-**

**CA. Mayur Batra (M. No. 096613),  
M/s Mayur Batra & Co. (FRN No. 018694N), New Delhi**

**...Respondent**

**[PR-111/2015-DD/115/2015/BOD/273/2017]**

**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: 28<sup>th</sup> October, 2021**

1. The Board of Discipline vide Report dated 11<sup>th</sup> February, 2021 held that **CA. Mayur Batra (M. No. 096613)** is Guilty of Professional Misconduct falling within the meaning of Item (8) and (11) of Part I of First Schedule to the Chartered Accountants Act 1949.
2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against **CA. Mayur Batra** and communication dated 21<sup>st</sup> October, 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 28<sup>th</sup> October, 2021. Thereafter, he submitted his written representation dated 27<sup>th</sup> October, 2021 on the Findings of the Board.
3. The Board noted that **CA. Mayur Batra** did not appear before the Board on 28<sup>th</sup> October, 2021. The Respondent vide email dated 27<sup>th</sup> October 2021 informed that due to ongoing medical treatment of his wife in Dubai, it will not be possible for him to be present in person before the Board and requested for exemption from personal appearance. Since the



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written representation of the Respondent was already on record, the Board decided to consider the case of the Respondent for award of punishment.

4. **CA. Mayur Batra** in his written representation inter-alia submitted as under:-

- a. He surrendered his membership of ICAI by voluntarily opting to have his name removed from the Register of Members as well as the Certificate of Practice, effective from 5<sup>th</sup> February, 2021, due to medical emergency in his family which has led to not only trauma and agony but has also caused deterioration of his own physical and mental health.
- b. Due to ill fate, unavoidable and stressful circumstances through which Respondent has been passing, he couldn't even properly represent his case as he has mostly been abroad for medical treatment of his wife and could not afford to leave her alone to attend the proceedings.
- c. The Respondent requested for examination of the written submissions and evidences which were placed on record during the course of Disciplinary proceedings and take a compassionate and considerate view as he had no malafide intent to disobey or violate the Rules and Regulations (including Code of Ethics) of the ICAI. It was merely a case of omissions which occurred inadvertently and furthermore, these lapses were procedural in nature causing no harm or loss or financial damage to anyone or bring any dispute to the profession.
- d. The Respondent further requested for a lenient view in the present case.

5. The Board has carefully gone through the facts of the case and also the written representation of **CA. Mayur Batra**.

6. As regards the plea raised by the Respondent in his written representation that since he has already surrendered his membership with the Institute alongwith Certificate of Practice, whether the Board would like to view the conduct of its former member, the Board took into view the provisions of Rule 2(1)(g) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 wherein the term Member is defined as under:

*"Member" means an associate or fellow member of the Institute and includes a person who was a member of the Institute on the date of the alleged misconduct, although he has*



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*ceased to be a member of the Institute at the time of filing the complaint, initiation of the inquiry or thereafter."*

Accordingly, the Board held that it is well within its powers to award punishment to the Respondent on his misconduct as coming out in its Findings as he was a Member of the Institute at the time of alleged misconduct.

7. Further, as per the Findings of the Board as contained in its report, with respect to the charge of non-communication with the previous auditor before acceptance of audit assignment, the Board viewed that the communication made by the Respondent through courier is not an acceptable mode of seeking no objection and the said letter was also received back by the Respondent. Thus, there is no evidence of positive delivery of communication with the previous auditor. Further, the plea raised by the Respondent that Complainant had inherent knowledge of the Respondent's appointment and that he communicated with the Respondent even prior to the Respondent's appointment as auditor of the company is not sustainable as specific responsibility is casted on the incoming auditor to communicate with the previous auditor before acceptance of audit assignment and provide positive evidence of such communication and the said responsibility cannot be passed on to the outgoing auditor or the auditee. As regards the charge of engagement in any other business or occupation other than the profession of Chartered Accountant, the Board noted that although apart from authentication of the Financial Statement of the company, there was no evidence to show that the Respondent was involved in the management of the day to day affairs of the Company, however, the Board clearly observed that the Respondent has shown his occupation as "Business" in the incorporation documents available under Public Documents on the MCA Portal from where it can be inferred that the Respondent was involved in the business while holding full time Certificate of Practice and thus, was required to seek prior permission of the Council before engaging himself into the business other than the profession of accountancy.

Thus, it has already been held that **CA. Mayur Batra** is Guilty of Professional Misconduct falling within the meaning of Item (8) and (11) of Part I of First Schedule to the Chartered Accountants Act 1949. Further, the Board was conscious of the fact that the Respondent had been held guilty under Item(11) of Part I of the First Schedule in another Disciplinary case against him and the said fact has been considered while award of punishment to the Respondent in the instant case by the Board.



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8. Upon consideration of the facts of the case, the consequent misconduct of **CA. Mayur Batra (M. No. 096613)** and keeping in view his written representation before it, the Board decided to Reprimand **CA. Mayur Batra (M. No.096613)**.

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

**Date: 1<sup>st</sup> February, 2022**

**प्रमाणित सत्य प्रतिलिपि / Certified true copy**

**मुकेश कुमार मिश्र / Mukesh Kumar Mittal**  
**सहायक सचिव / Assistant Secretary**  
**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-111/2015-DD/115/2015/BOD/273/2017]**

**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. Sunil Kumar (M.No.515659),  
House No.539/B, Street No.7-B,  
E-Block, Sangam Vihar,  
New Delhi-110 062

.....Complainant

**-Vs.-**

CA Mayur Batra (M. No. 096613),  
M/s Mayur Batra & Co. (FRN No. 018694N),  
Chartered Accountants,  
7, Barakhamba Road,  
New Delhi-110 001

.....Respondent

DATE OF FINAL HEARING	:	18 <sup>th</sup> January, 2021
PLACE OF HEARING	:	New Delhi/ through video conferencing

**PARTIES PRESENT:**

Complainant	:	CA. Sunil Kumar (physically)
Counsel for the Respondent	:	CA. A. P. Singh (Through Video Conferencing)

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**FINDINGS:**

**Charges alleged:**

1. The following charges are alleged against the Respondent:-
  - (a) The Respondent accepted the audit of M/s Yamato Scale India Private Limited (hereinafter referred to as the 'Company') for the FY 2014-15 without first communicating in writing with the Complainant being the previous auditor of the company.
  - (b) The Respondent accepted the appointment as statutory auditor of the company without first ascertaining whether the requirements of Section 225 of the Companies Act, 1956 (Corresponding Section 139/140 of the Companies Act, 2013) in respect of such appointment have been duly complied with.
  - (c) The Respondent was carrying on whole time directorship in M/s MBC Global Advisory Services Private Limited (MBC Global) besides being in full time practice.

**Proceedings held:**

2. During the hearing held on 5<sup>th</sup> November, 2020 wherein the Complainant was physically present and the Respondent along with his Counsel was present through video conferencing, the Board considering the submissions of the parties adjourned the hearing with the direction to the Respondent to file the Financial Statement of M/s MBC Global Advisory Services India Private Limited for the Financial Year 2013-14 and 2014-15 along with the role and responsibilities of the two directors of the company and share the same with the Complainant for him to provide his comments on the same, if any.

Thereafter, the Respondent vide his letter dated 17<sup>th</sup> November, 2020 submitted his response.

3. Subsequent to the hearing held in the case on 5th November 2020, on 18<sup>th</sup> January, 2021, the Complainant who was physically present and the Counsel for the Respondent who was present through video conferencing before the Board, made their respective submissions before the Board.

On consideration of the documents and submissions on record, the Board decided to conclude the proceedings in the case with the following direction to the Respondent:

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- i. to file the Financial Statement of M/s MBC Global Advisory Services India Private Limited for the Financial year 2013-14 and 2014-15 along with the role and responsibilities of the two directors of the company
- ii. details of directorship of Mr. Amit Sachdev in the company M/s Yamato Scale India Pvt Ltd. and share the same with the Complainant for him to provide his comments on the same, if any.

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

Thereafter, the Respondent vide letter dated 29<sup>th</sup> January, 2021 submitted his response.

4. Thereafter, the Board at its meeting held on 11<sup>th</sup> February, 2021, on consideration of the documents and submissions on record, took a decision on the conduct of the Respondent.

**Brief of submissions of the Respondent:**

5. The Respondent in his defence, inter-alia submitted as under:-

- 5.1 With respect to the first charge :

- a. The outgoing auditor had already been in communication with the incoming auditor. The correspondence from the outgoing auditor in fact preceded the communication from the incoming auditor. The Complainant took contradictory position which is evident from his communication dated 2<sup>nd</sup> March, 2015 to the Company stating that there are issues that inconvenienced the Company and hence the Company wanted to remove him which has been made a part of the Complainant's Written Statement in Complaint Reference No. PR-143/15/DD/138/2015/BOD/337/2017 filed against the Complainant of the instant case. The Respondent submitted the copy of the audit report of the Company for the FY 2013-14 certified and issued by the Complainant which is not qualified, to support his claim. Further, the communication between the Respondent and the Complainant continued thereafter vide communication dated 13<sup>th</sup> May, 2015, 22<sup>nd</sup> June, 2015, 23<sup>rd</sup> June, 2015 and 25<sup>th</sup> June, 2015.
- b. This case positively falls in the category of such professional accountants who wish to obstruct a change of auditor at any cost and the Respondent referred to the Code of Ethics to support his claim of communication with the Complainant as under:-

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*"It is important to remember that every client has an inherent right to choose his accountant; also that he may, subject to compliance with the statutory requirements in the case of limited Companies, make a change whenever he chooses, whether or not the reasons which had impelled him to do so are good and valid."*

- c. In today's working culture when all the regulatory authorities under various statutes are recognizing communication through electronic mode, communication by the incoming auditor to the outgoing auditor must be recognized as sufficient communication. The Respondent further submitted that the acceptance of communication by emails is also referred at section 8 "Know your ethics" of the Journal for the month of May 2020 issued by the Institute of Chartered Accountants of India to support his claim.

5.2 With respect to the second charge :

- a. The Complainant was appointed as the statutory auditor of the Company at the Annual General Meeting held on 28<sup>th</sup> June, 2013. At such meeting, the appointment was made only up to the conclusion of the next Annual General Meeting. The said appointment was made in compliance with the provisions contained in the Companies Act, 1956. The Respondent further submitted copy of the letter of appointment issued by the Company to the Complainant post convening of the Annual General Meeting referred above.
- b. The law provides for a procedure by which the retiring auditors may not be appointed as the auditors for future years. The Complainant has himself admitted in his own communication dated 17<sup>th</sup> March, 2015 that he had received a copy of the resolution to be moved at the Annual General Meeting in March 2015 whereby he would not be appointed as the auditor. The Complainant would have been within his legal rights to make a representation at the concerned General Meeting, but he chose not to do so. All procedural formalities required to be followed in accordance with Companies Act, 2013 were fully complied as mandated by the provisions of section 115 and 140(4)(i) of the Companies Act, 2013 read with Rule 23 of the Companies (Management and Administration) Rules, 2014, special notices are required to be given by such number of members holding atleast 1% of the total voting power or holding shares on which an aggregate sum of atleast Indian Rupees Five Lakhs has been paid up on the date of the notice.
- c. Further, the special notices are required to be sent not earlier than 3 months and atleast 14 days before the meeting at which the resolution is to



be moved, exclusive of the day on which the notice is given and the day of the meeting. Thereupon, the Company shall immediately after the receipt of the notice, give its members' notice of the resolution atleast 7 days before the meeting, in the same manner, as it gives notice of any general meetings. To comply with this requirement, the special notices were sent by both the shareholders of the Company i.e. M/s Yamato Scale Co. Ltd., Japan and M/s Yamato Dataweigh U.K. Ltd. dated 10<sup>th</sup> March, 2015 to the Board of Directors of the Company expressly stating the intention to move a resolution at the ensuing AGM for appointing the Respondent as the statutory auditors of the Company in place of the retiring auditors i.e. the Complainant at the said AGM.

- d. In terms of provisions of section 140(4) (ii), on receipt of notice of such a resolution, the Company shall forthwith send a copy thereof to the retiring auditor. To comply with this requirement, upon receipt of the special notices from the shareholders, the Company had on 11<sup>th</sup> March, 2015 sent the copies of the special notices to the Complainant clearly stating that (i) in case there is any intended representation to be made by the Complainant, it shall be submitted to the Company's registered office on or before 20<sup>th</sup> March, 2015; or (ii) it may alternatively be read out at the AGM of the Company. The Respondent also submitted copies of email sent by the Company to the Complainant attaching the Special Notices sent by the shareholders and the copies of courier receipts evidencing sending of original letter enclosing Special Notices sent by the shareholders of the Company, to the Complainant.
- e. In terms of the provisions of Section 101(1), a general meeting may be called by giving atleast 21 days' notice either in writing or through electronic mode. However, a general meeting may be called by giving a shorter notice provided consent of atleast 95% of the members entitled to vote is obtained in writing. To comply with this requirement, the Company had obtained the consent from both the shareholders in writing on 13<sup>th</sup> March, 2015. The Company had sent the notice of AGM on 11<sup>th</sup> March, 2015 inviting the Complainant to attend the AGM of the Company scheduled to be held on 26<sup>th</sup> March, 2015.
- f. The AGM of the Company was duly held on 26<sup>th</sup> March, 2015 wherein the resolution for appointing the Respondent as the statutory auditors of the Company in place of the retiring auditors i.e. the Complainant, was duly passed.

5.3 With respect to the third charge :

- a. The Respondent was not the whole time director of M/s MBC Global for FY 2012-13 and 2013-14. The Respondent resigned from the directorship of M/s MBC Global on 04/08/2014 as Mr. Hrishikesh Kar was appointed as its director on 02/08/2014.
- b. The Respondent did not sign the Financial Statements of M/s MBC Global for the FY 2013-14. The said Financial Statements were signed on 30/09/2014 by Mr. Hrishikesh Kar and Mr. Ameet Kumar Ganguly in their capacity of directors of M/s MBC Global.
- c. The e-filing of the Financial Statements and annual returns of M/s MBC Global for the FY 2012-13 and 2013-14 was also made through DSC of director Mr. Ameet Kumar Ganguly and not the Respondent.
- d. Mr. Amit Sachdev was inadvertently appointed as the director of M/s Yamato Scale India Private Limited on 20/03/2015 and he resigned from the directorship on the very next day i.e. 21/03/2015.
- e. The Respondent also submitted following documents:-
  - i. Copy of Financial Statements of M/s MBC Global for FY 2012-13 and 2013-14.
  - ii. Copy of annual return of M/s MBC Global for FY 2012-13 and 2013-14.
  - iii. Copy of e-Form 23AC and e-Form 20B obtained from the web portal of Ministry of Corporate Affairs confirming the e-filing of the financial statements and annual return of M/s MBC Global for FY 2012-13 and 2013-14.
  - iv. The DIN history details of Mr. Amit Sachdev, Partner at M/s. K.L. Seth & Associates showing the details of his directorship in M/s Yamato Scale India Private Limited.
  - v. Copy of e-Form DIR-12 with respect to appointment of Mr. Amit Sachdev filed with ROC on 15/04/2015 and copy of e-Form DIR-12 with respect to resignation of Mr. Amit Sachdev filed with ROC on 28/10/2015.
  - vi. Copy of Master Data of M/s MBC Global obtained from the web portal of Ministry of Corporate Affairs showing details of its directors.
- f. The Company had resolved and accepted resignation of Mr. Amit Sachdev from its directorship effective from 21/03/2015 and the Respondent produced the copy of minutes of the Board of Directors dated 24/03/2015 with respect to said resignation. The Respondent further clarified that the delay in filing of the Form containing information about the resignation of

Mr. Amit Sachdev was a lapse on the part of the Company and hence it was bound to pay additional fee for delayed filing. The Complainant has not produced any instance of Mr. Amit Sachdev having acted in his capacity of director of the Company beyond 21<sup>st</sup> March 2015. Mr. Amit Sachdev never acted as director of the Company even during the period of 24 hours (20<sup>th</sup> March, 2015 to 21<sup>st</sup> March 2015) when he was recorded as a director of the Company; he has not participated in any board meeting and has not been involved in any decision making as a director even during the said 24 hours.

- g. The Respondent only acted as director simplicitor being director of M/s MBC Global Advisory Services India Private Limited. He never assumed the position of a Managing Director/ Whole Time Director in M/s MBC Global Advisory Services India Private Limited.
- h. The Respondent acted as director merely to oversee that the investments of his family comprising of his mother and wife (including minor children) remain secured. It was only prudent on the part of the Respondent to act so being the only adult male member of his family. The functions of running and managing day to day affairs of M/s MBC Global were discharged by other director.
- i. The Respondent was signatory of the Financial Statements of M/s MBC Global for the FY 2012-13 as he was its director and it was necessary to comply with the provisions of the Companies Act, 1956 which provides that such Financial Statements have to be signed by atleast two directors. The Respondent resigned from the directorship of M/s MBC Global on 04/08/2014 after Mr. Hrishikesh Kar was appointed as the director effective from 02/08/2014. The Respondent submitted the table of the directors alongwith the period of their directorship as under:-

S. N.	Period	Name of the Directors
1.	FY 2012-13	Mr. Mayur Batra (Respondent) & Mr. Ameet Ganguly
2.	FY 2013-14	Mr. Hrishikesh Kar & Mr. Ameet Ganguly
3.	FY 2014-15 till date	Mr. Hrishikesh Kar & Mr. Ameet Ganguly

- j. The Director (Discipline) has arrived at the conclusion in PFO without considering the submission of the Respondent that Respondent was involved in the M/s. MBC Global Advisory Services India Private Limited only as a director simplicitor. Further, the Complainant has not produced any proof of the Respondent playing any role in the running of the business or the administration of the said Company.

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k. The Director (Discipline) has arrived at the conclusion that the matter needs to be investigated further and in this regard the Respondent referred to the following case laws in his submissions:-

- a. The Appellate Authority in The ICSI vs Vipulkumar Dahyalal Bheda held:

*"it is a settled law that disciplinary proceedings are in the nature of quasi judicial proceedings and the disciplinary committee acts as a quasi judicial authority. Every quasi-judicial authority is supposed to consider the disputed questions of fact as well as of law raised before it and give its own reasons for arriving at a conclusion. When both the sides present their arguments before across the quasi judicial authority, it is not enough that the quasi judicial authority reproduces the arguments and then without a discussion and without giving its mind as to what appeals to it and why, it passes the Order."*

The Disciplinary mechanism between the two Institutes is as good as mirror reflection in the judicial pronouncement and holds good for matters relating to the members of ICAI. Further by stating that the matter is required to be investigated further and then holding the Respondent prima facie guilty, the Director had acted beyond the powers vested in him. At the stage when the prima facie opinion is referred to the Board of Discipline or the Disciplinary Committee in compliance with Rule 9, it must clearly state whether or not the Respondent is prima facie guilty for any specific allegation within the meaning of any applicable clause of the two Schedules of the Chartered Accountants Act. Beyond the stage of formation of the prima facie opinion, the question of any "further Investigation" does not arise under the law. In fact, such a process is unknown to law. At that stage, the Board of Discipline or the Disciplinary Committee shall proceed with the matter in accordance with Rule 14 or Rule 18 as may be applicable. That is the stage where submissions are based on the prima facie opinion of the Director (Discipline) and further evidences/witnesses may be examined to arrive at a final determination regarding the alleged professional misconduct of the Respondent. The Director Discipline cannot refer the matter to the Disciplinary Committee on a tentative basis. If the Director is not convinced, that the

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Respondent is prima facie guilty, he cannot make a plea for further investigation.

- I. The Respondent further referred to the following case law and submitted that it is a settled principle that the formation of a PFO on the basis of the relevant material is a condition precedent for any inquiry to proceed to next stage:-

- i. "Narayanan Nambudiri v. Institute of Chartered Accountants of India [2006] 150 TAXMAN 406 (KER.)

*"Prima facie satisfaction of the Council on the basis of the materials placed before it is a factor which gives jurisdiction to the disciplinary authority to hold an enquiry. Expression of an opinion by the Council is a sine qua non or a condition precedent for assumption of jurisdiction by the disciplinary authority and is usually a check against frivolous complaints against Chartered Accountants."* (Para 6)

*"9. The Calcutta High Court in Kishorilal Dutta v. P.K. Mukherjee AIR 1964 Cal. 131 held that great are the responsibilities on the Council and the Disciplinary Committee and they must not so act as to become a convenient tool and an engine of oppression against the members of the profession. They must act with responsibility. That is why section 21 imposes a preliminary duty on the Council to form a prima facie opinion before proceeding further. It will be a misfortune for the profession of the Chartered Accountants in India, if the Council chooses to let loose the whole machinery of Disciplinary Committee on any complaint or information received without examining it with care to see that a prima facie case has been made out."* (Para 9)

The Respondent submitted that formation of an opinion on the basis of relevant materials is a condition precedent for conferring power on the Disciplinary Committee to conduct an enquiry against a Chartered Accountant. The Respondent further submitted that it is settled principle of law that where the statute provides to Rules for the conduct of any inquiry, adherence to such Rules is absolutely compulsory.

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**Brief of submissions of the Complainant:**

6. The Complainant reiterated his submissions during the hearings and submitted as under:-
  - a. The Respondent was very well aware about the change in the position of the auditor of the Company and referred to email dated 18/03/2015 and letter issued by the Complainant dated 17/03/2015 addressed to the Respondent regarding professional correspondence in respect of the Company.
  - b. The Company has to file e-form DIR 12 in case of appointment and resignation of Director of the Company within 30 days of said event. However, in the present case the said intimation was filed at a later stage in October, 2015. The Respondent got auditorship on 25/03/2015 because his partner already resigned from the Company on 21/03/2015 so there is no conflict of interest. There is loophole in Respondent's story, his resignation Form is filed on 20/04/2015 as per him. But that Form was actually filed on 28/10/2015. On 21/03/2015, the Respondent knowingly very well took auditorship of the company. On 15/04/2015, DIR-12 is filed with Government regarding the appointment of Mr. Amit Sachdev which is attested by the Respondent himself. The auditor at the time of appointment was supposed to give up his association with any entity. Considering the said circumstances, on 13/05/2015, the Complainant had to approach the Institute and institute the extant proceedings.

**Observations and Findings of the Board:**

7. With regard to the first charge, the Board noted that the Respondent was appointed as the Statutory Auditor of the Company for the period from 01/04/2014 to 31/03/2019 and Form No. ADT-1 alongwith attachment of Certificate of eligibility, AGM resolution dated 26/03/2015 and Appointment letter was filed with the Registrar by the Company pursuant to Section 139(1) of the Companies Act, 2013 and Rule 4(2) of the Companies (Audit and Auditors) Rules, 2014.
- 7.1 The Board also considered the submission of the Respondent in this regard that he requested the Complainant being the previous auditor vide letter dated 31<sup>st</sup> March 2015 for issuance of No Objection for initiating the audit of the Company for the FY 2014-15 and also produced on record courier receipt dated 31/03/2015. However, the said letter was received back by him. Also, the

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Complainant being the outgoing auditor had already been in communication with the Respondent in the capacity of the incoming auditor even prior to his appointment.

- 7.2 In this regard, the Board took into view the following commentary under Clause (8) as per Code of Ethics (Edn. Reprint May, 2009, page no. 170) :-

*"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)."*

- 7.3 Considering the above submissions and documents available on record, the Board observed that the communication made by the Respondent through courier is not an acceptable mode of seeking no objection and the said letter was also received back by the Respondent. Thus, there is no evidence of positive delivery of communication with the previous auditor. Further, the plea raised by the Respondent that Complainant had inherent knowledge of the Respondent's appointment and that he communicated with the Respondent even prior to the Respondent's appointment as auditor of the company is not sustainable as specific responsibility is casted on the incoming auditor to communicate with the previous auditor before acceptance of audit assignment and provide positive evidence of such communication and the said responsibility cannot be passed on to the outgoing auditor or the auditee. Accordingly, the Respondent is held guilty of Professional Misconduct falling within the meaning of Item (8) of Part I of First Schedule to the Chartered Accountants Act 1949 in respect of the said charge.

8. With regard to the second charge, the Board took into view the following commentary on Item (9) of Part I of First Schedule provided under the Code of Ethics (Edn. Reprinted December, 2010 – Page 191 to 192):-

*"The procedure to be followed by the Company, is as under:*

*7.1 If a member of the Company wants that the retiring auditor should not be reappointed or that an auditor other than the retiring auditor should be appointed, he*

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has to give a special notice to the Company and specify the resolution which he proposes to move at the Annual General Meeting for this purpose.

7.2 Such special notice is also required to be given if a member of the Company wants to remove the auditor before the expiry of his term of office.

7.3 The special notice should be given at least 14 days before the date of the General Meeting when the question of appointment or reappointment of the auditor is to be considered.

7.4 On receipt of the special notice of such a resolution, the Company has to send a copy of the same to the retiring auditor forthwith.

7.5 The Company is also required to send the special notice to the members of the Company at least seven days before the Meeting as per the provisions of Section 190(2) read with Sections 172(2) and 53(1) to 53(4) of the Companies Act. According to these provisions, the notice should be sent by post or if that is not practicable then it should be given either by advertisement in a newspaper having an appropriate circulation or in any other mode allowed by the Articles of Association of the Company.

7.6 After receipt of the above notice, the retiring auditor can submit his representation to the members of the Company. Such representation, on receipt by the Company, is required to be sent to its members as required under Section 225(3) of the Companies Act.

7.7 The representation received from the retiring auditor will have to be considered at the General Meeting of the Company before the resolution proposed by the concerned member is passed. The resolution proposed by the concerned member can be passed only in accordance with the provisions of Section 189 of the Companies Act.

8. Under Clause (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949, the incoming auditor has to ascertain whether the Company has complied with the provisions of the above sections. The word "ascertain" means "to find out for certain". This would mean that the incoming auditor should find out for certain as to whether the Company has complied with the provisions of Sections 224, 224A and 225 of the Companies Act. In this respect, it would not be sufficient for the incoming auditor to accept a certificate from the management of the Company that the provisions of the above sections have been complied with. It is necessary for the incoming auditor to verify the relevant records of the Company and ascertain as to whether the Company has, in fact, complied with the provisions of the above sections....."

- 8.1 The Board noted that the Respondent in his defence brought on record copy of shorter notice of Annual General Meeting (AGM) dated 11/03/2015 for meeting to be held on 26/03/2015 wherein it was mentioned as under:-

"pursuant to the provisions of Section 139, 140 read with Section 115 and other applicable provisions, if any, of the Companies Act, 2013, M/s Sunil D Singh & Associates, Chartered Accountants, the Statutory Auditors of the Company (Complainant Firm), who will be retiring at the ensuing Annual General Meeting of the Company be and are hereby not being re-appointed as the Statutory Auditors of the Company".

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- 8.2 The Board further noted that as per minutes of the said AGM held on 26/03/2015 at item no. 7, it was mentioned as under:

*"The Chairman informed the members of the meeting concerning the Special Notice dated March 10, 2015 received from M/s. Yamato Scale Co. Ltd. Japan and M/s. Scale Dataweigh UK Ltd. concerning the proposal of appointment of M/s. Mayur Batra & Co., Chartered Accountants, as Statutory Auditors of the Company in place of the retiring auditor M/s. Sunil D Singh & Associates, Chartered Accountants."* and passed an ordinary resolution to the said effect.

- 8.3 The Board also noted that the Complainant vide letter dated 17<sup>th</sup> March 2015 addressed to the Respondent referred to the receipt of shorter notice from the company as regards the proposed appointment of the Respondent and also sent an email dated 25<sup>th</sup> March 2015 to the company referring to the proposed AGM and the contravention of the Companies Act, 2013. The Complainant vide letter dated 24<sup>th</sup> March 2015 made a complaint to the ROC regarding the failure to conduct the AGM in 2014 and conducting AGM on 26<sup>th</sup> March 2015 to change auditors without any previous approval from the Central Government and the company filed its reply to the ROC vide letter dated 27<sup>th</sup> April 2015. In this respect, the Board took into view operative part of Order dated 1<sup>st</sup> December, 2015 of Ld. Company Law Board, New Delhi Bench in Company Application No. 16/173/2015-CLB that the violations under Sections 129(7), 92, 137(3) and 99 of the Companies Act, 2013 were duly compounded and compounding fee levied on the Managing Director and the Company was duly paid through Demand Draft and an intimation is also sent to the Registrar of Companies.

The Board was of the view that there are certain offences committed by the company which are compoundable under the Companies Act 2013 and for which the Officers of the company are held in default. The Respondent, as the auditor of the company cannot be held liable for such defaults in the case under consideration.

- 8.4 The Board also considered the issue of applicability of Section 140(1) of the Companies Act, 2013 i.e. removal of auditor before completion of his term or applicability of Section 140(4) of the Companies Act, 2013 i.e. where a person other than a retiring auditor is proposed to be appointed at an AGM raised by the Complainant in the instant case and observed that compliance of Section 140 (4) shall apply in the present situation.

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- 8.5 The Board also considered the issue of appointment of Mr. Amit Sachdev, Partner of the Respondent firm as Director in M/s Yamato Scale India Private Limited. The Complainant in this regard submitted that the Respondent got auditorship on 25/03/2015 because his partner already resigned from the Company on 21/03/2015 so there is no conflict of interest. There is loophole in Respondent's story, his resignation Form is filed on 20/04/2015 as per him. But that Form was actually filed on 28/10/2015. On 21/03/2015, the Respondent knowingly very well took auditorship of the company. On 15/04/2015, DIR-12 is filed with Government regarding the appointment of Mr. Amit Sachdev which is attested by the Respondent himself.

The Board took into view the following commentary provided under Code of Ethics (Edn. Reprinted December 2010 – Page 347):-

*"...a member cannot accept and hold the office of a Managing Director or a whole-time director in a Company. If the member/ and/ or his partners is interested in such a company as an auditor."*

The Board on perusal of above contention of the Complainant observed that the late filing of e-forms are permitted under the provisions of the Companies Act, 2013 subject to payment of additional fees/ penalty as may be determined by the regulatory authority under the provisions of law. Further, the Respondent was appointed as the auditor of the company on 25<sup>th</sup> March 2015 when CA. Amit Sachdeva was not a director of the company. Accordingly, there was no infirmity in the conduct of the Respondent in this respect.

- 8.6 Considering the above submissions and documents available on record, the Board observed that for the purpose of appointment of auditor other than the retiring auditor, specific provision has been prescribed under the Companies Act, 2013, the compliance of which is required to be ensured by the company as well as the incoming auditor prior to acceptance of appointment. The Respondent has duly provided the point wise details of compliances and also brought on record corroborative documents during the proceedings to substantiate compliance with the prescribed requirements. Keeping in view the above facts, the Board held the Respondent not guilty in respect of the said charge falling within the meaning of Item (9) of Part I of First Schedule to the Chartered Accountants Act 1949.

9. With regard to the third charge regarding the whole time directorship in M/s MBC Global, the Respondent submitted before the Board that he acted as director merely to oversee the investments of his family comprising of his mother and wife (including minor children) to ensure the same remain secured. The Respondent was only adult member in his family and thus, it was prudent on his part to accept the directorship. Further, the functions of running and managing day to day affairs of M/s MBC Global were discharged by the other director.

9.1 The Board perused the public documents available on the MCA portal with respect to M/s MBC Global and observed as under:

- a. The Respondent has stated his occupation as "Business" at the time of incorporation of Company in Form I/ MOA filed in September, 2007
- b. The Respondent authenticated the Financial Statement of the Company in the capacity of its director from the year 2008 till 2013.
- c. There were only two directors appointed with M/s MBC Global and Respondent was one of them.

9.2 The Board noted that the Respondent was simultaneously holding Certificate of Practice since 12/08/1998 as per members' database available with the Institute.

9.3 The Board took into view the provision of Regulation 190A vis-à-vis requirement of Clause (11) of Part I of the First Schedule to the Chartered Accountants Act which reads as under:

*"190A - Chartered Accountant in practice not to engage in any other business or occupation*

*A Chartered Accountant in practice shall not engage in any business or occupation other than the profession of accountancy, except with the permission granted in accordance with a resolution of the Council."*

9.4 Keeping in view the submissions and documents brought on record, the Board observed that the prime defence which the Respondent has taken in respect of this charge is that he was primarily involved as director merely to oversee the investments of his family comprising of his mother and wife to ensure that the same remain secured and to ensure the corporate compliance of authentication of financial statements of the company by at least 2 directors as the company had two directors only. The Board also noted that apart from authentication of the Financial Statement of the company, there was no

evidence to show that the Respondent was involved in the day to day management of the affairs of the Company, however, the Board clearly observed that the Respondent has shown his occupation as "Business" in the incorporation documents available under Public Documents on the MCA Portal which infers that the Respondent was involved in the business while holding full time Certificate of practice and thus, was required to seek prior permission of the Council before engaging himself into the business other than the profession of accountancy. Accordingly, the Respondent is held guilty for the said charge under Item (11) of Part I of First Schedule. Further, while holding the Respondent guilty under this charge, the Board was also of the view that the preliminary objection raised by the Respondent at para 5.3(j) and (k) above is not tenable as the basis of the Prima Facie Opinion had been duly recorded in para 9.11 of the Prima Facie Opinion which had been concurred to by the Board while considering the said Opinion.

10. 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 guilty of Professional Misconduct falling within the meaning of Item (8) and (11) of Part I of the First Schedule to the Chartered Accountants Act 1949.

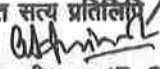
**CONCLUSION:**

11. 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 (11) of Part I of First Schedule to the Chartered Accountants Act 1949.

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

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

प्रमाणित सत्य प्रतिलिपि / Certified true copy

  
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अनुशासनात्मक निदेशालय / Disciplinary Directorate  
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