

BOARD OF DISCIPLINE

(Constituted under Section 21A of 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 151/2013-DD/153/2013/BOD/226/2016

QUORUM:

CA. Nilesh S.Vikamsey, Presiding Officer
Shri R.K. Tewari, Government Nominee
CA. (Dr.) Debashis Mitra, Member

In the matter of:

Sh. Manohar G Bhujbal
C/o C T Bhambure
B-22, Bhimashankar,
Govt. Colony, Near Gunjan Theatre,
Pune- 411 006

.....Complainant

V/S

CA. Atish Vilās Phulphagar (M. No. 150979)
B6/8, Kumar Aangan
Air Port Road, Yerwada
Pune- 411 006

.....Respondent

DATE OF HEARING : 18.08.2017

PLACE OF HEARING : MUMBAI

PARTIES PRESENT:

Complainant : Sh. Manohar G Bhujbal
Respondent : CA. Atish Vikas Phulphagar

Findings:

1. The Board noted that the charge on which the Respondent has been held prima facie Guilty is that being one of the partners of the Construction Firm the Respondent

has failed to refund the amount to the Complainant which was paid by him as the booking amount for the flat. The Board noted that payment was made vide Cheque no. 391491 drawn on Shri Shardha Sahakari Bank Ltd on 25th December, 2011 in favour of Construction Firm. Later, due to financial problem the Complainant was unable to pay the remaining amount so he decided to cancel the bookings of the flat. The partners of the Construction Firm however failed to pay money back to the Complainant.

2. The Board heard the submissions made by the parties and duly considered various documents made available on record.

3. The Board also noted the submission of the Respondent that he was never involved in the firm himself, it was his father who was involved in this. At the time of the partnership he was not a Chartered Accountant. He has during the articleship come to know that he is not allowed to be in a partnership and he had given his resignation in the year 2010. He has transferred all his shares in his father's name. However, there is no evidence on record to show that the resignation of the Respondent was accepted by the Firm.

4. The Board also noted the fact that the amount paid by the Complainant for booking of the flat was credited into the account of the Construction Firm in which the Respondent was a partner. Thereafter the Complainant applied for cancellation of booking of the flat and sought for refund. The Complainant during the course of hearing has also drawn attention of the Board to the fact that he has filed a suit for recovery of the said amount before the Hon'ble Civil Judge, Sr. Division, Pune.

5. The Board also noted that the Respondent in his submissions stated that he had resigned from the partnership firm on **18th November, 2010**. But the Board opined that since the resignation had not been accepted, he continued to be accountable for the acts of the partnership firm. The Respondent stated that the amount of Rs. 3.25 lakh had been refund by to the Complainant Rs. 1,25,000/- by Cheque and 2,00,000/- by Cash. But the Respondent did not bring on record any evidence to substantiate the same.

6. The Board also noted that the Complainant had submitted before it that the Hon'ble Civil Judge, Sr. Division, Pune had vide Order dated 16th July 2017 directed the Respondent to pay the due amount with 10% interest. However, the same had not been complied with.

7. Thus, the Board opined that the act of non-refunding the token amount paid once the booking of the flat with the firm has been cancelled despite issuance of the legal notice by the Complainant to the Respondent as one of the partner of R.P Associates and despite verbal assurance before the Board to refund the amount as per the Order passed by the Hon'ble Civil Judge, Sr. Division, Pune, is an act unbecoming of a Chartered Accountant and brings disrepute to the profession.

CONCLUSION:

8. In conclusion, in the considered opinion of the Board, the Respondent is held **Guilty** of Other Misconduct falling within the meaning of Clauses (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with section 22 of the said Act.

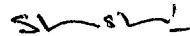
-Sd/-
(NILESH S VIKAMSEY)
PRESIDING OFFICER

-Sd/-
(R K TEWARI)
GOVERNMENT NOMINEE

-Sd/-
(DEBASHIS MITRA)
MEMBER

DATE: 10th FEBRUARY, 2018
PLACE: NEW DELHI

Certified True Copy



Shashi Mahajan
Assistant Secretary
Disciplinary Directorate

The Institute of Chartered Accountants of India
ICAI Bhawan, I.P. Marg, New Delhi-110 002

100-100000

100-100000

100-100000

100-100000

100-100000

100-100000

100-100000



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

**ORDER UNDER SECTION 21 A(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.**

Shri Manohar G Bhujbal, C/o C T Bhambure, Pune

.....Complainant

-Vs-

CA. Atish Vikas Phulphagar (M.No.150979), Pune

.....Respondent

[PR 151/2013-DD/153/2013/BOD/226/2016]

MEMBERS PRESENT:

CA. G. Sekar, Presiding Officer

Shri R. K. Tewari, Government Nominee

1. That vide Report dated **10th February, 2018**, the Board of Discipline was of the opinion that **CA. Atish Vikas Phulphagar** is guilty of Other Misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act.
2. That an action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against **CA. Atish Vikas Phulphagar** and communication dated 31st December, 2018 was addressed to him thereby granting him an opportunity of being heard in person and/or to make written representation before the Board on 12th January, 2019.
3. That **CA. Atish Vikas Phulphagar** appeared personally before the Board and made his oral submissions. He also submitted his written submission vide his letter dated 21st March, 2018.
4. The Board has carefully gone through the facts of the case and also the oral and written submissions of **CA. Atish Vikas Phulphagar** that the Board of Discipline has failed to appreciate the fact that he was a dormant / sleeping partner in the partnership concern and was never involved in day to day affairs of the business of the partnership concern. He further submitted that he will obey and comply with and do such acts as per the directions set out against him in the order of the Hon'ble Civil Judge, Sr. Division, Pune. He also requested for a considerate and lenient view as his career has only initially started.



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

5. The Board also noted that Respondent was entered into the partnership on 18.11.2010 when he was minor. The Board also noted that the Respondent qualified in May, 2012.

6. Upon consideration of the facts of the case, the consequent misconduct of the Respondent, and keeping in view his oral and written submissions before it, the Board was of the view that the ends of justice shall be met if minimal punishment is awarded to the Respondent.

7. Accordingly, the Board decided to Reprimand CA. Atish Vikas Phulphagar

M (M.No.150979).

Sd/-
CA. G. SEKAR
(PRESIDING OFFICER)

Sd/-
SHRI R.K. TEWARI
(GOVERNMENT NOMINEE)

DATED: 12TH JANUARY, 2019
PLACE: MUMBAI

Certified True Copy

Abhinav
R.S. Srivastava
Assistant Secretary
Disciplinary Directorate
The Institute of Chartered Accountants of India
ICAI Bhawan, I.P. Marg, New Delhi-110 002