

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-208/14-DD/242/14/BOD/229/16

QUORUM:

**CA. (Dr.) Debashis Mitra, Presiding Officer
Shri R.K. Tewari, Government Nominee**

In the matter of:

**CA. Vinay Dattatray Balse
A/2, Anandashram
Proctor Road,
Grant Road (E)
Mumbai-400007**

.....Complainant

Versus

**CA. Yogendra N. Thakkar... (M.No.033329)
133/134, Chandramani,
701-702, 7th Floor Telang
X Rd no. 3, Matunga
Mumbai- 400019**

..... Respondent

DATE OF HEARING: 18.08.2017

PLACE OF HEARING: MUMBAI

PARTIES PRESENT:

Complainant	: CA. Vinay Dattatray Balse
Counsel for Complainant	: Shri S.G. Gokhale, Advocate
Respondent	: CA. Yogendra N. Thakkar
Counsel for Respondent	: CA. Bhupendra Shah

Findings:

1. At the outset, the Board noted that the Respondent vide his letter dated 15th August, 2017 requested that since the Hon'ble President is the personal friend of the Complainant, he should recuse himself from the proceedings as it would

affect the principle of independence. CA. Nilesh Shivji Vikamsey, President, ICAI categorically informed that he is not a personal friend of the Complainant .He is not in any way related to the Complainant except that the Complainant had his office in the same building as that of the President, ICAI till 2012. However, in the interest of justice and not to cause any prejudice to the proceeding, he recused himself from the hearing in this case and in terms of the provisions of Rule 13(3) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, CA. (Dr.) Debashis Mitra presided over the matter.

2. The Board noted that of the various charges against the Respondent, he has been held prima facie guilty in respect of the following charges and has been examined accordingly:

2.1 The Respondent held the Firm M/s N.M. Rajji & Co. to ransom and demanded for increase in share in profit.

2.2 The Respondent manipulated the arbitration process and Hon'ble Mumbai High Court passed strictures and levied cost of Rs. 2 lakhs against him.

2.3 The Respondent refused to sign the cheques for making salary payments to employees and other payments as per Consent Order passed by Hon'ble High Court, Bombay.

2.4 The Respondent while holding Certificate of practice was also engaged in other business as he was Director of M/s Mriyog Investment Pvt Ltd and has signed the Balance Sheet of said Company for the financial year 2012-13.

2.5 The Respondent has brought disrepute to the profession as he has published resignation letter of CA. Jayesh M. Gandhi in newspaper and written threatening letters to clients handled by CA. Jayesh M. Gandhi.

3. The Board heard the submissions of the Complainant, the Respondent and their Counsels and duly considered various documents available on record.

4. As regards the first charge, the Board noted that the Complainant stated that Respondent being partner only for 5% share had demanded for 20% share and wanted to be included in the Committee of senior partners out of nine partners. The contention of the Complainant in para 45(3) and 45(4) of complaint merit consideration and it is clear from the exchange of correspondence/e-mail that the

- Respondent tried to put the firm M/s N.M Raiji & Co., in a difficult position which is not expected of a professional while dealing with co-professionals. Accordingly, he is held guilty in respect of the charge.
5. As regards the second charge, the Board noted that the Respondent stated that the Honourable Bombay High Court had made remarks against his Nominee Arbitrator and that on account of the acts of the arbitrator, the Court wrongly asked him to pay costs of Rs. 50,000/- each in respect of the four awards passed by the arbitrator. He also stated that once the arbitrator is appointed, he becomes a part of the Arbitral tribunal and thus, he no more can be termed as the nominee arbitrator of the party appointing him. He also did not appeal against the said Order of the Honourable Bombay High Court as the cost of filing the appeal in four petitions would far exceed Rs. 50,000/- each. He also stated that the Court did not levy any penalty. Levy of costs is not penalty. The Board perused the Order passed by the Hon'ble Bombay High Court levying costs on the Respondent and noted that it had passed strong remarks against the Respondent and his Nominee Arbitrator on account of making mockery of the Arbitration and Conciliation Act. The Board opined that since the Nominee Arbitrator represented the Respondent, the Respondent was accountable for the representation done by him. Accordingly, the Board held him guilty in respect of this charge.
6. As regards the third charge, the Board noted that the Respondent brought on record an e-mail dated 04/04/2012 addressed by him to the Complainant stating that if by 9th April, the cheque (for car repair bill of the Respondent) is not signed either by Jayesh or Vinay or Shivkumar, he will be constrained to stop signing cheques from 10th April onwards, as their conduct and action are in violation of Court Order dated 08/09/2005. In this regard, the Board also perused the Complainant's e-mail dated 30/05/2012 and the email dated 12/05/2012 from one of the partners of the Complainant's firm addressed to the Respondent wherein it has been informed to the Respondent that the cheques for loyalty bonus had already been sent to the Complainant and to the Respondent and the same have been banked by the persons concerned and the amounts debited to M/s N.M Raiji & Co., bank Account. As regards car repairs, the Complainant stated that he had only sought to know the amount of Insurance Claim to be allowed because the liability of NMR was restricted only to the extent of the claim not allowed by the Insurance Company. It has been further stated that the insurance claim was

settled for Rs.96,000/- after being repaid by the Respondent and he was paid accordingly. The Respondent was also explained the necessity of making timely payment of salary to audit staff and requested to sign the cheques in respect of the same and in case of any reservation, the same can be taken up during arbitration on communication of the underlying issue to the other partners. The Board also perused the Order dated 8th September 2005 passed by the Honourable High Court of Judicature at Bombay in arbitration petition no. 543 of 2004 providing for the Consent terms agreed to between the Complainant's firm and the Respondent to ensure smooth day to day working and operations of the Complainant's firm which specifically provided for the payment of salary to audit and other staff of the Complainant's firm as per the past practice. Thus, it is apparent that the Respondent was escalating the internal dispute between the partners to the extent of not signing cheques required by him and forcing difficulties in the normal functioning of the firm. The Board held that a member is expected to maintain his professional standards while dealing with his professional brothers also which in the instant case, seems to be lacking. Accordingly, the Board holds the Respondent guilty in respect of this charge.

7. As regards the fourth charge, the Board noted that 90% of shareholding of M/s Mriyog Investments Pvt. Ltd was held by the Respondent and the balance 10 % by his family members. Further, on perusal of the list of the signatories, the Board noted that the Respondent along with his family members was also the director in the said company and one of the subscribers to the Memorandum of Association of the company. The Respondent also issued the Director's Report and also signed the financial statements of the Company for the F.Y. 2012-13 and 2013-14. Also, in the company data maintained with ROC, the email id of the Respondent has been specified.

The Board also took into view the provisions of section 2(26) of the Companies Act 1956 which provides that even where a person is not designated as a managing director or a whole time director if he is entrusted with the whole or substantially the whole of the management of the affairs of the company, he can be deemed to be the managing director or a whole time director of a company. Thus, the Board held that the aforesaid documents establish that the Respondent was involved in the day to day affairs of the company and the contention of the

Respondent that he was only a director simplicitor in the said company and had attended only board meetings without any remuneration or fees for the same is not tenable and was required to seek the prior permission of the Council before accepting the other engagements apart from being actively engaged in practice. Accordingly, the Board holds him guilty in respect of the said charge.

8. As regards the fifth charge, the Board noted that the Respondent had issued a public notice in respect of resignation of CA. Jayesh M. Gandhi and also addressed a letter dated 11/05/2013 to the Board of Directors of the clients of CA. Jayesh M. Gandhi in respect of his resignation. The Board was of the view that the plea of the Respondent that to protect interest of M/s N.M Raiji & Co., as CA Jayesh M. Gandhi was joining as partner of M/s S.R. Batliboi, he got a public notice advertised in the newspaper, cannot be accepted as being a partner in the same firm does not entitle the Respondent to divulge the details of the firm to the public at large. The Board also held that the Respondent was trying to reveal the internal differences amongst the partners and the text and manner of such letters and the public notice clearly causes damage to the goodwill of the firm. Accordingly, the Board holds the Respondent guilty in respect of this charge.

CONCLUSION:

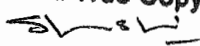
9. Thus in conclusion, in the considered opinion of the Board, the Respondent is **GUILTY** of Professional and Other Misconduct falling within the meaning of Clause (11) of Part I and Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act.

-Sd/-
(DEBASHIS MITRA)
PRESIDING OFFICER

-Sd/-
(R K TEWARI)
GOVERNMENT NOMINEE

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

THE FIRST PART

THE SECOND PART
THE THIRD PART
THE FOURTH PART
THE FIFTH PART



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.

CA. Vinay Dattatray Balse (M. No. 039434), Mumbai

.....Complainant

-Vs-

CA. Yogendra N. Thakkar (M.No.033329), Mumbai
[PR-208/2014/DD/242/14/BOD/229/2016]

.....Respondent

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. Yogendra N. Thakkar** is guilty of "Professional and Other Misconduct" falling within the meaning of Clause (11) of Part I and 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. Yogendra N. Thakkar** 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. Yogendra N. Thakkar** appeared personally before the Board and made his oral submissions. He also submitted his written statement earlier vide letter dated 16th June, 2018.

4. The Board has carefully gone through the facts of the case and also the oral submissions and written statement made by **CA. Yogendra N. Thakkar** before the Board that. The Board noted that the Respondent in his submission requested for a considerate and lenient view in the matter and specifically requested the Board not to remove his name from the Register of

M Member.



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5. As per the findings of the Board as contained in its report, it has already been conclusively proved that **CA. Yogendra N. Thakkar** is guilty of "Professional and Other Misconduct" falling within the meaning of Clause (11) of Part I and Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act.

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 reasonable punishment is awarded to the Respondent.

7. Accordingly, the Board decided to remove the name of **CA. Yogendra N. Thakkar (M.No.033329)** from the Register of Member for a period of one month and further imposed a fine of **Rs.1,00,000/- (Rs. One lakh (inclusive of GST))** upon him, which shall be payable by him within a period of 60 days from the receipt of the Order.

M

Sd/-

CA. G. SEKAR
(PRESIDING OFFICER)

Sd/-

SHRIR.K. TEWARI
(GOVERNMENT NOMINEE)

DATED: 12TH JANUARY, 2019

PLACE: MUMBAI

Certified True Copy
Mukesh Kumar Mittal
Mukesh Kumar Mittal
Assistant Secretary
Disciplinary Directorate
The Institute of Chartered Accountants of India
ICAI Bhawan, I.P. Marg, New Delhi