

**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-271/15-DD/241/2015/ BOD/269/2017**

**QUORUM:**

**CA. Nilesh Shivji Vikamsey, Presiding Officer  
CA. (Dr.) Debashis Mitra, Member**

**In the matter of:**

**CA. Vijay D. Saykar (M.No36179)  
M/s Vijay Saykar & Co. (FRN No 111433 W)  
Office No. 303, P.J. Chambers,  
Near Mahatma Phule Statue,  
Nehru Nagar Road, Pimpri,  
Pune - 411018**

**..... Complainant**

**v/s**

**CA. Mahesh Malhotra (M.No. 044913)  
M/s M.Y Malhotra & CO.,(FRN No. 114113 W)  
No. 1A, 3<sup>rd</sup> Floor,  
Runwal Plaza, Opp. Sonal Hall,  
41/12, Karve Road,  
Pune - 411004**

**.....Respondent**

**DATE OF HEARING: 18.08.2017**

**PLACE OF HEARING: Mumbai**

**PARTIES PRESENT:**

<b>Complainant</b>	<b>:</b>	<b>CA. Vijay D. Saykar</b>
<b>Respondent</b>	<b>:</b>	<b>CA. Mahesh Malhotra</b>
<b>Counsel for Respondent</b>	<b>:</b>	<b>CA. Sharad Atmaram Vaze</b>

**Findings:**

1. The Board noted that the charge against the Respondent he did not communicate with the Complainant before accepting the Statutory and Tax Audit of the Company Mask Polymers Pvt Ltd. for the financial year 2014-15 (hereinafter referred to as the "Company"). The Complainant was the Statutory as well as the Tax Auditor of the Company till financial year 2013-14.

2. The Board heard the submissions made by the Complainant, the counsel for the Respondent and duly considered the submissions/documents available on record.

3. As regards the acceptance of statutory audit for the F.Y 2014-15, the Board noted that the main defence of the Respondent had been that there has been communication by email. The Respondent brought to the notice of the Board a recent Judgment of TATA SONS LIMITED & ORS v/s JOHN DOE(S) ORS of Delhi HC in case no. CS (COMM) 1601/2016 dated 27.04.2017 wherein it has been categorically specified as under:

*"The plaintiffs are permitted to serve the Defendants No. 9 Ashok Kumar Agarwal by text message as well as through Whatsapp as well as by email and to file affidavit of service".*

Thus, he was of the view that, even communication via email or whatsapp is acceptable.

4. However, the Board was of the view that the question for examination before it was not the mode of communication, but whether any communication has been made by the Respondent before acceptance of appointment as incoming auditor. The Board noted that the appointment of the Respondent as Statutory Auditor of the Company for FY 2014-15 was done at the AGM held on 30.09.2014 and accordingly, an appointment letter was sent by the Company to the Respondent on the same date. The Respondent accepted the appointment vide his letter dated 3<sup>rd</sup> October, 2014. However, the first written communication from his side was made with the Complainant only on 14<sup>th</sup> September, 2015 through an email.

5. The Board also opined that the presumptive presence of the Complainant in the AGM wherein the Respondent had been appointed as the statutory auditor in place of the Complainant and communication made by the company with the Complainant being previous auditor on 4<sup>th</sup> August, 2015 regarding providing NOC to the Respondent implying that the Complainant was aware of the appointment of the Respondent does not give cushion to the Respondent to not fulfill his responsibility to communicate with the previous auditor as provided as under Clause (8) of part I of the First Schedule to Chartered Accountants Act 1949. The Board, therefore, held the Respondent guilty of the charge.

6. Further, as regards the acceptance of tax audit for the F.Y 2014-15, the Board noted that the Respondent himself admitted that he did not communicate with the Complainant for Tax Audit Assignment of the Company. Thus, keeping in view the guideline of the Council that the requirement for communicating with the previous auditor being a Chartered Accountant in practice would apply to all types of audit viz., statutory audit, tax audit, internal audit, concurrent audit or any other kind of audit and the self admission of the Respondent he is held guilty for non communication with respect to tax audit also.

**CONCLUSION:**

7. Thus, in conclusion, in the considered opinion of the Board, the Respondent is **GUILTY** of "Professional Misconduct" falling within the meaning of Clause (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

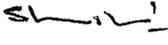
-Sd/-  
(NILESH S VIKAMSEY)  
PRESIDING OFFICER

-Sd/-  
(DEBASHIS MITRA)  
MEMBER

DATE: 10<sup>th</sup> 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

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**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. Vijay D. Saykar (M.No.36179),  
M/s. Vijay Saykar & Co., (FRN No. 111433 W)  
Chartered Accountants, Pune**

.....Complainant

**-Vs-**

**CA. Mahesh Malhotra (M.No. 044913)  
of M/s. M.Y. Malhotra & Co., (FRN No. 114113 W)  
Pune**

.....Respondent

**[PR-271/15/DD-241/2015/BOD/269/2017]**

**MEMBERS PRESENT:**

**CA. G. Sekar, Presiding Officer  
Shri R. K. Tewari, Government Nominee**

1. That vide Report dated **10<sup>th</sup> February, 2018**, the Board of Discipline was of the opinion that **CA. Mahesh Malhotra** is guilty of "Professional Misconduct" falling within the meaning of Clause (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949.
2. That an action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against **CA. Mahesh Malhotra** and communication dated 31<sup>st</sup> 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 12<sup>th</sup> January, 2019.
3. That **CA. Mahesh Malhotra** appeared personally before the Board and made his oral submissions.
4. The Board has carefully gone through the facts of the case and also the oral submissions made by **CA. Mahesh Malhotra** before the Board. The Board noted that the Respondent in his submission requested for a considerate and lenient view in the matter.



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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. Mahesh Malhotra** is guilty of "Professional Misconduct" falling within the meaning of Clause (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

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. *M* Accordingly, the Board decided to **Reprimand CA. Mahesh Malhotra (M.No. 044913)**.

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

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

**DATED: 12<sup>TH</sup> JANUARY, 2019**

**PLACE: MUMBAI**

Certified True Copy

*R.S. Srivastava*

**R.S. Srivastava**

Assistant Secretary

Disciplinary Directorate

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