

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. : PPR-4/W/13-DD/7/W/INF/2013/BOD/276/2017

QUORUM:

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

In the matter of:

CA. Shiv Kumar Ramnarain Sharma (M.No. 080214)
401, Mantri Lawn, 4th lane,
Anand Park, Aundh,
PUNE – 411007

.....Respondent

DATE OF HEARING: 02.01.2018

PLACE OF HEARING: Mumbai

PARTIES PRESENT:

None (matter was proceeded exparte)

Findings:

1. The Board noted that the charge on which the Respondent has been held Prima Facie **Guilty** is that as per the statement of the Respondent in the Hon'ble Court of Civil Judge, Senior Division, Pune, the Respondent, apart from being a full time practicing Chartered Accountant, also conducts Business of Finance and the Business of Brokerage through M/s Monharsh Finance and Investment Company and is the only person who looks after the Company.

2. The Board noted that the Respondent was not present before it in spite of the due service of the notice of the hearing. The Board also noted that on the previous date of hearing i.e on 18th August, 2017 also, the Respondent did not appear and the hearing was adjourned on account of his absence. Accordingly, the Board decided to proceed

ahead with the hearing in the matter exparte the Respondent.

3. The Board considered the documents and further submissions of the Respondent available on record.

4. The Board noted that the Respondent in his submissions denied the contents of cross examination taken on 26th June, 2012 and stated that presently he is unable to recall under what and which circumstances he had answered the relevant question asked by the Complainant's lawyer. He also stated that he is neither practicing CA nor in business but only retained his practicing certificate of which he is immensely proud.

5. The Board on perusal of the Form 23AC filed with Registrar of Companies on behalf of Companies namely M/s Monharsh Finance and Investments Pvt. Ltd. and M/s Monika Agencies Pvt. Ltd. observed that there are only two Directors in the Company, one is the Respondent and second being his wife. It is also seen that as per the requirement of Form 23AC, it has to be digitally signed by Managing Director or Director or Manager or Secretary of the Company. In case of these two Companies, the said Form has been signed by the Respondent. Thus, the documents on record show that he is acting as the Whole Time or Managing Director of the Company, which has not been rebutted by leading evidence. Moreover, the Respondent has admitted within the cause title of the suit number filed by him that his occupation is one of business. Even in the Appeal Memo which has been filed by the Company in which the Respondent is a Director, the occupation of the Respondent is shown as 'Business'.

6. It is also observed by the Board that in Form 23 AC of these two Companies, the address of M/s Monharsh Finance and Investment P. Ltd. and of M/s Monika Agencies Private Limited is same as the Professional address of the Respondent. Thus, it is inferred that the above Companies are being operated from the Professional address of the Respondent.

7. As per Part B of Appendix F of the Code of Ethics, it is observed that according to Section 2(26) of the Companies Act, 1956, even where a person is not designated as a Whole Time Director, he can be deemed to be a Whole Time or Managing Director if he is entrusted with the whole and substantial management of the company as per the Memorandum or Articles of Association. Upon perusal of his Statement on Oath it is seen that the Respondent has mentioned :-

"It is true that I am the only person who looks after the plaintiff company."

Further he also mentioned that, *"The plaintiff board directors consists of only me and my wife"*

8. Thus, he was required to take specific and prior approval of the Council for engaging in other occupation apart from being in practice. Upon perusal of his membership file, it is seen that no such approval has been obtained by him.

9. Accordingly, in view of the above, the Respondent is Guilty of Professional Misconduct within the meaning of Clause (11) of Part I of the First schedule to the Chartered Accountants Act, 1949 for not obtaining specific and prior approval of the Council in terms of the requirements of Part-B of Regulation 190A of the Chartered Accountants Regulations 1988.

CONCLUSION:

10. Thus, in conclusion, in the considered opinion of the Board, the Respondent is **GUILTY** of "Professional Misconduct" falling within the meaning of Clause (11) of Part I of the First schedule to the Chartered Accountants Act, 1949 for not obtaining specific and prior approval of the Council in terms of the requirements of Part-B of Regulation 190A of the Chartered Accountants Regulations, 1988.

-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

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.

In the matter of **CA. Shiv Kumar Ramnarain Sharma (M. No.080214),**
PuneRespondent

[PPR-4/W/13-DD/7/INF/2013/BOD/276/2017]

CORAM:

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

1. That vide findings dated **10th February, 2018**, the Board of Discipline was of the opinion that **CA. Shiv Kumar Ramnarain Sharma** is guilty of Professional Misconduct falling within the meaning of Clause (11) 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. Shiv Kumar Ramnarain Sharma** and communication dated 19th March, 2018 was addressed to him thereby granting him an opportunity to make written representation. Further, vide letter dated 03rd May, 2018 **CA. Shiv Kumar Ramnarain Sharma** was granted opportunity to represent himself in person & make his representation before Board on 22nd May, 2018.
3. That despite due service of the notice of the hearing for award of punishment, **CA. Shiv Kumar Ramnarain Sharma** did not appear before the Board.
4. This Board has carefully gone through the facts of the case.
5. As per the findings of the Board dated 10th February, 2018, **CA. Shiv Kumar Ramnarain Sharma** apart from being a full time practicing Chartered Accountant, also conducted Business of Finance and the Business of Brokerage through M/s Monharsh Finance and Investment Company and was also looking after the **M Company.**



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6. The Board also noted that forms pertaining to Company were signed by the **CA. Shiv Kumar Ramnarain Sharma** .
7. A Chartered Accountant in practice is required to take specific and prior approval of the Council for engaging in other occupation apart from being in practice. Upon perusal of **CA. Shiv Kumar Ramnarain Sharma** membership file, it is seen that no such approval has been obtained by him.
8. As per the findings of the Board as contained in its report, it has already been conclusively proved that **CA. Shiv Kumar Ramnarain Sharma** is Guilty of Professional Misconduct falling within the meaning of Clause (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949.
9. Upon consideration of the facts of the case, the consequent misconduct of **CA. Shiv Kumar Ramnarain Sharma**, the Board was of the view that the ends of justice shall be met if the Respondent is awarded punishment of reprimand.
10. Accordingly, the Board decided to reprimand **CA. Shiv Kumar Ramnarain Sharma**.

Sd/-

(G. SEKAR)

PRESIDING OFFICER

Sd/-

(R K TEWARI)

GOVERNMENT NOMINEE

DATE: 22nd MAY, 2018

PLACE: MUMBAI

Certified True Copy

Mukesh Kumar Mittal
Assistant Secretary
Disciplinary Directorate

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