

## **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-226/14/DD/238/2014/BOD/355/2017**

### **QUORUM:**

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

### **In the matter of:**

**Shri Bomkesh Sett & Shri Pratha Pratim Sett  
Directors  
M/s Sandhu Charan Sett (Grocery) Pvt. Ltd.  
327, Netaji Subhas Road,  
HOWRAH (WEST BANGAL) - 711101**

**.....Complainant**

**Versus**

**CA. Pradip Kumar Agrawal (M. No. 065184)  
21/1, Mahindra Nath Roy Lane,  
4<sup>th</sup> Floor, Flat No. 402,  
HOWRAH (WEST BANGAL) - 711101**

**.....Respondent**

**DATE OF HEARING: 02.12.2017**

**PLACE OF HEARING: KOLKATA**

### **PARTIES PRESENT:**

<b>Respondent</b>	<b>:</b>	<b>CA. Pradip Kumar Agrawal</b>
<b>Counsel for Respondent</b>	<b>:</b>	<b>CA. A.P Singh</b>

### **FINDINGS:**

1. The Board noted that the charge against the Respondent is that he didn't communicate with the previous auditor and did not ensure compliance with the provisions of Section 224 and 225 of the Companies Act, 1956 before accepting the

appointment as a statutory auditor of the Company M/s Sadhu Charan Sett (Grocery) Pvt. Ltd.(hereinafter referred to as the company) for the Financial Year 2012-13.

2. The Board noted that the Complainant was not present before it in spite of the due service of the notice of the hearing.

3. The Board heard the submission of the Respondent and his Counsel and duly considered the submissions/ documents available on record.

4. The Board noted that the Respondent brought on record a sealed envelope as a proof of communication with previous auditor sent through registered post (A.D) on 29<sup>th</sup> July, 2013. The said letter was marked on the same address as appearing on the stationary of the previous auditor on which the audit report relating to the financial statement for the previous year (Financial year 2012-13) was issued by him. However, the said envelope was received back undelivered, to the Respondent on 14<sup>th</sup> August, 2013. The Board also observed that there was some over writing in the date of the receipt number affixed on the postal receipt, and asked for the clarifications on the same in writing.

The Respondent in his written submissions stated the reference number was written in hand by the postal authorities and it does include an over writing which is beyond his control.

5. The Board observed that as per the Code of Ethics members should communicate with the retiring auditor in such a manner as to retain in their hands positive proof of delivery of the communication to the addressee. In the opinion of the Council, communication by a letter sent "Registered Acknowledgement Due" or by hand against a written acknowledgment would in the normal course provide such evidence.

6. Further, it is well known that communication is said to be complete when it effectively reaches the person for whom it is meant to be received. The Board on perusal of the audit report of the company for the F.Y. 2011-12 issued by the previous auditor on his letter head noted that it categorically contained the address and phone number of its head office along with that of its branch office. The Board was of the view that in case the letter seeking the no objection of the previous auditor had been received

back undelivered, he should have exercised alternative measures like calling up, sending the communication at the address of the head office to ensure compliance with the requirements of clause (8) of Part I of the First Schedule at his end which in the instant case was clearly missing as no further efforts were there on the part of the Respondent to ensure the delivery of the letter seeking the NOC on the previous auditor. This further assumes importance in view of the letter dated 18<sup>th</sup> April 2015 from the previous auditor to the Respondent and also to the post master, Howrah Post Office categorically denying to have refused it. Thus, the Board held that compliance of the requirements of clause (8) of Part I of the First Schedule had not been ensured by the Respondent in spirit.

7. As regards the charge of ensuring compliance with the requirements of section 224 and 225 of the Companies Act, 1956, the Board observed that the Respondent brought on record copy of the representation dated 19<sup>th</sup> June 2013 received from one of the shareholders of the company regarding appointing a new auditor in place of M/s T.K.Sarkar & Associates and an intimation dated 20<sup>th</sup> June 2013 in this regard sent to M/s T.K.Sarkar & Associates through RPAD which was received back with the comment 'refused'. The Board also perused the postal receipt dated 29<sup>th</sup> June 2013 with the comment 'refused'. The Board further perused the letter dated 18<sup>th</sup> April 2015 written by the previous auditor i.e. M/s T.K.Sarkar & Associates to the Post Master, Howrah Post Office categorically denying to have received it.

8. The Board also perused the copy of Form 23B filed by the previous auditor i.e. M/s T.K.Sarkar & Associates with the ROC showing that he had been appointed as the auditor of the company for the F.Y. 2012-13 in the AGM held on 29<sup>th</sup> September 2012.

9. The Board also observed that there were disputes between the Complainants and other Director namely Sh. Kashinath Sett. and the matter was referred to the Company Law Board wherein CLB vide its interim order dated 25<sup>th</sup> June, 2014 ordered to keep on hold composition of Board of Directors of the Company. The Board also noted that the Complainants in their Rejoinder at prima facie stage challenged the validity/ genuineness of documents brought on record by the Respondent such as Minutes of Board of Directors and EOGM etc. and a report of handwriting expert to

establish that the signature of one of the Director, Mr. Partha Sett. were forged on the Minutes of Board of Directors dated 29<sup>th</sup> June, 2013. On consideration of the aforesaid, the Board was of the view that on account of existence of such conditions, the Respondent should have desisted from accepting the position of the auditor of the company. Thus, the Board held that the Respondent did not ensure due compliance of the requirements of section 224 and 225 of the Companies Act, 1956 before accepting the said appointment.

**CONCLUSION:**

8. Thus, in conclusion, in the considered opinion of the Board, the Respondent is **GUILTY** of "Professional Misconduct" falling within the meaning of Clauses (8) and (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949.


**-Sd/-**  
**(DEBASHIS MITRA)**  
**PRESIDING OFFICER**

**-Sd/-**  
**(R K TEWARI)**  
**GOVERNMENT NOMINEE**

**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



**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. Bomkesh Sett & Shri ParthaPratim Sett,**  
**Director, M/s. Sadhu Charan Sett (Grocery) Pvt. Ltd.,**  
**Howrah (West Bengal)**

....Complainant

**-Vs-**

**CA. Pradip Kumar Agrawal (M.No.065184),**  
**Howrah (West Bengal)**

.....Respondent

**[PR-226/14/DD/238/2014/BOD/355/2017]**

**CORAM:**

**CA. G. Sekar, Presiding Officer**  
**Shri R.K. Tewari (Government Nominee)**  
**CA. Dhinal Ashvinbhai Shah, Member**

1. That vide Report dated 10<sup>th</sup> February, 2017, the Board of Discipline was of the opinion that **CA. Pradip Kumar Agrawal** is guilty of Professional Misconduct falling within the meaning of Clauses (8) and (9) 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. Pradip Kumar Agrawal** and communication dated 3<sup>rd</sup> April, 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 19<sup>th</sup> April, 2018.

3. That **CA. Pradip Kumar Agrawal** appeared personally before the Board and made his oral submissions.

4. That **CA. Pradip Kumar Agrawal** in his written representation dated 14<sup>th</sup> March, 2018 stated that the previous auditor was not available at the address which

AT



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(Set up by an Act of Parliament)

was printed on his stationery that was used for his last submitted audit report for the year 2011-12. He had dispatched the letter through prescribed mode, but the previous auditor was not traceable at that address.

5. That **CA. Pradip Kumar Agrawal** further submitted that the entire issue relates to two groups of management. The Respondent cannot be held guilty for any fabrication in the minutes etc as being an outsider. He is not required to suspect the genuineness of documents placed before him by the management of the Company. Accordingly, as far as the fabrication of documents relating to his appointment is concerned, he cannot be liable for the same.

6. This Board has carefully gone through the facts of the case and also the oral and written submissions of **CA. Pradip Kumar Agrawal**.

7. As per the findings of the Board as contained in its report, it has already been conclusively proved that **CA. Pradip Kumar Agrawal** is guilty of Other Misconduct falling within the meaning of Clauses (8) and (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

8. Upon consideration of the facts of the case, the consequent misconduct of **CA. Pradip Kumar Agrawal**, and keeping in view his written and oral submissions, the Board was of the view that the ends of justice shall be met if lower punishment is awarded to him.

9. Accordingly, the Board ordered that **CA. Pradip Kumar Agrawal** be reprimanded.

Sd/-  
(G. SEKAR)

PRESIDING OFFICER

Sd/-  
(R K TEWARI)


GOVERNMENT NOMINEE

Sd/-  
(DHINAL ASHVINBHAI SHAH)

MEMBER

DATE : 19<sup>th</sup> APRIL, 2018

PLACE : KOLKATA

**Certified Copy**  
  
**PARVESH BANSAL**  
Deputy Secretary  
Disciplinary Directorate  
The Institute of Chartered Accountants of India  
ICAI Bhawan, I.P. Marg, New Delhi-110 002