



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

[PR/161/2021/DD/152/2021/BOD/651/2022]

ORDER UNDER SECTION 21A(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. Mahesh Kumar Vasantlal Dave (M.No.038219)**

M/s Mahesh Dave & Co, Chartered Accountants  
Office-A-201, Vishnu APTS-L T, Babhai Naka, Borivli-W  
MUMBAI- 400092.

.... Complainant

-vs-

**CA. Shankar Choudhary (M.No.064045)**

M/s Choudhary & Co., Chartered Accountants  
317, 3rd Floor, Chawla Complex, Sector-15 CBD Belapur,  
NAVI MUMBAI- 400614.

....Respondent

[PR/161/2021/DD/152/2021/BOD/651/2022]

MEMBERS PRESENT (in person):

**CA. Rajendra Kumar P, Presiding Officer**

**Ms. Dolly Chakrabarty (IAAS, rettd.), Government Nominee**

**Date of Hearing: 02<sup>nd</sup> November 2023**

**Date of pronouncement of Order: 11<sup>th</sup> December 2023**

1. The Board of Discipline vide its Findings dated 18<sup>th</sup> August 2023 was of the view that **CA. Shankar Choudhary (M.No.064045)** is guilty of "Professional Misconduct" falling within the meaning of Item (8) of Part-I of the First Schedule to the Chartered Accountants Act, 1949.
2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against **CA. Shankar Choudhary (M.No.064045)** and communication dated 10<sup>th</sup> October 2023 was addressed to him thereby granting him an opportunity of being heard on 02<sup>nd</sup> November 2023 which was exercised by him by being present in person before the Board. He confirmed receipt of the Findings of the Board and requested the Board to take a lenient view in the case.
3. Since the decision on the quantum of punishment to be awarded to **CA. Shankar Choudhary (M.No.064045)** was reserved by the Board, he vide communication dated 8th December 2023 was asked to be present before the Board on 11th December 2023 for the purpose of pronouncement of Order. He was not present before the Board on the said date for the said purpose.
4. Thus, upon consideration of the facts of the case and the consequent misconduct of **CA. Shankar Choudhary (M.No.064045)** and keeping in view his representation before it, the Board decided to impose a Fine of Rs.25,000/- (Rs. Twenty Five Thousand only) upon him.

Sd/-

सही प्रमाणित होने के लिए प्रमाणित  
Certified to be true copy

Sd/-

**CA. Rajendra Kumar P**  
(Presiding Officer)

(विभागाध्यक्ष/ Bishwa Nath Tiwari)  
कार्यकारी अधिकारी / Executive Officer  
अनुशासन-व्यवस्था निदेशालय / Disciplinary Directorate  
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया  
The Institute of Chartered Accountants of India  
आईसीएआई भवन, विश्व नगर, शाहदरा, दिल्ली-110032  
ICAI Bhawan, Vishwas Nagar, Shahdara, Delhi-110032

**Ms. Dolly Chakrabarty (IAAS, rettd.)**  
(Government Nominee)

CONFIDENTIAL

**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-161/2021/DD/152/2021/BOD /651/2022**

**CORAM (present in person):**

**CA. Rajendra Kumar P., Presiding Officer**  
**Ms. Dolly Chakrabarty (IAAS, Retd.), Government Nominee**  
**CA. Priti Savla, Member**

**In Re:**

**CA. Mahesh Kumar Vasantlal Dave (M.No. 038219),**  
**M/s Mahesh Dave & Co.,**  
**Chartered Accountants**  
**Office-A-201, Vishnu APTS-LT**  
**Babhai Naka, Borivli**  
**Mumbai- 400092 .**

**....Complainant**

**Versus**

**CA. Shankar Choudhary (M.No. 064045)**  
**M/s Choudhary & Company,**  
**Chartered Accountants**  
**317,3<sup>rd</sup> Floor, Chawla Complex, Sector-15,**  
**CBD Belapur**  
**Navi Mumbai-400614.**

**.... Respondent**

**DATE OF FINAL HEARING : 28<sup>th</sup> March, 2023**  
**PLACE OF FINAL HEARING : Mumbai**

**PARTIES PRESENT:**

**Complainant : CA. Mahesh Kumar Vasantlal Dave**  
**Respondent : CA. Shankar Choudhary**

**FINDINGS:**

**Brief background of the case:**

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1. The Complainant's firm was the immediate previous GST auditor of M/s VEMB Lifestyle Pvt. Ltd. and M/s ONO Uniforms Pvt Ltd (hereinafter referred to as Companies) and the Respondent was appointed as GST auditor of M/s VEMB Lifestyle PVT. Ltd. for the Financial Year 2018-19 and M/s ONO Uniforms Pvt. Ltd. for the Financial Year 2019-2020.

**Charge Alleged:**

- 2.1 The Respondent accepted his appointment as the GST auditor of M/s VEMB Lifestyle Pvt Ltd for the Financial Year 2018-19 and M/s ONO Uniforms Pvt Ltd. (now M/s ONO Lifestyle Ltd.) for the Financial Year 2019-20 without first communicating with the previous auditor (i.e. Complainant or Complainant's Firm) in writing as required under the provisions of Item (8) of Part I of the First Schedule to the Chartered Accountant Act, 1949.
- 2.2 Substantial amount of Complainant's professional fees was also pending with the management of the Companies.

The Board noted that the Director(Discipline) in his Prima Facie Opinion held the Respondent prima facie guilty of Professional Misconduct only in respect of the charge specified at para 2.1 above and the said Prima Facie Opinion had been accepted by the Board. Accordingly, the conduct of the Respondent was examined by the Board in respect of the charge specified at para 2.1 above only.

**Brief of Proceedings held:**

- 3.1 At its meeting held on 28<sup>th</sup> March 2023, the Complainant and the Respondent was present in person before the Board. They were put on oath. On being asked by the Board as to whether the Respondent pleaded guilty in respect of the charges alleged against him, he replied in affirmative and made his detailed oral submissions before the Board. The Complainant also made his counter oral submissions before the Board.
- 3.2 On consideration of the documents and submissions on record, the Board concluded the proceedings in the case.

**Observations and Findings of the Board:**

4.1 As regard the charge that the Respondent failed to communicate with the Complainant being retiring Auditor before acceptance of the appointment as the GST auditor of the aforesaid Companies for the F.Y. 2018-19 and 2019-20 respectively, the Board took into view the requirement of Item (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949 which provides as under:

*"a Chartered Accountant in practice shall be deemed to be guilty of Professional Misconduct, if he-*

*Accepts a position as auditor previously held by another chartered accountant or a certified auditor who has been issued certificate under the Restricted Certificate Rules, 1932 without first communicating with him in writing."*

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4.2 The Board observed that there are two essential requirements under Item (8) of Part I of the First Schedule to The Chartered Accountant Act, 1949 which are as follows:

- i. The communication should be prior to the acceptance of the appointment.
- ii. The communication should be in writing.

4.3 The Board also took into view the following sequence of events in the case on the basis of documents on record:

S.No.	As per documents provided by the Respondent	
	Date	Event
1.	12/06/2020 and 5/01/2021	Date of his appointment as the GST auditor of M/s Vemb lifestyle Private Limited and M/s Ono Lifestyle Limited respectively.
2.	19/06/2020 and 7/01/2021	Date of letter sent by the Respondent to the Complainant seeking his no-objection with respect to the acceptance of his appointment as the auditor of the aforesaid companies.

4.4 Thus, the Board noted that the Respondent was appointed as the GST auditor of the aforesaid Companies as on 12.06.2020 and 05.01.2021 respectively. Although the Respondent claimed that he had sent the letter to the Complainant as on 19.06.2020 and 07.01.2021 respectively seeking his no-objection with respect to the acceptance of the appointment as the auditor of the aforesaid companies through courier as it was a CORONA period and due to lockdown in the country, he could not sent the said letter through registered post acknowledgement due. He was also not able to bring on record the proof of delivery of the said letters on the Complainant. The Complainant also expressly denied having received the said letters. The Board also noted that the audit report in respect of M/s Vemb lifestyle Private Limited and M/s Ono Lifestyle Limited had been signed by the Respondent on 31<sup>st</sup> December 2020 and 31<sup>st</sup> March 2021 respectively.

4.5 In this regard, the Board took into view the following explanation as mentioned at page no. 165 of Code of Ethics 2009:

*"Members should therefore communicate with a retiring auditor in such a manner as to retain in their hands positive evidence of the delivery of the communication to the addressee. In the opinion of the Council, communication by a letter sent through "Registered Acknowledgement due" or "by hand against a written acknowledgement" would in the normal course provide such evidence."*

4.6 Further, the Code of Ethics- 2020 in its para 2.14.1.8(x) states as under :

*"2.14.1.8(x) Members should therefore communicate with a retiring auditor in such a manner as to retain in their hands positive evidence of the delivery of the communication to the addressee. In the opinion of the Council, the following would in the normal course provide such evidence:- (a) Communication by a letter sent through "Registered Acknowledgement due", or (b) By hand against a written acknowledgement, or (c)*

*Acknowledgement of the communication from retiring auditor's vide email address registered with the Institute or his last known official email address , or (d) Unique Identification Number (UDIN) generated on UDIN portal (subject to separate guidelines to be issued by the Council in this regard) "*

Thus, the Board noted that as per Code of Ethics – 2009 and Code of Ethics 2020, it is the responsibility of the incoming auditor not only to communicate with the previous auditor but also to have clear-cut evidence of the delivery of such communication in his hand. Mere sending of a letter to the previous auditor without having any evidence in hand that the communication was duly received by him, is not sufficient.

Further, the Respondent in his defence stated that "due to national lockdown he could not go to post office and send the communication with the previous auditors through registered AD". In this regard, the Board noted that looking to Covid situation, the Institute had issued announcement dated 01st May, 2020 as follows:

*"The members have raised concerns that during the period of ongoing lockdown, it is not possible for the Incoming Auditor to communicate with the Retiring Auditor through the mode(s) of communication permissible in terms of provisions of Code of Ethics. "*

*The existing Code of Ethics, 2009, provides, under commentary to Clause (8) of Part-I of First Schedule to The Chartered Accountants Act, 1949 as under :-*

*"Members should therefore communicate with a retiring auditor in such a manner as to retain in their hands positive evidence of the 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 acknowledgement would in the normal course provide such evidence."*

*Due to the existing constraint of communication through abovementioned modes, it has been decided that the members may communicate with the Retiring Auditor vide E-mail, provided an acknowledgement of such communication is received from the Retiring Auditor's E-mail address registered with the Institute or his last known official E-mail address. Such acknowledgement of communication would be deemed as valid evidence of positive delivery of communication. "*

Thus, the Board noted that during the pandemic, incoming auditor was given relaxation by ICAI to communicate with the Retiring auditor through email and acknowledgment of such communication received from the Retiring auditor's email address registered with the ICAI. However, in the extant case, the Respondent categorically accepted before the Board during the course of hearing that he did not send any email to the Complainant seeking his no-objection prior to the acceptance of the said appointment. Thus, the Respondent failed to comply with such requirement of the provision of Code of Ethics – 2009 /2020.

*Dr*

4.7 In view of the above, the Board was of the view that the Respondent had failed to establish that there was a communication with the Complainant before the acceptance of the appointment as the GST auditor of the aforesaid Companies for the F.Y. 2018-19 and 2019-2020 respectively in term of the requirements of Item (8) of Part I of First Schedule as he could not bring on record any positive evidence of the delivery of the said letters on the Complainant seeking his no-objection prior to the acceptance of the appointment as the GST Auditor.

Accordingly, the Board held the Respondent guilty of Professional Misconduct falling within the meaning of Item (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

**CONCLUSION:**

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

**Sd/-**  
**CA. RAJENDRA KUMAR P**  
**(PRESIDING OFFICER)**

**Sd/-**  
**DOLLY CHAKRABARTY (IAAS, Retd.)**  
**(GOVERNMENT NOMINEE)**

**Sd/-**  
**CA. Priti Savla**  
**(MEMBER)**

**DATE:18-08-2023**

सही प्रतिलिपि होने का लेख प्रमाणित  
Certified to be true copy  
*Arun Kumar*  
अरुण कुमार / Arun Kumar  
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer  
अनुशासन-आत्मक विभाग / Disciplinary Directorate  
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया  
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