



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

[PR- 60/2019-DD/276/19/BOD/630/2022]

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. Mohan Rungta (M. No. 057053),
31, Giri Babu Lane, 1st Floor,
Room No B-1, Kolkata-700012
West Bengal.

.....Complainant

Versus

CA. Narayan Aggarwal (M.No.064005)
Prop of Narayan Garv & Associates (FRN 0326624E)
Baidhyanath Apartment, Flat No. 405/6
139, Feeder Road, Belghoria,
Kolkata-700056 (West Bengal).

..... Respondent

[PR- 60/2019-DD/276/19/BOD/630/2022]

MEMBERS PRESENT (through video conferencing):

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

Date of Hearing and passing Order: 17th December, 2023

1. The Board of Discipline vide its Findings dated 5th October 2023 was of the view that CA. Narayan Aggarwal (M.No.064005) 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. Narayan Aggarwal (M.No.064005) and communication dated 12th December 2023 was addressed to him thereby granting him an opportunity of being heard on 17th December 2023. The Respondent vide his e-mail dated 16th December 2023 informed that he had already made all his relevant submissions regarding the matter and specifically expressed his acceptance with regard to the decision taken up by the Board of Discipline. He further submitted that he does not wish to exercise his right and opportunity of being heard once again and accept the charges framed upon him by the Hon'ble Board of Discipline.
3. Thus, upon consideration of the facts of the case, the consequent misconduct of CA. Narayan Aggarwal (M.No.064005) 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/-

CA. Rajendra Kumar P
(Presiding Officer)

Sd/-

Ms. Dolly Chakrabarty (IAAS, reted.)
(Government Nominee)

Sd/-

CA Priti Savla
(Member)

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

मीनू गुप्ता / Meenu Gupta
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनपरक विभाग / Disciplinary Directorate
The Institute of Chartered Accountants of India
आईसीएआई भवन, विद्यवा नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vidya Nagar, Shahdara, Delhi-110032

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- 60/2019-DD/276/19/BOD/630/2022]

CORAM: (Present in Person)

CA. Rajendra Kumar P, Presiding Officer

Ms. Dolly Chakrabarty (IAAS, retd.), Government Nominee

CA. Priti Savla, Member

In the matter of:

CA. Mohan Rungta (M. No. 057053),

31, Giri Babu Lane, 1st Floor,

Room No B-1, Kolkata-700012

West Bengal.

..... Complainant

Versus

CA. Narayan Aggarwal (M.No.064005)

Prop of Narayan Garv & Associates (FRN 0326624E)

Baidhyanath Apartment, Flat No. 405/6

139, Feeder Road, Belghoria,

Kolkata-700056 (West Bengal)

..... Respondent

DATE OF FINAL HEARING

:

4th May, 2023

PLACE OF FINAL HEARING

:

kolkata/ through video conferencing

PARTIES PRESENT:

Complainant (in person)

:

CA. Mohan Rungta

Counsel for the Complainant (in person)

:

CA. A. P. Singh

Respondent (through VC)

:

CA. Narayan Aggarwal

Counsel for the Respondent (in person)

:

CA. Rishav Churiwal

FINDINGS:

BACKGROUND OF CASE:

- 1.1. The Complainant was the Tax Auditor of M/s Shree Siddhi Vinayak Jewellers (hereinafter referred to as 'SSVJ'), a proprietorship concern of Shri Vinod Kumar Verma since 31.03.2012 and had conducted the Tax Audit of SSVJ for the year ended 31st March 2017 and submitted his report on

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03.10.2017. The Tax Audit fee payable by SSVJ to the Complainant for the year ended 31st March 2017 was Rs. 60,000/- plus applicable taxes. As part of the regular practice, tax had been deducted at source by SSVJ on the above-mentioned Tax Audit fee of Rs.60,000/- on 31.03.2017. He was also appointed as Tax Auditor for the F.Y 2017-18 (A.Y 2018-19). Accordingly, SSVJ deposited an amount Rs. 6,000/- representing the amount of tax deducted at source on the Tax Audit Fee of Rs.60,000/- on 21st April 2018. Considering the increase in workload, both parties agreed for revision of Tax Audit fee from Rs. 60,000/- to Rs. 1,50,000/-. Consequent upon the increase in the Tax Audit fee, SSVJ deposited an additional amount of Rs.9,000/- (along with applicable interest), representing the amount of Tax Deducted at Source on the incremental Tax Audit fee. This payment was made by SSVJ on 24.07.2018 vide challan no. 03506, BSR code 0011349, State Bank of India. SSVJ thereafter reversed the transaction for the amount of Tax Deducted at Source for Rs. 6,000/- and Rs.9,000/- by filing a correction in the Tax Deducted at Source return and did not inform the Complainant about the same. In accordance with the requirement for submission of details of the Tax Auditor, SSVJ uploaded information on the appropriate website (<https://www.incometaxindiaefiling.gov.in.>) stating that Complainant would be its Tax Auditor for the F. Y. 2017-18 (A. Y. 2018-19).

- 1.2. Thereafter, SSVJ through an email dated 30th September 2018 intimated that the Respondent Firm, M/s Narayan Agarwal & Company (FRN 326527E) (hereinafter referred to as "NAC") had been appointed as the Tax Auditor of the SSVJ for A.Y. 2018-19 and sought no-objection for the same.

CHARGES ALLEGED:

- 2.1 The Respondent accepted the appointment as the Tax Auditor of SSVJ and signed the Financial Statement for the F.Y. 2017-18 without communicating with the Complainant, being the previous Tax Auditor in writing.
- 2.2 The Complainant's Audit fees from SSVJ for the F.Y 2016-17 for an amount of Rs. 1,800/- was also pending.

The Board noted that the Director(Discipline) in his Prima Facie Opinion held the Respondent prima facie Guilty of Professional Misconduct falling within the meaning of Item (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949 only in respect of the charge specified at para 2.1 above and the said view had been accepted by the Board. Accordingly, the conduct of the Respondent was examined in respect of Professional Misconduct falling within the meaning of Item (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949 only in respect of the charge specified at para 2.1 above.

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BRIEF OF PROCEEDINGS HELD:

3. At the time of hearing held in the case on 4th May 2023, the Complainant and the Respondent along with their respective Counsels were present before the Board. Thereafter, the Complainant and the Respondent were put on oath. On being asked by the Board as to whether the Respondent pleaded Guilty in respect of the charge alleged against him, he replied in negative, and his Counsel made detailed oral submissions to defend on the charges alleged against the Respondent. The Counsel for the Complainant also made his submissions in support of the allegations alleged against the Respondent. Thus, on consideration of the documents and submissions on record, the Board concluded the proceedings in the case.

BRIEF SUBMISSIONS OF THE RESPONDENT:

4. The Respondent in his Written submissions, inter-alia, stated as under:
- a) M/s Narayan Garv & Associates had been appointed as Auditor of M/s Shree Siddhi Vinayak Jewellers for the accounting and taxation period of 1st April, 2017 till 31st March, 2018 and the Respondent's Firm was supplied with the valid appointment letter issued by the client on its letterhead. The professional fee of the Complainant was duly paid by SSVJ and no amount of payment was lying due on their part at the time of the appointment of the Respondent as the auditor therein.
 - b) The Complainant had been demanding an exceptionally abnormal hike in his professional fees. The demand was clearly unethical on the part of a registered member of ICAI which in turn has been an act demeaning the glory of the profession.
 - c) SSVJ was ready to initiate appropriate criminal proceedings against the Complainant, but the Respondent requested them not to proceed since such an instance shall severely humiliate the prestige and honor of the noble profession.
 - d) The Complainant has also initiated a Civil Suit on monetary grounds against SSVJ and the same is pending adjudication before the Ld. City Civil Court.

OBSERVATIONS OF THE BOARD:

- 5.1 As regard the charge that the Respondent failed to communicate in writing with the Complainant being the previous Auditor before acceptance of the appointment as the Tax Auditor of SSVJ for the F.Y. 2017-18, 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."

The Board observed that there 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 appointment.
- ii. The communication should be in writing.

Besides, the "Code of Ethics (2009 edition)" for the Chartered Accountants emphasis that professional courtesy alone is not the major reason for requiring a member to communicate with the existing accountant who is member of the Institute or a certified auditor. The object of the incoming auditor, in communicating with the retiring auditor, is to ascertain from him whether there are any circumstances which warrant him not to accept the appointment.

- 5.2 In the instant case, the Board noted that the Complainant conducted the Tax Audit of SSVJ for the year ended 31st March 2017 and submitted his report on 3rd October 2017. The Board also noted that the Complainant was also appointed as Tax Auditor for the F.Y 2017-18 (A.Y 2018-19) and there was revision of Tax Audit fee from Rs 60,000/- to Rs. 1,50,000/- due to which SSVJ deposited Rs 15,000/- as TDS for the A.Y 2018-19 which was also reflected in Form 26AS. But on the same day, SSVJ reversed the said transaction.
- 5.3 The Board further noted that the Respondent brought on record a letter dated 22nd September 2018 whereby SSVJ informed the Respondent firm of its appointment as the Tax Auditor for the F.Y. 2017-18 and also stated that they have sent letter for NOC from previous Tax Auditor and requested to accept the appointment and complete the audit work.
- 5.4 The Board also noted that the Complainant, on the other hand, brought on record an email dated 30th September 2018 sent by SSVJ attaching therewith a letter dated 21st September 2018 intimated to the Complainant that M/s Narayan Agarwal & Company (FRN 326527E) had been appointed as the Tax Auditor of SSVJ for the F.Y. 2017-18 and sought their no objection for the same. The Board also noted that there was another email dated 8th October 2018 received by the Complainant from CA. Rishav Churiwal (Membership No. 304176), Partner of M/s Narayan Agarwal & Company (FRN 326527E) stating that they had been appointed as Tax Auditor for SSVJ

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for FY 2017-18 and sought No Objection in writing from the Complainant which was replied to by the Complainant on 11th October 2018 as under:

"We are in receipt of your email intimating us regarding your appointment as Tax Auditor of M/s Shree Siddhi Vinayak Jewellers for the Financial Year 2017-18 and seeking our "No Objection" for the same.

We would like to state that M/s Shree Siddhi Vinayak Jewellers has not paid us our Fees for the professional services rendered to them and has also not reimbursed us the amount of Income Tax paid by us on their behalf.

We request you not to accept your appointment as the Tax Auditor till our payments are not cleared fully."

- 5.5 The Board further noted that although the Tax Audit report of SSVJ for the F.Y. 2017-18 is dated as 31st October 2018, the copy of the Financial Statements attached to the said report have been signed by the Respondent as on 29th September 2018 in the capacity of proprietor of M/s Narayan Garv and Associates i.e. much before the date when the first communication was received by the Complainant through an e-mail dated 30th September 2018 from SSVJ in respect of Tax Audit for the F.Y. 2017-18 to be conducted by a different audit firm in which the Respondent is also a partner and not from the Respondent/his proprietorship firm i.e. the incoming auditor.
- 5.6 The Board also noted that during the course of hearing the Counsel for the Respondent admitted that the Respondent did not communicate with the Complainant who conducted the Tax Audit of SSVJ for the F.Y. 2016-17 prior to the acceptance of Tax audit of SSVJ for the F.Y. 2017-18.
- 5.7 The Board noted that the Code of Ethics, 2009, inter-alia, provides the following with respect to the requirements of Item (8) of Part I of the First Schedule to the Chartered Accountants Act 1949: *"What should be the correct procedure to adopt when a prospective client tells you that he wants to change his auditor and wants you to take up his work? There being two persons involved, the Company and the old auditor, the former should be asked whether the retiring auditor had been informed of the intention to change. If the answer is in the affirmative, then a communication should be addressed to the retiring auditor. If, however, it is learnt that the old auditor has not been informed, and the client is not willing to make the first move, it would be necessary to ask him the reason for the proposed change. If there is no valid reason for a change, it would be healthy practice not to accept the audit. If he decides to accept the audit he should address a communication to the retiring auditor."*



The Board also took into view the following Guidelines given by the Council on the subject (Code of Ethics 2009):

"The term "previous auditor" means the immediately preceding auditor who held same or similar assignment comprising same/similar scope of work."

- 5.8 Thus, on perusal of the submissions and documentary evidence on record, the Board viewed that there is no evidence to indicate that M/s Narayan Agarwal & Company (FRN 326527E) had accepted the appointment as the Tax Auditor of SSVJ for the F.Y. 2017-18. The Board also viewed that the onus to communicate with the previous auditor is on the Incoming auditor and the same cannot be passed on to the auditee. Further, there is no evidence to indicate that the Respondent communicated with the Complainant being the previous auditor before acceptance of the Tax Audit of SSVJ for the FY 2017-18 as stated in the provisions of Item (8) of Part I of First Schedule of the Chartered Accountants Act, 1949.

Thus, in view of the above together with the admission of the aforesaid fact of non-communication by the Respondent during the course of hearing, the Respondent is held guilty in respect of the charge alleged.

CONCLUSION:

6. Thus, in conclusion, in the considered opinion of the Board, the Respondent 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.

Sd/-
CA. Rajendra Kumar P
(Presiding Officer)

Sd/-
Ms. Dolly Chakrabarty (IAAS, retd.)
(Government Nominee)

Sd/-
CA. Priti Savla
(Member)

DATE: 05-10-2023

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Certified to be true copy

मि. नाथ तिवारी / Bishwa Nath Tiwari
कार्यकारी अधिकारी / Executive Officer
अनुशासनसमक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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