



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

[PR/348/2020/DD/334/2020/BOD/639/2022]

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. Aditya Aggarwal (M.No. 0515644),
M/s Aggarwal & Rampal, Chartered Accountants
2nd Floor, 19, Local Shopping Complex,
Madangir, Delhi- 110062.

.....Complainant

Versus

CA. Sanjay Bhatia, (M.No. 523817)
M/s R K Dudeja & Co., Chartered Accountants
4/1, 2nd Floor, Room No-202,
East Patel Nagar, New Delhi- 110076.

.....Respondent

[PR/348/2020/DD/334/2020/BOD/639/2022]

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 3rd November 2023 was of the view that CA. Sanjay Bhatia (M.No. 523817) is Guilty of Professional Misconduct falling within the meaning of Item (8) and (9) 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. Sanjay Bhatia and communication dated 12th December 2023 was addressed to him thereby granting him an opportunity of being heard on 17th December 2023 which was exercised by him by being present through video conferencing. He confirmed the receipt of the Findings of the Board and concurred with the same. He requested the Board to pardon him and take a lenient view in the case.
3. Thus, upon consideration of the facts of the case, the consequent misconduct of CA. Sanjay Bhatia (M.No.523817) and keeping in view his representation before it, the Board decided to impose a Fine of Rs.35,000/- (Rs. Thirty Five Thousand only) upon him.

Sd/-

CA. Rajendra Kumar P
(Presiding Officer)

Sd/-

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

सही प्रतिस्तिपि होने के लिए प्रमाणित /
Certified to be true copy

मीनू गुप्ता / Meenu Gupta
परिचय कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासननात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आइसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Viahwas Nagar, Shashtra, Delhi-110032

Sd/-

CA Priti Savla
(Member)

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/348/2020/DD/334/2020/BOD/639/2022]

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. Aditya Aggarwal (M.No. 0515644),

M/s Aggarwal & Rampal,

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Versus

CA. Sanjay Bhatia, (M.No. 523817)

M/s R K Dudeja & Co.

Chartered Accountants

4/1, 2nd Floor, Room No-202,

East Patel Nagar,

New Delhi- 110076.

.....Respondent

DATE OF FINAL HEARING

: 29th June 2023

PLACE OF FINAL HEARING

: New Delhi

PARTIES PRESENT: (In person)

Respondent

: CA. Sanjay Bhatia

FINDINGS:

CHARGES ALLEGED:

Bill

- 1.1 The Complainant was appointed as Statutory and Tax Auditor of "M/s Narula Corporate Relocation Services Private Limited" (hereinafter referred to as the "Company") for the Financial Years 2016-17 and 2017-18 and further reappointed for the period of 3 Financial Years from 01.04.2018 to 31.03.2021. The Respondent accepted his appointment as the Statutory and Tax Auditor of the Company for the Financial Year 2018-19 without first communicating in writing with the previous auditor (i.e. the Complainant or the Complainant Firm).
- 1.2 The appointment of the Respondent as Statutory and Tax auditor of the Company for the Financial Year 2018-19 was in violation of Section 139 and 140 of the Companies Act 2013 as the Complainant firm never resigned from the position of Statutory and Tax auditor of the Company.
- 1.3 The Respondent to solicit the business has signed the Financial Statements at zero fees which tantamount to "under cutting" of audit fees which is in contravention of the Guidelines of the Institute of Chartered Accountant of India.

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) and (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949 in respect of the charge specified at para 1.1 and 1.2 above which had been accepted by the Board. Accordingly, the conduct of the Respondent was examined in respect of charge specified at para 1.1 and 1.2 above only.

BRIEF OF PROCEEDINGS HELD:

2.

S.No.	Date of Hearing	Status
1.	16th May 2023	Adjourned at the request of the Complainant.
2.	29th June, 2023	Heard and concluded.

BRIEF SUBMISSIONS OF THE RESPONDENT:

3. The Respondent in his written submissions, inter-alia, stated as under:
 - a) Mr. Rajat Narula had come to the Respondent through a professional colleague, CA. Shrey Sawhney, partner of Sawhney & Sawhney Associates (a Firm Located at Paschim Vihar, West Delhi), he was mediator between the Respondent and Mr. Rajat Narula, even all communication in email was received from his email-id.
 - b) The Respondent was trapped in the whole case by Mr. Rajat Narula and CA. Shrey Sawhney. The Respondent was forced into believing that NOC and resignation letter was there, and he could proceed with the audit. Therefore, the Respondent performed the audit in good faith on the basis of assurances given to him.

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- c) The Respondent had never counter attacked the complaint made by the Complainant. The Respondent accepted that his actions inadvertently made him guilty of this offence.
- d) The Respondent also attached his apology letter.

OBSERVATIONS OF THE BOARD:

4.1 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 Statutory and Tax auditor of the company for the F.Y. 2018-19, 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 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 as the auditor.
- ii. The communication should be in writing.

4.2 The Board noted that the Respondent was appointed as the Statutory and Tax Auditor of the company for the period 1st April 2019 to 31st March 2024 and ADT-1 in respect of his appointment had been filed by the company. The Respondent issued the Statutory Audit Report in respect of the company for the F.Y. 2018-19 on 28th June 2019.

4.3 The Board further noted that the Respondent brought on record an apology letter addressed to the Complainant accepting that his actions are considered offence in the eyes of the profession, and it happened due to his negligence. The Board also noted that during the course of hearing the Respondent admitted his guilt.

4.4 Thus, in view of the admission by the Respondent and the submissions and documentary evidence on record, the Board viewed that the Respondent has failed to communicate with the Complainant being the previous auditor before acceptance of the Statutory and Tax audit of the Company for the FY 2018-19 in the manner as stated in the provisions of Item (8) of Part I of First Schedule of the Chartered Accountants Act, 1949 and is thus held guilty in respect of the charge alleged.



- 4.5 As regard the second charge that the appointment of Respondent as Statutory and Tax auditor of the Company for the Financial Year 2018-19 was in violation of Section 139 and 140 of the Companies Act 2013 as the Complainant firm never resigned from the position of Statutory and Tax Auditor of the Company, the Board took into view the requirement of Section 139 and 140 of the Companies Act 2013 which provides as under:

139. Appointment of auditors. —

“According to Section 139(8)(i) of the Companies Act, 2013 any casual vacancy in the office of an auditor shall in the case of a company other than a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Board of Directors within thirty days, but if such casual vacancy is as a result of the resignation of an auditor, such appointment shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting”

Further as per section 139(9) of The Companies Act, 2013: -

Subject to the provisions of sub-section (1) and the rules made thereunder, a retiring auditor may be re-appointed at an annual general meeting, if—

- (a) he is not disqualified for re-appointment;*
- (b) he has not given the company a notice in writing of his unwillingness to be re-appointed;*
- (c) a special resolution has not been passed at that meeting appointing some other auditor or providing expressly that he shall not be re-appointed.*

140. Removal, Resignation of Auditor and Giving of Special Notice: -

(1) The auditor appointed under section 139 may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner:

Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard.

(2)

(3)

(4) (i) Special notice shall be required for a resolution at an annual general meeting appointing as auditor a person other than a retiring auditor, or providing expressly that a retiring auditor shall not be re-appointed, except where the retiring auditor has completed a consecutive tenure of five years or, as the case may be, ten years, as provided under sub-section (2) of section 139.

From the above provisions, it is clear that to remove an auditor before the expiry of his term a procedure is defined under the Companies Act, 2013 which needs to be complied with by the concerned Company. Further, the provision of Item (9) of Part I of First

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Schedule to the Chartered Accountants Act, 1949 casts a duty on the incoming auditor to ensure before accepting his appointment as auditor of a company whether the requirements of Sections 139 and 140 of Companies Act, 2013 (Replaced with Section – 224 and 225 of Companies Act, 1956) in respect of such appointment have been duly complied with or not by the Incoming auditor.

- 4.6 The Board noted that the Complainant firm was re-appointed as Statutory auditor of the Company for the financial years 2018-19 to 2020-21 as evidenced from ADT- 1 filed by the Company on 05-04-2019 for appointing the Complainant firm as its auditor for the period 1st April 2018 to 31st March 2021. Further, it is also noticed that there has been no evidence on record to show that the Complainant firm ever resigned as an auditor of the Company for the financial year 2018-19. On perusal of Form ADT- 1 dated 26-09-2020 brought on record by the Complainant, the Board noted that the Respondent was appointed as statutory auditor of the Company for the financial years 2019-20 to 2023-24. Also, the Respondent brought on record a letter dated 02.08.2019 issued by the Company proposing appointment of his firm as their Statutory auditor for FY 2018-19 on account of casual vacancy created by the resignation of the Complainant firm along with a copy of Board resolution dated 05.08.2019 to the said effect. Further, even the said appointment was subject to approval of EGM of the Company as being mentioned in the letter as well as Board resolution. However, the Respondent signed the financial statement of the Company for the financial year 2018-19 on 28th June 2019 i.e., much before his formal appointment as Statutory auditor of the Company. Also, no resignation letter of the Complainant has been brought on record by the Respondent. Further, the proposed appointment letter produced by the Respondent is dated 02nd August 2019 while the Board resolution has been stated to be passed on 05th August 2019 which in itself are contradictory. Thus, it is apparent that due procedure as prescribed under the Companies Act for the appointment of the Respondent for FY 2018-19 has not been followed.
- 4.7 The Board further noted that the Respondent brought on record an apology letter addressed to the Complainant stating that he got misled by the false assurance of one of the directors of the company and a professional colleague and that no resignation had taken place. The Board also noted that during the course of hearing the Respondent admitted his guilt.
- 4.8 Thus, in view of the admission by the Respondent and the submissions and documentary evidence on record, the Board viewed that Respondent before his acceptance as an auditor of the Company did not ensure whether the provisions of Section 139 and Section 140 of the Companies Act, 2013 were complied with regarding his appointment and is thus held guilty in respect of the charge alleged.

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CONCLUSION:

5. Thus, in conclusion, in the considered opinion of the Board, the Respondent is **GUILTY** of Professional Misconduct falling within the meaning of Item (8) and (9) 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: 03-11-2023

सही प्रतिलिपि होने के लिए प्रमाणित
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बिष्व नाथ तियारी / Bishwa Nath Tiwari
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
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