



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

[PR-285/2019-DD/247/2019/BOD/663/2022]

**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. Jitendra Devkisaroop Gupta (M. No.102500)**  
Chartered Accountants,  
Shop No.49, Shivji Market,  
Sector-19D, Vashi,  
Navi Mumbai – 400705.

.....Complainant

Versus

**CA. Ramesh Gupta (M. No.043755)**  
Chartered Accountants  
Office No. A- 3021, Bima Complex  
Steel Market Road,  
Navi Mumbai – 410218.

.....Respondent

[PR-285/2019-DD/247/2019/BOD/663/2022]

**MEMBERS PRESENT (through video conferencing):**

**CA. Rajendra Kumar P, Presiding Officer**  
**Ms. Dolly Chakrabarty (IAAS, ret'd.), Government Nominee**

**Date of Hearing and passing Order: 17<sup>th</sup> December 2023**

1. The Board of Discipline vide its Findings dated **6<sup>th</sup> December 2023** was of the view that **CA. Ramesh Gupta (M. No.043755)** 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. Ramesh Gupta** and communication dated 12<sup>th</sup> December 2023 was addressed to him thereby granting him an opportunity of being heard on 17<sup>th</sup> December 2023 which was exercised by him by being present through video conferencing. He confirmed receipt of the Findings of the Board. He requested the Board to take a sympathetic view in the case, keeping in view the fact that he is not medically fit due to which he has to incur a lot of medical expenditure, his age and the fact that he had an unblemished career.
3. Thus, upon consideration of the facts of the case, the consequent misconduct of **CA. Ramesh Gupta (M. No.043755)** and keeping in view his representation before it, **the Board decided to impose a Fine of Rs.15,000/- (Rs. Fifteen Thousand only) upon him.**

Sd/-

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

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

*Nisha Sharma*

निशा शर्मा / Nisha Sharma  
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer  
अनुशासनात्मक निदेशालय / Disciplinary Directorate  
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया  
The Institute of Chartered Accountants of India  
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032  
ICAI Bhawan, Vishwas Nagar, Shahdara, Delhi-110032

Sd/-

**Ms. Dolly Chakrabarty (IAAS, ret'd.)**  
(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-285/2019-DD/247/2019/BOD/663/2022]**

**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. Jitendra Devkiswaroop Gupta (M. No.102500)  
Chartered Accountants,  
Shop No.49, Shivji Market,  
Sector-19D, Vashi,  
Navi Mumbai – 400705.**

**.....Complainant**

**Versus**

**CA. Ramesh Gupta (M. No.043755)  
Chartered Accountants  
Office No. A- 3021, Bima Complex  
Steel Market Road,  
Navi Mumbai – 410218.**

**.....Respondent**

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

**PLACE OF FINAL HEARING : Mumbai**

**PARTIES PRESENT (in person):**

**Complainant : CA. Jitendra Devkiswaroop Gupta  
(with his colleague Shri Atul Doshi)  
Respondent : CA. Ramesh Gupta**

**FINDINGS:**

**BRIEF FACTS OF THE CASE:**

1. The Complainant's Firm was the Statutory Auditor of M/s Aey Pee Roadways Pvt. Ltd. (hereinafter referred to as the "Company") for the Financial Year 2017-18. Thereafter, the Respondent was appointed as the Statutory Auditor of the Company from the Financial Year 2018-19 onwards. In this regard, the Company proposed the Respondent for his appointment vide letter dated 1<sup>st</sup> April 2019 asking for his consent to serve as the Statutory Auditor of the Company from the Financial Year 2018-19 till the Financial Year 2022-23. The Respondent in response gave his consent on 05th April 2019 and ADT-1 in this regard was filed on 12th April 2019. Later on, the Respondent resigned from the post of auditor and the statutory audit of the Company was conducted by the Complainant for FY 2018-19.

**CHARGE ALLEGED:**

2. It is alleged by the Complainant that the Respondent accepted his appointment as the Statutory Auditor of the Company for the Financial Year 2018-19 on 05-04-2019 without first communicating in writing with the previous auditor (i.e., Complainant) as required under Item (8) of Part I of First Schedule to the Chartered Accountants Act, 1949. It is further stated that the Respondent had written for no-objection to the Complainant on 15-07-2019.

The Board noted that on consideration of the Prima Facie Opinion of the Director (Discipline) along with the documents on record, the (erstwhile) Board had noted that ADT 1 in respect of the Respondent's appointment as the auditor of the company for the F.Y. 2018-19 had been filed by the company with the ROC on 12<sup>th</sup> April 2019 alongwith the consent letter of the Respondent dated 5<sup>th</sup> April 2019. On perusal of the consent letter of the Respondent dated 5<sup>th</sup> April 2019, the Board observed that the same was absolute meaning thereby that it was as good as acceptance of the appointment. Further, the Respondent approximately after three months of his appointment vide letter and email both dated 15<sup>th</sup> July 2019 sought for the no objection of the Complainant and that too when the Complainant vide his email of the same date pointed out the same to him. Thus, the (erstwhile) Board did not agree with the Prima Facie Opinion of the Director (Discipline) that the Respondent is NOT GUILTY of Professional

Misconduct falling within the meaning of Item (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949 and decided to proceed under Chapter IV of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

**BRIEF OF PROCEEDINGS HELD:**

3.

Date of Hearing(s)	Status
28 <sup>th</sup> March 2023	Heard and concluded.

**BRIEF SUBMISSIONS OF THE PARTIES TO THE CASE:**

**A. COMPLAINANT:**

4. The Complainant in his submissions, inter-alia, stated as under:

4.1 The Complainant submitted the copy of the Challan issued by MCA site for filing of appointment of Auditors ADT-1 vide SRN No.H50874417 dated 12/04/2019 which clearly shows the name of the Respondent under 'received' from column. Also, the same name and address appear in the Challan bearing SRN R05253943 dated 16/10/2019 which is issued against filing of ADT-3. So, the contention of the Respondent of being unaware of the entire filing process appears to be false as they themselves have filed ADT-1.

4.2 Since the Complainant had already filed a complaint against the Respondent, he did not proceed with the signing of the Balance Sheet. This cannot be proved if they had already started auditing the books of accounts of the client.

**B. RESPONDENT:**

5. The Respondent in his submissions, inter-alia, stated as under:

5.1 The Respondent informed with remorse that the only act he conducted wrong was issuing consent letter without communicating with the previous auditor which was technically incorrect. However, the Respondent would like to explain circumstances under which this error was committed by him. In the profession many clients' approach with

A2

desire to change current auditor due to some valid reason. In this case the reason given to Respondent by the client was distance of current Auditor (Vashi) which is about 30 Kms from client's office. The client (M/s Aee Pee Roadways Pvt. Ltd.) approached the Respondent in the month of April 2018, and he clearly informed the client that audit for FY 2017-18 has to be conducted by the Complainant and Respondent can take up audit work from next year (FY 2018-19) onwards and that a no-objection will be required from the Complainant before starting audit work for next year onwards. The client agreed for the same and informed that they were having very amicable relations with the Complainant and will arrange the required no-objection in due course after completion of audit for FY 2017-18 which was expected to be completed sometime in September 2018. On several occasions during the intervening period and thereafter, the Respondent orally informed the client that he can take audit work only after getting no-objection from the current Auditor. Format of no-objection was given to the client for this purpose. The client always assured the Respondent that they will arrange for the no-objection in due course.

5.2 The client sent invitation for appointment as Statutory Auditor of their company dated 01-04-2019 and informed the Complainant that they are unaware of any such appointment and did not respond to e-mail (Dt. 11-06-2019) of the Complainant. In the profession, many potential clients approach for change of Auditor and Respondent is not sure whether they will appoint him as Auditor or not. In one out of ten cases there is actual change of Auditor. In this case, the client had invited the Respondent, and he was not knowing how many contenders were there and who will be appointed in the end. The client never informed the Respondent about their appointment in the AGM and filing of ADT-1. Interestingly, the e-mail ID of company mentioned in Form No. ADT-1 is that of the Complainant, which is [cajdgupta@gmail.com](mailto:cajdgupta@gmail.com). So, the knowledge of the Respondent's appointment was between the company and the Complainant till 15<sup>th</sup> July 2019. The Respondent did not get an opportunity to either accept or reject the appointment until he got an e-mail from the Complainant in the month of July 2019.

5.3 The Respondent formally asked for the NOC on the same day (i.e. 15<sup>th</sup> July 2019) when he came to know about their appointment. It was informed by the Complainant that he will

not issue no-objection as client had to pay some outstanding fees. The Respondent took all efforts to resolve this situation including mediation for resolution of fees dispute. The Respondent met the Complainant personally and as per his advice, the Respondent resigned from the company immediately and informed the Complainant. The Respondent accepted that technically he had done misconduct but requested the Board to consider his intention and circumstances. The Respondent did not know the Complainant personally except one meeting related to this case and there is no change of clients between them as he is catering to different geographical areas.

- 5.4 The Respondent did not give acceptance of his appointment. He never started conducting the audit.
- 5.5 When the Respondent came to know about objection of the Complainant regarding pending fees, he offered his help to resolve the issue of pending fees. Unfortunately, the Complainant considered this as brokerage and hence the Respondent decided to keep out of it till it got resolved between the client and the Complainant.
- 5.6 The Respondent personally visited the Complainant's office and expressed regret for his mistake and on his advice, the Respondent resigned as Auditor by filing ADT-3.
- 5.7 The Complainant conducted the audit of this company in all years. The Respondent did not conduct Audit for any year.

**OBSERVATIONS OF THE BOARD:**

6.1 As regard the charge that that the Respondent accepted the position as Statutory Auditor of the Company for the F.Y.2018-19 without first communicating in writing with the Complainant being its previous Statutory auditor, 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 auditor,
- ii. The communication should be in writing.

6.2 In the instant case, the Board noted that the Complainant's Firm was the Statutory Auditor of the Company for the Financial Year 2017-2018. Further, the following sequent of events merit consideration in this regard:

S.no.	Date of event/date of communication	Particulars of event
1.	Letter dated 1 <sup>st</sup> April 2019	The Company proposed the Respondent for his appointment vide letter dated asking for his consent to serve as the Statutory Auditor of the Company from the Financial Year 2018-19 till 2022-23 along with certificate of his eligibility for such appointment as required under Section 139 and Section 141 of the Companies Act, 2013.
2.	4 <sup>th</sup> April, 2019	The Respondent was appointed as the Statutory Auditor of the Company in its AGM held on from the financial year 2018-19 onwards.
3.	05 <sup>th</sup> April 2019	The Respondent gave his consent to act as Statutory Auditor of the company and his eligibility certificate addressed to the Board of Directors of the Company.
4.	12 <sup>th</sup> April 2019	ADT-1 filed by the Respondent on behalf of the company in respect of his appointment as the auditor of the company

5.	Email dated 15 <sup>th</sup> July 2019	The Complainant sent an email to the Respondent stating that he accepted the appointment as auditor without obtaining no-objection from him.
6.	Letter and email dated 15 <sup>th</sup> July 2019	The Respondent sought for the no objection of the Complainant.
7.	31 <sup>st</sup> July 2019	Complaint filed in Form 'I' by the Complainant with the Disciplinary Directorate.
8.	15 <sup>th</sup> October 2019	The Respondent resigned from the position of the statutory auditor of the Company.

6.3 The Board also perused the contents of the letter dated 5<sup>th</sup> April 2019 written by the Respondent to the company wherein it was, inter-alia, stated as below:

*"We are in receipt of your letter dated 18/12/2018 requiring our consent for being appointed as Statutory Auditor of M/s AEY PEE ROADWAYS PRIVATE LIMITED for the financial years 2018-19 to 2022-23.*

*We hereby give our consent to act as Statutory Auditor of M/s AEY PEE ROADWAYS PRIVATE LIMITED.*

*We are enclosing herewith a certificate required under Section 139 and 141 of the Companies Act,2013. "*

6.4 Thus, the Board observed that the communication in writing with the Complainant by the Respondent was clearly after acceptance of the appointment as statutory auditor of the company and that too on the initiation of the Complainant only which was clearly not in consonance with the spirit of the requirements of Item (8) of Part I of the First Schedule of the Chartered Accountants Act 1949. The Respondent also resigned from the position of the statutory audit of the Company only after filing of the instant complaint by the Complainant.

6.5 The Board was also of the view that the contention of the Respondent that the client always assured him that they will arrange for the no-objection in due course was not

*Am*



acceptable as Item (8) of Part I of the First Schedule of the Chartered Accountants Act 1949 casts responsibility on the incoming auditor to communicate with the previous auditor and the same can not be passed on to the auditee.

6.6 The Board also noted that the Respondent during the course of hearing himself accepted that technically he had done wrong.

6.7 Thus, on consideration of the facts, submissions and documents on record, the Board held the Respondent guilty in respect of the charge alleged.

**CONCLUSION:**

7. 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:06-12-2023

सही प्रतिलिपि होना के लिए प्रमाणित

Certified to be true copy



अरुण कुमार / Arun Kumar

वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer

अनुशासनात्मक विभाग / Disciplinary Directorate

इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया

The Institute of Chartered Accountants of India

आईसीएआई भवन, विकास नगर, शाहदरा, दिल्ली-110032

ICAI Bhawan, Vashwan Nagar, Shahdara, Delhi-110032