



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

[PR-238/2020/DD-234/2020/BOD/673/2022]
[PR-54/2020/DD-77/2020/BOD/674/2022]

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. Monish Uppal (M. No. 090133)

Optek House,
30/29 Third Floor
East Patel Nagar
New Delhi – 110008.

.....Complainant

Versus

CA. Abhishek Monu Kaushik (M. No. 525286)

190B, MIG Flats, Garud Apartments,
Pocket IV, Mayur Vihar-I,
New Delhi – 110091.

.....Respondent

[PR-238/2020/DD-234/2020/BOD/673/2022]

[PR-54/2020/DD-77/2020/BOD/674/2022]

(since the charges alleged against the Respondent in both the cases is the same, the Board decided to pass a common Order in both the cases)

MEMBERS PRESENT (through video conferencing):

CA. Rajendra Kumar P, Presiding Officer

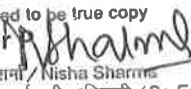
Ms. Dolly Chakrabarty (IAAS, reted.), Government Nominee

Date of Hearing and passing Order: 17th December 2023

1. The Board of Discipline vide its Findings dated 26th October 2023 was of the view that CA. Abhishek Monu Kaushik (M. No. 525286) 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. Abhishek Monu Kaushik (M. No. 525286) and communication dated 12th December 2023 was addressed to him thereby granting him an opportunity of being heard on 17th December 2023. He vide email dated 14th December 2023 requested for adjournment on account of his pre-occupation with some personal work. His request was not acceded to by the Board which was informed to him vide email dated 15th December 2023 and was asked to be present before the Board. He chose not to be present before the Board. Keeping in view the provisions of Rule 15(1) of The Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Board is of the view that he has nothing more to represent before it and accordingly, decided to consider his case for award of punishment. The Board also noted that the Respondent during the course of hearing admitted the charge alleged against him.
3. Thus, upon consideration of the facts of both the cases and the consequent misconduct of CA. Abhishek Monu Kaushik (M. No. 525286), the Board decided to impose a Fine of Rs.25,000/- (Rs. Twenty Five Thousand only) upon him.

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

CA. Rajendra Kumar P
(Presiding Officer)


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, विद्यास नगर, शाहदरा, दिल्ली-110032

Sd/-

Ms. Dolly Chakrabarty (IAAS, reted.)
(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-238/2020/DD-234/2020/BOD/673/2022]

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. Monish Uppal (M. No. 090133)
Chartered Accountants
Optek House, 30/29 Third Floor
East Patel Nagar
New Delhi – 110008.**

....Complainant

Versus

**CA. Abhishek Monu Kaushik (M. No. 525286)
M/s P A N & Co.
Chartered Accountants
W 1 C-24, DLF Phase V
Gurgaon – 122002.**

....Respondent

**DATE OF FINAL HEARING : 3rd July, 2023
PLACE OF FINAL HEARING : New Delhi**

PARTIES PRESENT (in person):

**Complainant : CA. Monish Uppal
Respondent : CA. Abhishek Monu Kaushik**

FINDINGS:

BRIEF BACKGROUND OF THE CASE:

1. The Complainant was the Statutory Auditor of M/s. Mega Self-Lube Bearings Private Limited (hereinafter referred to as the "Company") since incorporation and was also reappointed as the Tax Auditor of the company for F.Y. 2014-15 vide letter dated 05th September 2014. He during the course of conducting Statutory Audit of the company for the year 2014-15 came across several financial irregularities and violations for which he was pressurized by the management to accommodate such illegal things and to give a clean report. On his refusal to do so he was removed vide Order of Central Government dated 20.06.2018 and a Chartered Accountant firm M/s A. Mandiratta & Associates was appointed as Statutory Auditor of the company for the F.Y.2014-15 vide its resolution passed in EGM of the Company held on 27th June 2018. Thereafter, upon the resignation of M/s A. Mandiratta & Associates only after 3 days of his appointment, the Respondent firm was appointed as Statutory Auditor of the company for the F.Y.2014-15 vide its special resolution passed in company's EGM dated 2nd July 2018. The Respondent was also appointed as the Tax Auditor of the company for F.Y.2014-15.

CHARGE ALLEGED:

2.1 The Complainant alleged that the Respondent accepted the position of Tax Auditor of the Company for the F.Y.2014-15 without first making any communication with the Complainant, being the previous Tax Auditor of the company for the F.Y.2013-14.

2.2 The Company deliberately, to get the clean chit for all its violations and financial irregularities from the Respondent as Statutory Auditor, appointed M/s A. Mandiratta & Associates as Statutory Auditor of the company for the F.Y.2014-15 and then got his resignation within 3 days of appointment to create a layer of auditor between the Complainant and the Respondent so as to avoid the communication between the Complainant and the Respondent.

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 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 by the Board only in respect of the charge specified at para 2.1 above.

BRIEF OF PROCEEDINGS HELD:

3.

Date of Hearing(s)	Status
16 th May 2023	Adjourned at the request of the Respondent.

(Handwritten mark)

3rd July, 2023

Heard and concluded.

OBSERVATIONS OF THE BOARD:

4.1 As regard the charge that that the Respondent accepted the position as Tax Auditor of the Company for the F.Y.2014-15 without first communicating in writing with the Complainant being its previous Tax 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.

Further, the Council of ICAI has laid certain guidelines as mentioned in Para -1 of page no.167 of Code of Ethics – 2009 which provides as under:

"The requirement for communicating with the previous auditor being a Chartered Accountant in practice would apply to all types of audit viz., statutory audit, tax audit, internal audit, concurrent audit or any other kind of audit."

4.2 In the instant case, the Board noted that the Complainant gave his Tax Audit report on the accounts of the company for the F.Y. 2013-14 on 20th November 2014. He was re-appointed as Tax Auditor of the Company for the F.Y. 2014-15 vide appointment letter dated 05th September 2014. However, the Tax Audit of the company for the F.Y. 2014-15 had been performed by the Respondent. The Board noted that there is no evidence of communication by the Respondent with the Complainant prior to the acceptance of the Tax Audit of the company for the FY 2014-15. The Board also noted that the Respondent during the course of hearing admitted that he did not communicate with the Complainant prior to the acceptance of the Tax Audit of the company for the FY 2014-15 as stated in the provisions of Item (8) of Part I of First Schedule of the Chartered Accountants Act, 1949. Accordingly, the Board held the Respondent guilty in respect of the charge alleged.

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) 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, ret'd.)
(Government Nominee)

Sd/-
CA. Priti Savla
(Member)

DATE: 26-10-2023

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


नीलम पुंडीर / Neelam Pundir
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक विभाग / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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ICAI Bhawan Vohra, Tishanagar, Mahadara, 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-54/2020/DD-77/2020/BOD/674/2022]

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. Monish Uppal (M. No. 090133)

**Optek House,
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.....Complainant

Versus

CA. Abhishek Monu Kaushik (M. No. 525286)

**190B, MIG Flats, Garud Apartments,
Pocket IV, Mayur Vihar-I,
New Delhi – 110091.**

.....Respondent

DATE OF FINAL HEARING : 3rd July, 2023

PLACE OF FINAL HEARING : New Delhi

PARTIES PRESENT (in person):

Complainant : CA. Monish Uppal

Respondent : CA. Abhishek Monu Kaushik

FINDINGS:

BRIEF FACTS OF THE CASE:

1. The Complainant was the Statutory Auditor of M/s Marut Techno Tools Private Ltd (hereinafter referred to as the "Company") since incorporation. He was also the Tax Auditor of the Company. He conducted the last Tax Audit of the Company for the

Financial Year 2013-14. He was also re-appointed as the Tax Auditor of the company for the Financial Year 2014-15 vide letter dated 05-09-2014. While conducting the audit of the Company for the Financial Year 2014-15, he observed various financial irregularities, defaults and violations by the management of the Company. The management of the Company started pressurizing the Complainant to accommodate the Company and to give a clean chit by way of a clean Audit Report for which he refused. In retaliation, the Company moved an application under Section 140 of the Companies Act, 2013 for removal of the Complainant as Statutory Auditors for the Financial Year 2014-15. The Hon'ble Regional Director (Northern Region) vide its Order dated 20-06-2018 removed the Complainant from the position of the Statutory Auditor of the Company. Since there is no specific provision in the Companies Act, 2013 regarding removal of Tax Auditor of the Company, hence power to remove/change the Tax Auditor vests with the Board of Directors of the Company only. The Company accordingly appointed CA. Anil Mandiratta and the latter took appointment for a short period of 3 days from 27-06-2018 to 30-06-2018. Subsequently, the Respondent Firm was appointed as Statutory as well as Tax Auditor of the Company for the Financial Year 2014-15. In the instant complaint, the Complainant has raised the allegation regarding tax audit of the Company which was allegedly accepted by the Respondent for the FY 2014-15.

CHARGE ALLEGED:

2. The Complainant alleged that the Respondent accepted and conducted the Tax Audit of Company for the Financial Year 2014-15 without first communicating in writing with the Complainant being its previous Tax Auditor.

BRIEF OF PROCEEDINGS HELD:

3.

Date of Hearing(s)	Status
16 th May 2023	Adjourned at the request of the Respondent.
3 rd July, 2023	Heard and concluded.

BRIEF SUBMISSIONS OF THE COMPLAINANT:

4. The Complainant, in his submissions, inter-alia, stated as under:
 - 4.1 The Respondent has stated in his written statement that the Complainant threatened M/s A. Mandiratta & Associates, hence they immediately resigned from the position of the auditor of the company. However, as per ADT-3 filed by M/s A. Mandiratta & Associates on 04.07.2018, on the portal of the MCA, stated in the resignation letter dated 30.06.2018 furnished to the Board of Directors of the company as under:

"we are unable to continue as Auditor of your company due to some unavoidable reasons. Hence, we are submitting our resignation."

4.2 M/s A. Mandratta & Associates was appointed as Statutory Auditor by the Company on 27.06.2018 and ADT-1 for M/s A Mandratta & Associates has been filed on 29.06.2018. Mr. A. Mandiratta communicated with the Complainant on 29.06.2018 by way of email. On 30.06.2018, the Complainant communicated by way of email to M/s A Mandiratta & Associates regarding his reservations and observations in respect of audit of the company for the Financial Year 2014-15. Mr. A. Mandiratta has given resignation to the Company on 30.06.2018. ADT-3 has been filed by Mr. A. Mandiratta & Associates on 04.07.2018. The Respondent was appointed as Statutory Auditor of the company on 02.07.2018 for the Financial Year 2014-15. The Respondent audited the financials of the company for the year 2014-15 and issued Audit Report on 05.07.2018. ADT-1 for the appointment of the Respondent was filed on 09.07.2018. The Complainant communicated his observation to the Respondent on 10.07.2018. Thus, the Respondent signed the Financials and Audit Report before filing the ADT-1 with ROC. Accordingly, the Complainant as previous auditor was not able to communicate with the Respondent about his reservation and observation before signing of the Financial Statements of the company by the Respondent for the audit of the Financial Year 2014-15 as the fact of his appointment came to the knowledge of the Complainant after 09.07.2018. Thus, the Respondent conveniently and wrongfully escaped from the observations and reservations which ought to have been taken into consideration by him lawfully and must be considered and commented in their Audit Report of the company for the Financial Year 2014-15.

4.3 The mala-fide and manipulative actions of the Respondent are evident from the fact that the Respondent firm chose not to enter into communication with the Complainant and tried to mislead the Disciplinary Directorate by portraying that they have communicated with their self created shield/ layer Chartered Accountant firm A. Mandiratta & Associates, who were neither offered nor accepted the appointment as Tax Auditor of the company. Accordingly, Mr. A. Mandiratta, directors of the company and the Respondent created a chain and defeated the very purpose of communication with the previous auditor for taking into consideration their observations and reservations while conducting the audit of the Company for the Financial Year 2014 15.

OBSERVATIONS OF THE BOARD:

5.1 As regard the charge that that the Respondent accepted the position as Tax Auditor of the Company for the F.Y.2014-15 without first communicating in writing with the Complainant being its previous Tax 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:

उत्तर प्रदेश के (नियंत्रण) विभाग
आयुक्त निदेशक, आयुक्त (नियंत्रण) विभाग
आयुक्त निदेशक, आयुक्त (नियंत्रण) विभाग
आयुक्त निदेशक, आयुक्त (नियंत्रण) विभाग
आयुक्त निदेशक, आयुक्त (नियंत्रण) विभाग
आयुक्त निदेशक, आयुक्त (नियंत्रण) विभाग
आयुक्त निदेशक, आयुक्त (नियंत्रण) विभाग
आयुक्त निदेशक, आयुक्त (नियंत्रण) विभाग

"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.

Further, the Council of ICAI has laid certain guidelines as mentioned in Para -1 of page no.167 of Code of Ethics – 2009 which provides as under:

"The requirement for communicating with the previous auditor being a Chartered Accountant in practice would apply to all types of audit viz., statutory audit, tax audit, internal audit, concurrent audit or any other kind of audit."

- 5.2 In the instant case, the Board noted that the Complainant gave his Tax Audit report on the accounts of the company for the F.Y. 2013-14 on 20th November 2014. He was re-appointed as Tax Auditor of the Company for the F.Y. 2014-15 vide appointment letter dated 05th September 2014. However, the Tax Audit of the company for the F.Y. 2014-15 had been performed by the Respondent. The Board noted that there is no evidence of communication by the Respondent with the Complainant prior to the acceptance of the Tax Audit of the company for the FY 2014-15. The Board also noted that the Respondent during the course of hearing admitted that he did not communicate with the Complainant prior to the acceptance of the Tax Audit of the company for the FY 2014-15 as stated in the provisions of Item (8) of Part I of First Schedule of the Chartered Accountants Act, 1949. Accordingly, the Board held the Respondent 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: 26-10-2023

सही प्रतिलिपि होने के लिए प्रमाणित

Certified to be true copy

CA. Nitika Gupta

सहायक निदेशक / Assistant Director

अनुशासनमय निदेशक / Disciplinary Directorate

इन्स्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया

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