



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

[PR-5/2020/DD-37/2020/BOD/609/2022]

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. G.S. Budyal (M.No.040988)**

M/s G.S. Budyal & Co.

Chartered Accountants

Kshirasagar Complex, 1<sup>st</sup> floor

Ameer Talkies Road

Vijayapura (Karnataka) – 586101.

.....Complainant

-Vs-

**CA. Vinay Kulkarni (M.No. 210497)**

Eskay Build (Killa) Hungund Taluq

Bagalkot Dist

Hungund (Karnataka)- 587118.

.....Respondent

[PR-5/2020/DD-37/2020/BOD/609/2022]

**MEMBERS PRESENT:**

CA. Rajendra Kumar P, Presiding Officer (in person)

Ms. Dolly Chakrabarty (IAAS, retd.), Government Nominee (through video conferencing)

CA. Priti Savla, Member (through video conferencing)

Date of Hearing: 26<sup>th</sup> October 2023

Date of pronouncement of Order: 23<sup>rd</sup> January 2024

1. The Board of Discipline vide its Findings dated 5<sup>th</sup> October 2023 was of the view CA. Vinay Kulkarni (M.No. 210497) 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. Vinay Kulkarni (M.No. 210497) and communication dated 10<sup>th</sup> October 2023 was addressed to him thereby granting him an opportunity of being heard on 26<sup>th</sup> October 2023 which was exercised by him by being present in person before the Board. He confirmed the receipt of the Findings of the Board and made representation before the Board.
3. Since the decision on the quantum of punishment to be awarded to CA. Vinay Kulkarni (M.No. 210497) was reserved by the Board, he vide communication dated 16<sup>th</sup> January 2024 was asked to be present before the Board on 23<sup>rd</sup> January 2024 for the purpose of pronouncement of Order. He was present before the Board through video conferencing on the said date for the said purpose.
4. Thus, upon consideration of the facts of the case especially that the audit in question was the Statutory audit of the divisional office of 'United India Insurance Co. Ltd. wherein the appointment was for a fixed term by the appointing Authority and neither the Complainant nor the Respondent had any role to play in the same, the consequent misconduct of CA. Vinay Kulkarni (M.No. 210497) and keeping in view his representation before it, the Board decided to impose a Fine of Rs.10,000/- (Rs. Ten Thousand only) upon him.


Sd/-

CA. Rajendra Kumar P  
(Presiding Officer)

Sd/-

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

सही प्रतिलिपि होने के लिए प्रमाणित /  
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नीलम पुंडीर / Neelam Pundir  
परिष्कृत सार्वजनिक अधिकारी / Sr. Executive Officer  
अनुशासननायक विभाग / Disciplinary Directorate  
दिल्ली/दूर और राष्ट्रीय स्तर पर कार्य करने वाले  
The Institute of Chartered Accountants of India  
(M.No. 210497) डिप्टी एग्जिक्यूटिव ऑफिसर, दिल्ली - 110002  
3rd Floor, 100, Connaught Place, New Delhi - 110002

Sd/-

CA. Priti Savla  
(Member)

CA. G.S. Budyal (M.No.040988) -Vs- CA. Vinay Kulkarni (M.No.210497)

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-5/2020/DD-37/2020/BOD/609/2022]**

**CORAM: (Present in Person)**

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

**Smt. Dolly Chakrabarty (IAAS, retd.), Government Nominee**

**In the matter of:**

**CA. G.S. Budyal (M.No. 040988)**

M/s G.S. Budyal & Co.,

Chartered Accountants,

Kshirasagar Complex, 1st Floor,

Ameer Talkies Road

BIJAPUR – 586101.

.....Complainant

**Versus**

**CA. Vinay Kulkarni (M. No. 210497)**

M/s D. Shantilal Jain & Co. ,

Chartered Accountants,

107,108, 1st Floor Center Point Building

Near Bhagat Singh Circle Opp. VRL New

Godown New Cotton, Market

HUBLI – 580029.

..... Respondent

**DATE OF FINAL HEARING**

:

**15<sup>th</sup> June 2023**

**PLACE OF FINAL HEARING**

:

**Chennai/through video conferencing**

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

**Respondent**

:

**CA. Vinay Kulkarni**

**FINDINGS: -**

**CHARGE ALLEGED:**

1. The Complainant was the Statutory Auditor of the divisional office of "United India Insurance Co. Ltd" (hereinafter referred to as the "Company") for the Financial Year 2016-17. The Complainant

has alleged that the Respondent Firm has accepted the position of Statutory Auditor of the Company for the Financial Year 2017-18 without obtaining 'No Objection' from him.

**BRIEF OF PROCEEDINGS HELD:**

2. The Board at its meeting held on 15<sup>th</sup> June 2023 noted that the Respondent was present before it through video conferencing. He was put on Oath and he confirmed that he has read and understood the contents of the modalities and protocols of e-hearing and follow them. On being asked by the Board as to whether the Respondent pleaded guilty in respect of the charge alleged against him, he replied in affirmative and thereafter, made his submissions before the Board.

Thus, on consideration of the documents and submissions on record, the Board concluded the proceedings in the case.

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

**A. Respondent:**

3. The Respondent in his defence, inter-alia, submitted as under:
  - 3.1 The Respondent agreed with the facts portion in the 'Prima Facie opinion' dated 15/12/2020. However, he strongly disagreed with the conclusion drawn for the below mentioned reasons:
    - a) The unit of which he accepted the audit without communicating with the previous auditor in writing, though he met him personally before signing the Audit Report, is a Public Sector Undertaking. Technically, as per Code of Ethics, he should have obtained it in writing before accepting the audit.
    - b) The appointing authority for Public Sector Undertakings is C&AG.
    - c) The following para mentioned in point number 8.4 of 'Prima Facie Opinion' which read as follows is not applicable with the full force for the Government audits:

*"It must be pointed out that professional courtesy alone is not the major reason for requiring a member to communicate with the existing accountant who is a member of the Institute or a certified auditor. The underlying objective is that the member may have an opportunity to know the reasons for the change in order to be able to safeguard his own interest, the legitimate interest of the public and the independence of the existing accountant. It is not intended, in any way, to prevent or obstruct the change. When making the enquiry from the retiring auditor, the one proposed to be appointed or already appointed should primarily find out whether there are any professional or other reasons why he should not accept the appointment."*

- d) Unknowing the technicalities, he went by the substance of the provision rather than the form, which is the basic in whole of the auditing and accounting and he requested to extend the same here also.

- 3.2 There was no malicious intention. If at all any error has happened, it is purely technical.

3.3 He brought on record the following case law as appearing in Code of Ethics 2009:

*"Where a Chartered Accountant failed to communicate in writing with the previous auditor of his appointment as auditor of a Cooperative Bank and such omission was not intentional. Held that the breach was only technical and that it was open to the High Court to award a lesser punishment than removal of a member. (S.V. Kharwandikar vs. D.K. Borkar - Page 113 of Vol.I of the Disciplinary Cases and page 236 of November, 1952 issue of the Institute's Journal-Judgement delivered on 18th August, 1952)."*

**B. Complainant:**

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

- a) The Respondent has accepted the audit without informing the previous auditor and the same is made clear from his written submissions.
- b) Communication to the previous auditor has reasons which cannot be overlooked by social and emotional feelings. The said communication is mandatory, and this is nothing to do with undertaking/entity whether it is related to Government or other and its appointment was made by Government or other body.
- c) Para 8.4 of the ICAI letter states that communication with the previous auditor is must and submissions made by the Respondent by stating that the same is not applicable for Government audits is not acceptable.
- d) The case quoted by the Respondent is not applicable to this case as it is said in the case of breach of technical omission, the High Court has the opinion to award a lesser punishment than the removal. But it is clear from the High Court decision that the Chartered Accountant who failed to communicate with the previous auditor is guilty of Professional Misconduct.

**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 Statutory auditor of the company 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 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.

5.2 The Board noted that the Respondent was appointed as the Statutory Auditor of the Company for the F.Y. 2017-2018. The Respondent met the Complainant in the last week of March 2018 and the

said fact had been accepted by the Complainant in his letter dated 26<sup>th</sup> April 2018. The Respondent vide letter dated 23<sup>rd</sup> April 2018 intimated the Complainant for the first time in writing regarding his appointment whereas he was appointed as the statutory auditor of the company vide appointment letter dated 15<sup>th</sup> September 2017.

- 5.3 The Board also noted that during the course of hearing the Respondent admitted his guilt on technical grounds. The Board also noted that the Respondent in his written communication dated 17<sup>th</sup> May 2018 with the Complainant clearly stated as under:

*"I admit that I didn't do written communication with you for the above stated understanding on my part."*

- 5.4 The Board also noted that the Respondent completed the audit of the Company and submitted his report on 10<sup>th</sup> April 2018 as mentioned by the Complainant in a letter dated 02<sup>nd</sup> August, 2018 to the Respondent and this fact has not been refuted by the Respondent whereas he communicated with the Complainant in writing for the first time only on 23<sup>rd</sup> April 2018, which is after the date of signing the Audit Report for the F.Y. 2017-2018.
- 5.5 The Board noted that there was series of written communication between the Complainant and the Respondent. However, the same were only subsequent to the acceptance of appointment by the Respondent.
- 5.6 Also, as regard the submission of the Respondent that the provision of Item 8 is not applicable to Government entities, the Board took into view the following Guidelines given by the Council on the subject(Code of Ethics 2009):

*Although the mandatory requirement of communication with previous auditor being Chartered Accountant applies, in uniform manner, to audits of both government and Non-Government entities, yet in the case of audit of government Companies/ banks or their branches, if the appointment is made well in time to enable the obligation cast under this clause to be fulfilled, such obligation must be complied with before accepting the audit. However, In case the time schedule given for the assignment is such that there is no time to wait for the reply from the outgoing auditor, the incoming auditor may give a conditional acceptance of the appointment and commence the work which needs to be attended to immediately after he has sent the communication to the previous auditor in accordance with this clause. In his acceptance letter, he should make clear to the client that his acceptance of appointment is subject to professional objections, if any, from the previous auditors and that he will decide about his final acceptance after taking into account the information received from the previous auditor."*

- 5.7 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 Audit for the FY 2017-18 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.

**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, ret'd.)  
(Government Nominee)

DATE: 05-10-2023

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नीलम पुंडीर / Neelam Pundir  
अधिकांश कार्यकारी अधिकारी / Sr. Executive Officer  
अनुशासन शाखा / Disciplinary Directorate  
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया  
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