



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

[PR-121/21/DD-128/2021/BOD/657/2022]

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. Shlvprasad K (M.No.026959)**

D No CW/35/2826

First Floor Haji Building

Near Plaza Junction

Kannur (Kerala) – 670001.

.....Complainant

-Vs-

**CA. Mohammed Ashraf Naimarmoola Abdulrahiman (M.No. 255905)**

Chartered Accountants

Golden Arcade New Bus Stand, Kasargod

Kasaragode (Kerala) – 671121.

.....Respondent

[PR-121/21/DD-128/2021/BOD/657/2022]

MEMBERS PRESENT:

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

Ms. Dolly Chakrabarty (IAAS, reted.), 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. Mohammed Ashraf Naimarmoola Abdulrahiman (M. No. 255905) 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. Mohammed Ashraf Naimarmoola Abdulrahiman (M. No. 255905) 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. Mohammed Ashraf Naimarmoola Abdulrahiman (M. No. 255905) 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, the consequent misconduct of CA. Mohammed Ashraf Naimarmoola Abdulrahiman (M. No. 255905) 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)

CA. Shlvprasad K (M.No.026959) -Vs- CA. Mohammed Ashraf Naimarmoola Abdulrahiman (M.No. 255905)

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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-121/21/DD-128/2021/BOD/657/2022]**

**CORAM: (Present in Person)**

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

**Ms. Dolly Chakrabarty (IAAS, ret'd.), Government Nominee**

**In the matter of:**

**CA. SHIVPRASAD K. (M.No.026959)**

Chartered Accountants

Door no. CW 35/2826, 1st floor

Haji building, Near Plaza Junction,

Fort Road, Kannur, KERALA- 670001.

**.....Complainant**

**Versus**

**CA. MOHAMMED ASHRAF N A (M.No.255905)**

Chartered Accountants

Golden Arcade,

New Bus Stand,

Kasargod, KERALA – 671121.

**..... Respondent**

**DATE OF FINAL HEARING : 19<sup>th</sup> April 2023**

**PLACE OF FINAL HEARING : Chennai**

**PARTIES PRESENT(in person):**

**Respondent : CA. Mohammed Ashraf**

**FINDINGS:**

**CHARGE ALLEGED:**

1.1 The Respondent accepted the Tax audit of the accounts of Mr. M.T. Abdul Kabeer (hereinafter referred to as the Client) for the Financial Year 2019-2020 without first communicating in writing with the Complainant being its previous auditor.

*Ans*

1.2 The Respondent accepted the Tax audit of the Client despite the audit fee of the Complainant being pending from the Client. The Client without settling his dues planned to change the auditor.

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 1.1 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 1.1 above.

**BRIEF OF PROCEEDINGS HELD:**

2. At the time of hearing held in the case on 19<sup>th</sup> April 2023, the Respondent was present in person before the Board. The Board also noted that the Complainant vide his communication dated 11th April 2023 and 13th April 2023 expressed his inability to be present before the Board and also made his written submissions pertinent to the case requesting the Board to conclude the proceedings in the case on the basis of the same. Thus, the Board decided to proceed ahead with the hearing in the case. Thereafter, the Respondent was put on Oath. The charges alleged against the Respondent were taken as read with the consent of the party present. On being asked by the Board as to whether the Respondent pleaded guilty in respect of the charges alleged against him, he replied in affirmative and made his further submissions before the Board. 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 written submissions, inter-alia, stated as under:

3.1 The Complainant had been conducting the audit of the accounts of Mr. M. T. Abdul Kabeer, PWD Contractor (Client), Kasaragod for the financial year upto 2018-19. Mr. Abdul Kabeer approached the Respondent (05-12-2020) and requested him to conduct the audit of his

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books of accounts for the financial year 2019-20. Thereupon, the Respondent made enquiries as to why the audit is not being conducted by previous auditor. Mr. M.T. Abdul Kabeer informed him that he had already informed the Complainant and took his permission in this regard. Mr. M.T Abdul Kabeer also informed him that the audit was entrusted to Complainant as he was also stationed at Kannur in connection with execution of PWD works. Now Mr. M.T. Abdul Kabeer has shifted his residence to Kasaragod and as such he was facing difficulties in getting the audit conducted by Complainant as his office was at Kannur, which is more than 100 kms from Kasaragod. Mr. M.T. Abdul Kabeer wrote a formal letter to the Respondent (dated 07-12-2020) requesting him to take up the Audit of his accounts as Complainant was far away at Kannur and he was experiencing difficulties to produce the records to him for audit especially in those days of Covid-19 which had restricted over all movement considerably. In his earnest effort to strictly adhere to the Rules and Regulations of the Institute of Chartered Accountant of India and as part of Professional conduct, the Respondent wrote a formal letter to the Complainant (dated 18.12.2020) and informed him about the approach made by Mr. M. T. Abdul Kabeer for the audit of his accounts for the year 2019-20. The Respondent wrote the above letter (dated 18-12-2020) to the Complainant to seek his permission / consent in this regard as he was the previous auditor of Mr. M T Abdul Kabeer, which was necessary as per the Rules and procedure of the ICAI.

3.2 The Respondent had handed over the letter (dated 18.12.2020) to Mr. M. T. Abdul Kabeer for onward delivery to the Complainant at Kannur. In the normal course he could have sent the letter by post or through email but could not do so as he did not had his postal address or his email id with him. While handing over the letter, he also directed Mr. M. T. Abdul Kabeer to clear all dues (including Audit fees) if any, pending payment to Complainant in respect of audit of his accounts up to 31.03.2019. After two days Mr. M. T. Abdul Kabeer came to his office and informed him that his letter has been handed over to the Complainant and that he has cleared all pending dues. As such, Mr. M. T. Abdul Kabeer again requested the Respondent to conduct the audit of the accounts of his business. He waited for more than a reasonable period and as no objection was forthcoming from the Complainant, he took up and completed the audit of the accounts of Mr. M. T. Abdul Kabeer for the Financial Year 2019-20. (An affidavit executed by Mr. M. T. Abdul Kabeer is enclosed)

3.3 In his letter dated 15.06.2021, he had strictly and sincerely followed the Professional Ethics enshrined in the Rules and procedures of our esteemed Institute of Chartered Accountants

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of India. He had always discharged his duties keeping high in mind the Professional Ethics expected from him as a product of the Institute and will not indulge in future also in any act which may go against the solemn ethics prescribed by the Institute. Accordingly, the audit of the accounts of Mr. M. T. Abdul Kabeer for the year 2019-20 was conducted by him strictly following all the Rules in this regard.

3.4 The Respondent made efforts to obtain prior consent from the Complainant, before taking up the audit of the accounts of Mr. M.T. Abdul Kabeer. Mr. MT Abdul Kabeer in his letter dated 14.08.2021 had confirmed that all previous dues in respect of Complainant, have been completely cleared and that no dues are pending in this regard for the audits conducted for the Financial Year up to 2018-19.

**(b) Complainant:**

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

4.1 The Respondent in his letter dated 15/12/2020 addressed to his client has stated that he has accepted the audit and thus he never felt to communicate the same to the Complainant before that.

4.2 Further, the Respondent in his letter dated 05/03/2021 has stated that he has sent the Complainant official letter without mentioning the mode of delivery that the client had informed him about the move from his side. However, in his letter dated 15/06/2021 he has stated that the mode of communicating was through the client itself, which is contradictory to the fact that the client could not come to Kannur at all for any activity as stated by him in previous letter and thus he was forced to complete the audit at Kasargod. Further, the appointment letter of the client appointing the erring member as auditor has also stated that due to COVID-19 restrictions he is unable to travel to Kannur and hence being stationed at Kasargod wish to complete the audit at Kasargod which proves that the client has not come to Kannur to deliver the communication as set forth by the erring member.

4.3 With respect to the settlement of fees, had the client settled all the dues on 14/08/2021 as accepted by the Respondent and mentioned in the Affidavit, what was the amount credited to the Complainant's Bank account on 15/11/2022, after 20 months of filing the formal complaint with the Disciplinary Authorities of the Institute of Chartered Accountants of India u/s 21 of the Chartered Accountants of India Act, 1949?

*As*

**OBSERVATIONS OF THE BOARD:**

5.1 As regard the charge alleged, 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.

Further, the Council of ICAI has laid certain Guidelines as mentioned in Para -1 of Page no. 166 of Code of Ethics – 2009 which read as below:

***"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."*** (emphasis added)

5.2 The Board noted that the Complainant was appointed as the Tax auditor of Mr. M.T. Abdul Kabeer (herein referred to as 'Client') till the Financial Year 2018-2019. However, due to geographical difficulties the Client was unable to continue with the Complainant for conducting audit of their books of accounts. Vide letter dated 07/12/2020 the Client wrote to the Respondent requesting to conduct the audit for him for the Financial Year 2019-2020. The Respondent vide letter dated 15/12/2020 confirmed the Client to undertake the assignment of auditing for the Financial Year 2019-2020. The Respondent handed over a letter dated 18/12/2020 addressed to the Complainant informing and seeking permission with respect to undertaking the Tax audit assignment of the Client. However, it is pertinent to mention herewith

that the communication should be prior to the acceptance of the appointment as the auditor and that too from the incoming auditor to the previous auditor. The incoming auditor cannot pass on the responsibility to communicate with the previous auditor to the auditee.

5.3 The Board also noted that during the course of hearing as well as in his submissions made at the Prima Facie stage, the Respondent admitted his guilt.

5.4 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 Tax Audit for the FY 2019-20 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, retd.)

(Government Nominee)

DATE: 05-10-2023

Certified to be true copy  
अरुण कुमार / Arun Kumar  
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer  
अनुशासन-मन्त्रक विभाग / Disciplinary Directorate  
इन्स्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया  
The Institute of Chartered Accountants of India  
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