



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

[PR-375/2018-DD/108/19/BOD/662/2022]

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. S. Chandaran (M. No. 008646)
M/s Sankaran & Krishnan (F.RN. 003582S)
Chartered Accountants,
Komalam Building Old No 11, New No 23
First Main Road, Raja Annamalai Puram
Chennai – 600 028.

.....Complainant

-Vs-

CA. Venkat Krishnamurthy (M. No. 049322)
M/s V. Ramaratnam & Co., (F.RN. 002956S)
Chartered Accountants
2/11 50th Street, Ashok Nagar
Chennai – 600 083.

.....Respondent

[PR-375/2018-DD/108/19/BOD/662/2022]

MEMBERS PRESENT:

CA. Rajendra Kumar P, Presiding Officer (in person)
Ms. Dolly Chakrabarty (IAAS, rettd.), Government Nominee (through video conferencing)
CA. Priti Savla, Member (through video conferencing)

Date of Hearing: 26th October 2023

Date of pronouncement of Order: 23rd January 2024


1. The Board of Discipline vide its Findings dated 5th October 2023 was of the view **CA. Venkat Krishnamurthy (M. No. 049322)** 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. Venkat Krishnamurthy (M. No. 049322)** and communication dated 10th October 2023 was addressed to him thereby granting him an opportunity of being heard on 26th 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. Venkat Krishnamurthy (M. No. 049322)** was reserved by the Board, he vide communication dated 16th January 2024 was asked to be present before the Board on 23rd 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. Venkat Krishnamurthy (M. No. 049322)** 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, rettd.)
(Government Nominee)


अरुण कुमार / Arun Kumar
सचिव कार्यालय अधिकारी / Sr. Executive Officer,
अनुसंधानात्मक विभाग / Disciplinary Directorate
इन्स्टीट्यूट ऑफ चार्टर्ड अकाउंटेंट्स ऑफ इंडिया
आदर्श भवन, विश्व नगर, शहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shaheedra, Delhi-110032

Sd/-

CA. Priti Savla
(Member)

CA. S. Chandaran (M. No. 008646) -Vs- CA. Venkat Krishnamurthy (M. No. 049322)

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- 375/2018-DD/108/19/BOD/662/2022]

CORAM: (Present in Person)

CA. Rajendra Kumar P, Presiding Officer

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

In the matter of:

CA. S. Chandaran (M. No. 008646)

M/s Sankaran & Krishnan (FRN. 003582S),

Chartered Accountants,

G-2, Green Court Apartments,

No. 11, Visweswarapuram Street,

Mylapore- Chennai-600004.

..... Complainant

Versus

CA. Venkat Krishnamurthy (M. No. 049322)

M/s V. Ramaratnam & Co., (FRN. 002956S),

Chartered Accountants,

26, Ground Floor, IV Street, Abhiramapuram,

Chennai – 600 018.

..... Respondent

DATE OF FINAL HEARING

: 15th June, 2023

PLACE OF FINAL HEARING

: Chennai/ through video conferencing

PARTIES PRESENT (through video conferencing):

Respondent

: CA. Venkat Krishnamurthy

FINDINGS:

CHARGE ALLEGED:

1. The Complainant firm was the Statutory and Tax auditor of the Company M/s Automark Pvt. Ltd. (hereinafter referred to as the 'company') for the Financial Year 2016-17. The

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Complainant alleged that the Respondent Firm accepted the position of Statutory and Tax auditor of the Company for the F.Y. 2017-18 without getting 'No Objection' from the Complainant Firm being its previous auditor.

BRIEF OF PROCEEDINGS HELD:

2.1 At the time of hearing held in the case on 19th April 2023, the Respondent was present in person before the Board. However, neither the Complainant/their authorized representative were present before it nor was there any intimation as regards his non-appearance. 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 negative. The Respondent made his further submissions before the Board. Since the case was fixed for hearing for the first time, keeping in view the principle of natural justice, the Board adjourned the hearing in the case to provide a final opportunity to the Complainant to be present before it at the next date of hearing with the following direction to:

The Respondent:

1. To provide an Affidavit to the effect that the audit of M/s Automark Private Limited for the Financial year 2017-18 had not been done by him.

The Office:

1. To seek the details of the auditor of the company M/s Automark Private Limited for the financial year 2017-18.

2.2 In response, the Respondent vide his e-mail dated 10th June 2023 informed that he did conduct the audit of M/s Automark Private Limited for the Financial year 2017-18 and also provided a copy of the audited Financial Statement of the company for the said Financial year.

2.3 Thereafter, at the time of hearing held in the case on 15th June 2023, the Respondent was present before the Board through video conferencing. However, neither the Complainant/his authorised representative was present before it nor was there any intimation as regards his non-appearance despite the due service of the Notice for hearing. Subsequent to the last hearing held in the case on 19th April 2023, the Respondent made his submissions before the

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

BRIEF SUBMISSIONS OF THE RESPONDENT:

3. The Respondent in his defence, inter-alia, made the following submissions at the time of hearing:
 - a) The company approached the Respondent because they had some problems with the previous auditor for some fraudulent conduct. The company requested for help and the Respondent helped them.
 - b) On 25th August 2018, the Respondent sent an email to the Complainant to share their contact information. The intent of that email was to have dialogue and get no objection from the Complainant Firm.
 - c) The Respondent claimed that he had sent a communication to the Complainant on 27th August 2018 through Blue Dart Courier, but he did not have the proof of delivery. He further submitted that he went to the local office and Head office of the courier company to get proof of delivery, but the courier company failed to provide the delivery report as it was a very old matter.

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 M/s Automark Private Limited 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."

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The Board further noted that the "Code of Ethics (2009 edition)" for the Chartered Accountants emphasize that professional courtesy alone is not the major reason for requiring a member to communicate with the existing accountant who is member of the Institute or a certified auditor. The object of the incoming auditor, in communicating with the retiring auditor, is to ascertain from him whether there are any circumstances which warrant him not to accept the appointment.

4.2 The Board noted that the Complainant was the previous Tax and Statutory auditor of the Company for the F.Y.2016-17. The Board noted that the Respondent accepted that his Firm was appointed the auditor of the company on 24th August 2018 and he communicated with the Complainant vide email dated 25th August, 2018 having the following contents:

"

Dear Mr. Chandru and Mr. Bala- It is a pleasure to meet you electronically, we certainly look forward to speaking with you in person. If you don't mind we will call you and work with to ensure smooth transition for Automark.

Alternatively, please feel free to call me on the number below for any questions or clarifications."

The Board noted that the Respondent claimed that the intent of the email was to have dialogue and get no objection from the Complainant Firm. However, upon perusal of the content of the said e-mail, the Board was of the view that that the content of the aforesaid email was not in line with the intent and requirement of Item (8) of Part I of First Schedule.

4.3 The Board also noted that the Respondent brought on record copy of communication dated 27th August 2018 sent to the Complainant seeking his no-objection as regards the Respondent's appointment as the auditor of the company for the F.Y. 2017-18 through Blue Dart Courier, but he failed to bring on record any proof of delivery of the same. He submitted that the courier company has confirmed delivery, however since this is an old matter, they do not have records to provide the information as regard the delivery of the same. The Board further noted that the Complainant expressly denied having received the said communication.

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4.4 In this regard, the Board also took into consideration the following provisions as contained in Code of Ethics, 2009:

"The Council has taken the view that a mere posting of a letter under certificate of posting is not sufficient to establish communication with the retiring auditor unless there is some evidence to show that the letter has in fact reached the person communicated with. A Chartered Accountant who relies solely upon a letter posted under certificate of posting therefore does so at his own risk.

The view taken by the Council has been confirmed in a decision by the Rajasthan High Court in J.S. Bhati vs. The Council of the Institute of the Chartered Accountants of India and another. (Pages 72-79 of Vol. V of Disciplinary Cases published by the Institute - Judgement delivered on 29th August, 1975). The following observations of the Court are relevant in this context:-

*"Mere obtaining a certificate of posting in my opinion does not fulfill the requirements of clause (8) of Schedule I as the presumption under Section 114 of the Evidence Act that the letter in due course reached the addressee cannot replace that positive degree of proof of the delivery of the letter to the addressee which the letters of the law in this case require. The expression 'in communication with' when read in the light of the instructions contained in the booklet 'Code of Conduct' cannot be interpreted in any other manner but to mean that there should be positive evidence of the fact that the communication addressed to the outgoing auditor by the incoming auditor reached his hands. Certificate of posting of a letter cannot, in the circumstances, be taken as positive evidence of its delivery to the addressee." **Members should therefore communicate with a retiring auditor in such a manner as to retain in their hands positive evidence of the delivery of the communication to the addressee. (emphasis added)***

In the opinion of the Council, communication by a letter sent "Registered Acknowledgement due" or by hand against a written acknowledgement would in the normal course provide such evidence."

4.5 Thus, the Board was of the view that it is evident that the Respondent has not been able to bring on record any conclusive evidence to substantiate that he communicated in writing with the Complainant being the previous auditor prior to the acceptance of the Statutory and Tax

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Audit of the company for the FY 2017-2018. The Board also noted that during the course of hearing, the Respondent admitted that he did not have proof of delivery of the letter seeking no objection from the Complainant. Accordingly, the Board viewed that the Respondent has clearly failed to communicate with the Complainant being the previous auditor prior to the acceptance of the Statutory and Tax audit of the company 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 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/-

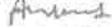
CA. Rajendra Kumar P
(Presiding Officer)

Sd/-

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

DATE: 05-10-2023

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy


अरुण कुमार / Arun Kumar
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
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