



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

[PR- 276/2021-DD/292/2021/BOD/678/2023]

**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. Dalam Chand Bhandari (M.No. 051795)**

Partner, M/s DC Bhandari & Associates, Chartered Accountants  
Bagree Market, 5th Floor, Block-A, Room No.-515 71  
Biplabi Rash Behari Basu Road (Canning Street)  
Kolkata – 700001.

.....Complainant

-Vs-

**CA. Vikash Kumar Pandey (M.No. 312685)**

M/s Pandey Vikash & Associates, Chartered Accountants  
131 Jangalpur Road, 2nd Floor, Airport Gate No 3  
Kolkata – 700081.

.....Respondent

[PR- 276/2021-DD/292/2021/BOD/678/2023]

**MEMBERS PRESENT (in person):**

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

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

**CA. Priti Savla, Member**

**Date of Hearing and passing Order: 23<sup>rd</sup> January 2024**

1. The Board of Discipline vide its Findings dated 28<sup>th</sup> December 2023 was of the view that **CA. Vikash Kumar Pandey (M.No. 312685)** is **GUILTY** of Professional Misconduct falling within the meaning of Item (8) and Item (9) 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. Vikash Kumar Pandey (M.No. 312685)** and communication dated 16<sup>th</sup> January 2024 was addressed to him thereby granting him an opportunity of being heard on 23<sup>rd</sup> January 2024 which was exercised by him by being present through video conferencing. He confirmed the receipt of the Findings of the Board. He also requested the Board to take a sympathetic view in the case as he had already pleaded guilty during the hearing, it was the first ever case of misconduct against him that too in the initial years of his practice which he started in 2020 and promised not to repeat it in the future.
3. Thus, upon consideration of the facts of the case, the consequent misconduct of **CA. Vikash Kumar Pandey (M.No. 312685)** and keeping in view his representation before it, especially the fact that it was the first ever case of misconduct against him and that too in the initial years of his practice, the Board took a lenient view and **decided to impose a Fine of Rs.20,000/- (Rs. Twenty Thousand only) upon CA. Vikash Kumar Pandey (M.No. 312685).**

Sd/-

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

Sd/-

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

Sd/-

**CA. Priti Savla**  
(Member)

यही प्रतिलिपि होने के लिए प्रमाणित  
Certified to be true copy

*Charan Singh*  
वरुण सिंह / Charan Singh  
कार्यकारी अधिकारी / Executive Officer  
अनुशासनसमन्वय निदेशालय / Disciplinary Directorate  
भारतीय अगती लेखाकार संस्थान  
The Institute Chartered Accountants of India  
आइसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032  
ICAI Bhawan, Vishwas Nagar, Shahdara, 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- 276/2021-DD/292/2021/BOD/678/2023]**

**CORAM: (Present in Person)**

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

**Ms. Dolly Chakrabarty, Government Nominee**

**CA. Priti Savla, Member**

**In the matter of:**

**CA. Dalam Chand Bhandari (M.No. 051795)**

Partner, M/s DC Bhandari & Associates,

Chartered Accountants,

White Towers, 5th Floor,

Room No. 5J, 115, College Street,

**Kolkata – 700012.**

**.....Complainant**

**Versus**

**CA. Vikash Kumar Pandey (M.No. 312685)**

M/s Pandey Vikash & Associates,

Chartered Accountants,

Flat No. T 1, 3rd Floor, Ideal Apartments,

10D, Jhill Path, PO Nabagram,

**Kolkata – 712246.**

**.....Respondent**

**DATE OF FINAL HEARING : 4<sup>th</sup> May 2023**

**PARTIES PRESENT(in person)::**

**Respondent : CA. Vikash Kumar Pandey**

**FINDINGS:**

**BACKGROUND OF CASE:**

1.1 The Complainant claimed that he was appointed as statutory auditor of M/s Tapas Management Services Pvt Ltd (formerly Guinness Portfolio Management Services Pvt Ltd)

(hereinafter referred to as the Company) for the term of 5 years from the Financial Year 2019-20 to 2023-24 in the AGM held on 30.09.2019. He brought on record copy of ADT-1 regarding his appointment from 2019-20 to 2023-24 filed by the Company to ROC on 26.10.2019 to prove his contention wherein one of the Director namely Akshay Kothari certified that the Complainant firm was appointed as statutory auditor of the Company in its AGM dated 30.09.2019 for five years i.e., from 2019-20 to 2023-24.

- 1.2 The Complainant audited and signed the Financial Statement of the Company for FY 2018-19 also. In the same AGM held on 30.09.2019, Respondent's firm has been stated to be appointed for the period of one year from 01.04.2019 to 31.03.2020 and the Respondent firm gave his eligibility certificate to the Company on 30.09.2019 and filed ADT-1 on 31.12.2020 after 15 months gap from the said AGM. In this regard, the Complainant has brought on record, copy of ADT-1 filed by the Company on 31.12.2020 under the digital signature of the same director i.e., Akshay Kothari. The Complainant stated that the Respondent audited the Financial Statement of the Company for the Financial Year 2019-20.

**CHARGES ALLEGED:**

Against the aforesaid background, the following was alleged against the Respondent:

- 2.1 Allegation 1: The Respondent accepted appointment as the Statutory Auditor of the Company for the financial year 2019-2020 without first communicating with the previous auditor (i.e., Complainant) in writing as required under Item (8) of Part I of First Schedule to the Chartered Accountants Act, 1949.
- 2.2 Allegation 2: The Respondent accepted his appointment as the Statutory Auditor of the Company without first ascertaining whether the requirements of Section 139 and 140 of the Companies Act 2013 in respect of such appointment have been duly complied with it.
- 2.3 Allegation 3: It is also alleged by the Complainant that Mr. Gopal Ram Dhanuk was given authority to sign AOC-4 of the Company for FY 2018-19 on 16/06/2019. However, he was appointed by the Board on 20/09/2019. The Complainant further alleged that in FORM AOC-4 the board meeting in which accounts were approved was shown as 16/06/2019 and directors who signed the accounts were shown as Mr. Kamal Kothari (DIN 00292123) and Mr. Akshay Kumar Kothari (DIN 05354130) and it has been also mentioned in Form AOC-4

that auditor also signed the Financial Statements on 16/06/2019. However, the Board of Directors approved the Financial Statements on 16/01/2020 and Mr. Akshay Kothari (DIN 05354130) and Mr. Gopal Ram Dhanuk (DIN 08563722) actually signed the said Financial Statements of the Company for FY 2018-19 on behalf of the Board and the Complainant also signed the Financial Statements under UDIN 20051795AAAAAE822. Mr. Kamal Kumar Kothari resigned from the Company on 29/10/2019 then how it is being showing in Form AOC-4 that Mr. Kamal Kumar Kothari has approved the accounts on 16/06/2019 in the capacity of Director.

- 2.4 Allegation 4: Form-ADT-1 filed on 31/12/2020 and AOC-4 filed on 29/01/2020 contained false, untruthful information and wrong attachments. Hence, appropriate action as per law should be taken against the Company, its directors and CS who has certified wrong attachments to AOC-4.
- 2.5 Allegation 5: To avoid payment of late additional fees and other penal consequences for not adopting of accounts in due time, the adjournment of AGM etc., the Company adopted unfair means by citing wrong dates and information.

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) and (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949 in respect of the charge specified at para 2.1 and 2.2 above only. The said view had been accepted by the Board. Accordingly, the conduct of the Respondent was examined by the Board in respect of the charge specified at para 2.1 and 2.2 above only.

**BRIEF OF PROCEEDINGS HELD:**

3.

| Date of Hearing(s)       | Status of Hearing(s) |
|--------------------------|----------------------|
| 4 <sup>th</sup> May 2023 | Heard and concluded  |

**OBSERVATIONS OF THE BOARD:**

- 4.1 As regard the first charge that the Respondent accepted his appointment as the Statutory Auditor of the Company for the financial year 2019-2020 without first communicating with

the previous auditor (i.e., Complainant) in writing, 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.

The following Paras of the Code of Ethics- 2009 also merit consideration in this regard:

*“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. “*

*“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. 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.”*

- 4.2 In the instant case, the Board noted the Respondent brought on record a copy of letter dated 11<sup>th</sup> September 2019 addressed by him to the Complainant seeking his no-objection for his proposed appointment as the Statutory Auditor of the Company for the financial year 2019-2020 which according to him was hand delivered to the Complainant. However,

*ds*

he could not bring on record any acknowledgement or positive evidence to prove that such communication was delivered to the Complainant being the previous auditor of the Company.

4.3 The Board also noted that the Respondent during the course of hearing clearly admitted his guilt in respect of the charge alleged.

4.4 Thus, in view of admission of guilt on the part of the Respondent and the documents and submissions on record, the Board held the Respondent Guilty in respect of the charge alleged.

4.5 As regard the second charge that the Respondent accepted appointment as the Statutory Auditor of the Company without first ascertaining whether the requirements of Section 139 and 140 of the Companies Act 2013 in respect of such appointment have been duly complied with, the Board took into view the following provisions of Sub Section (4) of Section 140 of the Companies Act, 2013 which provides for removal, resignation of auditor and giving of special notice as below:

*"(i) Special notice shall be required for a resolution at an annual general meeting appointing as auditor a person other than a retiring auditor or providing expressly that a retiring auditor shall not be re-appointed, except where the retiring auditor has completed a consecutive tenure of 5 years or, 10 years, as provided under sub-section (2) of section 139.*

*(ii) On receipt of notice of such a resolution, the company shall forthwith send a copy thereof to the retiring auditor.*

*(iii) Where notice is given of such a resolution and the retiring auditor makes with respect thereto representation in writing to the company (not exceeding a reasonable length) and requests its notification to member of the company, the company shall, unless the representation is received by it too late for it to do so, —*

*(a) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and*

*(b) send a copy of the representation to every member of the company to whom notice of the meeting is sent, whether before or after the receipt of the representation by the company, and if a copy of the representation is not sent as aforesaid because it was*

*received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representation shall be read out at the meeting."*

4.6 The Board further noted that the Complainant was appointed as the Statutory auditor of the company for a period of 5 years commencing from 01/04/2019 to 31/03/2024 as per the copy of ADT-1 filed on 26<sup>th</sup> October 2019. Further, another ADT-1 was filed on 31<sup>st</sup> December 2020 for the Respondent's appointment which was for a period of 01 year commencing from 01/04/2019 to 31/03/2020. Furthermore, the nature of appointment under 'point 3(b)' of such Form has been shown as 'Appointment/Re-appointment in AGM' instead of 'resignation / removal of previous auditor or appointment due to casual vacancy'. However, under point no. 7(a) of said Form ADT 1, it was mentioned that the appointment of the Respondent was not due to any casual vacancy. Thus, it is implied that the Complainant was removed from the position of the Statutory auditor of the Company before expiry of his term.

4.7 The Board also noted that the Respondent brought on record the following:  
(a) copy of the proposal letter of appointment of the Respondent dated 01.09.2019 (b) His consent letter dated 30.09.2019  
(c) the Resolution of AGM dated 30.09.2019.  
However, in none of the aforesaid documents, the fact of removal/resignation of the Complainant from the post of statutory auditor of the Company was mentioned. Also, the Respondent audited the Financial Statement of the Company for the F.Y. 2019-2020 and issued his audit report on 1<sup>st</sup> December 2020 i.e., during the term of engagement of the Complainant. Thus, it is apparent that the due procedure as prescribed under the Companies Act 2013 for the removal of the Complainant and the appointment of the Respondent was not followed and the Respondent did not ensure whether the provision of Section 139 and 140 of the Companies Act, 2013 were complied with prior to the acceptance of his appointment.

4.8 The Board also noted that the Respondent during the course of hearing clearly admitted his guilt in respect of the charge alleged.

4.9 Thus, in view of admission of guilt on the part of the Respondent and the documents and submissions on record, 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) and (9) 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: 28-12-2023**

सही प्रतिलिपि होने के लिए प्रमाणित  
Certified to be true copy  
सोप सुति मर्म / CA. Anil K. Singh  
सहायक निदेशक / Assistant Director  
अनुप्रासनात्मक निदेशालय / Disciplinary Directorate  
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