



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

[PR/29/2021-DD/69/2021/BOD/690/2023]

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:

Shri Rajesh P Ruparel,
804 C, Dr. Ambedkar Road, Ratty Lodge,
Room No. 2, Dadar East,
Mumbai, Maharashtra-400014.

.....Complainant

-Vs-

CA. Haresh Kantilal Shah (MNo. 035072),
M/s. H.K. Shah & Associates,
403, Prabhat Kiran Housing Society,
Manish Park, Pump House, Andheri East,
Mumbai, Maharashtra-400093.
[PR/29/2021-DD/69/2021/BOD/690/2023]

.....Respondent

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 and passing Order: 23rd January 2024

1. The Board of Discipline vide its Findings dated 28th December 2023 was of the view that **CA. Haresh Kantilal Shah (M. No. 035072)** is **GUILTY** of Other Misconduct falling within the meaning of Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the Act and Not Guilty of Professional misconduct falling within the meaning of Item (11) of Part I of the First Schedule to the Chartered Accountant Act, 1949.
2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against **CA. Haresh Kantilal Shah (M. No. 035072)** and communication dated 16th January 2024 was addressed to him thereby granting him an opportunity of being heard on 23rd January 2024. He sent his written representation on the Findings of the Board vide email dated 22nd January 2024. He also vide email dated 23rd January 2024 informed that he has authorised his lawyer Mr. Prasad Rao to appear before it through video conferencing. The Board held that since there is no specific stipulation as regard representation through an authorized representative in Rule 15 of The Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, and no fresh grounds can be adduced at this stage, representation through authorized representative is not permitted. Accordingly, the Board decided to consider his case for the award of punishment on the basis of documents and submissions on record.
3. Thus, upon consideration of the facts of the case, the consequent misconduct of **CA. Haresh Kantilal Shah (M.No. 035072)** and keeping in view his written representation before it, the **Board decided to remove the name of CA. Haresh Kantilal Shah (M. No. 035072) from the Register of Members for a period of One (1) month.**

Sd/-

CA. Rajendra Kumar P
(Presiding Officer)

Sd/-

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

Sd/-

CA. Priti Savla
(Member)

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/29/2021-DD/69/2021/BOD/690/2023]

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:

**Shri Rajesh P Ruparel,
804 C, Dr. Ambedkar Road, Ratty Lodge,
Room No. 2, Dadar East,
Mumbai, Maharashtra-400014.**

..... Complainant

Versus

**CA. Haresh Kantilal Shah,
M/s. H.K. Shah & Associates,
403, Prabhat Kiran Housing Society,
Manish Park, Pump House, Andheri East,
Mumbai, Maharashtra-400093.**

.....Respondent

DATE OF FINAL HEARING : 21st November 2023

PARTIES PRESENT(in person):

**Complainant : Shri Rajesh P Ruparel
Respondent : CA. Haresh Kantilal Shah**

FINDINGS:

BRIEF BACKGROUND OF THE CASE:

1. In the instant case, the Complainant stated that he engaged the Respondent for filing his income tax return and to look after his other tax related matters. The Complainant has



alleged that the Respondent while acting in the said capacity took an amount of Rs. 35 Lacs from him to invest the said money in the share market with a promise to pay back an interest of 1 % per month to him on the said sum. It is stated that after paying interest of Rs. 35,000/- per month by cheque for a few months the Respondent suddenly stopped paying any further amount despite several reminders by the Complainant either through calls or messages. The Complainant stated that after some time, the Respondent also stopped responding to him and ultimately refused to pay any further money to the Complainant.

CHARGE ALLEGED:

- 2.1 The Respondent is engaged in any business or occupation, other than the profession of Chartered Accountant without obtaining the specific approval of the Council in that regard.
- 2.2 The Respondent has misappropriated and embezzled his money and hence brought disrepute to the profession.

BRIEF OF PROCEEDINGS HELD:

3.

S. No.	Date of Hearing(s)	Status of Hearing(s)
1	22 nd May, 2023	Part heard and adjourned with the direction to the office to write a letter to ICICI Bank to provide the certified copy of the Statement of the Account maintained by the Complainant with it for the F.Y. 2010-11,2011-12 and 2012-13(till June 2012).
2	1 st September, 2023	adjourned at the request of the Respondent.
3	2 nd November, 2023	Part-Heard & Adjourned with the directions to the office to seek from ICICI Bank a copy of the Statement of the Account maintained by the Complainant with it for the period from 2009 to 2016.

4	21 st November, 2023	Heard and concluded.
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BRIEF SUBMISSIONS OF THE RESPONDENT:

4. The Respondent in his defence, inter-alia, submitted as under: -

4.1 The Respondent has never taken Rs.35 Lakhs from the Complainant with or without any intention to invest in share market and never given any promise to pay any interest. The Respondent has never received any amount in his bank account from the Complainant and never paid any interest by cheque from his Bank account.

4.2 The Respondent is not doing stock market trading activities with promise to pay interest/ commission. The Respondent has no share trading terminal, he and his family members have no SEBI/ NSE/ BSE Registration as Broker/ Dealer.

4.3 The complainant is misleading the Board by submitting fraudulent copy of ICICI Bank Statement. Normally bank statement display bank name, branch, bank logo, name and address of the Account holders, account Id and account no, nature of account, IFSC Code of the bank and Statement period these details are not available in the ICICI bank statement submitted by Complainant. The complainant has fabricated following credit entries in copy of bank statement submitted to the Board:

DATE	DESCRIPTION	AMOUNT
20121205	BIL/...../INTEREST HARESH	9375.00
20121205	BIL/...../INTEREST HARESH	9375.00
20121205	BIL/...../INTEREST HARESH	2918.30
20121205	BIL/...../INTEREST HARESH	9375.00

20121205	BIL/...../INTEREST HARESH	9375.00
20121205	BIL/...../INTEREST HARESH	9375.00
20120727	BIL/...../LOAN RETURN	500000.00

All the above are not payments of interest /cash loan returned by the Respondent. These are amount transferred from Reliance Securities Ltd to the complainant Bank account. The Respondent is not at all related with these transactions.

- 4.4 Amount mentioned in the cash statements are actually amount transferred by Reliance Securities Ltd to ICICI Bank Accounts of the complainant and his family members.

OBSERVATIONS OF THE BOARD:

- 5.1 As regard the charge that the Respondent is engaged in any business or occupation other than the profession of Chartered Accountant without obtaining the specific approval of the Council in that respect, the Board noted that Item 11 of Part I of the First Schedule to the Chartered Accountants Act, 1949 states as under:

Clause (11) "A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he engages himself in any business or occupation other than the profession of chartered accountant unless permitted by the Council so to engage:

Provided that nothing contained herein shall disentitle a chartered accountant from being a director of company (not being managing director or a whole-time director) unless he or any of his partners is interested in such company as an auditor"

In this regard, the Board noted that Regulation 190A of Chartered Accountants Regulations,1988 provides as under:



"The Chartered Accountant in Practice shall not engage in any business or occupation other than the profession of accountancy, except with the permission granted in accordance with a resolution of the Council".

- 5.2 The Board further noted that the Code of Ethics with respect to Item (11) of Part I of the First Schedule to the Chartered Accountant Act 1949 provides as under:

"This is a provision introduced to restrain a member in practice from engaging himself in any business or occupation other than that of Chartered Accountant except when permitted by the Council to be so engaged. The objective is to restrain members from carrying on any other business in conjunction with the profession of accountancy and combining such work with any business which is not in keeping with the dignity of the profession. Another reason for the introduction of such prohibition is that a Chartered Accountant, if permitted to enter into all kinds of business, would be able to advertise for his other business and thereby secure an unfair advantage in his professional practice."

- 5.3 In the instant case, the Board noted that there is neither any conclusive nor corroboratory documentary evidence on record to substantiate that the Respondent is engaged in stock market trading activities with promise to pay interest/ commission. Further, there is no documentary evidence on record that the Respondent has either a share trading terminal or he/ his family members have SEBI/ NSE/ BSE Registration to engage as a Broker/ Dealer. The Complainant has brought on record evidence with respect to a sole monetary transaction of borrowal of Rs. 35 Lacs by the Respondent from the Complainant which cannot be stretched to amount to his being in other business engagements. Accordingly, the Board held the Respondent **Not Guilty** of Professional misconduct falling within the meaning of Item (11) of Part I of the First Schedule to the Chartered Accountant Act, 1949.

- 5.4 As regard the charge that the Respondent has embezzled and misappropriated a portion of money out of Rs. 35 lacs taken as loan from the Complainant upon a promise that he will yield him regular Interest or profit arising out of investing the same in the stock



market, the Board noted that the Complainant brought on record a statement of cash account claimed to be in the Respondent's own handwriting showing receipt of Rs. 35 Lacs on 30th June 2011 by the Respondent from the Complainant and its repayment on different dates. During the course of hearing, the Board enquired about the said statement of cash account from the Respondent, in response, he confirmed that the amount written in left hand side is in his own handwriting and the amount written on right hand side is of Complainant. The Board noted that the amount written on the right-hand side basically represented the narration for the said transactions. The Board also noted that the Respondent paid an interest of Rs. 35,000/- per month by cheque only for a few months and suddenly stopped paying after some time. The Board also noted that as per the Bank account statement of the Complainant maintained with the ICICI Bank for the period 1st April, 2010 to 31st December, 2011 there were certain deposits from the Respondent.

5.5 Later, in discharge to his liability and towards payment of interest, the Respondent signed and issued 20 post-dated cheques of Rs. 7,500/- each, total amounting to Rs. 1,50,000/- drawn on Saraswat bank, Andheri, Mumbai in 2017 as a security against amount borrowed. During the course of hearing, the Complainant informed that he could not present these cheques in the bank since the Respondent stopped him from presenting the said cheques for clearance stating that there is no balance in the bank account and that he needed some more time. Due to this, the cheque expired and became stale. During the course of hearing, the Board enquired about the said 20 post-dated cheques from the Respondent and, in response, he stated that the signed cheques were lying in his office and later on the same were misplaced. However, no police complaint was lodged for the same. The Board also noted that the said cheques were issued on behalf of Parag Ramniklal Shah who was his aunt and the Respondent.

5.6 Thus, upon consideration of the documents and submissions on record, the Board was of the view that the conduct of the Respondent in the aforesaid explained circumstances is clearly unwarranted and he does not seem to be fair and reasonable in dealing with his



client in his individual capacity. Hence, the Board held the Respondent **Guilty** of Other misconduct falling within the meaning of Item (2) of Part IV of the First Schedule to the Chartered Accountant Act, 1949.

CONCLUSION:

6. Thus, in conclusion, in the considered opinion of the Board, the Respondent is **GUILTY** of Other Misconduct falling within the meaning of Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 and **Not Guilty** of Professional misconduct falling within the meaning of Item (11) of Part I of the First Schedule to the Chartered Accountant 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

Me
नीलम पंडीर / Neelam Pundir
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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