



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

[PR/201/2021/DD/230/2021/BOD/694/2023]

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. Brij Mohan Barwal
M/s Barwal & Associates
D-58, Basement,
Kalkaji,
New Delhi – 110019.

.....Complainant

-Vs-

CA. Durgesh Kumar Mishra (M. No. 558358)
B-37, Gali no. 1,
West Vinod Nagar
New Delhi –110092.

.....Respondent

[PR/201/2021/DD/230/2021/BOD/694/2023]

MEMBERS PRESENT:

CA. Rajendra Kumar P, Presiding Officer (in person):
Ms. Dolly Chakrabarty (IAAS, ret'd.), 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 7th November 2023 was of the view that CA. Durgesh Kumar Mishra (M. No. 558358) 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.
2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against CA. Durgesh Kumar Mishra (M. No. 558358) and communication dated 17th January 2024 was addressed to him thereby granting him an opportunity of being heard on 23rd January 2024 which was not exercised by him despite the due service of the notice of hearing for award of punishment. Thus, keeping in view the provisions of Rule 15(1) of The Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Board is of the view that he has nothing more to represent before it and thus, decided to consider his case for award of punishment.
3. Thus, upon consideration of the facts of the case and the consequent misconduct of CA. Durgesh Kumar Mishra (M. No. 558358), the Board decided to remove the name of CA. Durgesh Kumar Mishra (M. No. 558358) from the Register of Members for a period of 1(One) month.

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Sd/-

CA. Rajendra Kumar P
(Presiding Officer)

Sd/-

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

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

Sd/-

CA. Priti Savla
(Member)

गीता अशोक कुमार / GITA KUMAR
आयोजना अधिकारी / E. Secy
अनुभाग / Section
CA. Brij Mohan Barwal -Vs- CA. Durgesh Kumar Mishra (M. No. 558358)
आयोजना अधिकारी / E. Secy
अनुभाग / Section

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/201/2021/DD/230/2021/BOD/694/2023]

CORAM (present in person):

**CA. Rajendra Kumar P, Presiding Officer
Ms. Dolly Chakrabarty (IAAS, ret'd.), Government Nominee
CA. Priti Savla, Member**

In the matter of:

**CA. Brij Mohan Barwal
M/s Barwal & Associates
D-58, Basement,
Kalkaji,
New Delhi – 110019.**

.....Complainant

Versus

**CA. Durgesh Kumar Mishra (M. No. 558358)
B-37, Gali no. 1,
West Vinod Nagar
New Delhi –110092.**

.....Respondent

DATE OF FINAL HEARING : 3rd July 2023

PLACE OF FINAL HEARING : New Delhi

PARTIES PRESENT (in person):

**Complainant : CA. Brij Mohan Barwal
Respondent : CA. Durgesh Kumar Mishra**

FINDINGS:

BACKGROUND OF THE CASE:

1. M/s Barwal & Associates (hereinafter referred to as the "Complainant firm" / "firm") appointed the Respondent as an employee on 29th April 2019. As per the Complainant, the Respondent took leave for his marriage from 12th February 2021 to 8th March 2021.

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Before his leave, the Complainant firm gave a Dell Laptop and an advance of Rs. 1,00,000/- to him over different period of time which he promised to return after his marriage. However, after completion of leave, the Respondent did not join the Complainant's office and requested to extend his leave for one more day. As per the Complainant, the Respondent joined the office on 9th March 2021 at 2:30 PM and took some soft copies of client data to start office work from 15th March 2021.

CHARGE ALLEGED:

2. The Complainant made following allegation against the Respondent:
 - 2.1 On 15th March 2021, the Respondent neither reported in the Complainant's office nor at the client's office. He was called repeatedly but he did not respond to the phone calls and even not replied to the message. The Complainant also received message from the client that the Respondent is not picking up their phone calls. On next day, i.e., on 16th March, 2021, the Complainant's office tried to contact the Respondent about the client's data on which he was working as only he was aware about the location of the data but he did not respond to the calls or message due to which the work assigned to him could not be completed in due time. Further, as per the terms of the Employment Agreement, before resigning from employment with them, the Respondent will serve a notice period of 60 days.
 - 2.2 It came to the knowledge of the Complainant from third party sources that the Respondent has already joined some other employment without even informing them. As per the terms of his Employment Agreement, the Respondent cannot accept employment in any other organization till he is working with their firm.
 - 2.3 As per the terms of Employment Agreement, the Respondent was required to hand over all the data, work status and assets as per the Complainant firm's policy and take a NOC from all the Departments. The Complainant stated that they are afraid that the Respondent has taken some critical client data in three to four days after 9th March 2021 as there is no other valid reason to come to office for three days when he already joined another company.
 - 2.4 The Respondent was required to clear all the outstanding as on date, but he has not cleared the same.
 - 2.5 Due to above reasons, the following is the expected loss which the Complainant firm has incurred:-
 - i) A dell laptop provided to him by the firm for carrying out official assignment, which he has not returned before leaving the job (Cost approximate Rs.50,000/-).
 - ii) An advance which he has taken in different lots over the period of time, totaling around Rs.1,00,000/-.

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- iii) Loss due to breach of Employment Agreement as he has not served the notice period of 60 days.
- iv) Loss of reputation before the clients due to non-delivery of assignment on time.
- v) Loss of contract of Rs.5,00,000/- as he did not start the work on time.
- vi) Loss of client data which he has not handed over till date.

The Board noted that the Director (Discipline) in his Prima Facie Opinion held the Respondent prima facie Guilty of Other Misconduct falling within the meaning of Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 only in respect of the charge relating to the breach of contract by not serving the notice period and joining the other employment without any prior intimation and the said view had been accepted by the Board. Accordingly, the conduct of the Respondent was examined in respect of Other Misconduct falling within the meaning of Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 in respect of the said charge only.

BRIEF OF PROCEEDINGS HELD:

3.

S.no.	Date of hearing(s)	Status
1.	16 th May 2023	Adjourned on account of non-appearance of the parties to the case.
2	3 rd July 2023	Heard and concluded.

BRIEF SUBMISSIONS OF THE COMPLAINANT:

4. The Complainant, inter-alia, made the following submissions to substantiate his case:

4.1 Regarding the advance paid of Rs. 1,07,838/- (Rupees One Lac Seven Thousand Eight Hundred Thirty Eight Only), the Complainant stated that he can submit the following reasons/documents to substantiate the amount paid to him:

(a) Advance was given to Respondent on his request at different times for different reasons. The request made by him were sometimes through WhatsApp messages and sometimes oral too. He was in a habit of asking advance as and when in need of money for different reasons and is clear from his messages.

(b) The Respondent first asked for advance of Rs. 10,000/- on 19-06-2020 for hospitalization of his sister-in-law and the Complainant transferred the same on the

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same day. Because of lockdown in that period and the medical reason for the advance taken, there was no possibility of getting the voucher signed. Also, the advance was given as per his specific request and paid through the banking channel.

(c) The Respondent again asked for an advance of Rs 6,000/- on 21-08-2020. The Complainant transferred him Rs.5,000/- through banking mode on the same date but he said that he requires Rs. 6,000/- and then he took Rs. 1,000/- in cash on 31-08-2020 after repeated reminders.

(d) Next time, the Respondent asked for advance of Rs. 25,000/- on 25-09-2020 for purchase of jewellery for his marriage. This time also the advance was given on his specific request and paid through bank mode.

(e) Another advance of Rs. 30,000/- was given on 12-02-21, when the Respondent said that he requires the money for the marriage purpose. This advance was also given for his specific requirement which seemed to be genuine. The Complainant transferred him Rs 30,000/- through banking channel but the Respondent requested that he needs additional money so the Complainant gave him Rs. 15,000 /-in cash. The cash was given in the last working hours of the office so the voucher could not be signed at that time and then he went on leave from the same day.

- 4.2 He was working with the Complainant firm on a senior position for a good time and also the reasons given by him seemed to be genuine, so it was not possible to neglect his demands (Hospitalization of his sister- in law, purchase of jewellery for his marriage etc.)
- 4.3 During lockdown period, 50% salary was paid to all the staff members due to cash crunch. The rest 50% was promised to all the staff members as bonus as per the cash flow of the firm. The bonus was supposed to be paid to those employees who will remain in continuous employment with the firm till November 2021. The Respondent did not fulfil the conditions attached to bonus declaration, hence he was not eligible for the bonus amount and also the advance paid as per his specific demands and requirements was not at all linked with the bonus amount payable to the other eligible staff. If the amount paid to him was related to the salary arrears, it would have been paid to all the staff members on the same time which is not true in this case.
- 4.4 The advance paid was duly reflected in the audited Balance Sheet of the Complainant firm.
- 4.5 As responded by the Respondent that he was on leave for his marriage ceremony and that all the work assigned to him was transferred to some other person does not hold good due to following reasons:

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- a) The Respondent was a senior manager in the firm, and he had the overall responsibility of handling certain clients assigned to him, his team was taking care of some urgent jobs of those clients in his absence, but he was never relieved from the overall responsibility of those clients. Also, the Respondent was supposed to join the office w.e.f. 08 March 2021 so the work plan which he was supposed to start post vacation was ready and also communicated to him in some cases as per the office policies.
- b) Complainant firm uses a "CA Dashboard Software" installed in his office for management of the job assignments. Whenever an assignment is assigned to someone, it gets reflected on the portal under his login and also a mail is forwarded to him for the same.
- c) 15 March 2021 was the due date to deposit final installment of Advance Tax for the FY 20-21 for which the Respondent was supposed to finalize advance tax calculations for some of the clients. One of such clients was Burgeon Law LLP for which he was supposed to finalize the advance tax calculations. The client has also sent the Respondent various meeting invites and also the data for advance tax calculations during the period 06 March 2021 to 15th March 2021 but neither the meetings were attended by him nor the mails were replied.
- 4.6 Post filing the police complaint and also filing the complaint with ICAI, the Complainant came to know that the Respondent has joined the office as an employee of one of Complainant's client. This is also another breach of Clause 23 of the appointment letter. As per the said clause, an employee cannot join the office of any client or any of its group: organization as employee, consultant or in any other capacity for a period of 3 (Three) years post resignation without the written consent of the firm. However, Complainant has come to know that the Respondent has accepted the employment in AIPL Group of Companies, and 4-5 companies of this group are Complainant's auditee companies.
- 4.7 The Respondent was the in charge of Statutory Audit of these auditee companies for the FY 2019-20 and hence was already in touch with their staff members. When the Complainant came to know this fact later on, he also informed the client about the same.

OBSERVATIONS OF THE BOARD:

- 5.1 As regard the charge relating to the breach of contract by not serving the notice period and joining the other employment without any prior intimation, the Board on perusal of the Appointment Letter dated 27th October, 2020 duly accepted by the Respondent

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noted that the Respondent was appointed as Senior Manager – Audit & Taxation in the Complainant firm w.e.f. 29.04.2019 (Joining date).

The Board further noted that para 14(a) and (b) of the said Appointment letter provided as under:

“(a) The Firm reserves the right to terminate your services at any point of time on giving 30 Days’ notice, or basic salary in lieu thereof without assigning any reason.

(b) Similarly, you would also be at liberty to terminate the employment after giving the written notice of 60 days or such greater period as informed by the firm from time to time. The Employee is not entitled to pay the firm salary in lieu of such notice. In case of termination by your resignation, the firm will have the option to accept your resignation either with immediate effect and pay you salary in lieu of notice period or accept it effective any day upto the end of the notice period and pay you salary for the remaining period from the acceptance of resignation till the end of the notice period.”

Also, in terms of Para 11 of the Letter of Appointment, during the term of employment, an employee of the Complainant firm was not allowed to accept or perform any work, whether for remuneration or otherwise in any other trade or business without obtaining the prior written permission of the Complainant firm.

- 5.2 The Board further noted that the Respondent brought on record copy of his resignation letter dated 9th March 2021 wherein it was mentioned as under:-

“Subject :- Resignation from Job with effect 01.04.2021

Dear Sir,

This letter is to notify that I am resigning from my position here as Manager – Audit & Taxation with effect from 09.03.2021 due to the personal and professional growth prospective and opportunities.

.....

My last working day will be 31.03.2021. As due to my marriage I was on leave and due to which my pending work has already been transferred to other colleagues non the less any work is pending from my end i will do the same within 31.03.2021.

Any work which will be still pending as on 31.03.2021 than I will come to your office in the weekend to complete the same.”

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The Board thus noted that the Respondent mentioned two dates for his resignation from the job. One was 01.04.2021 and second one was 09.03.2021. The Respondent also stated in the said letter that his last working day in the Complainant firm would be 31.03.2021. However, the said letter does not bear any acknowledgement for receipt of the same by the Complainant firm.

5.3 The Board also noted that the Respondent during the course of hearing stated that the Complainant did not accept his resignation letter, so he placed the same in his office and left.

Further, the Board also noted that the Respondent on one hand informed that he joined other employment on March 15, 2021 and on the other stated in his resignation letter that his last working day in the Complainant firm was 31st March 2021.

5.4 Thus, in view of the aforesaid observations, the Board was of the view that the act of the Respondent of joining the other employment without serving the notice period of 60 days and consequent non-seeking of prior permission of the Complainant Firm in this respect and without having duly served his resignation on the Complainant firm, is in clear violation of the terms of the Letter of Appointment issued by the Complainant firm to him which was duly accepted by him. This act on the part of the Respondent not only resulted in dispute between the Complainant and the Respondent as employer and employee but also brought disrepute to the profession as members of the profession are expected to maintain their ethics and follow their commitments in dealing with the professional brothers.

Accordingly, the Board held the Respondent Guilty in respect of the charge alleged.

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 read with Section 22 of the said Act.

Sd/-

CA. Rajendra Kumar P
(Presiding Officer)

Sd/-


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

Sd/-

CA. Priti Savla
(Member)

DATE: 07-11-2023

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Certified to be true copy


अरुण कुमार / Arun Kumar
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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