



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

[PR/281/2019/DD/285/2019/BOD/735/2024]

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. Nitin S. Bangad (M. No. 049693),
M/s S.M. Bangad & Co. 1st Floor, Tapadia Terraces, Adalat Road
Aurangabad.....Complainant

Versus

CA. Ashish Ashok Baheti (M. No. 148353),
12 Housing Society, Near Mantri Bank, Distt. Beed,
Ambajogai.....Respondent

[PR/281/2019/DD/285/2019/BOD/735/2024]

MEMBERS PRESENT (THROUGH VIDEO CONFERENCE):

CA. Rajendra Kumar P, Presiding Officer
Ms. Dolly Chakrabarty (IAAS, retd.), Government Nominee

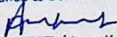
Date of Hearing and passing Order: 10th January 2025

1. The Board of Discipline vide its findings dated 27th August 2024 was of the view that CA. Ashish Ashok Baheti (M. No. 148353) 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. Ashish Ashok Baheti (M. No. 148353) and communication dated 2nd January 2025 was addressed to him thereby granting him an opportunity of being heard on 10th January 2025 which was exercised by him by being present through video conferencing. He confirmed receipt of the findings of the Board.
3. Thus, upon consideration of the facts of the case, the consequent misconduct of CA. Ashish Ashok Baheti (M. No. 148353) and keeping in view of his representation before it, the Board decided to impose a **Fine of Rs.1,00,000/- (One Lakh Only)** upon CA. Ashish Ashok Baheti (M. No. 148353).

Sd/-
CA. Rajendra Kumar P
(Presiding Officer)

Sd/-
Ms. Dolly Chakrabarty (IAAS, retd.)
(Government Nominee)

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
इंस्टीट्यूट ऑफ चार्टर्ड अकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन-110, गार्ड, राजस्थान, दिल्ली-110032
ICAI Bhawan, Mehrauli, New Delhi, India, Pin-110032

CA. Nitin S. Bangad (M. No. 049693) -Vs- CA. Ashish Ashok Baheti (M. No. 148353)

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

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:

CA. Nitin S. Bangad (M. No. 049693)

M/s S.M. Bangad & Co.

1st Floor, Tapadia Terraces, Adalat Road

Aurangabad.....Complainant

Versus

CA. Ashish Ashok Baheti (M. No. 148353)

12 Housing Society, Near Mantri Bank, Distt. Beed,

Ambajogai.....Respondent

Date of Final Hearing : 26th June 2024

Place of Final Hearing : ICAI Bhawan, Mumbai

PARTY PRESENT (IN PERSON)

Respondent : CA. Ashish Ashok Baheti

FINDINGS:

BACKGROUND OF THE CASE:

1. The Complainant being a practicing Chartered Accountant was appointed as the statutory auditor of M/s Veer Gurjar Aluminum Industries Pvt. Ltd. (hereinafter referred to as the "Company"). The Complainant carried out the statutory audit assignment of the Company up to the Financial Year March 2011. As per the audited books of accounts of the Company, the audit fees of Rs. 07.72 lacs were payable by the Company to the Complainant's Firm for the Financial Year 2010-11. However, only the part payment was received by the Complainant, and the outstanding balance of Rs. 04.72 lacs were yet to be received.
2. The Respondent had accepted and conducted the statutory audit assignment of the Company for the Financial year March 2012 till March 2017 without prior communicating with the Complainant and without ensuring as to whether his outstanding audit fees was paid by the Company. Further, the Complainant had not resigned from the post of

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statutory auditor of the Company and even the Director's report and Notice of AGM of the Company for March 2011 referred to re-appointment of the Complainant Firm as auditor in the Company. However, despite sending the letter through registered post and e-mail, no communication/reply was received by the Complainant from the Respondent.

CHARGE ALLEGED:

3. The Respondent accepted the statutory audit assignment of the Company for the Financial Year March 2012 till March 2017 without prior communicating with the Complainant and without ensuring the balance payment of the Complainant's audit fee of Rs. 04.72 lacs for the Financial Year 2010-11 by the Company.

BRIEF OF PROCEEDING HELD:

4. The details of the hearing fixed and held in the matter is as under:

| S. No. | Date of hearing | Status of hearing |
|--------|----------------------------|------------------------------------|
| 1. | 26 th June 2024 | Matter heard and hearing concluded |

BRIEF SUBMISSIONS OF THE COMPLAINANT:

5. The Complainant vide email dated 22nd June 2024 attaching therewith a letter dated 20th June 2024 stated that as per Para No. 9.5 of the Prima Facie Opinion (PFO) of the Director (Discipline), which contains that *"it may be noted that from the bare perusal of the copy of the unsigned ledger of the complainant firm in the books of the company, it transpires that the closing balance as on 31.03.2011 is Rs 7.72 lacs whereas, the complainant has in his complaint, stated that the outstanding audit fees is Rs 4.72 lacs. The Complainant has not given any plausible explanation for these contradictory figures. Moreover, the said ledger account is unsigned one"*, humbly states that when the complaint was initially filed, in para 3 of Annexure-1 to e-Form-I, it was clearly stated that *"further part payments were received and the outstanding balance of Rs 4.72 lacs is pending as on date"*

The Complainant submitted that as per the copy of ledger submitted, the outstanding balance of fees receivable from the company was Rs. 07.72 lacs as per the last financial statement signed by the Complainant. Subsequently part of the fees was received in subsequent years & as on the date of filing of the complaint with ICAI, the outstanding balance was Rs. 04.72 lacs. Since the details regarding the subsequent fees received are quite old, therefore Complainant cannot submit any other documents / proof justifying the subsequent receipt or part of the outstanding fees. The Complainant, however, confirm that the outstanding fees receivable is Rs. 04.72 lacs even as on date.

6. The Complainant further states that Para No. 9.5 of the PFO records that, "Further, the Balance sheet of the company as of 31st March 2011 does not contain any head with regard to the audit fees. Thus, the Complainant has not provided any cogent evidence to substantiate this allegation". In response, the Complainant submits that in Complainant's ledger, Rs 7,72,324/- was included in the figure of Rs. 8,24,834/- as per statement in the sub-grouping of the various figures which were included in the figure of "Creditor for Goods & Expenses" in SUB-SCH-8 of the audited financial statement of the company as on 31st March 2011.

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OBSERVATIONS OF THE BOARD:

7. At the outset, the Board noted that the Respondent was present in person before it. However, the Complainant vide his email dated 22nd June 2024 submitted that all the documents and materials available with him have already been submitted and he has nothing to submit further and requested the Board to decide the matter on merits.
8. Thus, upon review of the documents/evidence presented by the parties and as per first leg of allegation, wherein Complainant alleged that the Respondent had accepted the statutory audit assignment of the Company for the Financial Year March 2012 till March 2017 without prior communicating with the Complainant, the Board of Discipline notes that, the Complainant carried out the statutory audit of the Company for FY March 2011 and the Respondent carried out the statutory audit of the Company for FY March 2012 till March 2017. The Board further noted that neither the Complainant resigned nor the Respondent had any sort of communication with the Complainant before accepting the audit of the accounts of the Company.
9. The Board also noted that the Complainant brought Company's AGM Notice dated 5th September 2011 wherein it was stated that they will appoint auditors till next AGM. Further, in the said notice there is no mention of appointment of the Respondent nor there is any mention of Complainant retiring or Complainant resigning. Further, there is nothing on record to show that the Company even informed the Complainant that he is being replaced. Moreover, the Respondent never rebutted the said allegation. Additionally, the Respondent even admitted during the hearing before the Board that he has not obtained NOC from the Complainant. Hence, the said part of the allegation is an established fact.
10. The Board to make the observations more intelligible, herein elucidate the provision of Item (8) of Part-I of the First Schedule to the Chartered Accountants Act, 1949, which states as under:

"A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he –

(8) 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".

As rightly said in the PFO by the Director (Discipline) that from a bare perusal of the aforesaid statutory provision, before accepting the position as an auditor in any organization, a practicing Chartered Accountant shall communicate with the outgoing auditor in writing and any violation of this provision will make a Chartered Accountant liable for misconduct.

11. As regard the second leg of allegation, wherein the Complainant alleged that the Respondent had accepted the statutory audit assignment for the Financial Year March 2012 till March 2017 without ensuring the balance payment of the Complainant's audit fee of Rs. 04.72 lacs for Financial Year 2010-11 by the Company, the Board noted that the Respondent admitted during the hearing that there was outstanding fee. Hence, the said part of the allegation is also an established fact.
12. Thus, on a detailed hearing of the submissions, admission of the Respondent besides perusing the documents on record, the Board is of the view that the Complainant has been able to substantiate with corroborative and conclusive documentary evidence in his claim that the Respondent had accepted the statutory audit assignment of the Company

for the Financial Year March 2012 till March 2017 without prior communicating with the Complainant and without ensuring the balance payment of the Complainant's audit fee of Rs. 04.72 lacs for Financial Year 2010-11 by the Company.

CONCLUSION:

13. 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.

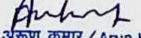
Sd/-
CA. Rajendra Kumar P
Presiding Officer

Sd/-
Dolly Chakrabarty, IAAS (Retd.)
Government Nominee

Sd/-
CA. Priti Savla
Member

Date: 27-08-2024

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अरुण कुमार / Arun Kumar
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
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