



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

[PR-6/2017-DD/41/2017/BOD/511/2019]

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. Gaurav Sharma (M.No. 069055),
Siliguri.**

..... **Complainant**

Versus

**CA. Poonam Kumari Gupta (M.No. 302794)
CA. Vidhi Churiwala (M.No. 307866)
M/s PKVC & Co. (FRN. 329115E),
Kolkata**

..... **Respondent no. 1**

..... **Respondent no.2**

[PR-6/2017-DD/41/2017/BOD/511/2019]

MEMBERS PRESENT (in person):

CA. Rajendra Kumar P., Presiding Officer

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

Date of Final Hearing: 17th March 2023

1. The Board of Discipline vide Findings dated 10th February 2023 was of the view that **CA. Poonam Kumari Gupta (M.No. 302794)** and **CA. Vidhi Churiwala (M.No. 307866)** are 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. Poonam Kumari Gupta (M.No. 302794)** and **CA. Vidhi Churiwala (M.No. 307866)** and communication dated 1st March 2023 was addressed to them thereby granting them an opportunity of being heard in person and/or to make written representation before the Board on 17th March, 2023.
3. **CA. Poonam Kumari Gupta** made her written representation vide letter dated 11th March 2023. Both **CA. Poonam Kumari Gupta** and **CA. Vidhi Churiwala** appeared before the Board through video conferencing on 17th March 2023.



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4. **CA. Poonam Kumari Gupta** in her written representation, inter-alia, submitted as under:
- a) The Respondent had sent the NOC which the Complainant never responded to. The Complainant never responded to both the letters sent by the Respondent. The Complainant must have responded to the communication made by the Respondent stating his observations with regard to the Company and whether there were any fees which were unpaid. Hence, the question of the Respondent having knowledge of the whole matter does not arise. In the wildest dream the Respondent would never have known what has transpired between the Management and the Complainant.
 - b) The retired auditor never communicated his grievances to the incoming auditor. Had the Complainant Respondent to the NOC by the Respondent, then the said matter would not have arisen.
 - c) A Chartered Accountant cannot be held responsible for all the filings and other compliances which have to be made by the Company. The documents presented by the Company to the Respondent have already been attached in the PFO which the Respondent believes to be sufficient for accepting an appointment.
 - d) Further, this was a case of removal of the auditor by the Management. The management had provided the EGM notice, the appointment letter, resignation letters, ADT-1 and such other documents to the Respondent basis which there seemed no non-compliance with regards to the appointment of the Respondent as a statutory auditor. Reliance was placed on the documents provided by the Management to the Respondent.
 - e) The responsibility of complying with Section 140 remains with 2 parties i.e. the Management and resigning auditor. The section nowhere mentions or casts responsibility on the incoming auditor. Section 140 of the Companies Act, 2013 clearly states that it is Management's responsibility to carry out appropriate filings with the ROC and also the said Section casts responsibility on the resigning auditor as well to file the certain forms and explanations with the ROC. In the event of non-compliance, the resigning auditor will be charged a penalty. The Complainant has not provided any proof or evidence with regards to his compliance with the ROC with regards to the said matter. There is a continuing failure on part of the Complainant with regards to such compliance under the Companies Act, 2013. The BOD has ignored the fact that the Complainant was required to comply with the provisions of Section 140 of the Companies Act, 2013 and also he was supposed to respond to the letters sent by the Respondent. However, no such response was given.



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- f) In para 4.6.2 the BOD has interpreted the Section 140 (1) of the Companies Act, 2013, however, the compliance requirements and penalty on the resigning auditor mentioned in sub-clause (2) and (3) of the said sections have been completely ignored by the BOD. The BOD has been very selective in looking at the provisions of Section 140, and the same has not been read in its entirety.
- g) The Code of Ethics issued by ICAI only requires the incoming auditor to communicate with the outgoing auditor to ascertain from the outgoing auditor, whether there are any circumstances which warrant the incoming auditor to not accept the appointment. For example, whether the outgoing auditor has been changed on account of having qualified his report or he had expressed a wish not to continue on account of something inherently wrong with the administration of the business. The outgoing auditor may even give out information regarding the condition of the accounts of the client or the reason that impelled him to qualify his report. In all these cases it is essential for the incoming auditor to carefully consider the facts before deciding whether or not incoming auditor should accept the audit, and should he do so, he must also take into account the information while discharging his duties and responsibilities. Hence, it is matter of pure judgment which is exercised by the incoming auditor. There is no requirement in the law to obtain a No Objection Certificate in any case. A further requirement is to ascertain whether there are any unpaid fees or not.
- h) The Respondent firm was a partnership firm. The office was in Kolkata. However, since the Respondent is a resident of Kolkata, the letter was sent from Kolkata, and this should not create any doubts with regards to genuineness. Documents proving the delivery have already been presented. All these facts have been thoroughly overlooked by the Board.
5. The Board has carefully gone through the facts of the case along with the oral representation of both CA. Poonam Kumari Gupta and CA. Vidhi Churiwala as well as the written representation of CA. Poonam Kumari Gupta.
6. As per the Findings of the Board as contained in its report, as regards the first charge, the Board was of the view that the Respondent(s) had failed to establish that there was a communication with the Complainant before the acceptance of the appointment as the Statutory auditor of the Company by the Respondent firm for the F.Y. 2015-16 in terms of the requirements of Item (8) of Part I of First Schedule. The Board observed that Respondent no. 1 is no more a partner in the Respondent firm. However, since the Respondent firm had declared both Respondent no.1 and Respondent no.2 as the member answerable in the instant case and the Respondent No. 1 had



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carried out all the correspondence with the auditee and alleged correspondence with the Complainant in respect of the said assignment and the Respondent No. 2 had issued the Statutory Audit Report in respect of the Company for the F.Y. 2015-16, both the Respondent no. 1 and the Respondent no.2 are equally liable for the misconduct. Accordingly, the Board held both the Respondent no. 1 and the Respondent no.2 guilty of Professional Misconduct falling within the meaning of Item (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949. As regard the second charge, the Board noted that despite being specifically asked to provide how compliance of the company law procedure with respect to the removal of the Complainant from the position of the auditor of the company was ensured, no reply was received from the Respondent no. 1 and Respondent no.2. Also, the Board was of the view that it is clear that the Respondent no. 1 and Respondent no.2 had failed to ensure compliance of Section 140 of the Companies Act, 2013 before accepting the appointment as a Statutory Auditor of the Company for the F.Y. 2015-16. Accordingly, **CA. Poonam Kumari Gupta (M.No. 302794)** and **CA. Vidhi Churiwala (M.No. 307866)** were held 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.

7. Thus, upon consideration of the facts of the case, the consequent misconduct of **CA. Poonam Kumari Gupta (M.No. 302794)** and **CA. Vidhi Churiwala (M.No. 307866)** and keeping in view their oral and written representation of **CA. Poonam Kumari Gupta (M.No. 302794)** before it, the Board decided to Reprimand **CA. Poonam Kumari Gupta (M.No. 302794)** and **CA. Vidhi Churiwala (M.No. 307866)**.

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

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

DATE: 19th April 2023

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

Meenu Gupta
मीनू गुप्ता / Meenu Gupta
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विहास नगर, शाहदरा, दिल्ली-110032
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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-6/2017-DD/41/2017/BOD/511/2019]

CORAM (present in person):

CA. Prasanna Kumar D., Presiding Officer

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

CA. (Dr.) Raj Chawla, Member

In the matter of:

CA. Gaurav Sharma (M.No. 069055),
Siliguri.

..... Complainant

Versus

CA. Poonam Kumari Gupta (M.No. 302794)

..... Respondent no. 1

CA. Vidhi Churiwala (M.No. 307866)

..... Respondent no.2

M/s PKVC & Co. (FRN. 329115E),
Kolkata

DATE OF FINAL HEARING

: 29th December, 2022

PLACE OF FINAL HEARING

: New Delhi / through video conferencing

PARTIES PRESENT:

COMPLAINANT

: None

RESPONDENT

: None

BACKGROUND OF CASE:

1. The Complainant stated that he, through his firm M/s GAP & Co., was appointed as the Auditor of M/s N & M Management & Consulting Services Pvt. Ltd (hereinafter referred to as the "Company") on 30.9.2014 for 5 years i.e., until the conclusion of 6th AGM of such company. However, the Company removed the Complainant firm from the position of the Statutory Auditors before the expiry of his tenure citing reasons of irrevocable differences, loss of confidence and delay in completion of work by sending Notice on



29th September 2016 at 6:00 pm through email for EoGM on 30th September 2016 at 9:30 am. Further, the Complainant stated that despite a short notice for meeting when he reached to the venue for meeting, neither any meeting was convened nor his representation was attended.

CHARGE ALLEGED:

- 2.1. It has been alleged by the Complainant that the Respondent(s) failed to first communicate with the Complainant being retiring Auditor before accepting the appointment as the Statutory auditor of the Company for the F.Y. 2015-16.
- 2.2. Furthermore, there has been a failure on the part of the Respondent(s) to ensure compliance with Section 140 of the Companies Act, 2013 before accepting the said appointment as Statutory Auditor of the Company for the F.Y. 2015-16.

BRIEF OF PROCEEDINGS HELD:

- 3.1. At the time of hearing held in the case on 24th March 2021, only Respondent no. 1 was present before the Board through video conferencing from Kolkata office of ICAI who was put on oath and she confirmed that she has read and understood the contents of the modalities and protocols of e-hearing and follow them. However, neither the Complainant/Respondent no.2/their authorized representative were present before it nor was there any intimation as regards their non-appearance. Thus, the Board decided to proceed ahead with the hearing in the case. On being asked by the Board as to whether the Respondent no. 1 pleaded guilty in respect of the charges alleged against her, she replied in negative and made her detailed oral submissions before the Board. The Respondent was examined by the Board. Upon consideration of the documents and submissions on record, the Board adjourned the hearing in the case with the directions to the Respondent(s) to provide clarification/documents with respect to the following and also provide a copy of the same to the Complainant to provide his comments thereon, if any:

To the Respondent:

- i. Mismatch in the date of meeting with respect to her appointment as auditor of the company i.e. 24th September, 2016 or 22nd September, 2016.
 - ii. How compliance of the company law procedure with respect to the removal of the complainant from the position of the auditor of the company was ensured by her.
- 3.2 At the time of hearing held in the case on 29th December 2022, none of the parties to the case or their respective Counsels were present before the Board. The Board noted that the case had been placed before it on five earlier occasions also, but the



Complainant never appeared before the Board. The Respondent no. 1 appeared before the Board on only one occasion i.e. the hearing held on 24th March 2021 wherein the Board had directed the Respondent(s) to submit documents. However, no response was received from the Respondent(s). The Board also noted that the Respondent no. 1 had sent an email dated 23rd March 2021 to the Complainant with the subject 'withdrawal of complain', accepting her mistake and asking for forgiveness. The Complainant in response to the said email vide email dated 18th April 2021 addressed to the Respondent no. 1 with a copy marked to the email id of the Board stated that he is withdrawing the case in view of the said apology. The Complainant was informed vide email dated 22nd April 2021 that since the complaint had been filed against the firm and the firm had disclosed two members answerable in the case, a duly signed letter of withdrawal against the Firm is required for being considered in terms of the provisions of Rule 6 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. However, no response was received from the Complainant. Thus, the Board decided to examine the conduct of the Respondent(s) with respect to the charges alleged in the case on the basis of documents and submissions on record. Upon consideration of the documents and submissions on record, the Board concluded the hearing in the case. To examine whether the essential requirements of Item (8) and Item (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949 have been complied with by the Respondent(s), the Board kept the decision on the conduct of the Respondent(s) reserved.

- 3.3 Thereafter, in its meeting held on 3rd February 2023, the Board on consideration of the submissions and documents on record decided on the conduct of the Respondent.

OBSERVATIONS OF THE BOARD:

- 4.1. As regard the first charge that the Respondent(s) failed to communicate with the Complainant being retiring Auditor before acceptance of the appointment as the Statutory auditor of the Company for the F.Y. 2015-16, 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."

- 4.2. 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.



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ii. The communication should be in writing.

4.3. The Board took into view the following sequence of events in the case on the basis of documents on record:

S.No.	As per documents provided by the Complainant		As per documents provided by the Respondent	
	Date	Event	Date	Event
1.	30/09/2014	Date of his appointment as the Statutory auditor of the company as per ADT-I		
2.			07/09/2016	Request by the Company to the Complainant to resign from the position of the Statutory auditor of the company
3.	29/09/2016	Special Notice of EGM for the removal of the Complainant as the Statutory auditor of the company before the expiry of his term	20/09/2016	Special Notice of EGM for the removal of the Complainant as the Statutory auditor of the company before the expiry of his term
4.	30/09/2016	EGM for the removal of the Complainant as the Statutory auditor of the company before the expiry of his term	22/09/2016	EGM for the removal of the Complainant as the Statutory auditor of the company before the expiry of his term
5.			23/09/2016	Certificate by the Respondent firm as regard their eligibility for appointment as the Statutory Auditor of the company
6.			07/09/2016	Letter from Respondent firm to Complainant seeking his no-objection
7.			20/09/2016	Letter from Respondent firm to the Complainant informing that the appointment has been accepted as no response was received to the letter seeking his no-objection
8.	24/09/2016	Date of the Respondent's appointment as the		



		Statutory auditor of the company as per ADT-I		
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- 4.4.1 On perusal of the contents of the table above it is clear that there is a clear mismatch in the date of the Extra General Meeting in which the Complainant was removed from the position of the auditor of the company prior to expiry of his term. There are two dates with respect to the said same event:
- (a) 22nd September, 2016 – as per Notice of EGM brought on record by the Respondent.
 - (b) 30th September, 2016 – as per Notice of EGM brought on record by the Complainant.
- 4.4.2 Also, there is a clear mismatch in the date of appointment of the Respondent firm as the Statutory auditor of the company. There are two dates with respect to the said same event:
- (a) 22nd September, 2016 – as stated by the Respondent in her acceptance letter addressed to the company.
 - (b) 24th September, 2016 - as per ADT-I.
- 4.4.3 The Board also noted that the Respondent firm had allegedly sent a letter dated 7th September 2016 to the Complainant stating that they have been offered appointment and sought his no-objection in writing which has been followed up by another letter dated 20th September 2016 informing that the appointment has been accepted as no response was received to the letter seeking his no-objection. The Board also noted that the Complainant expressly denied receiving any such letter from the Respondent.
- 4.4.4 The Board also observed that in the disputed letter dated 20/09/2016 alleged to be issued by the Respondent to the Complainant it has been stated as under:

"we have accepted the appointment as the Statutory Auditor of N&M Management & Consultancy services private limited for the financial year 2015-16".

Thus, as per the said letter of the Respondent firm, the appointment had already been accepted by 20th September 2016 whereas as per documents on record there are two different dates as regard the date of the appointment of the Respondent firm as auditor of the company. Thus, the unexplained question is how the letter for no-objection/acceptance can be sent before the appointment ? On being specifically asked by the Board during the course of hearing on 24th March 2021 as to how can the acceptance be before the appointment, the Respondent no.1 stated that since there was a lot of work pressure in the month of September, they did not wait for confirmation from the retiring auditor.

- 4.5 The Board also noted that the Respondent firm brought on record proof of delivery of communication dated 7th September 2016 and 20th September 2016 with the Previous Auditor (i.e., the Complainant) which did not indicate the name of either Respondents or the Respondent Firm. Further, the name of the sender in the Postal slip indicates that the sender was the auditee company based in Darjeeling while the Respondent Firm is based in Kolkata. During the course of hearing on 24th March, 2021, on being asked by the Board regarding the discrepancy of address with respect to the two letters, the



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Respondent stated that due to the mistake of the Articled Clerk, instead of writing the name of the Respondent Firm, the name of the Company was written, however if the postal address is seen the post office is Middleton Road which is just under the first floor of their office.

- 4.6 The Board also observed that the Respondent no. 1 had sent an apology email dated 23rd March 2021 to the Complainant accepting her mistake.

- 4.6.1 In view of the above, the Board was of the view that the Respondent(s) had failed to establish that there was a communication with the Complainant before the acceptance of the appointment as the Statutory auditor of the Company by the Respondent firm for the F.Y. 2015-16 in term of the requirements of Item (8) of Part I of First Schedule. The Board observed that the Respondent no. 1 is no more a partner in the Respondent firm. However, since the Respondent firm had declared both Respondent no.1 and Respondent no.2 as the member answerable in the instant case and the Respondent No. 1 had carried out all the correspondence with the auditee and alleged correspondence with the Complainant in respect of the said assignment and the Respondent No. 2 had issued the Statutory Audit Report in respect of the Company for the F.Y. 2015-16, both the Respondent no. 1 and the Respondent no.2 are equally liable for the misconduct. Accordingly, the Board held both the Respondent no. 1 and the Respondent no.2 guilty of Professional Misconduct falling within the meaning of Item (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

- 4.6.2 As regard the second charge that there has been a failure on the part of the Respondent firm to ensure compliance of Section 140 of the Companies Act, 2013 before accepting the appointment as a Statutory Auditor of the Company for the F.Y. 2015-16, the Board took into view the provisions of Section 140 of the Companies Act, 2013 which provides as follows:

"140. Removal, resignation of auditor and giving of special notice:—

(1) The auditor appointed under section 139 may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner:

Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard."

- 4.7 The Board also noted that the Code of Ethics 2020 provides the following for the purpose of Item 9 of Part I of First Schedule:

"2.14.1.9(xxvii) Under Clause (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949, the incoming auditor has to ascertain whether the Company has complied with the provisions of the above sections. The word "ascertain" means "to find out for certain". This would mean that the incoming auditor should find out for certain as to whether the Company has complied with the provisions of Sections 139 and, 140 of the Companies Act, 2013. In this respect, it would not be sufficient for the incoming auditor to accept a certificate from the management of the Company that the provisions of the above sections have been complied with. It is necessary for the incoming auditor



to verify the relevant records of the Company and ascertain as to whether the Company has, in fact, complied with the provisions of the above sections. If the Company is not willing to allow the incoming auditor to verify the relevant records in order to enable him to ascertain as to whether the provisions of the above sections have been complied with, the incoming auditor should not accept the audit assignment.

2.14.1.9(xxxii) If the vacancy has arisen as a result of removal of the auditor before the expiry of his term of office, the incoming auditor should see that special resolution has been passed at the General Meeting of the Company and that the previous approval of the Central Government has been obtained by the Company.

2.14.1.9(xxxiv) For the purpose of ascertaining whether the Company has complied with the provisions of Section 140 of the Companies Act the incoming auditor should verify the records of the Company in respect of the following matters:-

a. Whether a member of the Company has given special notice of the resolution as required under Section 140 (4) of the Companies Act, 2013. The notice shall be sent by members to the company not earlier than three months but at least fourteen days before the date of the meeting at which the resolution is to be moved, exclusive of the day on which the notice is given and the day of the meeting. A true copy of this notice should be obtained by the incoming auditor.

b. Whether this special notice has been sent to all the members, of the Company as required under Section 115 of Companies Act, 2013 at least 7 days before the date of the General Meeting.

c. Whether this special notice has been sent to the retiring auditor forthwith as required under Section 140 (4) .

d. Whether the representation received from the retiring auditor has been sent to the members of the Company as required under Section 140 (4) .

e. Whether the representation received from the retiring auditor has been considered at the general meeting and the resolution proposed by the special notice has been properly passed at the general meeting.

2.14.1.9(xxxix) If the incoming auditor is satisfied that the Company has complied with the provisions of Sections 139 and 140 of the Companies Act, he should first communicate with the outgoing auditor in writing as provided in Clause (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949 before accepting the audit assignment.

4.8 In this regard, the Board took into view the following sequence of events in the case on the basis of documents on record:

S.No.	Date	Event
1.	30/09/2014	Appointment of Complainant as the Statutory Auditor of the Company as per ADT-1

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2.	23/06/2016	Letter by the Complainant to the Company asking the date for commencement of audit for the FY-2015-16
3.	07/09/2016	Request by the Company to the Complainant to resign from the position of the Statutory auditor of the company
4.	15/09/2016	Letter by the Complainant to the Company requesting to check legal provisions before sending such letters(Lt dated 6 th September 2016) and requesting to make necessary arrangements for conducting the audit at the earliest
5.	29/09/2016	Special Notice of EGM for the removal of the Complainant as the Statutory auditor of the company before the expiry of his term (as per the documents brought on record by the Complainant)
6.	30/09/2016	EGM for the removal of the Complainant as the Statutory auditor of the company before the expiry of his term (as per the documents brought on record by the Complainant)
7.	24/09/2016	Date of appointment of Respondent as the Statutory Auditor of the Company as per ADT-1

4.9 The Board also noted that as per observation at para 4.4 and para 4.5 above, there is a clear mismatch in the date of the Extra General Meeting in which the Complainant was removed from the position of the auditor of the company prior to expiry of his term and the date of appointment of the Respondent firm as the Statutory auditor of the company. Further, the date of both these events is generally the same which in the instant case seems to be different. Hence, there is an ambiguity with regard to the said dates.

4.10 During hearing in the case on 24th March, 2021, the Board enquired from the Respondent no.1 as to whether the procedure laid down in the Companies Act, 2013 was followed prior to acceptance of the appointment to which she stated that they just enquired whether the fees of the retiring auditor was paid or not, for which the Company had shown them receipt of the cheque. Furthermore, the Respondent on enquiry with the Company was shown letter dated 06/04/2015 asking for resignation of the Complainant with effect from 01/04/2015 and informed the Respondent that no reply had been received even after expiry of three months.

4.11 Further, as per the requirements of Section 140 of the Companies Act, 2013 read with Companies (Audit and Auditors) Rules, 2014, a company needs to make an application in Form ADT-2 to the Central Government (now powers have been delegated to Regional Director) (Rule 7) for removing an auditor before expiration of his term. This application needs to be made within 30 days of the resolution passed in the Board for removal of Auditor before expiry of his term. After getting the approval from the Regional Director, Company is required to hold general meeting within 60 days and pass a special resolution to this effect. However, on perusal of the language in both the special notices given on 20th



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September, 2016 as well as on 29th September, 2016, it appears that the approval of the Central Government/Regional Director was yet to be taken up. As per the Secretarial Standards and Companies (Audit and Auditors) Rules, 2014, the General Meeting in which matter of removal of Auditor was to be discussed should "follow" the step of seeking approval from the Regional Director and not vice-versa. While the sequence of events as per documents on record shows that the Extra Ordinary General Meeting was conducted on 30.09.2016 in which Complainant was to be removed while approval from Central Government was yet to be obtained. The Board also noted that the ADT-2 had not been filed by the Company. This also shows inconsistency in procedure.

4.12 The Board also noted that despite being specifically asked to provide how compliance of the company law procedure with respect to the removal of the complainant from the position of the auditor of the company was ensured, no reply was received from the Respondent no. 1 and Respondent no.2.

4.13 Keeping in view the above submissions and observations, the Board was of the view that it is clear that the Respondent no. 1 and Respondent no.2 had failed to ensure compliance of Section 140 of the Companies Act, 2013 before accepting the appointment as a Statutory Auditor of the Company for the F.Y. 2015-16. Hence, the Respondent no. 1 and Respondent no.2 are Guilty of Professional Misconduct falling within the meaning of Item(9) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

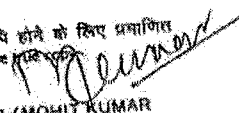
CONCLUSION:

5. Thus, in conclusion, in the considered opinion of the Board, the Respondent no. 1 and Respondent no.2 are **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.

Sd/-	Sd/-	Sd/-
CA. Prasanna Kumar D. (Presiding Officer)	Ms. Dolly Chakrabarty (IAAS, retd.) (Government Nominee)	CA. (Dr.) Raj Chawla (Member)

DATE: 10th February 2023

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मोहित कुमार / MOHIT KUMAR
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अनुशासनशास्त्र विभाग / Disciplinary Directorate
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