



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF
INDIA

(Set up by an Act of Parliament)

[PR/191/2022/DD/213/2022/BOD/700/2023]

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 Varadharajan S

Director, M/s. Coologee Technology Solutions Pvt. Ltd.

Haricharan, 1st Floor, No. 12, Fourth Street, New Colony, Adambakkam

Chennai.....Complainant

Versus

CA. K M Ramakrishnan (M. No. 026737)

M/s. K M Ramakrishnan & Co.,

Plot No. 28, 2nd Street PG Avenue, Kattupakkam

Chennai.....Respondent

[PR/191/2022/DD/213/2022/BOD/700/2023]

MEMBERS PRESENT (THROUGH VC):

CA. Rajendra Kumar P, Presiding Officer

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

Date of Hearing and Passing of Order: 25th September 2024

1. The Board of Discipline vide its Findings dated 27th August 2024 was of the view that CA. K M Ramakrishnan (M. No. 026737) 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.
2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against CA. K M Ramakrishnan (M. No. 026737) and communication dated 18th September 2024 was addressed to him thereby granting him an opportunity of being heard on 25th September 2024, which was exercised by him by being present through Video Conferencing. He confirmed receipt of the findings of the Board and submitted his oral as well as written submissions.
3. Thus, upon consideration of the facts of the case, oral as well as written submissions, and the consequent misconduct of CA. K M Ramakrishnan (M. No. 026737), the Board decided to remove the name of the CA. K M Ramakrishnan (M. No. 026737) for a period of 15 days from the Register of Members.

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

Sd/-

CA. Rajendra Kumar P
(Presiding Officer)

बिषा नाथ तिवारी / Bishwa Nath Tiwari
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahdara, Delhi-110032

Sd/-

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

Shri Varadharajan S -Vs- CA. K M Ramakrishnan (M. No. 026737)

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:

Shri Varadharajan S

Director, M/s. Coologeex Technology Solutions Pvt. Ltd.
Haricharan, 1st Floor, No. 12, Fourth Street, New Colony, Adambakkam

Chennai..... Complainant

Versus

CA. K M Ramakrishnan (M. No. 026737)

M/s. K M Ramakrishnan & Co.,
Plot No. 28, 2nd Street PG Avenue, Kattupakkam

Chennai..... Respondent

Date of Final Hearing : 12th June 2024
Place of Final Hearing : ICAI Bhawan, Chennai

PARTIES PRESENT (IN PERSON):

Complainant : Shri Varadharajan S
Witness No. 1 : Shri Chandrasekaran
Witness No. 2 : CA. J. S. Kumar

FINDINGS:

BRIEF BACKGROUND OF CASE:

1. As per the version of the Complainant, the Respondent who resigned as Auditor of the Complainant Company on 15th December 2021, has backdated his resignation letter with date 02nd December 2020. The said act of the Respondent has allegedly restricted the Complainant to appoint new firm of auditors and due to the same, the Complainant Company has suffered financial loss in the form of penalties as well as mental agony.

CHARGES ALLEGED:

2. The Respondent has back dated his resignation letter and no resignation letter was sent to the Complainant Company before 15th December 2021. Due to backdating, the Company had to suffer penalties from different authorities and the Company could not file

Income Tax return for the Financial Year 2020-21 within the due date and consequently, it could not carry forward losses to next year. Moreover, the aforesaid act of the Respondent has restricted the appointment of the new auditor.

3. The Respondent has authorized a person Mr. P. R. Chandrasekaran, who is not a member of ICAI to deal on his behalf as Mr. P. R. Chandrasekaran was doing correspondence with the Company on behalf of the Respondent.

Director (Discipline) in his Prima Facie Opinion held the Respondent '**Guilty**' as against the Charge that the Respondent has back dated his resignation letter and no resignation letter was sent to the Complainant Company before 15th December 2021 due to which the Company had to suffer penalties from different authorities and the Company could not file Income Tax return for the Financial Year 2020-21 within the due date and consequently, it could not carry forward losses to next year and '**Not Guilty**' with respect to Charge that the Respondent has authorized a person Mr. P. R. Chandrasekaran, who is not a member of ICAI to deal on his behalf as Mr. P. R. Chandrasekaran was doing correspondence with the Company on behalf of the Respondent. The Board of Discipline in its 268th Meeting held on 22nd April 2023 while considering the Prima Facie Opinion formed by the Director (Discipline) concurred with the reasons given against the Charge and thus agreed with the Prima Facie Opinion of the Director (Discipline). Accordingly, the Board initiated the hearing proceedings in the matter limited to the extent of the charge where the Director (Discipline) found the Respondent '**Guilty**'.

BRIEF OF PROCEEDINGS HELD:

4. The details of the hearings fixed and held in the said matter are given as under:

S. No.	Date of Hearing(s)	Status of hearings
1	15 th June 2023	Part heard and adjourned.
2	4 th December 2023	Adjourned due to non-appearance of the parties.
3	23 rd January 2024	Adjourned due to non- appearance of the Respondent.
4	12 th June 2024	Matter heard and hearing concluded.

BRIEF SUBMISSIONS OF THE PARTIES:

RESPONDENT:

5. The Respondent in his written submissions dated 9th June 2023 inter-alia submitted that the allegation of the Complainant that the Respondent has wilfully breached in discharging his duties and has created unnecessary hardship and trouble is a baseless charge without any meaning because if the Complainant is of the opinion that the Respondent continued to be his auditor, nothing prevented him submitting his accounts for the financial year 2020-21, during the long period of nine months from 01st April 2021 to 16th December 2021. By his own words, transactions were few and he knew that the auditor had resigned, allowed him time to identify alternatives and was waiting to put the formal resignation papers. After second thoughts, it appears that the matter was discontinued. As per MCA portal, master data, taken on 01st June 2023, accounts of the company were filed only up to 31st December 2020. Thus, it appears that the delay in filing is created intentionally to show that the Respondent is responsible for such delay. Data on GST return filing, as per GST portal, shows, that the company has filed all returns up to the month of April 2023. Keeping accounts intentionally pending and attributing that to the Respondent indicates the vindictive attitude of the Complainant.

6. The Respondent further submitted that the complainant, even though, had two previous experiences regarding ROC, IT return filing & their last dates, did not care about their compliances. Even on 28th November 2021, in his mail to CA. J S Kumar, he was not able to provide the information in full for audit. Filing of Income tax return presupposes completion of accounts and audit. When the complainant himself is not ready, he alone is responsible for consequential loss & penalties. It was the Complainant's contention that the Respondent continued to be their auditor till 15th December 2021. It goes to prove that he was aware about the resignation of the Respondent and estopped himself from proceeding further. It is the Complainant, who is putting others into mental agony and not otherwise.
7. As regards the allegation that the resignation letter dated 02nd December 2020 was sent to the Complainant on 15th December 2021, whereas, in Form No. ADT-3, the date of resignation was mentioned as 02nd December 2020, the Respondent submitted that it is not predated. It only states one of the dates informed to him orally earlier. Sufficient time was given to the Complainant to switch over to some other auditor, which the Complainant did not do. The Complainant was requested to make alternative arrangements; orally, immediately after accounts for 2018-19 were completed. No written resignation letter was put up, with the idea of giving him time & ending this assignment in a coordinial manner. Now, this date has become a point of contention, proof from Mr. P.R. Chandrasekaran who was Complainant's person in charge of governance of statutory matters (MCA, GST etc.) is obtained and placed. Through his mail, Mr. P.R. Chandrasekaran has confirmed Respondent unwillingness to continue which was communicated to the Complainant. Based on the written records, the Complainant concedes he is aware of Respondent intention to leave on 10th March 2021. Infact, he admits that he has preferred this complaint for predating the resignation by three months. It presupposes, prior intimation, to allow time for smooth change over, to suit, other party's convenience. It is preposterous to tell, the written resignation letter was given on 15th December 2021 without the knowledge of the Complainant, suddenly, causing loss to him. The underlying truth in all his complaints is that he never denied that there were oral communications, and he did nothing about them. As the Complainant did nothing, another mail was sent on 09th June 2021, the earlier mail dated 10th March 2021 was to kindle him into action. Nothing happened, no communication was received. As there was a sea of silence, Respondent proceeded with filing ADT-3 with the date of resignation as 02nd December 2020. If, according to the Complainant, Respondent continued as the Complainant's company auditor, then, nothing prevented Complainant sending his financials for 2020-21, (period being 01st April 2020-31st March 2021)- till 15th December 2021. The act of not sending his financials for a period of 9 months is conclusive proof of his discontinuing of the Respondent services. The filing of Form ADT-3 is to be done by the outgoing auditor. Communicating ADT-3 to the Complainant is only for information and not for approval. Moreover, if approval is contemplated in law, approval of the Company would have been made as condition precedent for filing ADT-3. Further, Resignation by Auditor is an independent event not warranting any interference by the client. Acceptance of resignation by Company is not a condition precedent. Otherwise, acceptance of resignation by the Company would have been a condition precedent for filing ADT- 3. Company has no power to hold back or reject the resignation of an Auditor. Hence, the Complainant claiming, resignation is rejected and the same could not be communicated, as the Respondent was not available, are not acceptable before law.
8. As regards another part of the allegation, wherein it is alleged that, due to back dating the company had to suffer penalties from different authorities and the company could not file income tax return for the FY 2020-21 with in the due date and consequently, it could not carry forward losses to next year. Respondent submitted that according to the Complainant, he was in receipt of the resignation only on 15th December 2021. However,

he has already identified another auditor on 28th November 2021 itself and sent him his financials for further work. The other auditor contacted Respondent for NOC over phone & no objection was conveyed to him then and there. Circular No.17/2021 dated 09th September 2021, of CBDT has extended the date of furnishing the return of Income tax for the Annual Year 2021-22 up to 15th February 2022 & subsequently up to 15th March 2022. By his own claim, the transaction of 2020-21 are very few. It is anybody's guess, for very few transactions, the extended time is more than sufficient to file Income tax Return. As such attributing loss & penalties to Respondent is motivated. When a new auditor is identified & work assigned on 28th November 2021 itself, alleging work got derailed after 15th December 2021 is biased.

9. The Respondent further submitted that the Complainant has no previous experience as a Director of a Company. When Respondent expressed his intention to relinquish the assignment, it was not acted upon by Complainant. No alternatives were explored. The Complainant was under the impression that the Respondent cannot relinquish without his express consent. Since Respondent was in the industry/profession for nearly four decades and aware of the consequences of not meeting statutory deadlines, he had to continue. It was very clear to the Respondent that Complainant had no desire to go for alternatives. Since the Complainant's business was small, he has no separate staff and has kept Mr. P. R Chandrasekaran as his representative to deal with all MCA / GST/ audit and all connected matters. Hence, relinquishment of the audit work was communicated to the Complainant and to Mr. P.R. Chandrasekaran orally after completion of first year work, 2018-19 itself. As no hitch was expected at that time, it was not put in writing. Only when Complainant avoided the issue of Respondent resignation, forcing Respondent to continue, the problem arose. After waiting for one more year, Respondent had to put his resignation in writing. Resignation was sent to the email id of the Company as per MCA portal. It so happened the resignation was received by Mr. P. R Chandrasekaran who was their person charged with governance, operating the email id. If somebody else was the recipient of the mails at the Company email id, the resignation letter would have been received by them. Since resignation being a formal matter, it was sent to the Company's mail id and not to the individual mail id of Director. The Respondent did not contemplate any problem after resignation was put in writing, therefore, additional copies were not marked to the individual Directors.
10. The Respondent while relying on "Implementation guide on Resignation / Withdrawal from an engagement to perform audit of financial statement by ICAI", submitted that when considering resignation / withdrawal from an engagement, the auditor should communicate with those charged with governance. Further, as regards not serving resignation letter physically, the Respondent relied on Circular No. 17/2011 of MCA, Government of India, where in service of document through email is sufficient compliance. Also, section 282 (1) of the Income Tax Act deals with service of notice, summons, requisition, order and other communication transmitted electronically states that in case of addressee being a Company, email address of the company as available on the website of Ministry of Corporate affairs is the address for serving communication. Resignation by physical mode is not the only mode of valid service, service of resignation by electronic mode is also an accepted mode, legally and there is no specific time prescribed for an auditor to resign. The audit assignment of 2019-20 has been completed. No loss is caused to the company on account of the auditors' exit.
11. The Respondent prayed to the Board to examine the written submissions and evidence which were placed on record during these proceedings and to take a considerate view as Respondent had no malafide intent to disobey or violate the rules and regulations including Code of Ethics of the ICAI. It was merely not substantiating the date of resignation with

a written record. The Respondent caused no harm or loss or financial damage to anyone or brought disrepute to the profession.

COMPLAINANT:

12. The Complainant vide email dated 13th February 2024 submitted that the audit completion mail communicated Respondent's intention to ask the client to look for a new auditor rather than communicating his resignation. This communication is through email on 10th March 2021 for which the Complainant had responded on 17th March 2021 and mentioned about mitigating his locational disadvantage through online meetings, to which Respondent has not responded with any certainty that he would want to resign as an auditor. Further, when we are not in receipt of the resignation of the Respondent, then how can we deny not receiving it or even mention it and his resignation was received by us only on 13th December 2021, through email from Mr. P. R Chandrasekharan, which mentions that it is for our perusal. Furthermore, the Complainant is not aware of the MCA procedure and legal requirements as laid out in Section 140 of the Companies Act, 2013 for resignation, wherein he must send his resignation, based on which the Board Meeting will be convened to take up further actions and then he could have been filed the ADT-3. Since Respondent is not an auditor as per his filing with MCA, this is a sheer act of irresponsibility that the Respondent must have communicated his resignation by physical delivery, but he has not even sent his resignation as an email to us but only to his business associate Mr. P.R Chandrasekharan.
13. The Complainant consequently submits that he is at the juncture of involuntary winding up due to non-compliances with MCA/GST. Complainant's carry forward of losses is accumulating and Complainant is not able to carry forward them as the Statutory Audit and Tax Filings were not made due to the bottleneck created by the Respondent.

OBSERVATIONS OF THE BOARD:

14. The Board of Discipline at the outset noted that the Respondent vide his letter dated 5th June 2024 requested an excuse from his personal appearance before it.
15. Further, the Board noted that as regards the allegation, wherein it was alleged that the Respondent has backdated his resignation as 2nd December 2020 in ADT-3 filed with MCA whereas resignation letter was sent to the Complainant on 15th December 2021 through e-mail by Shri P. R. Chandrasekaran, the Respondent to corroborate his stance of giving resignation on 2nd December 2020, submitted a letter dated 2nd December 2020 addressed to Board of Directors of Coologeex Technology Solutions Private Limited (hereinafter 'Company'), wherein he categorically stated that he will not continue as statutory auditor, but the big issue with the said letter is that, there was no acknowledgement receipt by the Complainant or by the Board of Directors of the Company on it, further there is no mention of any medium regarding how it was sent to the Board of Directors. Hence, the Board observed that it is just a resignation typed on the letter head of the Respondent with no evidence of being communicated/sent to the Complainant or the Company, therefore Respondent's submission of this letter being communicated to the Board of Directors has no substance because letter with no receipt, of being received or even communicated, would not come under the garb of proper communication. Moreover, there was no clarification by the Respondent as to why he filed ADT-3 with MCA on 16th December 2021 (i.e., after 1 year of resignation in December 2020).
16. The Board also noted that the Respondent vide email dated 10th March 2021 addressed to the Complainant, stated that, "for current year, you may, if you desire, can changeover to some other person". This shows that Respondent is asking himself to be replaced, that

means at that very moment he is still considering himself as the statutory auditor of the company. Therefore, Respondent considering himself as the auditor only manifest that the Respondent has not yet resigned from the post. Further, the Respondent vide email dated 9th June 2021 requested the Complainant to return signed copy of financials of 2019-20, bank statements of 2020-2021 and excel statement indicating nature of receipt / expenditure. This shows to the Board that the Respondent has not yet resigned from the post of statutory auditor and no satisfactory explanation was given by the Respondent as to the reason why he asked for financials even though he has resigned from the post. Additionally, Mr. P. R. Chandrasekaran vide email dated 15th December 2021, sent resignation of the Respondent to the Complainant, wherein document property information reveals that; title was resignation, and the said document was created on 15th December 2021. This document is the standing proof that the Respondent has not resigned on 2nd December 2020. Thus, on examination of three emails dated 10th March 2021, 9th June 2021 & 15th December 2021 respectively, it is testament to the Board that no resignation letter was sent to the Complainant Company before 15th December 2021 by the Respondent.

17. The Board also noted that Witness number 2 (W-2), who is the incoming auditor of the said Company, submitted to the Board that the Complainant in November 2021 asked him to join the Company. Therefore, he requested the Respondent to give NOC so that he can commence the work, but Respondent did not give NOC. This act of Respondent raises a particular question in the mind of the Board that if Respondent has resigned from the post of auditor, then what would stop him from issuing NOC? Thus, the Board concluded that Respondent was still the auditor and had not yet resigned. Moreover, non-issuance of NOC by the Respondent restricted the appointment of the new auditor in the said company.
18. The Board also heard Witness number 1 (W-1), who submitted before the Board that in January 2021, Respondent sent an email to Complainant that the 2020 audit is over, Income Tax Return is filed and requested Complainant to pay his fee. In March also, the Respondent was asking about the same. On 9th June 2021, the Respondent wrote a final email asking the Complainant that if he wanted to continue Respondent as an auditor, please send the books. Then the Respondent spoke to him that it seems that the Complainant does not want to appoint him. Further, in his deposition witness number-1 stated that the Respondent resigned on 3rd January 2021. The Board noticed that if Respondent resigned on 3rd January 2021, then how come Respondent inform the witness after 9th June 2021 that Complainant does not want him. The statement of witness that the Respondent resigned on 3rd January 2021 contradicts his own deposition. This proves that Witness No.1 is not reliable.
19. The Board also noted that Rs. 5000/- is still outstanding as fees of the Respondent from the Complainant. The Complainant also accepted the outstanding fee. Further as regards the allegation, wherein it was alleged that the Complainant faced heavy penalty and losses due to backdating of the resignation of the Respondent, the Board noted that the Complainant brought no evidence or documents in support of this part of allegation.
20. Thus, on a detailed perusal of the submissions and documents on record besides hearing the arguments of the parties present, 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 has back dated his resignation letter and no resignation letter was sent to the Complainant Company before 15th December 2021 by him and therefore, the Respondent is '**Guilty**'.



CONCLUSION:

21. 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.

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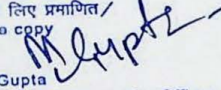
Sd/-
CA. Rajendra Kumar P
Presiding Officer

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

Sd/-
CA. Priti Savla
Member

Date: 27-08-2024

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मीनू गुप्ता / Meenu Gupta
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
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