

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. : [PPR/54/15/DD/50/INF/15/BOD/284/2017]

CORAM:

CA. Prasanna Kumar D., Presiding Officer

Mrs. Rani Nair (IRS, Retd.), Government Nominee

CA. Durgesh Kumar Kabra, Member

In the matter of:

CA. Subodh Kumar Sood (M. No. 080812) in Re:

1628/33, 3rd Floor,

Naiwala, Karol Bagh,

New Delhi - 110005

.....Respondent

DATE OF FINAL HEARING : 17th December, 2020

PLACE OF HEARING : Through video conferencing

PARTIES PRESENT:

Respondent : CA. Subodh Kumar Sood (M. No. 080812)

FINDINGS:

1. The Board noted the following charges against the Respondent:

- (a) The Respondent failed to communicate with CA. Anand Swaroop Garg, Partner, M/s Arun Ketan & Associates, Chartered Accountants, Delhi (hereinafter referred to as the 'Informant') before accepting the Statutory Audit of Taurus International (Projects) Private Limited (hereinafter referred to as the 'Company') for the Financial Year 2011-12.
- (b) The Respondent failed to ascertain the compliance of Section 225 of Companies Act 1956 before accepting the aforesaid audit assignment of the Company.
- (c) The Respondent uploaded the forged audit report and CARO report of the Company for the financial year 2010-11 on the website of MCA under his digital signatures.

The Respondent had been held prima facie guilty only with respect to the charges falling within the meaning of Item (8) and (9) of Part I of First Schedule to the Chartered Accountants Act, 1949 and the said view had been accepted by the Board of Discipline and accordingly, the Respondent has been examined during enquiry in respect of the said two charges only.

2. The Board heard the submissions of the Respondent who was present before it through video conferencing and duly considered the documents available on record.

3. As regards the charge of non-communicating with the informant, the Board noted the submission of the Respondent that due to medical treatment of his wife and audit work, the matter of issuing letter skipped his attention and was not posted due to oversight. His digital signature for uploading statements was used by the previous auditors through company's staff as their payment was outstanding. After receiving the payment, the Informant issued NOC and had withdrawn the case. The said submission of the Respondent was also corroborated by letter dated 4th July, 2015 wherein the Informant stated as under:

'We appreciate your letter and the fact that there was no malafide intension in acceptance of above said audit without 'No Objection' from us and accept your version that it was missed due to pressure of the audit assignments. In view of above we shall not follow-up the matter with the Institute for acceptance of the audit by you without our "No Objection".'

4. The Board noted that the Code of Ethics (Eleventh Edition, January 2009) also provides for issues raised by the Informant while dealing with members charged under Item (8) of Part I of First Schedule to the Chartered Accountants Act, 1949 as under:-

"...professional courtesy alone is not the major reason for requiring a member to communicate with the existing accountant who is a member of the Institute or a certified auditor. The underlying objective is that the member may have an opportunity to know the reasons for the change in order to be able to safeguard his own interest, the legitimate interest of the public and the independence of the existing accountant. It is not intended, in any way, to prevent or obstruct the change...."

"...every client has an inherent right to choose his accountant; also that he may, subject to compliance with the statutory requirements in the case of limited Companies, make a change whenever he chooses, whether or not the reasons which had impelled him to do so are good and valid...."

The Board opined that the intent behind Item (8) of Part I of First Schedule is to safeguard the interest of the affected members being the previous auditors. However, the Company/client has every right to choose the auditor on ensuring due compliance of requirements of Companies Act, 1956. In the instant case, the Board noted that the Informant i.e. being the previous auditor did not have any grudge against the Respondent as regards the alleged misconduct, Informant's professional dues had been paid, the Respondent communicated over phone with the Informant as regards his appointment, there was no malafide on the part of the Respondent in not seeking the no-objection of the informant before accepting the appointment as the statutory auditor of the company for the Financial Year 2011-12, the Respondent was old and was not into regular practice. Thus, the Board taking into view the total facts and submissions made, decided to hold the Respondent not guilty in respect of the charge falling within the meaning of Item (8) of Part I of the First Schedule to the Chartered Accountants Act 1949.

5. As regard the charge of non-compliance with Section 225 of the Companies Act, 1956, the Board noted the submission of the Respondent that he relied upon the oral confirmation from the company that due compliance of the provisions of Section 225 of the Companies Act, 1956 had been made while appointing him as the

statutory auditor of the company for the Financial Year 2011-12 and that the previous auditor is not interested in accepting the appointment. The Board was of the view that although, the Respondent ought to have ensured compliance with the provisions of Section 225 of the Companies Act, 1956 before accepting the said appointment, however, looking into the contents of the letter dated 4th July, 2015 from the Informant to the Respondent, it is clear that there was no malafide intent on the part of the Respondent in not ensuring the compliance, the Informant also did not wish to pursue the matter further and keeping in view the principle of substance over form, the Board decided to hold the Respondent not guilty in respect of this charge also.

6. While holding the Respondent not guilty in respect of both the charges, the Board also advised the Respondent to be more careful in future in ensuring compliance with the governing Rules and the Regulations.

CONCLUSION:

7. Thus, the Board of Discipline, in view of the above, is of the considered view that the Respondent is **Not Guilty** of Professional Misconduct falling within the meaning of Item (8) and (9) of Part I of First Schedule to the Chartered Accountants Act 1949.

8. Accordingly, the Board passed Order for closure of the case in terms of the provisions of Rule 15(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

Sd/-

**CA. PRASANNA KUMAR D.
(PRESIDING OFFICER)**

Certified to be true copy



Jyotika Grover
Assistant Secretary,
Disciplinary Directorate

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