

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. : [PPR/163/16/DD/148/INF/18/BOD/579/2020]

CORAM:

CA. Prasanna Kumar D., Presiding Officer (attended physically from ICAI, BKC, Mumbai)

Mrs. Rani Nair (IRS, Retd.), Government Nominee (attended through video conferencing)

CA. Durgesh Kumar Kabra, Member (attended physically from ICAI, BKC, Mumbai)

In the matter of:

CA. Anjali Jain (M.No. 511198), In Re:

D-804, Logix Blossom County,

Sector 137,

Noida (Uttar Pradesh)-201301

....Respondent

DATE OF FINAL HEARING

:

30th January, 2021

PLACE OF HEARING

:

ICAI, BKC, Mumbai/through video conferencing

PARTIES PRESENT: (Through video conferencing)

Respondent

:

CA. Anjali Jain (M.No. 511198)

FINDINGS:

1. The Board noted the charge against the Respondent that she did not communicate with CA. Qimat Rai Garg, Gurgaon (M. No. 80857) (hereinafter referred to as the Informant) before accepting the appointment as Statutory Auditor of M/s Vasify Mobile Media Pvt. Ltd, Noida (hereinafter referred to as the Company) for the Financial Year 2014-15.
2. During the proceedings held on 30th January 2021, the Board heard the submissions of the Respondent who was present before it through video conferencing. The Board on consideration of the submissions and documents on record concluded the proceedings with the direction to the Respondent to provide

copy of correspondence to show removal of the informant from the position of the auditor of the company. Accordingly, the decision on the misconduct of the Respondent was kept reserved by the Board. Thereafter, the Board at its meeting held on 11th February 2021 perused the further submissions made by the Respondent together with the submissions and documents on record and arrived at its findings.

3. As regards the charge of non-communication with the Informant prior to acceptance of appointment as auditor of the company for the Financial Year 2014-15 by the Respondent, the Board noted the Respondent in her defence stated that she had sent a letter to the Informant seeking his no objection prior to acceptance of the appointment as the auditor through registered post. However, due to shifting of her office, she is unable to bring on record the proof of communication with the Informant before accepting the said assignment of statutory audit of the Company.
4. The Board further noted the following chronological order of events and documents in support thereof submitted by the Respondent to negate the charge alleged against her:-

S No.	Date	Description of documents
a.	14/05/2015	The Company sent a special notice to the Informant to present his case before the members of the Company as regards his removal from the position of the auditor of the company.
b.	28/05/2015	The Company passed a Special resolution for Removal of Informant from the post of statutory auditors of the Company under Section 140(1) read with Section 139 of the Companies Act, 2013 before the expiry of their term.
c.	16/10/2015	The Company filed Form ADT-2 with respect to application for removal of Informant from his position as the auditor of the company before expiry of his term under Rule 7(1) of the Companies (Audit and Auditors) Rules, 2014 as he did not possess sufficient expertise in taxation and accounting(as stated in the said Form)
d.	10/03/2016	The Joint Director, Ministry of Corporate Affairs issued notice to the Company and the Informant to appear before the Regional Director on 29/03/2016 for hearing on the application filed by the Company for removal of Informant under Rule 7(2) of the Companies (Audit and Auditors) Rules, 2014.
e.	26/05/2016	The Informant filed letter of allegation before the Institute

		against the Respondent on the basis of which instant case had been initiated as 'Information' against the Respondent.
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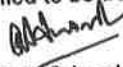
5. The Board also noted the company provided the following grounds for removing the Informant from the position of the auditor before the expiry of his term:
- (a) He did not possess sufficient expertise in taxation and accounting field
 - (b) His in-expertise in the field of taxation resulted in payment of interests by company under many laws.
 - (c) He failed to deliver accounting services as promised with sufficient expertise and clarity.
 - (d) Special Notice was sent to him to represent his case at the EGM of the company held on 28th May 2015. However, neither the Informant/ any partner of his firm showed up nor any communication was received from them.
6. The Board further observed that the Informant being member of the Institute and well versed with the procedure for filing disciplinary proceedings before the Disciplinary Directorate did not come forward to file a formal complaint against the Respondent and contest the case against her despite being reminded to do so.
7. The Board also noted that the Code of Ethics (Eleventh Edition, January 2009) provides for the following for dealing with members charged under Item (8) of Part I of First Schedule to the Chartered Accountants Act, 1949:-
- "...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...."*
8. The Board opined that the intent behind Item (8) of Part I of First Schedule was to safeguard the interest of the affected members being the previous auditor. However, the Company/client has every right to choose the auditor on ensuring due compliance of requirements of Companies Act, 2013. In the instant case, the Board observed that the letter of allegation in the instant case was filed by the Informant after due knowledge of his removal from the position of auditor of the company before expiry of his term and thus, was aware of the fact that a new auditor had been appointed. He also failed to come forward to file a formal

complaint against the Respondent. In view of the same, the Board decided to condone the non-compliance on the part of the Respondent to produce a positive evidence of delivery of the communication with the Informant being the retiring auditor on account of change in her place of profession and efflux of time and 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.

CONCLUSION:

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

R.S. Srivastava
Assistant Secretary,
Disciplinary Directorate
The Institute of Chartered Accountants of India,
ICAI Bhawan, Vishwas Nagar, Shadra, Delhi-110032