



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

[PR/240/2017/DD/277/2017/BOD/457/2018]

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 Rajender Kumar Goel (Director)
M/s R.K Silk Mills (India) Ltd.
5666/78, 3rd Floor,
Reghar Pura,
Karol Bagh
New Delhi - 110005

.....Complainant

Versus

CA. Sanjay Kumar Singhal (M. No. 085931)
M/s Samasand & Associates (FRN: 003708N)
Chartered Accountants
3406, 3rd Floor,
D.B Gupta Marg,
Karol Bagh,
New Delhi -110005

.....Respondent

[PR/240/2017/DD/277/2017/BOD/457/2018]

MEMBERS PRESENT (physically at ICAI Bhawan, Indraprastha Marg, New Delhi):

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

Date of Final Hearing: 25th April, 2022

1. The Board of Discipline vide Report dated 11th February, 2022 held that **CA. Sanjay Kumar Singhal** is Guilty of 'Other Misconduct' falling within the meaning of Item (2)

As



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of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with section 22 of the said Act.

2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against **CA. Sanjay Kumar Singhal** and communication dated 08th April, 2022 was addressed to him thereby granting him an opportunity of being heard in person and/or to make written representation before the Board on 22nd April, 2022 which was adjourned at his request and rescheduled to 25th April, 2022.

3. **CA. Sanjay Kumar Singhal** was not present before the Board on 25th April 2022 despite the due service of the notice of hearing for award of punishment. The Board took into view the provisions of Rule 15(1) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 which provides as under:

“ On arriving at a finding under sub-rule (9) of rule 14 that the respondent is guilty of professional or other misconduct, the Board of Discipline shall give the respondent an opportunity to be heard before passing any order under sub-section (3) of section 21A of the Act: Provided that if the respondent does not appear before the Board of Discipline at the time directed to do so when given such an opportunity to be heard, the Board of Discipline shall presume that he has nothing more to represent before it and shall pass orders under sub-section (3) of section 21A of the Act.”

Accordingly, the Board decided to consider the case of the Respondent for award of punishment.

4. The Board has carefully gone through the facts of the case along with the documents on record.

5. As per the Findings of the Board as contained in its report, it was alleged that CA. Sanjay Kumar Singhal as the Statutory Auditor of M/s R.K. Silk Mills (India) Ltd. (hereinafter referred to as the “Company”) audited the Financial Statements of the company for the Financial Years 2005-06 to 2014-15, but did not provide the Audit Reports and Audited Financial Statements of the company for the Financial Years 2013-14 and 2014-15 despite numerous reminders. CA. Sanjay Kumar Singhal did not file Form ADT-3 with the Registrar of Companies within 30 days of his resignation due

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to which the Complainant Company was not able to appoint another auditor in place of him. As regard the first charge, the Board noted that the Financial Statements of the Company for the Financial Year 2013-14 and 2014-15 had been audited by the Respondent on 4th September 2014 and 31st August 2015 respectively. The Financial Statements of the company for the said years had been filed with the ROC on 9th September 2017 and 11th September, 2017 respectively and the Complainant filed the instant Complaint on 20th September 2017. Thus, it is clear that the Financial Statements of the company for the Financial Year 2013-14 and 2014-15 were provided to the company by the Respondent after the filing of the instant Complaint with the Disciplinary Directorate. The Board on perusal of para 6 of Order of Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi dated 23/05/2017 noted as under:

"On 18.04.2018, Authorised Representative for the Complainant Company submitted that they have handed over Pay order no. 028647 dated 02.04.2017 for Rs. 4,12,720/- drawn on Axis Bank Ltd., East Patel Nagar Branch, New Delhi to the Respondent. Respondent accepted it as full and final payment of their fees He also agreed to tender his resignation from the Auditorship of the Applicant Company."

Thus, the Board noted that the Company had paid full and final audit fees to the Respondent vide demand draft dated 02/04/2017 which was also accepted by him. The Respondent resigned from the auditorship of the Company vide letter dated 18/03/2017. Thus, the Board held that the Respondent withheld the Financial Statements of the Company for the F.Y. 2013-14 and 2014-15 for non-payment of fees as alleged by the Complainant and provided the same to the Company only after filing of the instant Complaint against him which is clearly unbecoming of a Chartered Accountant. As regard the second charge, the Board observed that CA. Sanjay Kumar Singhal was required to file ADT-3, when he resigned from the position of the auditor of the Company which he deliberately withheld to do to stall the process of appointment of the auditor of the company which is unbecoming of a Chartered Accountant. Thus, it has already been held that the Respondent is Guilty

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of 'Other Misconduct' falling within the meaning of Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with section 22 of the said Act.

6. Upon consideration of the facts of the case and the consequent misconduct of CA. Sanjay Kumar Singhal, the Board decided to Reprimand CA. Sanjay Kumar Singhal (M.No.085931) and also imposed a fine of Rs.50,000/- (Rs. Fifty Thousand only) upon him payable within a period of 60 days from the date of the receipt of the Order.

Sd/-
CA. PRASANNA KUMAR D.
(PRESIDING OFFICER)

Sd/-
Ms. DOLLY CHAKRABARTY (IAAS, retd.)
(GOVERNMENT NOMINEE)

Sd/-
CA.(Dr.) RAJ CHAWLA
(MEMBER)

DATE: 2nd June, 2022

सही प्रतिलिपि होने के लिए प्रमाणित /
Certified to be true copy

अरुण कुमार / Arun Kumar
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, बिलास नगर, जवाहर, दिल्ली-110032
ICAI Bhawan, Vishwa Bhawan, Shalimar, Delhi-110032

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/240/2017/DD/277/2017/BOD/457/2018]

CORAM:

CA. Prasanna Kumar D., Presiding Officer (attended physically)
Mrs. Rani Nair (IRS, Retd.), Government Nominee (attended through VC)
CA. Satish Kumar Gupta, Member (attended through VC)

In the matter of:

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M/s R.K Silk Mills (India) Ltd.
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.....Complainant

Versus

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M/s Samasand & Associates (FRN: 003708N)
Chartered Accountants
3406, 3rd Floor,
D.B Gupta Marg,
Karol Bagh,
New Delhi -110005

.....Respondent

DATE OF FINAL HEARING : 17th December, 2021
PLACE OF HEARING : New Delhi/Through video conferencing

PARTIES PRESENT:

Respondent : CA. Sanjay Kumar Singhal (through VC)

FINDINGS:

Charges Alleged :

1. The following charges were alleged against the Respondent:-
 - a) The Respondent as the Statutory Auditor of M/s R.K. Silk Mills (India) Ltd. (hereinafter referred to as the "Company") audited the Financial Statements of the company for the Financial Years 2005-06 to 2014-15, but did not provide the

Audit Reports and Audited Financial Statements of the company for the Financial Years 2013-14 and 2014-15 despite numerous reminders.

- b) The Respondent did not file Form ADT-3 with the Registrar of Companies within 30 days of his resignation due to which the Complainant Company was not able to appoint another auditor in place of him.
- c) The Respondent is practising as a Chartered Accountant and as well as Advocate also.

The Director(Discipline) in his Prima Facie Opinion held the Respondent prima facie guilty in respect of the charge specified at (a) and (b) above and the said Opinion had been accepted by the Board. Accordingly, the Board enquired into the conduct of the Respondent only in respect of the charge specified at (a) and (b) above.

Brief of Proceeding held:

2. During the hearing held in the case on 17th December 2021, the Respondent was present before the Board through video conferencing, he confirmed that he has read and understood the contents of the modalities and protocols of e-hearing and follow them. However, the Complainant was not present before the Board. Since there was a change in the composition of the Board since the last hearing held in the case on 22nd December 2020, the Board gave an option to the Respondent as to whether he would like to have a De -Novo enquiry or continue from the last proceedings to which he stated that he would like to continue from the last proceedings. Thereafter, the Respondent made his detailed submissions before the Board. The Respondent was examined by the Board.

On consideration of the submissions and documents on record, the Board concluded the hearing in the case with the direction to the Respondent to provide the following:

- (a) Confirmation as to whether he did the audit of M/s R. K. Silks Mills (India) Limited for the F.Y. 2013-14 and 2014-15 vis-à-vis the copy of the audited financial statements of the company for the said years uploaded on the ROC website and his specific denial during the hearing that the same was not done by him.

The Board also advised the office to seek clarification from ESB as to whether a Chartered Accountant can withhold issue of audit report to the auditee for want of payment of his audit/other professional fees.

Accordingly, the decision on the conduct of the Respondent was reserved by the Board. The Board noted that the clarification as sought from the ESB had been received. However, no reply was received from the Respondent. Thus, on consideration of the documents and submissions on record, the Board at its meeting held on 11th February 2022 decided on the conduct of the Respondent.

Observation of the Board:

3. As regard the first charge, the Board noted that the Financial Statements of the Company for the Financial Year 2013-14 and 2014-15 had been audited by the Respondent on 4th September 2014 and 31st August 2015 respectively. The Financial Statements of the company for the said years had been filed with the ROC on 9th September 2017 and 11th September, 2017 respectively and the Complainant filed the instant Complaint on 20th September 2017. Thus, it is clear that the Financial Statements of

the company for the Financial Year 2013-14 and 2014-15 were provided to the company by the Respondent after the filing of the instant Complaint with the Disciplinary Directorate.

4. The Board on perusal of para 6 of Order of Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi dated 23/05/2017 noted as under:

"On 18.04.2018, Authorised Representative for the Complainant Company submitted that they have handed over Pay order no. 028647 dated 02.04.2017 for Rs. 4,12,720/- drawn on Axis Bank Ltd., East Patel Nagar Branch, New Delhi to the Respondent. Respondent accepted it as full and final payment of their fees. He also agreed to tender his resignation from the Auditorship of the Applicant Company."

Thus, the Board noted that the Company had paid full and final audit fees to the Respondent vide demand draft dated 02/04/2017 which was also accepted by him. The Respondent resigned from the auditorship of the Company vide letter dated 18/03/2017.

5. As regard the question whether a Chartered Accountant can withhold issue of audit report to the auditee for want of payment of his audit/other professional fees, the Board noted that ESB clarified that the auditor, in case of non-payment of fees, has one of the options of discontinuing from the Audit assignment/ resigning, which he may consider to exercise. However, there appears to be no available option of remaining the auditor of the client and still withholding the Audit Report. The Ethical Standard Board in its 131st Meeting held on 27.04.2016 clarified as under :-

"Chartered Accountant cannot exercise lien over the client documents/ records for non-payment of his fees unless it is required by any law for the time being in force or vide the Order of a Court of law."

Thus, the Board held that it is clear that the Respondent withheld the Financial Statements of the Company for the F.Y. 2013-14 and 2014-15 for non-payment of fees as alleged by the Complainant and provided the same to the Company only after filing of the instant Complaint against him which is clearly unbecoming of a Chartered Accountant. Accordingly, the Board held the Respondent Guilty in respect of the first charge.

6. As regard the second charge, the Board observed that the Respondent did not file Form ADT-3 with the Registrar of Companies within 30 days of his resignation from the position of the auditor of the company. The Board took into view the provisions of Section 140 of Companies Act, 2013 which provides as under:-

(2) The auditor who has resigned from the company shall file within a period of thirty days from the date of resignation, a statement in the prescribed form with the company and the Registrar, and in case of companies referred to in sub-section (5) of section 139, the auditor shall also file such statement with the Comptroller and Auditor-General of India, indicating the reasons and other facts as may be relevant with regard to his resignation.

(3) If the auditor does not comply with the provisions of sub-section (2), he or it shall be liable to a penalty of fifty thousand rupees or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure,

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with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees.

7. The Board noted that the Respondent was required to file ADT-3, when he resigned from the position of the auditor of the Company which he deliberately withheld to do to stall the process of appointment of the auditor of the company which is unbecoming of a Chartered Accountant. Accordingly, the Board decided to hold the Respondent Guilty in respect of the charge alleged.

CONCLUSION:

8. Thus, the Board of Discipline, in view of the above, is of the considered view that the Respondent is **Guilty** of Other Misconduct falling within the meaning of Item (2) of Part IV of First Schedule to the Chartered Accountants Act 1949 read with Section 22 of the said Act.

Sd/-
CA. PRASANNA KUMAR D.
(PRESIDING OFFICER)

DATE: 11th February, 2022

प्रमाणित सत्य प्रतिलिपि / Certified true copy

Atkumar
आर. एस. श्रीवास्तव / R. S. Srivastava
सहायक सचिव / Assistant Secretary
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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