

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/206/2016-DD/303/2016-BOD/483/2018**

**CORAM (present in person):**

**CA. Prasanna Kumar D., Presiding Officer  
Ms. Dolly Chakrabarty (IAAS, Retd.), Government Nominee**

**In the matter of:**

**CA. B.K. Amarnath, (M.No. 026536)  
M/s Anand Amarnath and Associates,  
FRN. 000121S,  
S2, Gem Plaza,  
Second Floor, #66, Infantry Road  
Bengaluru-560001**

**.....Complainant**

**Versus**

**CA. G.C. Somadas(M. No. 018636)  
Audit Committee Chairman  
Opto Circuits (India) Limited  
2/A, 10th cross, 5th Main,  
R. K Layout 1st Stage, Padmanabhanagar  
Bengaluru (South) – 560070**

**.....Respondent**

**DATE OF FINAL HEARING : 6<sup>th</sup> January, 2023  
PLACE OF FINAL HEARING : New Delhi**

**PARTIES PRESENT(through video conferencing):**

**Complainant : CA. B.K. Amarnath  
Counsel for Complainant : CS. B.K. Panduranga  
Respondent : CA. G.C. Somadas**

**FINDINGS:**

**BRIEF BACKGROUND OF THE CASE:**

- 1 The Complainant was associated with M/s Opto Circuits (India) Limited (hereinafter referred to as the "OCIL") and its seven subsidiaries as the Statutory Auditor. As per the Complainant, the OCIL has illogically removed the Complainant as the auditors of the OCIL on the recommendation of the Audit Committee headed by the Respondent.

**CHARGE ALLEGED:**

- 2.1 The Respondent has illogically and illegally removed the Complainant as auditors of the Company, i.e. Opto Circuits (India) Limited.
- 2.2 The incoming auditor, i.e. CA. Amarnath of M/s B V Swamy & Co. issued its audit report for the Financial Year 2015-2016 on the basis of recommendation of the Respondent, despite the fact that the current auditors have not given their resignation.
- 2.3 In spite of ROC issuing show cause notice, the Respondent recommended Board to conduct the AGM and adopt the audited accounts for the Financial Year 2015-2016.

The Director (Discipline) in his Prima Facie Opinion held the Respondent Not Guilty. On consideration of the Prima Facie opinion of the Director (Discipline), the Board was of the view that since the petition had been made by the Complainant to ROC, Karnataka regarding his illegal removal and a show cause Notice had been issued to prosecute the company and its directors, the matter needs to be examined further. Accordingly, the Board disagreed with the reasoning(s) given against the charge(s) that the Respondent is Not Guilty of Professional Misconduct falling within the meaning of Clause (8) of Part I of First Schedule. The Board also held that since the Respondent was the Chairman of the Audit Committee, in view of the allegations alleged against him, Clause (8) of Part I of the First Schedule is not applicable in the case and the Respondent is Prima Facie GUILTY of 'Other Misconduct' falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949. Accordingly, the Board decided to proceed under Chapter IV of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

**BRIEF OF PROCEEDINGS HELD:**

- 3.1 At the time of hearing held in the case on 9<sup>th</sup> January 2020, the Board noted that the Complainant and the Respondent along with his Counsel were present before it. The Board also noted that at the time of last hearing held on 18<sup>th</sup> July 2019, it had directed the office to seek the latest status of the case regarding illegal removal of the Complainant from the ROC along with the copy of the Orders passed therein, if any. The Board also noted that the reply from the ROC had been received. On consideration of the submissions and the documents on record, the Board adjourned the hearing in the case as the issue of illegal removal of the Complainant was still under consideration.
- 3.2 Thereafter at its meeting held on 6<sup>th</sup> January 2023, the Board noted that the Respondent and the Complainant along with his Counsel were present before it through video conferencing. The Board noted that there was a change in the composition of the Board since the last hearing, the Board gave an opportunity to the parties to the case as to whether they would like to have a De-Novo enquiry in the case or continue from the last proceedings to which they stated that they would like to continue from the last proceeding. Thereafter, the Counsel for the Complainant and the Respondent made their respective submissions before the Board. The Board posed certain questions to the Respondent which was answered by him. On consideration of the documents and submissions on record, the Board concluded the proceedings in the case. However, to have a detailed study of the submissions and documents on record the decision on the conduct of the Respondent was kept reserved by the Board.
- 3.3 Thereafter, at its meeting held on 3<sup>rd</sup> February 2023, the Board on consideration of the documents and submissions on record, decided on the conduct of the Respondent.

**BRIEF SUBMISSIONS OF THE PARTIES TO THE CASE:**

**(a) RESPONDENT:**

4. The Respondent in his written submissions, inter-alia, stated as under:
- a) Regarding the complaint to ROC Karnataka and a show cause Notice issued to the Company and its Directors:-

4.1 The Company Secretary of Opto Circuits India Limited has furnished the details of the replies given to the show cause Notice issued by ROC and there is no further enquires after the submission of the reply to the ROC, which confirms that the ROC Karnataka has dropped the proceedings to prosecute the company and its directors on the complaint made by the Complainant.

- i. The Company in its replies has stated that the appointment of M/s B.V. Swami and CO as statutory auditors of the company was to fill up the casual vacancy and had submitted copy of the detailed board resolution dated 30th May, 2016 which is an optional attachment to the E-Form ADT-1, in response to the allegation made by the Complainant (kindly refer 11th July, 2016 letter of the Company).
- ii. The Company had submitted further information in response to the queries raised by ROC vide its letters dated 1st September, 2016, 9th December, 2016, 15th February, 2017. The company secretary vide letter dated 14th March, 2019 addressed to B. V. Swami & Co. has informed the various submissions made to ROC Karnataka and stated as under –

*"Please note, subsequent to the submission of above mentioned responses to the office of the Registrar of Companies, no further inquiries have been received by the Company on the captioned subject matter."*

- iii. Since the ROC Karnataka has dismissed the complaint regarding the illegal removal as statutory auditor and also dropping of the proceedings initiated for prosecution of the Company and the show cause notice issued by ROC Karnataka, the very basis of further examining the Respondent conduct as guilty of Other Misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 is not tenable and prima facie does not attract any action on the complaint made by the Complainant.
- a) Regarding the 'Other Misconduct' falling within the meaning of clause (2) of Part IV of the First Schedule to the Chartered Accountants Act 1949:

- i. The Board of Discipline vide its letter dated 28th February, 2019 has opined that the Respondent is prima facie GUILTY of 'Other Misconduct'.
- ii. The Respondent has earlier also submitted that his role as Chairman of the Audit Committee in adherence to the standards of Independent Directors and also to the code of ethics as a professional chartered accountants that he is not only responsible exclusively to satisfy the needs of an individual client or employer but also to accept his responsibility to act in the interest of public at large.
- iii. The Respondent's actions to consider the Complainant was not eligible to be re-appointed as statutory auditor was mainly motivated to prevent the disrepute to the profession of Chartered accountancy and also to protect the reputation of our great institute.
- iv. The Respondent had to consider the following facts and circumstances to treat that the Complainant had incurred the disqualifications mentioned in subsection (3) of Section 141 of the Companies Act, 2013 and such a vacation shall be deemed to be a casual vacancy in the office of the auditor:-
  - The Complainant indirectly has business relationship with the company or its subsidiaries through Doopadgiri Corporate Services Private Limited. (Copy of three cheques issued by the Complainant as director of Doopadgiri Corporate Services Private Limited for Rs. 30,00,000/- in total attached)
  - He was in the occupation of one of the apartments owned by the company and defaulted in payment of the rent.
  - He had issued cheques in part discharge of indebtedness to the company which have not been honoured and also which is evidence of the indebtedness of the Complainant as statutory auditor. (copy of cheque for Rs. 25,00,000/- issued in Complainant's individual capacity enclosed)
  - In view of the above disqualifications incurred by the Complainant, the Respondent had requested M/s Anand Amarnath & Associates to introduce the partner other than the Complainant to act on behalf of the audit firm and also confirm the reappointment as statutory auditor and eligibility to continue as statutory auditors vide letter dated 18th May, 2016. In fact, the Respondent had personally discussed these issues with the other partner of

the audit firm and requested any other partner other than CA. B.K. Amarnath of the Bangalore practice unit can take up the audit but only after issuing the consent letter to act as statutory auditor and confirm their continued eligibility to be re-appointed as auditors. However, the Complainant wrongly and falsely gave a declaration that the re-appointment made, is in accordance with the conditions as prescribed under Companies Act 2013 and also certified that they satisfy the conditions provided in section 141 of Companies Act, 2013. Further, the Complainant has himself confirmed the notice of re-appointment as statutory auditors with ROC in Form ADT-1 is not submitted as of 24th May, 2016. So, it is an admitted fact that the notice of re-appointment in Form ADT-1 was not submitted to the ROC and the reappointment of M/s Anand Amarnath & Associates as statutory auditors was not notified as per the regulations of the Companies Act, 2013 mainly due to the non-receipt of consent letter and eligibility under Section 141(3) of the Companies Act, 2013 and also Rule 4 of the Companies (Audit and Auditors) Rules, 2014.

- The Complainant firm and the Complainant were repeatedly informed about the rotation of auditors and the fact the Complainant had already conducted the statutory audit and also signed the audit report/authenticated the financial statements for continuous period of 8 years commencing from 2007-08 till 2014-15. Obviously, the Complainant insisting and confirming his eligibility to continue as statutory auditor defeats the very provisions of rotation of auditors beyond a block period of 5 years (in case of the extension period of 8 years) as enumerated in Section 139 of Companies Act 2013. It is also one of the reasons to consider the Complainant firm deemed to have vacated the office as per Section 141(4) of the Companies Act 2013.
- b) Other factors considered by the Audit Committee for re-appointment of B. K. Amarnath as statutory auditors.
- The conduct of the Complainant as partner of the Complainant firm for issuing the audit report for the financial year ending 31st March, 2015 (Audited ✓)

Results for the Quarter ending 31st March 2015 was considered by the Board of Directors and published as per the requirements of SEBI – Listed Companies Regulations on 29th May 2015) as late as 1st December 2015 which resulted in not conducting the annual general meeting within the prescribed period of on or before 30th September 2015. Even though the audit firm had confirmed the publication of Quarterly audit results and also the financials for the entire financial year ending 31st March, 2015 as early as 29th May, 2015 still not issued the audit report as on 28th August 2015 and not completed the audit as of 27th August 2015.

- The Complainant was required to submit the limited review report on the financial results for the quarter ending 31st December 2015 on the day of consideration of the financial results by the board of directors which is required to be published as per the regulations enumerated in the SEBI circular no CIR/CFD/CMD/15/2015 dated 30th November, 2015. However as admitted by the Complainant the submission of limited review report was delayed till 3rd March 2016 instead of furnishing the report on the day of the board meeting / publication of results as on 15th February, 2016 and the company was unable to upload the limited review report along with the financial results to both the stock exchange BSE and NSE as on the date of publication of results i.e. 15th February 2016.
- It is pertinent to note the limited review report for the quarter ending 31st December 2015 and the observations made regarding KYC documents of debtors, non-moving stocks and provision for loss on such non moving stock, un-realised advances and un-realised debtors is not pertaining to the 3 months period of the quarter ending 31st December, 2015. In the limited review report submitted for the half year ending 30th September, 2015 for which a Balance Sheet as on that day is also published along with the Financial Result the Complainant member has not commented vis a vis the position of KYC documents of debtors, non-moving stocks and provision for loss on such non-moving stock, un-realised advances and un-realised debtors. Since the financial results for the quarter ending 31st December 2015 was to be

reviewed and only such comments which will have an impact on the results published for this period of 3 months is only relevant for the issue of Limited review report. The Complainant has failed to conduct the review audit considering the responsibility as an independent statutory auditor and perform the review to obtain moderate assurance as to whether the financial statements are free of material misstatements. A review is limited primarily to inquire of company personnel and analytical procedures applied to financial data and thus provide less assurance than an audit. Further as the Independent Statutory Auditor of a Listed Company, it is the duty and responsibility of the Statutory Auditor to ensure compliance with SEBI regulations primarily to enable investors to make well informed investment decisions, timely, adequate and accurate disclosure of financial results on a periodical basis and at the same time ensure comparability, uniformity and parity in disclosures made by listed entities across stock exchanges. Further the delay of nearly 3 months in conducting the AGM in December 2015 resulted in a delayed circulation of the Audit Report to the Shareholders of the Company defeating the very investor friendly regulations prescribed by SEBI.

- The Respondent was personally fully aware of the business conduct of the Complainant who was conducting business as a whole time director of business entities like Doopadagiri Estates Limited, Doopadagiri Corporate Services Private Limited, Doopadagiri Bio-Tech Private Limited, Intertech Limited and therefore not eligible to continue to hold the full time certificate of practice and accept any appointment as independent statutory auditor under the provisions of Companies Act 2013 (which is clear professional misconduct in relation to Chartered Accountant in Practice) particularly clause (4) and (11) of Part I of the First Schedule of the Chartered Accountants Act 1949. The Respondent further enclosed the copy of the sale deed executed by the Complainant as partner of M/s ALPS Developers a partnership firm and also the ROC Master data reflecting the Complainant as Director.

c) The Complainant in his submissions, inter-alia, stated as under:

- 5.1 He is neither a director nor a shareholder of Doopadagiri Corporate Services Private Limited ("DCPL"). Hence, having business relationship with Opto Circuits Limited ("OCL) does not arise.
- 5.2 He was never in occupation of an apartment owned by OCL. By producing a Debit Note dated June 30, 2017, the Respondent is trying to create a business interest by raising a frivolous Debit Note claiming rent from 2005 for alleged occupation of the flat of OCL. A mere perusal of the Debit note reflects the malice intent of the Respondent and OCL.
- 5.3 DCSPPL changed its name to Dupoint Advisory Private Limited ("DAPL\*") effective from December 30, 2011. Three cheques referred by the Respondent were part of the cheque book issued in the year 2011 by State Bank of India to DCSPPL. The cheque leaves has the name of DCSPPL and not DAPL. Many cheque leaves including the three presented by OCL were missing from the office of DCSPPL.DCSPPL/DAPL believes that OCL officials who used to visit the office DCSPPL have stolen the blank cheques in the year 2011, and presented the same in June 2016 by dating the cheques in March 2016 without realizing that these cheques were in the old name of DCSPPL and are stale. In any case there was no need to present these cheques by OCL as no money was due to Opto from DCSPPL. In this connection DCPL gave us a copy of no due certificate issued by OCL and the same is attached.
- 5.4 DCSPPL further confirmed that they are in the process of initiating criminal action against the directors and officials of OCL for stealing the cheques and trying to encash the same when there is no money due to them. A copy of the legal notice issued by DCSPPL to OCL is attached.
- 5.5 OCL vide its letter dated July 11, 2016 addressed to the ROC in response to the Complainant's complaint, produced the copies of same three cheques and alleged that DCSPPL did not honour the cheques and the Respondent is using the same cheques now alleging that the Complainant issued these cheques to clear his indebtedness to OCL.
- 5.6 Strangely OCL through its advocate issued a notice to the Complainant stating that he had issued the same three cheques referred to above to repay the loan which he had

allegedly taken from OCL to meet his personal needs. Two different stands on the same cheques expose the criminal intent of OCL directors and the Respondent.

- 5.7 The Complainant strongly denied that OCL gave him a loan of INR 30 lakhs nor did he seek any favour from OCL at any point of time when his firm was the auditor. The Respondent has not provided any evidence of debit of INR 30 lakhs in its bank account. It is ironical to make such baseless allegation when OCIL and its subsidiaries owe the Complainant's firm a sum of INR Rs.209.47 lakhs.
- 5.8 A copy of the legal notice issued by the advocate of OCL is attached and the Complainant's response to the said the legal notice issued by OCL is also attached.
- 5.9 OCL and the Respondent have taken a different stand on the same cheques and both the stands are contradictory to each other and bereft of facts. The motive is obviously to create an interest of Complainant's Firm with OCL so as to remove his firm from conducting the audit and appoint someone else who will act according to the wishes of OCL management.
- 5.10 The Respondent has also annexed a photo copy of the cheque dated October 1, 2007 alleging that the Complainant issued the cheque to OCL. The Complainant denied to have ever issued such a cheque to OCL in 2007 and denied his signature and contents of the said cheque.
- 5.11 The Respondent has interpreted section 139 of the Companies Act 2013 just to justify illegal removal of legally and duly appointed auditors. In terms of the proviso to section 139 of the Companies Act 2013, Complainant's firm could have continued as auditors till the financial year 2016-17.
- 5.12 OCL, was not cooperating with the limited review nor providing with the requested information and documents.
- 5.13 He was not a whole-time director of the companies specified by the Respondent. The Respondent has attached the Master Data of Doopadagiri Estates Limited where the

Complainant held the position of ordinary director. There is no bar under the institute regulations to hold a directorship in a Company.

- 5.14 The Complainant ceased to be a partner of the firm M/s Alps Developers in 2004 and the said firm was dissolved in 2005 and it never conducted any business during its existence.
- 5.15 The linking of the Complainant with OCL in relation to the transactions of 2003 and 2007 is an afterthought and how these transactions without being proved could lead to removal of auditors in 2016.

**OBSERVATIONS OF THE BOARD:**

- 6.1 On perusal of the documents and submissions on record, the Board observed that the Complainant had alleged that he has been illogically and illegally removed from the position of the auditors of the Company on the recommendation of the Respondent. The incoming auditor issued its audit report for the Financial Year 2015-2016 on the basis of recommendation of the Respondent, despite the fact that the Complainant as current auditors had not given their resignation. Despite of ROC issuing show cause notice, the Respondent recommended the Board to conduct the AGM and adopt the audited accounts for the Financial Year 2015-2016.
- 6.2 In this regard, the Board noted that the Respondent was the Chairman of the Audit Committee of the company at the time of alleged misconduct. As per Section 177 of the Companies Act, 2013, the Board of Directors of every listed company and such other class or classes of companies, as may be prescribed, shall constitute an Audit Committee. Provided that majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand the financial statement. Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, inter alia, include,—
- (i) the recommendation for appointment, remuneration and terms of appointment of auditors of the company;
  - (ii) review and monitor the auditor's independence and performance, and effectiveness of audit process;
  - (iii) examination of the financial statement and the auditors' report thereon;

- (iv) approval or any subsequent modification of transactions of the company with related parties: [Provided that the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as may be prescribed;]
- (v) scrutiny of inter-corporate loans and investments;
- (vi) valuation of undertakings or assets of the company, wherever it is necessary;
- (vii) evaluation of internal financial controls and risk management systems;
- (viii) monitoring the end use of funds raised through public offers and related matters.

6.3 The Board also noted that the Respondent in his defence stated that the Complainant had incurred the disqualifications as mentioned in subsection (3) of Section 141 of the Companies Act, 2013 and such a vacation shall be deemed to be a casual vacancy in the office of the auditor:

- a) The Complainant indirectly has business relationship with the company or its subsidiaries through M/s Doopadgiri Corporate Services Private Limited.
- b) The Complainant was in the occupation of one of the apartments owned by the company and defaulted in payment of the rent.
- c) The Complainant had issued cheques in part discharge of indebtedness to the company which had not been honoured and also which is evidence of the indebtedness of the Complainant as statutory auditor.

6.4 The Board noted that on one hand, the Complainant stated that he had been resigned and had been removed from the position of the auditor of the company before the expiry of his term whereas the Respondent stated that there was a casual vacancy in the office of the auditor as the Complainant had incurred the disqualification under section 141(3) of the Companies Act, 2013. To substantiate the same, the Respondent also enclosed copy of three cheques issued in favour of the company by the Complainant as director of M/s Doopadgiri Corporate Services Private Limited for Rs. 30,00,000/- in total and another cheque for Rs. 25,00,000/- in his individual capacity in favour of the company. The Respondent also enclosed the copy of the Sale Deed dated 6<sup>th</sup> June 2003 executed by the Complainant as partner of M/s ALPS Developers with the company and also the ROC Master data reflecting the status of the Complainant as Director of M/s Doopadgiri

Corporate Services Private Limited. He also enclosed copy of the Debit Note date 30<sup>th</sup> June 2016 issued by the company in the individual name of the Complainant with respect to the rent for the years 2005 to May 2016. The Complainant expressly denied the sanctity of the said evidences.

6.5 In this regard, the Board took into view the provisions of Section 141 of the Companies Act, 2013 which provides as under:

*“(3)The following persons shall not be eligible for appointment as an auditor of a company, namely:—*

*(b) an officer or **employee** of the company;*

*(c) a person who is a partner, or who is in the employment, of an officer or employee of the company;*

*(d) a person who, or his relative or partner—*

*(i) is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company: Provided that the relative may hold security or interest in the company of face value not exceeding one thousand rupees or such sum as may be prescribed;*

*(ii) is **indebted** to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of such amount as may be prescribed; or*

*(iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, for such amount as may be prescribed;*

*(e) a person or a firm who, whether directly or indirectly, **has business relationship** with the company, or its subsidiary; or its holding or associate company or subsidiary of such holding company or associate company of such nature as may be prescribed;*

*(f) a person whose relative is a director or is in the employment of the company as a director or key managerial personnel;*

*(i) any person whose subsidiary or associate company or any other form of entity, is engaged as on the date of appointment in consulting and specialised services as provided in section 144.*

*7 Where a person appointed as an auditor of a company incurs any of the disqualifications mentioned in sub-section (3) after his appointment, he shall vacate his office as such*

auditor and such vacation shall be deemed to be a **casual vacancy** in the office of the auditor.”

According to Section 139(8)(i) of the Companies Act, 2013, **any casual vacancy** in the office of an auditor shall in the case of a company other than a company whose accounts are subject to audit by CAG, be **filled by the Board of Directors within 30 days**. Where a company is required to constitute an **Audit Committee under section 177**, all appointments, including the filling of a casual vacancy of an auditor under this section shall be made after taking into account the **recommendations of such Committee**.

- 6.7 The Board also noted that it had sought the latest status of the case regarding illegal removal of the Complainant from the ROC along with the copy of the Orders passed therein, if any and in reply the ROC vide its letter dated 5th December, 2019 informed as under:

*“a complaint dated 15.06.2016 was received from Mr. B. K. Amarnath, Partner of M/s Anand Amarnath & Associates, alleging illegal removal of their firm as statutory auditors of M/s Opto Circuits (India) Ltd, Bangalore. The matter was taken up with the Company on 30.06.2016 and reply dated 11.07.2016 received was forwarded to the Complainant on 18.07.2016. In the reply the company has submitted copy of the Board Resolution passed on 30.05.2016 and stated that based on the recommendations of Audit and Risk Management Committee M/s B. V. Swami & Co., Bengaluru was appointed as Statutory Auditors for the financial year 2015-16 to fill up the casual vacancy caused, pursuant to provision of Section 141(4) of the Act as the auditor incurs disqualification and vacate office which is deemed to be a casual vacancy. The Complainant vide letter dated 27.07.2016 has denied the submissions made by the company. In this regard a show cause notice u/s 139 to 141 of Companies Act, 2013, r/w Rule 7(1) of the Companies (Audit & Auditors) Rules, 2014 was issued on 19.08.2016 to the company and its directors. The company has replied to the show cause notice on 01.09.2016, which was also informed to the Complainant M/s Anand Amarnath & Associates, vide letter No. ROCB/STA/Complaint/PS/2016 dated 26.10.2016 to **approach the Regional Director (SER) (emphasis provided)**, Hyderabad, who is the competent authority to adjudicate on such matter.*

*The Complainant and another partner Mr. B. K. Panduranga were repeatedly submitting complaints and RTI applications on action taken against the company(emphasis provided). Hence, the matter was again taken up with the company on 08.11.2019, as to why action u/s 147 of Companies Act, 2013, should not be taken. The company vide letter dated 28.11.2019, reiterates that the Audit committee and Board exercised the powers vested by the Companies Act, 2013 as M/s Anand Amarnath & Associates was removed from the Auditors list on account of disqualification u/s 141(4) of the Companies Act, 2013 and has appointed new statutory Auditor in place of him. "*

- 6.8 The Board also noted that the Complainant was specifically asked during the course of last hearing as to whether he approached the Regional Director (RD) regarding his grievance to which he stated that he had made an application to RD, but, did not receive any communication from the RD .
- 6.9 In view of the above, the Board held that since the Respondent was the Chairman of the Audit Committee of the Company, thus, whatever decision he had made was on behalf of the Audit Committee, he cannot be held solely liable for lapse, if any, on the part of the company until it is proved that the same was on account of some malice on his part, which in the instant case is clearly missing.
- 6.10 Accordingly, the Board held the Respondent Not Guilty in respect of the charges alleged.

**CONCLUSION:**

7. Thus, in conclusion, in the considered opinion of the Board, the Respondent is **NOT GUILTY** of Other Misconduct falling within the meaning of Item (2) of Part IV of the 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)

Sd/-

Ms. Dolly Chakrabarty (IAAS, ret'd.)  
(Government Nominee)

मुकेश कुमार मिश्रा / Mukesh Kumar Mittal  
सहायक सचिव / Assistant Secretary  
अनुशासनात्मक निदेशालय / Disciplinary Directorate  
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया  
The Institute of Chartered Accountants of India  
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ICAI Bhawan, Vishwas Nagar, Shahdara, Delhi-110032

DATE: 10<sup>th</sup> February 2023

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