

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/260A/2016-DD/304/2016/BOD/484/2018]

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)
S-2, Gem Plaza, Second Floor,
Number 66, Infantry Road,
Bangalore- 560001.

.....Complainant

Versus

CA. A. Amarnath (M. No. 213629)
M/s B.V. Swamy and Co (FRN. 009151S),
Chartered Accountants,
#6, Commander's Place, 1st Floor,
Raja Ram Mohan Road, Richmond Circle,
Bangalore- 560025.

....Respondent

DATE OF FINAL HEARING : 6th January, 2023
PLACE OF FINAL HEARING : New Delhi

PARTIES PRESENT (through video conferencing):

Complainant : CA. B.K. Amarnath
Counsel for the Complainant : CS. B.K. Panduranga
Respondent : CA. A. Amarnath
Counsel for Respondent : CA. C.V. Sajan

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 CA. G. C. Somadas. The Respondent received a communication dated 22.05.2016 from OCIL seeking his consent for appointment as Statutory Auditors to fill up the casual vacancy by the Board of Directors subject to the approval of the members at the proposed General Meeting to be held in the month of June 2016.

sw

CHARGE ALLEGED:

2. The Respondent accepted the audit of M/s Opto Circuits (India) Limited without first communicating with the Complainant.
- 2.1 The Respondent issued the Audit Report of the Company M/s Advanced Micronic Devices Pvt. Ltd. without the clearance of audit fees of the Complainant.
- 2.2 The Respondent in his Audit Report mentioned that he has relied upon the Audit Reports of the other auditors which is factually incorrect.

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 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. At the time of hearing held in the case on 9th January 2020, the Complainant and the Respondent along with his Counsel were present before the Board. The Board also noted that at the time of last hearing held on 18th 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.

3.1 Thereafter at its meeting held on 6th January 2023, the Board noted that the Complainant and the Respondent along with their respective 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 or continue from the last proceedings to which the Counsel for the Respondent stated that he would like to have a fresh proceeding in the case. Thereafter, the charges alleged against the Respondent were taken as read with the consent of the parties present. On being asked by the Board as to whether the Respondent pleaded guilty in respect of the charge alleged against him, the Respondent answered in negative and his Counsel made his submissions before the Board. The Counsel for the Complainant also made his submissions before the Board. Upon consideration of the submissions and documents on record, the Board concluded the hearing in the case. However, to have a detailed study of the submissions and documents on record and to examine whether there was any casual vacancy in the position of the auditor on account of the Complainant incurring the disqualification, the decision on the conduct of the Respondent was kept reserved by the Board.

3.2 Thereafter, at its meeting held on 3rd Feb 2023, the Board on consideration of the documents and submissions on record, decided on the conduct of the Respondent.

BRIEF SUBMISSIONS OF THE RESPONDENT:

4. The Respondent in his written submissions, inter-alia, stated as under:

h

4.1 The Respondent submitted the response of company to the Show Cause Notice issued by ROC and the status of Compliant made by Complainant to the ROC received from the Company.

4.2 Based on the above facts, information, and documents, he stated that the Respondent has not committed any Professional and Other Misconduct as alleged by the Complainant in case of M/s Opto Circuits (India) Ltd.

OBSERVATIONS OF THE BOARD:

5. On perusal of the documents and submissions on record, the Board observed that the Complainant alleged that the Respondent despite of not receiving the no objection from the Complainant who was the previous statutory auditor of OCIL conducted the audit and issued the audit report for the year ended 31st March, 2016. In this regard, the Board noted that the Complainant brought on record a letter dated 25th June, 2016 wherein the Respondent submitted that their appointment has been made to fill up the Casual Vacancy of the Statutory Auditors and according to which they sought no Objection from the Complainant for conducting the Statutory Audit of OCIL for the Financial Year 2015-2016. In furtherance, the Complainant vide letter dated 07th June, 2016 stated as under:

"We would like to state that there is no casual vacancy for the post of auditors in the above mentioned company in as much as we have not resigned from the position of Statutory Auditors (as per Section 139(8) of the Companies Act, 2013)

We continue to hold the office of the Statutory Auditors. Considering the above mentioned facts we will not be able to give No-Objection for accepting the above mentioned audit assignment"

The Board also noted that the Respondent also brought on record a letter of OCIL dated 7th June, 2016 wherein the Company confirmed the casual vacancy for the Financial Year 2015-2016 along with a certified copy of the resolution passed by the Board of Directors of OCIL at their meeting held on 30th May, 2016 as under:-

"resolved that there is a casual vacancy in the office of the Statutory Auditors as per the provisions of Section 131 of the Companies Act, 2013 Read with the Companies(Audit and Auditors) Rules, 2013".

5.1 The Board noted that on one hand, the Complainant stated that he had not resigned from the position of the auditor of the company and had been wrongly 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.

5.2 With respect to the requirements of Item 8 of Part I of the First Schedule of the Chartered Accountants Act, 1949, the Board took into view the following as provided in the Code of Ethics, 2009:

"The professional reasons for not accepting an audit would be:

3/

Non-compliance of the provisions of Sections 224 and 225 of the Companies Act as mentioned in Clause (9);

Non-payment of undisputed audit fees by auditees other than in case of sick units for carrying out the statutory audit under the Companies Act, 1956 or various other statutes; and

Issuance of a qualified report.

In the first two cases, an auditor who accepts the audit would be guilty of professional misconduct.”

5.3 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. “*

5.4 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.

5.5 The Board noted that the Respondent has brought on record the evidence wherein it is submitted and acknowledged by the Complainant also that prior communication was made and the professional issues raised by the Complainant were duly treated by the Respondent and OCIL. Thus, the Board observed that an effective communication was made by the Respondent prior to the acceptance of the appointment and he also ensured that the compliance with the provisions of Section 140 of the Companies Act 2013 was made by the

2

company prior to the acceptance of the appointment. Thus, the Board held the Respondent not guilty in respect of the charge alleged.

5.6 As regard the second charge that the Respondent issued the Audit Report of M/s Advanced Micronic Devices Pvt. Ltd (hereinafter referred to as the "AMDL") without the clearance of audit fees of the Complainant and the third charge that the Respondent in his Audit Report mentioned that they have relied upon the audit reports of the other auditors which is factually incorrect, the Board held that since the reason for disagreement with the Prima Facie Opinion of the Director(Discipline) was with respect to the first charge only and the Board had already dropped the second and the third charge at Rule 9 stage only by concurring with the Opinion of the Director(Discipline) at that stage, the Findings of the Board have been arrived at in respect of the first charge only for which the Respondent has been held not guilty.

CONCLUSION:

6. Thus, in conclusion, in the considered opinion of the Board, the Respondent is **NOT GUILTY** of Professional Misconduct falling within the meaning of Item (8) of Part I 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, retd.)
(Government Nominee)

DATE: 10th February 2023

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy



गीता अनिरुद्ध कुमार / GEETHA ANIRUDHA KUMAR
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
भारतीय सनदी लेखाकार संस्थान
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032