

**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/223/2016/DD/75/2017/BOD/680/2023]**

**CORAM:**

**CA. Rajendra Kumar P, Presiding Officer (in Person)**  
**Ms. Dolly Chakrabarty, Government Nominee (in Person)**  
**CA. Priti Savla, Member (through video conferencing)**

**In the matter of:**

**Shri Sai Prakash Pasumarthy,**  
Managing Director,  
M/S Acumen Software Technologies Ltd,  
2-22-174, Anant Nagar,  
Margdarshini Society,  
Rasootpura,  
Secunderabad-500003.

**.....Complainant**

**Versus**

**CA. P. Venkata Siva Ramamurthy (M.No.028996)**  
Villa No. 26, Luxura Greens,  
Opp. Kendriya Vidyalaya,  
New Bowenpally,  
Secunderabad-500011

**.....The Respondent**

**DATE OF FINAL HEARING**

**: 9<sup>th</sup> February 2024**

**PARTIES PRESENT:**

**Respondent (through video conferencing): CA. P. Venkata Siva Ramamurthy**

**FINDINGS:**

**BACKGROUND OF CASE:**

1. Brief facts of the case are as follows: -

1.1 M/s Acumen Software Technologies Ltd (hereinafter referred to as Company) was incorporated on 03.04.1995 by two brothers viz. the Complainant and the Respondent. Both the brothers

started the Company in good faith and the elder brother i.e., the Complainant contended that he had turned his software skills, contacts, and projects etc. into the equity share capital of the Company. The Complainant was involved in the affairs of the Company in his capacity as the Managing Director and was running the business along with his team. Further, there were about 12 shareholders in the Company as per the search report issued by M/s. B. Chaganlal & Associates, Company Secretaries at the request of the Respondent which clearly shows that the Complainant holds about 67.56% of shares in the Company and the Respondent held about 22.24% of shares. Over a period of time there seems to be differences among the brothers brewing which finally resulted into The Respondent taking complete control over the premises which is owned by the Company and from where the operations of the Company were being conducted. It is also on record that the Respondent had floated his own Company and was doing more or less the similar type of business without the involvement of his elder brother i.e., the Complainant.

- 1.2 Subsequent to the seizure of the Company, the operations of the Company have come to a standstill and both the brothers' filed complaints on various forums against each other.

**CHARGE(S) ALLEGED:**

2. Against the aforesaid background, the following was alleged against the Respondent:
  - 2.1 The Respondent with intention to take control of the Company, created a fake form 32 dated 21<sup>st</sup> October 2003 showing the Complainant as having resigned from directorship w.e.f. 26<sup>th</sup> September 2003 and appointed Ms P. Arunmyee, the wife of the Respondent as director w.e.f. 25<sup>th</sup> September 2003 while there was no resignation letter from Complainant or any board resolution to that effect. It is further stated that the Respondent in collusion with ROC office without filling this fake Form 32 to ROC in 2003 managed to take its filling receipt in May, 2016 and consequently (since no form -32 was actually filed to ROC in 2003) the Complainant continued as Managing director in the Company thereafter and attended Board meetings while the Respondent's wife did not attend any board meeting. In support of this, notice cum Agenda of various Board meetings signed by the Complainant and the Respondent pertaining to years 2007 and 2008 have been put forth. Further, his name (Complainant) is also stated to be appearing as Managing Director of the Company on the web portal of ROC/MCA till March 2016. It is further stated that after thirteen years of creating fake Form-32 in 2003 the Respondent in collusion with ROC had filed a Complaint against the Complainant on 9<sup>th</sup> May

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2016 alleging that even after resigning from the Company, the Complainant had been illegally filing annual returns on ROC portal and consequently he was served with a show cause notice from ROC under Section 447 and 448 of the Companies Act,1956. It is further stated that though Complainant had replied with all evidences to ROC that he never resigned from the Company as Managing director and in fact was its major shareholder, but in spite of this he along with his group of directors appointed in EGM in April,2008 were illegally removed and also the share allotment were also made invalidated by ROC while the money was brought in the Company and the necessary resolutions were also passed to that effect. Hence, as a result as on date the Complainant, a major shareholder in the Company and his other directors are not being shown as Director in the Company and only the Respondent, his wife and one Mr. Raghunathan who resigned in 2003 are being shown its directors of the Company.

It is further alleged that using this Show Cause Notice of ROC the Respondent had filed criminal complaint in Economic Offenses Court vide CC 5 of 2017 against Complainant and his group of directors and company's auditor that they had filed illegal documents on ROC while they were not directors and CA. N Venkata Ram was not eligible as auditor. **(Hereinafter referred to as the First Charge)**

- 2.2 Responsibility of filing the annual returns of the Company with the Registrar was given to the Respondent; however, the Respondent took advantage of it and filed false shareholder statement showing 1,25,100 shares being allotted to him and 25,100 shares being allotted to his wife when in fact those shares were allotted to the Complainant. Further, the Respondent has also stolen the resolutions when the Complainant was out of station.
- 2.3 The Respondent had filed wrong ITR in 2006-2007 with false information that he owned 90% shares in the Company and his wife owned 5%. **(Hereinafter referred to as the Second Charge)**
- 2.4 The Respondent had stolen all the documents of the Company including Board meetings notices, minutes book, ROC filings, accounts Ledgers, expenditure, Balance Sheets up to year 2006 to erase evidence of expenditure by the Complainant and did not return them. The Respondent also failed to attend five Board Meetings even after the notices regarding the same were sent to him.
- 2.5 The Respondent had sold the building that was the asset of the Company without the permission of shareholders and pocketed the money. **(Hereinafter referred to as the third Charge)**

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2.6 The Respondent was restrained from entering the office of the Company by the interim order of the Hon'ble Civil Judge (Junior), Hyderabad City Civil Court. Despite this, the Respondent broke open the office of the Company with henchmen in midnight of 07/08.01.2016 by welding the entry gates and stole some more latest documents of the Company.

2.7 The Respondent has committed all the frauds to take control of the Company because it has valuable Intellectual Property of software designed by the Complainant and valuable property of the Company such as building which he has already sold. Further, the Respondent has, started his own Company in the name of Bhaswa Computer Science Private Limited by diverting a major project from the Company. It is further stated that according to the family settlement, the Respondent was to pay Rs 50 lakhs to the Complainant for working on the project and also not to trouble the Complainant, but the Respondent paid only a few lakhs of the promised amount of Rs.50 lakhs.

The Board noted that the Director (Discipline) in his Prima Facie Opinion held the Respondent prima facie guilty 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 in respect of the charge specified at paras 2.1, 2.3 & 2.5 only. The said view had been accepted by The Board. Accordingly, the conduct of the Respondent was examined only in respect of the charge specified at paras 2.1, 2.3 & 2.5 above.

**BRIEF OF PROCEEDINGS HELD:**

3.

Date of Hearing(s)	Status of hearing(s) with Directions	Compliance of direction, if any, given by The Board
15 <sup>th</sup> June 2023	Adjourned at the request of the Respondent	.....
26 <sup>th</sup> October 2023	Part-heard and adjourned with the following directions: -  <u>To the Office:</u>  1. To download the balance sheet of M/s Acumen Software Technologies Ltd. for the financial year 1998 onwards from the ROC.	1. Office complied with the direction of The Board.

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4 <sup>th</sup> December 2023	Adjourned at the request of the Complainant	.....
23 <sup>rd</sup> January 2023	Part-heard and adjourned with the following directions: -  <b><u>To the Office:</u></b>  1. To seek clarification From NFRA that whether any disciplinary proceedings in terms of section 132(4) of the companies Act, 2013 read with rule 10 of National Financial Rules, 2018 have been initiated by them, on the subject matter against CA. Venkata Siva Ramamurthy (M.No.028996), on a reference from Shri Sai Pasumarthy bearing reference no. 2187 or otherwise.	1. The Office sent a letter dated 24 <sup>th</sup> January 2024 to the NFRA, regarding the said direction. In response, NFRA vide email dated 29 <sup>th</sup> January 2024 informed Office, that information from NFRA may be treated as NIL on the same issue.
9 <sup>th</sup> February 2024	Heard and concluded.*	.....

\* The Board noted that at the time of last hearing held in the case on 23<sup>rd</sup> January, 2024 wherein the Complainant was not present, the Complainant vide e-mail dated 22<sup>nd</sup> January 2024 had informed the Board that he has filed a complaint with the National Financial Reporting Authority (NFRA) against the Respondent on 25<sup>th</sup> November 2023 and he was informed by the NFRA that his complaint was registered bearing complaint no.2187. In view of the same, the Board had directed the office to seek confirmation/clarification from the NFRA that whether any disciplinary proceedings in terms of Section 132(4) of the Companies Act, 2013 read with Rule 10 of National Financial Rules, 2018 have been initiated by them on the same subject matter against CA. Venkata Siva Rama Murthy (M.No.028996), on a reference from Shri Sai Prakash Pasumarthy bearing reference no. 2187 or otherwise. Accordingly, a communication dated 24<sup>th</sup> January 2024 was sent to Secretary, NFRA who in turn vide e-mail dated 29<sup>th</sup> January, 2024 informed as under:

*"Information from NFRA may be treated as NIL".*

Accordingly, as advised by the Board a legal opinion on the future course of action to be adopted in the case keeping in view the said development was sought vide email dated 29<sup>th</sup> January 2024. The Legal section, ICAI, vide email of even date informed as under:

*"In the instant case, no such intimation is received from NFRA intimating that it has commenced investigation in the subject matter covered by the Complaint. On the other hand, in response to the e-mail sent by ICAI on 24.01.2024 the NFRA has replied that the information sought may be treated as Nil. In the absence of any express communication from NFRA informing the Institute*

that it has commenced investigation into the subject matter of the complaint, there is no bar for the Institute to continue the present proceedings. The Order of the High Court also does not impose any mandatory time limit for completion of the proceedings as it states that the proceedings will be concluded as expeditiously as possible preferably within a period of six months.

It may be noted that the complainant himself (who is a Petitioner in the aforesaid Writ Petition) has not co-operated in the matter and sought adjournment on 04.12.2023 and was not present in the proceedings on 23.01.2024. As such, the delay is attributable to the conduct of the Petitioner.

The BOD, may, therefore, proceed with the proceedings and complete the same as expeditiously as possible. "

Accordingly, the case was listed for hearing on 9<sup>th</sup> February 2024. The Board noted that in response to the communication dated 2<sup>nd</sup> February 2024 informing the date of today's hearing, the Complainant vide an e-mail dated 8<sup>th</sup> February, 2024 with a copy marked to NFRA and MCA, inter-alia, informed as under:

" despite being informed that the NFRA has registered his complaint in the matter and hence the ICAI has no legal jurisdiction, is barred legally as per provision of Sec. 132 Sub Section (4) from continuing with the inquiry but the ICAI is persisting with inquiry into this matter and has now put up the matter for inquiry and his personal attendance on 9<sup>th</sup> February, 2024. The Hon'ble High Court of Telangana's order which was issued on 22.8.2023 in a Writ Petition filed by me directed the ICAI to conclude the pending inquiry with six months is now infructuous as now the matter of inquiry is pending with NFRA as per Section 132 and Sub Section 4 of the Companies Act 2013.

Since the current inquiry by ICAI is without legal jurisdiction and barred by Section 132 and Sub Section (4) it would not be legally appropriate for me to be part of this inquiry. Hence it is requested that the MCA, NFRA and ICAI who are recipients of this mail kindly take appropriate action in accordance with Section 132 of the Companies Act 2013. "

Thus, the Board after detailed deliberation and keeping in view the reply dated 29<sup>th</sup> January, 2024 of NFRA and to comply with the directions of the Hon'ble High Court for the State of Telangana given in its Order dated 22<sup>nd</sup> August, 2023 while disposing of the Writ Petition No.1777 of 2023 filed by the Complainant, decided to continue with the instant disciplinary proceedings in the absence of the Complainant.

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

**A. RESPONDENT**

4 The Respondent inter alia submitted as:

- 4.1. Upon the Respondent's Grievance Petition / complaint dated 9<sup>th</sup> May 2016, the then Registrar of Companies Mr.N.Krishna Murthy verified the same and issued a Show Cause Notice dated 11<sup>th</sup> May 2016 to the Complainant giving him 7 days' time to explain the

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filing of false returns on MCA portal. After seeking several adjournments and being granted 35 days' time also, when the Complainant failed to furnish any explanation, the Registrar of Companies had invalidated the records vide Proceedings dated 17<sup>th</sup> June 2016.

- 4.2. 5 years after the ROC invalidated the false records filed by the Complainant; the Complainant filed a Writ Petition No.2643 of 2021 in the High Court of Telangana, Hyderabad seeking invalidation of the ROC proceedings. Though Complainant sought relief against the Respondent & other Directors in that Writ Petition, Complainant did not array us as Respondents.
- 4.3 In the certified copy issued by the High Court of Telangana of the COUNTER AFFIDAVIT filed by Sri.Josekutty, V.E., Registrar of Companies, Hyderabad in W.P. No.2643 of 2021. Through this deposition it is clear that the Form 32 was filed on 21<sup>st</sup> October 2003 and debunks all claims of the Complainant and also the conclusions of the Learned Director (Discipline) on this issue.
- 4.4 The Complainant has not provided any proof for the stories fabricated by him around his resignation letter and all his fabricated stories should not be taken at face value.
- 4.5 The Learned Director (Discipline) opined that Respondent was silent on Copies of Notices and agendas of Board meeting pertaining to the period 2007 and 2008 sent by the Complainant In the capacity of Managing Director of the Company and counter signed by the Respondent, clearly indicates that the Respondent was well aware all through these years since 2003 that the Complainant was acting in the capacity of Managing Director of the Company.

The Complainant has the track record of fabricating the documents and filed the same on MCA portal, for which he & others are facing criminal charges in CC No.5/2017 before the Hon'ble special Judge for Economic Offences, Hyderabad and the Hon'ble High court has dismissed the Complainant's Petition seeking quash of the criminal charges having taken into consideration the substantial material evidence that was filed in the Trial Court.



The Registrar of Companies, Hyderabad Mr. Josekutty v.E. has confirmed that the Complainant was mentioning himself as MANAGING DIRECTOR is against the records and to this extent in his Counter Affidavit dated 29<sup>th</sup> October 2021 to High Court of Telangana in W.P.2643 of 2021 he had clearly deposed so in para # 6 as follows:

The Petitioner has filed eform DIN-3 vide SRN A32822777 dated 28<sup>th</sup> February 2008 in MCA portal mentioning himself as the Managing Director of the Company from the date of the incorporation i.e. with effect from 03<sup>rd</sup> April 1998. It was observed that the said e-form in itself was against the facts on record filed at the time of incorporation of the Company as it is seen that the Form 32 filed at the time of incorporation in which it was noted that the Petitioner was only a director of the Company along with 3 others including his brother Sri. PVSR Murthy. "

When the Complainant was never legally appointed as a Managing Director, all such claims are rendered invalid.

- 4.6 Consequent to filing of Form 32 on 21<sup>st</sup> October 2003, the Complainant's name was removed from the list of Directors maintained with ROC w.e.f. 26<sup>th</sup> September 2003. This DIN-3 illegally filed by the Complainant was invalidated by the ROC after following the due process of law by issuing a Show Cause Notice, verification of the documents.
- 4.7 While things stood thus, the Complainant not having got any reprieve from ROC, had once again illegally filed DIR-3C vide SRN G7799443 dated 26<sup>th</sup> February 2018 to the MCA cell and again got his name once again included in the list of Directors and showing that he has been a director since 03<sup>rd</sup> April 1998 i.e. the incorporation of the Company. The Learned Director (Discipline) was misled with the document and concluded that the Complainant never resigned on 26<sup>th</sup> September 2003, nor a Form 32 was filed on 21<sup>st</sup> October 2003.
- 4.8 Respondent would like to state that, rules that govern the record preservation and disposal by ROC namely Disposal of Records (in the Offices of the Registrars of Companies) Rules, 2003, which prescribe that the Register of Director & their Consent

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is preserved only for 5 years. In view of these record disposal rules the documents were no longer preserved in physical format and were stored only in the digital format.

- 4.9 Mrs. P.Arunmyee has been acting as a Director of the Company since her appointment on 25.09.2003 and to evidence the fact, the below mentioned documents issued by / filed with CUSTOMS & EXCISE DEPARTMENT, INCOME TAX DEPARTMENT & TDS in which her signature as Director of the Company is counter signed by ASSISTANT COMMISSIONER (Central Excise), SUPERINTENDENT (Central Excise), INSPECTOR (Central Excise) and also by Income Tax Department and there are many ITRs which have been filled by Mrs. P Arunmyee.
- 4.10 Nowhere did the Respondent admit that the Form-32 could not be updated on the ROC portal. The Respondent had on the contrary mentioned in my reply dated 27<sup>th</sup> April 2017, that Form 32 has been recorded on the MCA servers. However, the Learned Director (Discipline) had incorrectly concluded so.
- 4.11 The Complainant made a false claim that he is the Managing Director of the Company. If only a contract was signed with him appointing him as Managing Director as claimed by him, Form 25C should have been filed with ROC u/s.269 (2) of the Companies Act 1956.
- 4.12 It was Complainant who prepared his ground with false and fabricated documents and filed the case OS No.2564/2015 in the City Civil Court, Hyderabad suddenly in 2015 i.e. 12 years after he resigned, claiming he is Managing Director & majority shareholder and that he and his 'planted directors' had concocted documents removing me as a Director {please refer to W 111 — 117} and sought a restraint order. Please refer to Para 4 of the Counter Affidavit of the ROC, Hyderabad before the Hon'ble High Court of Telangana in WP No.2643 of 2021, in which he refers that as per Article 34(b) of the Articles of Association that I was a Life Director. I only responded to what the Complainant had done, defended my case and got the records set right by filing a grievance petition with the ROC.



- 4.13 Legally speaking, the Complainant's allegation that the Respondent filed the Income Tax Return is wrong, as it was filed by Mrs.P Arunmyee and it should not fall in the scope of the inquiry.
- 4.14 The Complainant never possessed any technical skills to develop any software designs, which Complainant claimed.
- 4.15 Sec. 75(1)(b) of Companies Act, 1956 requires that:
- TECHNICAL KNOW HOW AGREEMENT dated 16/10/1998 which is supposedly constituted title to 925000 shares to Complainant should have been produced before the Registrar of Companies for his inspection and examination on or before 15/11/1998 i.e. 30 days from the date of its execution.
  - Such contract should have been duly stamped Indian Stamp Act, 1899
  - Copy of the technical know-how agreement should have been filed with Registrar of Companies.
  - Verification in the prescribed manner of all such contracts

Sec. 75(1)(b) of Companies Act, 1956 requires that.

- A Return of Allotment is filed within 30 days of the date of allotment.
- Return of Allotment (Form 2) was not filed for the "alleged allotment of shares" with the Registrar of Companies before 02.12.1998 i.e. within the statutory period of 30 days mandated.

Sec.79A(1)(c) says sweat equity shares cannot be issued within one year of the being entitled to commence business.

From this it is clear that the Complainant is not a shareholder of the company.

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4.16 The Respondent would like to explain the reasons as to why such prima facie opinion formed by the Learned Director is baseless, incorrect as per law, while the truth is contrary to the allegations that are as follows:

1) As per the Statement in Lieu of Prospectus Annexure-III (C-35), Acumen Financial Services sold the Property to Acumen Software vide Sale Deed dated 25<sup>th</sup> March 1999 for a sale consideration of Rs.15,00,000/-.

2) As per the same document Annexure-II (C-34), the said Sale Consideration was paid to M/s.Acumen Financial Services (Vendee) by issue of 150,000 shares of Rs.10/- each.

So, in the first place as per the document, Sale Consideration was paid other than in Cash i.e. by way of issue of Shares. This means that the transaction fell under the ambit of Sec.75(1)(b) of the Companies Act,1956.

4.17 Shares were issued to Acumen Financial Services on 29/03/1999. If the document "Statement in lieu of Prospectus" and its contents filed by the Complainant were to be genuine, Sale Deed 25<sup>th</sup> March 1999 should have been filed with the Registrar of Companies for inspection and examination, copies verified in the prescribed manner as per Sec.75(1)(b) of Companies Act, 1956 on or before 24<sup>th</sup> April 1999 i.e. within 30days of its execution. No proof has been adduced by the Complainant to this extent.

4.18 Sale Deed dated 25<sup>th</sup> March 1999 has neither been produced before the Registrar of Companies, Hyderabad by the Complainant on or before 24<sup>th</sup> April 1999 nor was it produced now before the Disciplinary Directorate for verification by the Learned Director. This means such a transaction never existed and the claims through such documents are a sham.

4.19 It is an agreed fact that the Respondent purchased the Property in the year 1992, but how Acumen Financial Services became the owner of the Property, such document details were not furnished by the Complainant.

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4.20 The Learned Director(Discipline) should not have given credence to the explanatory note of CA N Venkataram (D-15) who claimed to be the "Statutory Auditor" when he explained that the value of Flat No.29, IV B, Bharani Complex was included in Gross Block along with other buildings for the following reasons:

a) In the first place, CA N.Venkataram was never appointed as Statutory Auditor for the years which he claimed in his letter. The Balance Sheets they presented are concocted, illegal, fabricated for which acts they are facing criminal charges.

b) As I had mentioned in my previous replies dt 27/04/2017, CA N.Venkataram was a Partner-in-crime along with the Complainant and one Manoj Kumar who tried to take illegal control of the Company by filing around 55 documents on the MCA portal for which they are facing criminal charges in CC No.5/2017 dated 24/01/2017 before the Hon'ble Special Judge for Economic Offences, Nampally, Hyderabad and the Hon'ble High Court for Telangana at Hyderabad had dismissed their Quash Petition CRLP 5048 of 2019 in view of the evidences filed against them in the Trial Court and directed them to face trial for the charges before the Trial Court.

**B. COMPLAINANT**

5 The Complainant inter alia submitted as:

5.1 In the NCLT ordered inquiry, the sole conciliator/ advocate commissioner has recorded that the Respondent stated that he invested Rs. Eight Crores in the company and that too through bank but when called upon to submit record of the same the Respondent failed to submit any document or record to prove the claim. Secondly, it can be observed that the office of Registrar of Companies has issued the certified copy of the disputed shareholder statement with a stamp which states that the persons against who names the shares are being shown shall have to prove in a court of law that the shares have been issued to them and then claim them.

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- 5.2 In the NCLT petition filed by the Complainant, this issue of false shareholding statement was raised and the Respondent and his wife; Mrs. P. Arunmyee were called upon to prove that the disputed shares belonged to them and others as the false shareholder statement would go to show.
- 5.3 The Respondent did not even state anywhere that the said shares do not belong to him, his wife and others. These paid-up shares are part of the paid-up capital of the company. The Complainant has filed all pending annual returns from the year ending 2007 in the year 2013 with shareholder statement showing the disputed shares as shown in the false shareholder statement against the name of the Respondent, wife and others. These annual returns could not be filed earlier as the Respondent has taken away all documents and previous years Balance sheets and accounting records and the register of members/shareholders was also removed by him. The office of Registrar of Companies was issuing notices to me warning me of legal action for not filing the annual returns. In this situation, the only option left for me and the company's statutory auditor was to file annual returns with shareholder statement with the same shareholding pattern as shown in the disputed shareholder statement as we did not have the register of shareholders in our possession and the only basis of filing the shareholder statement along with the annual returns was the disputed shareholders statement but later challenge the disputed shares in the court of law. Accordingly, the Complainant challenged the disputed shares as shown in the disputed shareholder statement in the NCLT petition filed on 19.12.2016, but the Respondent did not submit any evidence of the shares being allotted to him and others later requested for conciliation in the case. Also, till now no judicial forum has till date did not pass any final order on the ownership of those disputed shares. In such a situation the only evidence that can be relied upon is that of the affidavit prepared by Mr. Ch. Bhanu Murthy whose signature/initial is appearing on the disputed shareholder's statement and wherein he stated that upon coercion by the Respondent he filed the false shareholder statement with the Registrar of Companies. The Respondent has falsely stated that a criminal case was filed by against Mr. Bhanu Murthy subsequent to the defamation notice issued to Mr. Ch. Bhanu Murthy. The Respondent may be called upon to furnish the details of the criminal case he claims to have filed against Mr. Ch. Bhanu

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Murthy in this regard. On the contrary, the Complainant has filed a criminal complaint in the matter of the false shareholder statement against the Respondent and his wife which was numbered as CC 1070 of 2017 in the court of the XIV Additional Chief Magistrate at Nampally, Hyderabad.

- 5.4 The Respondent has been disqualified by operation of law U/Sec. 167(1)(b) of the Companies Act for not being part of the company's operations for several years and also not attending board meetings for which evidence by the way of board meeting notices and a board resolution passed on 14.8.2015 has been submitted.
- 5.5 The Respondent was disqualified as director of the company U/Sec. 167(1)(b) of the Act 2013 and his wife Mrs. P. Arunmyee was never appointed as director at any EGM of the company by passing of an EGM resolution to the effect. The ex-Registrar of Companies; Mr. N. Krishna Murthy falsified the list of directors of the company and showed Mrs. P. Arunmyee as a director in June 2017 with a back date of 25.09.2003 and since then her name is appearing as director of the company on www.mca.gov.in. Hence these two are not legally directors of the company.
- 5.6 The continuing frauds which the Respondent committed till year 2019 by colluding with the said officer of Registrar of Companies and other state government authorities resulted in all the assets of Acumen Software Technologies Limited being either sold illegally by the Respondent or registered in his name. Various cases are pending against the Respondent in the lower courts of Hyderabad and before various benches of the High Court including the 1st court of the Hon'ble Chief Justice, in which the Respondent was issued show cause notice in two different matters pertaining to frauds he committed against Acumen Software Technologies Limited.
- 5.7 As the offences are leading to false filings with ROC and because the MCA and NFRA must investigate such offences, the Complainant was compelled to file a complaint with the NFRA which is empowered U/Sec.132 Sub section (4) to take over the inquiry into the matter from ICAI and as Sub Section (4) the ICAI has to discontinue further inquiry into the matter. Despite being informed that the NFRA has registered my complaint in the matter and hence the ICAI has no legal jurisdiction and is barred legally as per provision

of Sec. 132 Sub Section (4) from continuing with the inquiry; the ICAI is persisting with inquiry into this matter. The Hon'ble High Court of Telangana's order which was issued on 22<sup>nd</sup> August 2023 in a Writ Petition filed by the Complainant, directed the ICAI to conclude the pending inquiry with six months is now infructuous as now the matter of inquiry is pending with NFRA as per Section 132 and Sub Section 4 of the Companies Act 2013.

**6. OBSERVATIONS OF THE BOARD:**

- 6.1 As regards the first charge, where it is alleged that the Respondent created fake Form 32, thereby, stating that Complainant resigned from directorship w.e.f. 26<sup>th</sup> September 2003 and appointed Mrs P. Arunmyee, the wife of the Respondent as Director w.e.f. 25<sup>th</sup> September 2003 while there was no resignation letter from Complainant or any board resolution to that effect, the Board noted that, in Writ Petition No.2643 of 2021 Mr. Josekutty, VE, Registrar of Companies for State of Telangana produced an Affidavit dated 29<sup>th</sup> October 2021, in High Court of Telangana deposing that the said Form 32 vide Diary No.3992 dated 21<sup>st</sup> October 2003 was filled in ROC and same data is available in database of NIC, as quoted below.

*"6. It was found as true that true that the company had filed a Form No. 32 vide Diary No.3992 dated 21<sup>st</sup> October 2003. This Data is available in the database of NIC, which managed the 1<sup>st</sup> phase of computerization of the Ministry of Corporate Affairs".*

Thus, above statement of Mr. Josekutty, VE, Registrar of Companies for State of Telangana is contradicting the allegation of the Complainant where complainant said that that such Form was not filled to ROC in 2003. The Board further noted that MCA vide email dated 1 March 2018 informed about confirmation of approval of SRN G77799443, quoted :-

*"This is to inform you that eform DIR-3C submitted on the MCA portal in respect of ACUMEN SOFTWARE TECHNOLOGIES LIITED vide SRN G77799443 dated 26/02/2018 has been APPROVED. This is an acknowledgement for the same."*

- 6.2 The Board also noted that the Complainant alleged that he has never provided his Resignation letter to the Respondent. The Board on perusal of the Complainant's petition dated 2<sup>nd</sup> December 2016 before NCLT brought on record, noted that Complainant has indeed given his resignation letter to the Respondent as stated hereunder:

*"At the same time the 2<sup>nd</sup> the Respondent advised the 1<sup>st</sup> Petitioner to resign as Managing Director as he was facing a Divorce case and legally it shall be a problem. Believing 2<sup>nd</sup> the*

*Respondent advise as legally right as he was a chartered accountant and was also his biological brother the 1st petitioner gave a resignation letter 2<sup>nd</sup> The Respondent in 2003".*

\*2<sup>nd</sup> Respondent and 1<sup>st</sup> Petitioner in above statement is The Respondent and Complainant respectively in instant case.

The Board further noted that complainant allegation is in contradiction of statement given by himself in front of the quasi-judicial authority.

- 6.3 The Board noted that Complainant in this charge gave a statement that "*Complainant had replied with all evidence to ROC that he never resigned from the Company as Managing director and in fact was its major shareholder*". Regarding this, the Board noted that Mr. Josekutty, VE, Registrar of Companies for State of Telangana from Registrar of Companies produced an affidavit dated 29<sup>th</sup> October 2021, in High Court of Telangana whereby deposing that Complainant didn't comply with the ROC office scrutiny: -

*"7. It is stated that the office of The Respondent No.2 has issued notice dated 11<sup>th</sup> May 2016 to the Petitioner for producing the supporting documents for his directorship and to offer comments as to why action should not be initiated under Rule 10(4) of Companies (Registration offices and fees) Rules 2014 for cancellation of the respective e-forms and u/s 447 of the Companies Act, 2013 for punishment for fraud and u/s 448 of the Companies Act, 2013 but the Petitioner has failed to produce his reply.*

*8. It is submitted that since the Petitioner did not submit any reply to the above said letter dated 11.05.2016, the Registrar of Companies has issued the letter dated 17.06.2016 to the Petitioner informing him that the e-form filed vide SRN A32822777 (Form DIN 3 of Mr.Pasumarthy Sai Prakash), SRN S21869896 (Form No.PAS 3), SRN S44290898 (Form PAS-3) by him has been marked as invalid, pursuant to powers vested with Registrar of Companies vide Rule 10(4) of Companies (Registration offices and fees) Rules 2014. Further his attention was also drawn to the Rule 10(2) of Companies (Registration offices and fees) Rules for further necessary action at his end."*

\*The Respondent No.2 and Petitioner in above statement is ROC and Complainant respectively in instant case.

- 6.4 Thus, in view of the above observations, the Board was of the view that the Complainant has not been able to substantiate the said charge and accordingly, the Respondent is held Not Guilty in respect of the same.

- 6.6 As regards to the second charge, the Board noted that, there were no records available on the ROC portal to show the shareholding pattern of the company for the Assessment

by



Year 2006-2007. The Board noted the following shareholding pattern of the Company as available in the ROC records: -

Out of total share of 16,98,800

DATE	COMPLAINANT		RESPONDENT	
31-March-2007	9,33,800	54.96%	5,00,200	29.44%
31-March-2008	9,33,800	54.96%	5,00,200	29.44%
31-March-2009	9,33,800	54.96%	5,00,200	29.44%
31-March-2010	9,33,800	54.96%	5,00,200	29.44%
31-March-2011	9,33,800	54.96%	5,00,200	29.44%
31-March-2012	9,33,800	54.96%	5,00,200	29.44%

Out of total share of 3698800

DATE	COMPLAINANT		RESPONDENT	
30-September-2013	29,56,200	79.9%	5,00,200	13.5%

6.7 The Board also noted that the alleged declaration for the AY 2006-07 was signed by Mrs. P Arunmayee, director since 2003 meaning that declaration was signed by the company and not by the Respondent and thus, he cannot be held liable for any declaration given by the company. The Board also noted that the Respondent brought on record copy of his personal Balance Sheet as at 31<sup>st</sup> March 2004 and 31<sup>st</sup> March 2005 certified by a Chartered Accountant namely, CA. N. Venkataram wherein unquoted investments to the tune of Rs. 15157000/- was reflected.

In view of the above, the Board was of the view that the documents and submissions available on record do not reflect any misconduct on the part of the Respondent as alleged. Accordingly, the Respondent is held Not Guilty in respect of the charge alleged.

6.8 As regard the third charge, the Board noted that there are two properties namely (29B, Bharani Complex, Minister Road, Secunderabad 500003) and at (6-3-866/1/1,2 and 3, Greenlands, Begumpet, Hyderabad 500016). Statutory Auditor through letter dated 03<sup>rd</sup> November 2017 informed as under:

*"Please refer to Schedule 2 of Fixed Assets wherein the Gross Block of OFFICE BUILDINGS is Rs complainant has not been deposited in the Books of Accounts and therefore the Gross Block has remained constant and this disposal was done by not obtaining approval from Board and members based on the examination of records available with the Company.*

*The Value of Office Building comprises of 2 Buildings that is 29B, Bharani Complex, Minister Road, Secunderabad 500003 and at 6-3-866/1/1,2 and 3, Greenlands, Begumpet, Hyderabad 500016."*

*3*

6.9 The Board further noted that for the property in question many bills and demand notices (*as referred in table below*) were raised by the Municipality from (1993 to 2011) in the name of the Respondent only, which indicates that Respondent was the owner of the said property, getting ownership in 1992 as all the bills and demand notices are addressed to the Respondent:

YEAR	DATE OF DOCUMENT	DESCRIPTION OF DOCUMENT	VALUE
1993	22/12/1993	Special notice of house tax	416.98/-
1995	28/07/1995	Property tax bill	974.47/-
1996	08/01/1996	Notice of demand Bk No.33 & Receipt No.55	2502/-
1996	13/8/1996	Property tax bill cum cash challan	833/-
1996	13/8/1996	Provisional receipt for cheque receipt No.6 book No. 1737	416.98/-
1996	23/12/1996	Notice under sec.213 of HMC Act, 1995	
1997	06/01/1997	Provisional receipt for cheque receipt No.16 book No. 111	433.62/-
1997	22/08/1997	Property tax bill cum cash challan No.2286	834/-
1997	17/11/1997	Provisional receipt for cheque receipt No.88 book No. 507	867.36/-
1999	17/08/1999	Property tax bill cum cash challan No 2345	1668/-
2000	07/02/2000	Acknowledgement	1450/-
2002	02/05/2002	Notice under sec.213 of HMC Act, 1995	
2002	03/10/2002	Provisional receipt for cheque receipt No.97 book No. 1075	3277/-
2003	20/07/2003	Property tax bill 2003-2004	1484/-

4/

2004	21/08/2004	Provisional receipt for cheque receipt No.96 book No. 2885	1451/-
2005	01/06/2005	Property tax bill 2005-2006 Bill No. 238508	1450/-
2005	23/09/2005	Property tax receipt	1450/-
2006	21/06/2006	Property tax bill 2006-2007 Bill No. 421052	1450/-
2006	17/11/2006	Notice of demand	1538/-
2007	23/06/2007	Property tax bill 2006-2007 Bill No. 9882	3191/-
2009	09/12/2009	Notice of demand No 20473 2009-2010	8334/-
2010	24/12/2010	Notice of demand No 22986 2010-2011	11474/-
2011	23/05/2011	Provisional receipt for cheque receipt No.88 book No. 4694	7250/-

6.10 The Board further noted that the value of both the Properties has been shown as a combined figure since inception in the Books of Accounts of the company. The Board also noted the following value of the property (Below Table) as appearing in its audited Financial Statements from dated 31-3-2006( previous year data is not available):

DATES	VALUE
31-3-2006	1,96,04,886 /-
31-3-2007	66,51,922 /-
31-3-2008	69,15,104 /-
31-3-2009	67,95,822 /-
31-3-2010	66,76,540 /-
31-3-2011	65,57,258 /-
31-3-2012	64,37,976 /-

*S*

31-3-2013	63,18,694
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\*Property value under head of Fixed Assets

6.10 Thus, on a detailed perusal of the submissions and documents on record, the Board was of the view that the Complainant has not been able to substantiate with corroborative and conclusive documentary evidence the said charge and the evidence on record establish that the property was under the ownership of the Respondent. In view of the same, the Board held the Respondent NOT GUILTY in respect of the charge 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 read with section 22 of the said Act. 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.

*g*

Sd/-

CA. Rajendra Kumar P  
(Presiding Officer)

Sd/-

Ms. Dolly Chakrabarty (IAAS, retd.)  
(Government Nominee)

Sd/-

CA. Priti Savla  
(Member)

सही प्रतिलिपि होने के लिए प्रमाणित  
Certified to be true copy

*Geetha*

DATE: 10-02-2024

गीता अनिरुध कुमार / GEETHA ANIRUDHA KUMAR  
कार्यकारी अधिकारी / Executive Officer  
अनुशासनात्मक निदेशालय / Disciplinary Directorate  
भारतीय चार्टेड अकाउंटन्ट्स संस्थान  
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