

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-58/2019/DD-80/2019/BOD/618/2022]

CORAM (present in person):

**CA. Rajendra Kumar P, Presiding Officer
Ms. Dolly Chakrabarty (IAAS, ret'd.), Government Nominee**

In the matter of:

**Shri K Ramanathan,
4, Thirugnanasambantham Road,
Racecourse
COIMBATORE -641018.**

.....Complainant

Versus

**CA. Govind M Joshi (M.No.200363)
Proprietor M/s G M J & Associates
Chartered Accountants
4th Floor, Snow Stone Apartments
Opp. St. Paul's College for Women
Edayarpalayam,
COIMBATORE – 641025.**

.....Respondent

**DATE OF FINAL HEARING : 19th April, 2023
PLACE OF FINAL HEARING : Chennai**

PARTIES PRESENT (in person):

Respondent : CA. Govind M Joshi

FINDINGS:

BRIEF BACKGROUND OF THE CASE:

1.1 The Complainant is one of the shareholders of M/s CG-VAK Software & Exports Ltd. (hereinafter referred to as the "Company"). The Respondent who is also a fellow Member

of the Institute of Company Secretaries of India (FCS-3241) had been appointed as the Company Secretary and Compliance Officer in the company w.e.f. 18.12.2018.

- 1.2 In compliance of the provisions of the Companies Act, 2013 and Regulation 6 (1) of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, the appointment of the Respondent as the Company Secretary and Compliance Officer was intimated to the BSE on 18th December 2018 by the Company. There was communication to BSE on 24th December 2018 and 26th December 2018 regarding appointment of Company Secretary and Compliance Officer and details of authorized key Managerial Personnel of the company.

CHARGE ALLEGED:

- 2.1 The Respondent as a Member of the ICAI with full time Certificate of Practice is estopped from taking up whole time employment as Company Secretary cum Compliance Officer in the Company.

The Board noted that it had considered the Prima Facie Opinion dated 09th March, 2021 of the Director (Discipline) along with the Complaint, Written Statement, Rejoinder and the additional documents on record. On consideration of the same, the Board had noted that the intimation to Institute as regards being in employment since 18th December 2018 besides holding full time Certificate of practice was sent by the Respondent on 29th March 2019 i.e. after initiation of the instant complaint against him. During the intervening period i.e. from 18th December 2018 to 29th March 2019, his proprietorship firm M/s G.M.J. & Associates was also in existence. Thus, the Board was of the view that the conduct of the Respondent needs to be examined further to see as to whether any professional assignment had been executed by the Respondent during the said period. Accordingly, the Board did not concur with the reasons given against the charge(s) and did not agree with the Prima Facie Opinion of the Director(Discipline) that the Respondent is NOT GUILTY of Professional Misconduct falling within the meaning of Item (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949 and decided to proceed further 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.

| Date of Hearing | Status of Hearing |
|------------------------------|--|
| 19 th April, 2023 | Heard and concluded with direction to the Respondent to provide a notarised Affidavit to the effect that no attestation work had been done |

P

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| | by him during the period 18 th December 2018 to 29 th March 2019 which was submitted by him. |
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BRIEF SUBMISSIONS OF THE RESPONDENT:

4. The Respondent, in his defence, inter-alia, submitted as under:
 - 4.1 The Respondent was holding Full Time Certificate of Practice (COP). He took up employment as Company Secretary and Compliance Officer with M/s.CG VAK Software and Exports Limited, Coimbatore since 18.12.2018 and until 30.09.2019. During the course of the employment, vide email communication dated 29.03.2019, the Respondent intimated the Institute (SIRC of ICAI) for change of his professional address and Certificate of Practice status from full time to part time.
 - 4.2 Though, there was an unintentional delay on the part of the Respondent in submitting his application / request for change of his status of Certificate of Practice, nevertheless, the delay was condoned by the Authorities of the Institute at the relevant time and the status of the COP was changed from Full Time to Part Time.
 - 4.3 Mere delay in submission of application/intimation to the concerned Regional Office by the Respondent cannot be treated as misconduct falling within the meaning of Item (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949, if condoned, by the Authorities of the Institute at the relevant time. Further, it is not on record that the Respondent in the relevant period, has taken any undue advantage by way of involvement in the attestation work.
 - 4.4 It is mere coincidence that the Respondent had earlier also changed his status of COP from full time to part time as reiterated vide para 8.1 in Page 5/6 and para 8.2 in Page 6 of the Prima Facie opinion of the Director (Discipline). It is also clear that the status of the Respondent in ICAI's record during 18.12.2018 to 30.09.2019 is that of part time COP.
 - 4.5 During the intervening period i.e. from 18th December, 2018 to 29th March, 2019 (the date on which intimation was made by the Respondent to SIRC of ICAI as regards being in employment since 18.12.2019 besides holding full time COP), no professional assignment (attest function) had been executed by the Respondent either during the said intervening period nor until the tenure of employment until 30.09.2019.
 - 4.6 The Disciplinary Committee of ICSI on the complaint of the Complainant on a slightly different ground, after considering the information, written statement from the Respondent, prima facie opinion of the Director (Discipline) and all the facts and circumstances of the matter held vide its Order dated 1st July, 2019 that the Respondent

is "NOT GUILTY" and the Disciplinary Committee found no male-fide intent on part of the Respondent in not communicating the change of his professional address to the Institute. Moreover, no harm is caused to anyone. Accordingly, the Disciplinary Committee decided to close the matter.

OBSERVATIONS OF THE BOARD:

- 5.1 As regard the charge alleged against the Respondent as a Member of the ICAI with full time Certificate of Practice is estopped from taking up whole time employment as Company Secretary cum Compliance Officer, the Board took into view Regulation 190-A of Chartered Accountants Regulations, 1988, which deals with the provision for Chartered Accountants in practice not to engage in any other business or occupation, and the same reads as below:-

"A Chartered Accountant in practice shall not engage in any business or occupation other than the profession of accountancy, except with the permission granted in accordance with a resolution of the Council".

The Board also noted the intent behind such restrain as provided in the Code of Ethics 2009:

"This is a provision introduced to restrain a member in practice from engaging himself in any business or occupation other than that of Chartered Accountant except when permitted by the Council to be so engaged. The objective is to restrain members from carrying on any other business in conjunction with the profession of accountancy and combining such work with any business which is not in keeping with the dignity of the profession. Another reason for the introduction of such prohibition is that a Chartered Accountant, if permitted to enter into all kinds of business, would be able to advertise for his other business and thereby secure an unfair advantage in his professional practice. The Council, on a very careful consideration of the matter, has formulated Regulations 190A & 191 which are reproduced below, specifying the activities with which a member in practice can associate himself with or without the permission of the Council."

- 5.2 In the instant case, the Board noted that the Respondent while holding full time Certificate of Practice had been appointed as the Company Secretary and Compliance Officer in the company w.e.f. 18th December 2018. He on 3rd April 2019 had duly informed to the Institute for change of his professional address and COP status full time to Part time. The Board further noted that the status of the Respondent in ICAI's member record during 18th December 2018 to 30th September 2019 is that of a part-time COP holder only.



The Board thus noted that the conduct of the Respondent has been examined to the limited extent as to whether any professional assignment had been executed by him during the period from 18th December 2018 to 29th March 2019.

- 5.3 The Board noted that the Respondent during the course of hearing on being asked as to whether any professional assignment had been executed by him during the intervening period submitted that not only during the intervening period i.e., 18.12.2018 to 29.03.2019 but throughout the period of his employment which lasted only 9 months, he never executed any 'Professional Assignment'.
- 5.4 The Board further noted that the Respondent brought on record a notarised Affidavit dated 19th April 2023 to the following effect:

"during the period between 18th December 2018 to 29th March 2019, I have not undertaken/done any Professional Assignment (Attest function)."

- 5.5 Thus, considering the facts and circumstances of the case, the Board noted that the Respondent has admitted that there was a slight delay in intimation to the Institute as regard his employment but the same was unintentional and had been condoned by the Institute. Further, the Complainant has failed to bring on record any evidence to establish that the Respondent had executed any attest function during the period from 18th December 2018 to 29th March 2019 besides being in employment. Hence, the Board was inclined to hold the Respondent not guilty in respect of the charge alleged.

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 (11) 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. Rajendra Kumar P
(Presiding Officer)

Sd/-

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

DATE: 03-11-2023

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


नीलम पुंडीर / Neelam Pundir
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
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