



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

[PR-370/17-DD/07/2018/BOD/539/2020]

ORDER UNDER SECTION 21A (3) OF THE CHARTERED ACCOUNTANTS ACT, 1949 READ WITH RULE 15(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATIONS OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007

In the matter of:

Ms. Bhanu Prabha Krishna Hebbar, Director
M/s American Road Technology & Solutions Pvt Ltd.
Regd. Off: No 18, 2nd Floor
R. V. Layout, Kumara Park West
Bangalore-560 020.

...Complainant

-Vs-

CA. M. G. Mohan Kumar (M. No.023496)
27, Sri Nilaya, 10th Cross Street
Margosa Road, Malleshwaram
Bangalore-560 003.

...Respondent

[PR-370/17-DD/07/2018/BOD/539/2020]

MEMBERS PRESENT:

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

Date of Hearing: 26th October 2023

Date of pronouncement of Order: 23rd January 2024

1. The Board of Discipline vide its Findings dated 5th October 2023 was of the view that **CA. M G Mohan Kumar (M. No.023496)** is **GUILTY** of "Professional Misconduct" falling within the meaning of Item (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949.
2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against **CA. M G Mohan Kumar (M. No.023496)** and communication dated 10th October 2023 was addressed to him thereby granting him an opportunity of being heard on 26th October 2023 which was exercised by him by being present in person before the Board. He confirmed the receipt of the Findings of the Board and made representation before the Board.
3. Since the decision on the quantum of punishment to be awarded to **CA. M. G. Mohan Kumar (M. No.023496)** was reserved by the Board, he vide communication dated 16th January 2024 was asked to be present before the Board on 23rd January 2024 for the purpose of pronouncement of Order. He was present before the Board through video conferencing on the said date for the said purpose.
4. Thus, upon consideration of the facts of the case, the consequent misconduct of **CA. M. G. Mohan Kumar (M. No.023496)** and keeping in view his representation before it, the Board decided to impose a Fine of Rs.50,000/- (Rs. Fifty Thousand only) upon him.

Sd/-

CA. Rajendra Kumar P
(Presiding Officer)

Sd/-

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

Sd/-

CA. Priti Savla
(Member)

Ms. Bhanu Prabha Krishna Hebbar -Vs- CA. M

प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

Nisha Sharma
निशा शर्मा / Nisha Sharma
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासन/नियंत्रण विभाग / Disciplinary Directorate
The Institute of Chartered Accountants of India
आई.सी.ए.आई. भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
M Bhawan, Vishwas Nagar, Shahdara, Delhi-110032

CONFIDENTIAL

BOARD OF DISCIPLINE

Constituted under Section 21A of the Chartered Accountants Act 1949

Findings under Rule 14(9) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007

File No. : [PR- 370/17-DD/07/2018/BOD/539/2020]

CORAM (present in person):

CA. Rajendra Kumar P, Presiding Officer

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

CA. Priti Savla, Member

In the matter of:

Ms. Bhanu Prabha Krishna Hebbar, Director,

M/s American Road Technology & Solutions Pvt Ltd.,

Regd. Off: No 18, 2nd Floor,

R.V. Layout, Kumara Park West,

Bangalore 560 020.

.....Complainant

Versus

CA. M G Mohan Kumar (M. No. 023496),

Off: 27, Sri Nilaya, 10th A Cross,

Margosa Road, Malleshwaram,

Bangalore 560 003.

.....Respondent

DATE OF FINAL HEARING : 16th June, 2023

PLACE OF FINAL HEARING : Chennai

PARTIES PRESENT(in person) :

Complainant : Ms. Bhanu Prabha Krishna Hebbar

Counsel for the Complainant : Shri M. L. Sharma, Advocate

Respondent : CA. M G Mohan Kumar

Counsel for the Respondent : Shri Rohan Tigadi, Advocate

FINDINGS:

CHARGE ALLEGED:

1.1 The Complainant is CEO and majority shareholder of the Complainant Company i.e. M/s American Road Technology & Solutions Pvt. Ltd. The Complainant is an NRI and lives in USA. According to the Complainant, the Respondent defrauded the Complainant Company.

1.2 The Complainant has further alleged that the Respondent acted as Director of Complainant Company and simultaneously practiced as Chartered Accountant. The Respondent being whole time Director in the Complainant Company during the year 2012/13/14/15 has not only been claiming illegitimate remuneration against the Complainant Company but violated the provision of the Chartered Accountants Act 1949.

The Board noted that the Director (Discipline) in his Prima Facie Opinion held the Respondent prima facie Guilty of Professional Misconduct falling within the meaning of Item (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949 only in respect of the charge specified at para 1.2 above and the said view had been accepted by the Board. Accordingly, the conduct of the Respondent was examined in respect of Professional Misconduct falling within the meaning of Item (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949 only in respect of the charge specified at para 1.2 above.

BRIEF OF PROCEEDINGS HELD:

2.1 At the time of hearing held in the case on 20th April 2023, the Counsel for the Complainant and the Respondent were present in person before the Board. Thereafter, the Respondent was put on Oath. On being asked by the Board as to whether the Respondent pleaded guilty in respect of the charge alleged against him, he replied in negative and made detailed oral submissions to defend on the charges alleged against him. The Counsel for the Complainant also made his submissions in support of the allegations alleged against the Respondent. The Respondent also submitted his written submissions during the course of hearing which were shared with the Counsel for the Complainant. On consideration of the documents and submissions on record, the Board adjourned the hearing in the case with the direction to the following to provide the below stated information/ documents with a copy to the other party to the case:

The Complainant:



1. Clarification as to under whose authorization the Form 32 as regards Complainant's appointment as the Additional Director of M/s American Road Technology & Solutions Pvt Ltd., Bangalore had been filed with the ROC.
2. Copy of the Financial Statement of the Complainant company for the corresponding period to establish that provision was there in the financial statements for the amount of professional fees being claimed by the Respondent through NCLT.

The Respondent

1. Copy of Form 32 which shows that Ms. Bhanu Prabha Krishna Hebbar was appointed as the Additional Director of M/s American Road Technology & Solutions Pvt Ltd., Bangalore.
2. Copy of the invoices raised by the Respondent for the services rendered by him to the Complainant company.

The Board also directed the Complainant to be present in person at the next date of hearing. Accordingly, the hearing in the case was part-heard and adjourned.

2.2 Thereafter, at the time of hearing held in the case on 16th June 2023 noted that the Complainant and the Respondent along with their respective Counsel was present in person before the Board. Thereafter, the Complainant was put on Oath. The Board noted that at the time of last hearing held in the case on 20th April 2023, the Complainant and the Respondent were directed to submit certain documents which were submitted by them, to the extent available. Thereafter, the Counsel for the Respondent and the Complainant made their respective submissions before the Board. On consideration of the documents and submissions on record, the Board concluded the hearing in the case. To have a comprehensive examination of the documents on record vis-à-vis the misconduct alleged on the part of the Respondent, the decision on the conduct of the Respondent was reserved by the Board.

2.3 Thereafter, the Board at its meeting held on 18th August 2023, on the basis of the documents and submissions on record decided on the conduct of the Respondent.

BRIEF SUBMISSIONS OF THE PARTIES TO THE CASE:

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(a) Respondent:

3.1 The Respondent, in his written submissions, inter alia, stated as under:

- i. As per Code of Ethics published by the Institute and which is available on the web site, there is no bar for a member to be a subscriber to the Memorandum of Association of company and also to act as a promoter.
- ii. Regarding the selection of box as Executive Director, the Company Secretary, who provided service to incorporate the company has selected the box as Executive Director. This by itself cannot make a person the Executive Director of a company. The Articles of Association merely describe him as the first director of the Company and there is no clause in the Articles of Association appointing him as a whole-time/ executive director, though in Form 32 the classification has been done as Executive Director. The classification by the Company Secretary is obviously a bona fide mistake.
- iii. Also, it is not out of place to mention that there is difference between a Whole Time Director and an Executive Director, but what the Regulation provides is that the member cannot be a whole-time director without the prior permission of the Council. It is also important to note that these prohibitions are predominantly for preventing a member engaging himself in a business when he is engaged in the practice of Accountancy as a Member in Practice. After the incorporation of the Complainant company,-as per the Certificate of Incorporation, the company was incorporated on 7th May 2012 and Mrs.Bhanu Prabha Krishna Hebbar, was appointed as an additional director on 12th May 2012 to hold office upto the ensuing Annual General Meeting and her appointment was regularized in the first AGM held on 30th Sep 2013.Mrs. Bhanu Prabha Krishna Hebbar was allotted 4,000 equity shares of Rs. 100 each on 31.7.2012 and 90,000 equity shares of Rs.100 each at par on 24.9.2012 and as a subscriber to the MOA, the Respondent had subscribed for 999 Equity Shares of Rs. 100 each and Mr. B. K. Purushothama had subscribed for 1 equity share of Rs. 100 each and therefore Mr. Bhanu Prabha Krishna Hebbar's holding of equity was 98.95%. With this whole composition of the company changed. Further, Mr. Venkatratnam Adhikari Naidu was also appointed as an Additional Director on 24.09.2012 to hold office till the ensuing Annual General Meeting and his appointment was confirmed in

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the Annual General Meeting held on the date above mentioned. In the Form 32 filed with RoC for this appointment, he is shown as an Executive Director and he has been paid remuneration regularly to Respondent's knowledge. It is about Rs. 1,00,000/- per month and there is a letter of appointment issued to Mr. Naidu. Also, he has given personal guarantee to the Banking financial assistances availed from Karnataka Bank Ltd and Canara Bank amounting to Rs.8,00,00,000/-. On the contrary, no such remuneration was paid to the Respondent as he was not a whole-time director of the Company. If he was functioning in the capacity of whole-time director, then, like Mr. Naidu (Executive Director & Whole Time Director) he would also have been paid a monthly remuneration towards the services rendered to the Company. No such remuneration was paid because he never functioned as the whole-time director of the Company.

- iv. Mr.G.V. Sudhindra, an experienced engineer was the Chief Operating Officer since inception. Mr Rajendra, was looking after the finance & accounts and he is a qualified and experienced Chartered Accountant. These persons are covered by engagement/Employment letters. However, no such employment agreement was executed by the Company with the Respondent. This also demonstrates that he was not in the full-time employment of the Company. Thus, he cannot be regarded as an Executive Director/ Whole Director merely because of a mistake made by the Company Secretary that filed Form 32 on behalf of the company as part of the Incorporation process. The Complainant was to return to India in 2012 itself, but for the reasons known to her she returned only in March 2015. Mr. Omprakash, her husband was mostly in India and he was managing the business of the Complainant company. He was designated as Chairman of the company and all the employees were reporting to him including Mr.Naidu, Mr. Sudhindra and Mr.Rajendra. But Mr. Om Prakash was not a Board Member and he may be treated as Chairman Emirates.
- v. The Respondent only used to visit the company premises at the time of board meetings and whenever the promoters sought his advisory services. Some of the important professional advice/service rendered by him and/or his firm to the Company is provided in Annexure. All these facts conclusively establish that he was not in the full-time employment of the company and was only discharging pure

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directorial functions. Thus, the isolated erroneous mention in Form 32 by the Company Secretary cannot be made a ground to hold him guilty.

- vi. The Respondent had taken whole time director position in M/s Deccan Aviation Limited and he had taken ICAI permission for this. Moreover, he was a partner in firm Mohan & Sridhar, Chartered Accountancy Firm. He is mostly in management consultancy apart from conventional practice. During the period from May 2012 to October 2015, he had done statutory audits, tax audits, etc. and have also been a review partner for many of the companies where his firm is the statutory auditor. He also provided the details of the professional work performed. It is next to impossible to humanly undertake such a large volume of work as a chartered accountant while simultaneously being in the full-time employment of the Complainant company or any other company for that matter. During May 2012 to October 2015 (i.e. Respondent's tenure as director of the ARTS P Ltd) there was a search proceedings on one of his major clients having group of companies on 18/12/2012. There were 4 companies and 4 individuals who were involved in the proceedings and all these files were consolidated in Central Circle, Bangalore. There was reopening of their cases for 6 years prior to the search and as such there were 56 assessment proceedings in this matter. During the period commencing from the search till 31st March 2015 whereby all the assessment and reassessment orders was passed, the Respondent had represented all these 56 proceedings which is the same period the Complainant is claiming that he was the whole-time director of the Complainant company. Therefore, this fact is also inconsistent with the specious hypothesis in the PFO that the Respondent was in the full-time employment of the Complainant company.
- vii. The Criminal Court which was seized of the matter has exonerated the Respondent of the false charges.
- viii. Regarding the NCLT case, the claim as operational creditor/financial creditor is also for the amount provided as financial assistance by the Respondent to the Complainant company which is about Rs.30 lakhs during the Calendar year 2014 to tide over the difficult situation but for which the company would have gotten into serious problems especially on default in contractual obligations for which Performance Guarantee was provided by the company. Also, in PAS 4 for issue of 1,14,000 equity shares of Rs.100

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each on private placement to the Complainant, the remuneration for his services has been shown as Rs.30 lakhs. It is NOT salary but the remuneration for the management consultancy services provided by him to the Company. To treat this as salary, no TDS has been deducted and remitted under section 192 of the Income Tax Act, 1961. This shows that the said payment was never paid as salary to him. In fact, this demonstrates that, as an afterthought, the present proceedings have been filed to harass him and make him withdraw the proceedings before the NCLT.

- ix. After he resigned from the directorship of the Complainant company in Oct 2015, he pursued Mrs. Bhanu Prabha, Managing Director for settling his account particularly for the financial assistance provided as mentioned above. Instead, a criminal case was filed against him in Oct 2016 in Malleswaram Police Station and an FIR 207/2016 was registered. However, this criminal case was dismissed by the Magistrate Court, and he has brought this on record in the other case against him. To counter this, the Respondent was advised by lawyers that he should register his claim against the company to recover the dues. Therefore, he filed NCLT cases and also a Recovery Suit in Commercial Court. In order to deny his legitimate money due to him, this criminal case has been foisted.
- x. The Respondent also brought on record the names of the companies in respect of which the Audit Report had been signed by him on behalf of his firm during the said period:

<u>S.No.</u>	<u>Company name</u>	<u>Year</u>	<u>Signing date</u>
1.	Brindavan Beverages Private Limited	2012	06/09/2012
2.	Brindavan Phosphates Private Limited	2012	06/09/2012
3.	Brindavan Threads Private Limited	2012	03/09/2012
4.	Cauvery Aqua Private Limited	2012	03/09/2012
5.	Deccan Aviation Turbine Overhaul Private Limited	2012	06/09/2012
6.	Brindavan Beverages Private Limited	2013	02/09/2013

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7.	Brindavan Phosphates Private Limited	2013	02/09/2013
8.	Brindavan Threads Private Limited	2013	02/09/2013
9.	Canopy Homes and Holdings Private Limited	2013	02/09/2013
10.	Cauvery Aqua Private Limited	2013	02/09/2013
11.	Deccan Aviation Turbine Overhaul Private Limited	2013	02/09/2013
12.	Altex Land Developers Private Limited	2014	30/09/2014
13.	Baka Liftec (India) Private Limited	2014	20/09/2014
14.	Beaver Automative Prt. Ltd.	2014	20/09/2014
15.	Bhadra Packaids Pvt. Ltd.	2014	03/09/2014
16.	Brindavan Beverages Private Limited	2014	03/09/2014
17.	Brindavan Enpro Pvt. Ltd.	2014	03/09/2014
18.	Brindavan Phosphates Private Limited	2014	01/09/2014
19.	Brindavan Threads Private Limited	2014	01/09/2014
20.	Cauvery Aqua Private Limited	2014	03/09/2014
21.	Clean Enviroklen Pvt. Ltd.	2014	30/08/2014
22.	Danddeli Ferro Private Limited	2014	01/09/2014

(b) Complainant:

3.2 The Complainant in her submissions, inter-alia submitted as under:

- i. The Complainant Company was incorporated on 7th May 2012 with two promoter directors, namely, (1) the Respondent and (2) Shri Purushotham Kalachari at the instance of the Complainant, an NRI who was to be the 98% shareholder of the company. The Complainant became the majority shareholder on 28th August 2012.

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- ii. As the present Majority Shareholder, namely, the Complainant was residing in the USA, the Respondent was fully in charge of all business matters of the company till April, 2015.
- iii. The Respondent made a petition against the company claiming himself to be an operational creditor for the alleged remuneration due to him from the company under the Insolvency and Bankruptcy Code, 2016. The services rendered by him as Executive director to the company have been enumerated in the petition, the perusal of which shows that he was exercising the substantial powers of management as whole time Executive Director.
- iv. Articles 15 and 16 which govern the remuneration of directors of the company reads as under:-

"15. The directors shall be paid as sitting fees such sums as the Board may think fit, for each meeting of the Board or its committee attended by him together with reasonable travelling, boarding and lodging expenses in connection with the same.

16. The Directors shall be entitled to and shall be paid such reasonable remuneration monthly or otherwise as may be fixed by the Board of Directors from time to time in recognition of the services rendered by them for the company."

Proviso to Section 309(1) of the Companies Act, 1956 (Proviso to section 197(4) of the Companies Act, 2013) while defining the "remuneration of directors" has excluded the remuneration paid for the services rendered which are of a professional nature and also the remuneration for the services which are rendered for which the director possesses requisite qualification for the practice of the profession in the opinion of the Central Government. The remuneration claimed by the Respondent does not fall within the aforesaid two categories. Hence, obviously, the Respondent has claimed remuneration as a director in the aforesaid petition filed before the NCLT, whether it is called salary or remuneration or by any other name.

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V) In the notice issued prior to filing of Petition, the Respondent claimed Rs.76,74,499 @Rs.2,50,000 /- p.m. from 2014 to 2017 but in the Petition he claimed Rs.1,32,62,901 for several months from 2012 to 2017 @ Rs.3,00,000/-.

OBSERVATIONS OF THE BOARD:

4.1 As regard the charge alleged against the Respondent that he had been in active practice as a Chartered Accountant besides working as the Executive director of the Complainant company without obtaining the specific and prior approval of the Council, the Board took into view Regulation 190A 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 permissible categories of engagements approved by the Council under Regulation 190A, are available in Appendix No. 9 to the Chartered Accountants Regulations, 1988. Further, a member in practice shall be permitted to be a Director (Director Simplicitor), Promoter/Promoter Director, Subscriber to the Memorandum and Articles of Association of any company including a Board Managed Company. Further, the expression 'Director Simplicitor' shall be used for an ordinary/simple Director, who fulfills the following conditions :

(a) he is required to attend the Board meetings only.(emphasis provided)

(b) He will not be paid any remuneration except the sitting fees for attending the Board meetings; and

(c) He will be devoting his time for the company only to attend Board meetings and not for any other purpose. (emphasis provided)

A Member in practice is permitted generally to be a Director Simplicitor in any Company including a Board-Managed Company and as such he is not required to obtain any specific permission of the Council in this behalf irrespective of whether he and/or his relatives hold substantial interest in that Company. Further, there is no bar for a member to be a

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Promoter/Signatory to the Memorandum and Articles of Association of any Company. There is also no bar for such a promoter/signatory to be a Director Simplicitor of that Company irrespective of whether the objects of the Company include areas which fall within the scope of the profession of Chartered Accountancy. Therefore, members are not required to obtain specific permission of the Council in such cases.

4.2 The Board also noted the intent behind such restraint 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. "

4.3 The Board noted that in the instant case, the Complainant brought on record copy of Form-32 dated 30/04/2012 filed with the incorporation documents of the Complainant company before the Registrar of Companies wherein it was specifically mentioned that the Respondent was designated as 'Director' under Category 'Promoter' and will act as 'Executive Director' of the Complainant Company. The Board further noted that the Respondent was one of the two subscribers to the MOA and AOA of the Complainant company dated 9th March, 2012 and was holding 999 shares out of 1000 shares of the Company as mentioned in the MOA.

4.4 The Board also noted that the Respondent filed a case before the NCLT, Bangalore Bench against the Complainant company seeking Director's remuneration to the tune of Rs. 47,50,000/- payable from April 2014 till October 2015 for the services rendered by him as a director along with the interest to the tune of 18% P.A amounting to Rs.29,24,499/- and thus claiming a total amount of Rs. 76,74,499/- from the Complainant company.



The Respondent in the said Petition also submitted his role in the Complainant Company by stating as under:

“OPERATIONAL CREDITOR, M.G.MOHAN KUMAR SUPPORTED THE CORPORATE DEBTOR DURING THE SETUP STAGE OF THE BUSINESS AS THE PROMOTER & DIRECTOR, Mrs.BHANU PRABHA KRISHNA HEBBAR WAS RESIDING IN NEW YORK EXCEPT SOME VISITS FOR ABOUT DURING THE PERIOD FROM 7.5.2012 (BEING THE CORPORATE DEBTORS INCORPORATION DATE) TILL FIRST WEEK OF MARCH 2015 AND SHE ASSUMED CHARGE TO MANAGE THE COMPANY SECOND WEEK OF APRIL 2015 AND ALSO TOOK THE AUTHORIZATION TO OPERATE THE BANK ACCOUNT W.E.F. 22-04-2015. DURING THIS PERIOD OPERATIONAL CREDITOR SUPPORTED THE COMPANY IN ITS FOLLOWING ACTIVITIES:

*12.5.2012: Shortly after incorporation, Mrs. Bhanu Prabha Krishna Hebbbar, a Non-Resident Indian, the promoter of the company was inducted as an additional director and later her appointment was regularized in the next Annual General Meeting as per the procedure prescribed in the Companies Act, 1956. **The Operational Creditor, being a director of the company supported the Corporate Debtor to setup its business and Mr.G.V.Sudhindra was appointed as Vice President (Operations) to manage the day to day affairs of Corporate Debtor.** The Operational Creditor and VP (Operations) approached Public Works Department of Karnataka State Government and Bruhat Bangalore Mahanagar Palike (BBMP) for introducing the new technology for road maintenance particularly Quality Assurance in Public Works, etc to promote the new technology.*

Persuaded Karnataka Bank Ltd (KBL) to finance the first equipment which was costing approx. Rs.2,70,00,000/- and also persuaded Canara Bank to provide the Working Capital limits.”

4.5 The Board noted that the major defence of the Respondent in respect of the charge alleged is that his being named as an Executive Director in the Form 32 was a mistake/error on the part of the Company Secretary of the Complainant company. He gave a detailed list of the Professional services rendered by him/his firm to the Complainant company which can broadly be categorized as under:

1. Incorporation of the Company during April/May 2012.

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2. Company Secretarial services from May 2012 to June, 2015.
3. Filing of Income Tax Returns during the Financial Year 2012-13, 2013-14 and 2014-15.
4. Preparation of business plans with financial model.
5. Attending meetings with the Government agencies to explain cost advantages and timely completion of road maintenance. Preparation of bank proposals, tender documents.
6. Advisory services rendered to the company.

On being specifically asked by the Board during the course of hearing to provide the copy of the invoices raised by him in respect of such professional services rendered, he informed that no invoices were raised by him for such services.

4.6 Thus, the Board observed that on the one hand, the Respondent claimed that he had only provided advisory and consultancy services to the Complainant Company for which he did not raise any invoice and on the other hand, he claimed amount from the Complainant Company as director's remuneration. The Board was of the view that it is an undisputed fact that certain services had been rendered by the Respondent to the Complainant company during Apr/May, 2012 to June, 2015. However, there is a question on the capacity in which such services had been rendered by him i.e. whether as a director of the company or as a professional. The Respondent in the Petition filed before the NCLT himself claimed director's remuneration for being involved in the day-to-day activities/affairs of the Company. Thus, he is estopped from claiming the same as professional fee at a different forum.

4.7 The Board also took into view the following documents submitted by the Complainant Company in another case filed against the Respondent (and have been shared with him) on a separate charge which highlight the role of the Respondent in the day-to-day activities of the Company:

- (a) Copy of the Board Resolution dated 27th September 2013 authorizing the Respondent alongwith the other director of the Complainant company to execute the necessary loan documents for seeking financial assistance from Canara Bank which had been filed with

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the Canara bank under certification of the Respondent as one of the directors of the company.

- (b) Copy of the self-drawn cheques dated: 04/09/2014, 11/03/2015 and 12/03/2015 signed by the Respondent as director on behalf of the Complainant company.
- (c) Copy of the Contract Certificate dated 23rd July 2014 and 28th July 2014 signed by the Respondent as director on behalf of the Complainant company.
- (d) Copy of the email communication between the Respondent and the Complainant asking dates of her presence in India to cross check her attendance for the purpose of Board meeting.
- (e) The extract of the Minutes of meeting of the Board of Directors of the held on 9th June, 2017 wherein the following was resolved:

Ms. Bhanu Prabha has placed before the board the irregularities observed during the period 2012 to 2014 in managing the finance of the company. The said period was covered and entrusted to the board consisting of Mr. Mohan Kumar & Mr. Venkata Ratnam Adhikari, who were actively managing the business of the company and Ms. Bhanu Prabha, though was a director during the said period, was not in India and not actively involved in management of the company. Considering the reports issued by the external audit parties, it has been duly resolved".

- (f) The provisional Balance Sheet of the Complainant company as on 31st December, 2014 authenticated only by the Respondent in the capacity of the Director of the Complainant Company.

4.8 Thus, in view of the above, the Board was of the view that it is evident that the role of the Respondent in the Complainant company was not merely that of a director simplicitor. He was involved in the management of the day-to-day affairs of the Complainant Company during 2012 to 2015 besides being into full time practice and thus, was required to seek the specific and prior approval of the Council in this regard. Hence, the Respondent is held guilty in respect of the charge alleged.

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CONCLUSION:

5. Thus, in conclusion, in the considered opinion of the Board, the Respondent is **GUILTY** of Professional Misconduct falling within the meaning of Item (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949.


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CA. Rajendra Kumar P
(Presiding Officer)

Sd/-
Ms. Dolly Chakrabarty (IAAS, rettd.)
(Government Nominee)

Sd/-
CA. Priti Savla
(Member)

DATE: 05-10-2023

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बिष्वा नाथ तिवारी / Bishwa Nath Tiwari
कार्यकारी अधिकारी / Executive Officer
अनुशासनालयक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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