

BOARD OF DISCIPLINE

(Constituted under Section 21A of the Chartered Accountants Act 1949)

**FINDINGS UNDER RULE 14 (9) READ WITH RULE 15 (2) OF THE
CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATIONS
OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT
OF CASES) RULES, 2007**

CORAM: (PRESENT IN PERSON)

CA. Rajendra Kumar P, Presiding Officer
Ms. Dolly Chakrabarty, (IAAS, Retd.), Government Nominee
CA. Priti Savla, Member

IN THE MATTER OF:

CA. Bhaven Shah (M. No. 159303)

16, Capri Building, 4th Floor,
9, Manav Mandir Road, Malabar Hills,
Mumbai.....

Complainant

Versus

CA. Bharat Babubhai Shroff (M. No. 014822)

3/42, Tardeo Air Condition Market,
Room No.42, Third Floor, Tardeo Main Road,
Mumbai.....

Respondent

Date of Final hearing : 26th June 2024
Place of Final hearing : ICAI Bhawan, Mumbai

PARTIES PRESENT:

Complainant : CA. Bhaven Shah
Respondent : CA. Bharat Babubhai Shroff along with his Counsel CA. C N Vaze

FINDINGS:

BACKGROUND OF CASE:

1. In the instant case, the Respondent was the statutory auditor of M/s NAK Engineering Private Limited (hereinafter referred to as '**Company**'). As per the Complainant, the Company was a trespasser and an illegal and unlawful occupant in the premises of Complainant's Company i.e., M/s Modern Products Private Limited (hereinafter referred to as '**Complainant's Company**'). It was further stated that the Complainant lodged eviction proceedings against the Company and its Directors and

has lodged the complaint in the Court of Small Causes, Mumbai. As stated, upon online inspection of public documents of the Company on 30th April 2018 and 01st May 2018, it was found that the Company had defaulted in the mandatory annual filings including financial statements required by the Companies Act from the year 2005 till 2017 i.e., for 13 years and finally in the year 2018, the Company submitted 29 E-forms on MCA portal under 'Condonation of Delay Scheme, 2018 (CODS)', thereby, the Complainant alleged that the Company while taking the benefit of said scheme in collusion with the Respondent being statutory auditor of the Company with a view to regularize the illegalities of the company resorted to backdating, fabrication, manipulation of accounts and false evidence to the Registrar of Companies, Mumbai. The Respondent audited the financials of the Company for the years 2004 to 2017.

CHARGES ALLEGED:

2. The Complainant alleged the charges against the Respondent as under: -
- 2.1. That the Respondent audited the Company's financial statements from the years 2004-05 to 2011-12, but there was no record of his appointment as an auditor for that period.
 - 2.2. That in the audit reports from the years 2004-05 to 2010-11, the Respondent falsely certified a "profit" for these years, whereas there was a loss in all those years.
 - 2.3. That the Respondent's consent letter dated 01st September 2014 to act as an auditor of the company, submitted with the ADT-1 form, was only for Financial Year 2017-18, while the ADT-1 form was submitted for the Respondent's appointment for the years 2014-15 to 2018-19. Hence, it is alleged that the ADT-1 form was false, bogus, and post facto.
 - 2.4. That for the Financial Years 2014-15, 2015-16, and 2016-17, Note No. 2 'Significant Accounting Policies' and Note No. 2.4 'Depreciation and Amortization' in the Notes to the Accounts stated that the accounts were prepared according to the erstwhile Companies Act, 1956, instead of the applicable Companies Act, 2013, and the Rules made thereunder.
 - 2.5. That the Respondent, by certifying Form-23AC and Form-20B of the Company, *Suo-moto* condoned the delay in conducting AGMs for several years beyond the statutory limit specified in Section 166 of the Companies Act, 1956.
 - 2.6. That the date of the previous AGM in all annual returns filed under Section 159 for the years 2005-06 to 2012-13 was falsely certified and did not match with the date of the AGM provided in Form-20B certified by the Respondent. It was further alleged that the Respondent prepared, attested, and certified the annual return belatedly rather than in the respective years, while the scheme 'CODS 2018' allowed only for late filing of Form-20B, not for late preparation of the annual return. Additionally, there were discrepancies in the number of directors shown in e-form-20B for the Financial Years 2004-05 to 2010-11 certified by the Respondent and those shown in the corresponding annual return under Section 159 of the

Companies Act, 1956. Moreover, in Para-V of Form-20B for the Financial Years 2005-06, 2008-09, and 2010-11, Director who had ceased to be Director since the last AGM was shown as 'zero.'

- 2.7. That the Respondent audited and signed the financial statements for multiple years on a single date, i.e., on 17th January 2013 for the Financial Years 2004-05 to 2007-08, and on 18th January 2013 for the Financial Years 2008-09 to 2011-12. The Respondent is thereby alleged to have attempted to regularize the compliances in collusion with the Directors of the Company.

The Board of Discipline in its 301st meeting held on 11th December 2023 while considering the Prima Facie Opinion formed by the Director (Discipline), noted that the Respondent is found prima facie 'Not Guilty' regarding all the above allegations except one where the Director (Discipline) is of the Prima Facie view that the Respondent is Guilty within the meaning of Item (9) of Part-I of First Schedule to the Chartered Accountants Act, 1949. Accordingly, the Board on consideration of the same concurred with the reasons given against the charges and thus agreed with the Prima Facie Opinion of the Director (Discipline) that the Respondent is Prima Facie 'Guilty' of Professional Misconduct falling within the meaning of Item (9) of Part-I of the First Schedule to the Chartered Accountants Act, 1949 and decided to proceed under Chapter-IV of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 limited to the extent of hearing the parties, where the Respondent is found Prima Facie 'Guilty'.

BRIEF OF PROCEEDINGS HELD:

3. The details of the hearings fixed and held in the matter, are given as under:

Date of Hearing	Status of hearing
26 th June 2024	Matter heard and concluded.

SUBMISSIONS OF THE PARTIES:

RESPONDENT:

4. The Respondent vide his Written Submission dated 14th March 2024, submitted as under:
- 4.1. That the charge of irregularities in his appointment as an auditor is technical in nature. No, illegality has been proved as no one other than the Complainant (who is neither a shareholder nor a director of the Company), shall question the validity of appointment. Further, the appointment of auditor is a contract between the company and auditor. Forms to Registrar of the Companies is only an intimation. It is not the seeking of permission as such. Therefore, mere failure to intimate cannot invalidate the appointment.
- 4.2. That the matter is several years old, the Respondent is unable to trace the relevant papers regarding the subject matter. Further, the only person who can validly object to such lacuna is either a shareholder or a director besides the previous

auditor of the Company. In the instant case, the previous auditor also has not objected. The Respondent submitted that it may also be noted that the company is a very small company in which only the family members are shareholders, and no public interest is involved and the Respondent being a low-profile practitioner always worked sincerely and ethically who is 81 years old now and is almost retired from the practice.

- 4.3. The Respondent also submitted that the Complainant has some grievance against the impugned company viz. M/s NAK Engineering Company Private Limited and has an enmity against its owners/directors and therefore, unnecessarily harassing the Respondent obviously to create pressure on the company's directors. Further, the Respondent submitted that the entire matter is about the tenancy dispute between the company (sub-tenant) and their landlords i.e., M/s. Modern Products Private Limited (landlord) of which the complainant is one of the Director. In this dispute between both the above parties in which he was an auditor is being made a scapegoat by the Complainant.

COMPLAINANT:

5. The Complainant submitted that the Director (Discipline), in his Prima Facie Opinion, has seriously erred in condoning the gross professional misconduct committed by the Respondent. He stated that he was in shock looking at the lenient view taken considering the major instances of professional misconduct which were proven beyond an iota of doubt along with corresponding documentary material. He stated that *"I fail to understand the reason behind finding the Respondent 'Not Guilty' in all except one instance of professional misconduct"*. Further, it appears that the category of misconduct in which the Respondent has been found guilty of professional misconduct has been dialed down.
6. The Complainant further stated that the said Prima Facie Opinion sets a disturbing precedent which rather encourages misconduct among errant professionals and brings utmost disrepute to the Institute and this noble profession. The profession of Chartered Accountancy is one of honour and dignity, as the public has immense faith in the signature and certification of Chartered Accountants, as members of the Institute of Chartered Accountants of India. Fraudulent conduct like that of the Respondent encroach upon this faith and if such actions go unpunished, it will shake the entire foundation of the profession and will ultimately lead to its downfall and collapse.

OBSERVATIONS OF THE BOARD:

7. Upon reviewing the complaint filed by the Complainant against the Respondent and considering the materials on records, the Board observed that it is alleged that the Respondent facilitated illegal occupation and falsified company records. The Complainant, holding a 5% share, claimed that M/s NAK Engineering Pvt. Ltd. is a sham company and that the Respondent's actions infringed upon his rights. The case is based on assertions that the company had been illegally occupied premises since 2005 under an outdated leave and license agreement of the year 1975 and that the

financial statements for five consecutive years were signed in one go, indicating a lack of evidence.

8. The Board inquired the Complainant's *locus-standi* considering that he was neither a shareholder nor a director in M/s NAK Engineering Pvt. Ltd. The Complainant failed to demonstrate that he was either a creditor or a debtor or a previous auditor to the said company, thereby lacking a direct legal interest. Additionally, the complainant's reliance on procedural lapses, such as non-filing of Form-23B does not provide substantial evidence of the Respondent's alleged misconduct. The Respondent's counsel also emphasized and argued that the Complainant has no locus to challenge the legitimacy of the Respondent's actions.
9. The Board observed that the Complainant has failed to bring on record any evidence which shall prove the involvement of the Respondent in the company M/s NAK Engineering Private Limited alleged to be trespasser and an illegal and unlawful occupant of the said premises in question. The Board also notes that the Respondent is a statutory auditor of the company and as such has no role to play in the charge attributed by the Complainant against the Respondent.
10. Pursuant to hearing the arguments of the parties and considering the materials on record, the Board is of the view that the Complainant lacked the necessary *locus-standi* to pursue the instant complaint as the assertion that the company is a sham, without any direct evidence of personal legal interest is insufficient to hold the Respondent Guilty of any professional misconduct. The Respondent has acted well within his professional capacity. Thus, the instant complaint is liable to be dismissed.

CONCLUSION:

11. Thus, in conclusion, in the considered opinion of the Board, the Respondent is '**Not Guilty**' of professional misconduct falling within the meaning of Item (9) of Part- I of First Schedule to the Chartered Accountants Act, 1949. Accordingly, the Board passed an 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.

M

Sd/-
CA. Rajendra Kumar P
Presiding Officer

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

Sd/-
CA. Priti Savla
Member

Date: 27-08-2024

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

मीनू गुप्ता / Meenu Gupta
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनान्तक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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