

[Reserved]

A F R

Case :- **REFERENCE AGAINST MISC. ACTS. No. - 1 of 2014**

Applicant :- In The Matter Of The Chartered Accountants Act, 1949 & 2 Ors

Opposite Party :- CA. Satish Kumar Gupta

Counsel for Applicant :- Vinod Swaroop

Counsel for Opposite Party :- S. Khan, Krishna Agrawal, Murtuza Ali

Hon'ble Pankaj Mithal, J.

Hon'ble Umesh Chandra Tripathi, J.

This is a reference under Section 21 (5) of the Chartered Accountants Act, 1949 in respect of a Chartered Accountant Satish Kumar Gupta of Ghaziabad who has been held guilty of “other mis-conduct” falling under Section 22 read with Section 21 of the Act by the disciplinary Committee of the Council of the Institute of Chartered Accountants of India by treating the letter of the Securities Exchange Board of India (SEBI) dated 1st August 2017 as information that the aforesaid Chartered Accountant has committed “other misconduct”.

As many as four charges were framed against him. The said charges *inter-alia* were as follows:-

- i) The Chartered Accountant described himself as having over all control of the management of Brahaspati Finance Limited (in short BFL) in its prospectus even though he had resigned as its Director prior to opening of the public issue;
- ii) He has lent his name to the prospectus issued in connection with public issue of BFL thereby misleading investors and inducing them to subscribe to its shares;
- iii) He had made a mis-statement in prospectus and had mislead SEBI by providing a forged Chartered Accountant Certificate; and
- iv) If any of the aforesaid charges is proved, he would be guilty of other misconduct under Section 22 read with Section 21 of the Act.

All papers relating to the aforesaid information, the reply submitted by the Chartered Accountant with letter framing charges and the written statement as filed by the Chartered Accountant were placed before the Council in accordance with Regulation 12 (11) of the Chartered Accountant Regulations, 1988 in its meeting held in August 2008 at New Delhi. The Council on being prima-facie satisfied that he is guilty of “professional/other mis-conduct” opined for holding an inquiry in the matter by the disciplinary Committee.

The disciplinary Committee conducted the inquiry. The Chartered Accountant participated in the same along with his lawyer and on one of dates ie. 12.11.2011 pleaded “not guilty” of any of the above charges. He defended himself by alleging that he had not mislead anyone and that though he had resigned as Director of BFL before opening of the public issue but the same was accepted w.e.f. 9.9.1997. He had entrusted the management and control of the BFL to other persons before opening of the issue. No public money was received and as such no investor was induced and deceived. He had not supplied any forged certificate to the SEBI.

The disciplinary Committee on consideration of the entire material on record vis-a-vis the defence taken by the aforesaid Chartered Accountant on 10.2.2012 concluded that evidence is not sufficient to show that the aforesaid Chartered Accountant had provided a forged Chartered Accountant Certificate to the SEBI. He was however held guilty of “other misconduct” as according to his own statement he had resigned prior to the opening of the public issue of BFL but had signed the prospectus despite his alleged resignation. He had not protested against his name appearing as Director in the said prospectus.

The Council considered the report of the disciplinary Committee in its meeting held on 1st June 2013 and agreeing with the report recommended to the High Court that the name of Satish Kumar Gupta, Chartered Accountant be removed from the register of members for a period of three months.

This is how the reference has been placed before this Court.

Heard Sri Vinod Swarup, Senior Counsel appearing for the Institute of Chartered Accountants of India and Sri S.Khan for the Chartered Accountant Satish Kumar Gupta. The documents enclosed with the reference have also been perused.

The primary argument advanced from the side of the Chartered Accountant is that he was the Director of the BFL. He had submitted his resignation prior to the issuance of public issue but he continued to be the Director as his resignation was accepted on or w.e.f. 9.9.1997 ie. after the close to the issue. Accordingly, there was no mis-statement in the prospectus and no one was misled. No public money was received by the BFL and therefore there was no question of misleading investors and inducing them to subscribe to the shares of the said company.

Sri Vinod Swarup had argued that under the Companies Act resignation of the Director comes into effect immediately once it is tendered. Therefore, if the aforesaid Chartered Accountant on his own statement has resigned prior to the opening of the public issue of the BLF his name could not have come on its

prospectus. The said Chartered Accountant has signed the prospectus on 17.6.1996. Therefore, the disciplinary Committee has rightly concluded that he is guilty of “other mis-conduct”.

The basic question which now falls for our consideration is whether the aforesaid Chartered Accountant was in fact the Director of BFL at time of the aforesaid public issue or he had ceased to be its Director and he had illegally lent his name to the prospectus of the said public issue constituting “other mis-conduct” within the meaning of Section 22 read with Section 21 of the Act.

There is no dispute to the fact that the public issue of BFL opened on 25.7.1996 and closed on 5.8.1996. The Chartered Accountant Satish Kumar Gupta had signed the prospectus of the said issue on 17.6.1996 and that his name appeared therein as the Director of the Company.

According to statement of the Chartered Accountant himself he had tendered his resignation as Director of BFL prior to opening of the aforesaid public issue though the exact date has not come on record. His resignation is alleged to have been accepted on 9.9.1997.

The name of the Chartered Accountant could have appeared in the prospectus to the aforesaid public issue only if he had continued to be the Director of the BFL. It is therefore necessary to determine as to when he resigned or his resignation came into effect.

In Service Jurisprudence it is settled that resignation is a bilateral and is a voluntary act of relinquishment of office. The resignation becomes effective only when it is accepted by the competent authority and the person resigning can withdraw it before it is accepted unless there is an express provision to the contrary.

In the Indian Companies Act, 1856 there is no specific provision relating to resignation of a Director of the company. None of the parties have placed on record either the Memorandum of Association or Articles of Association of the BFL to show anything in this regard. Therefore, the common law principle would apply in so far as the resignation of the Directors of a company are concerned.

The Common law recognizes the resignation of a Director of a company to be an unilateral act which comes into effect as soon as the resignation is tendered by the Director of the company. The Directors are merely agents of the company and the agents is competent to determine the agency at his own end.

In *Glossop Vs. Glossop (1907) 2 Chancery Division 870* it was held that the resignation of a Director would become effective on and from the date it was tendered or submitted as is clear from the Articles of Association of the company also.

In the case of resignation of a Director there is no formality that the Board of Directors of the company should accept it before it becomes operative.

Justice Ratnavel Pandian of the Madras High Court (as he then was) in ***S.S. Lakshmana Pillai Vs. registrar of Companies and others 1977 (47) Companies Cases 652*** on considering the entire law with regard to effective date of the resignation of the Director of a company concluded that the Director who has submitted his resignation would be deemed to have resigned from his office from the date of submission of his resignation, when the intention is unequivocally expressed either orally or by a letter.

The aforesaid decision of the Madras High Court was followed by the learned Single Judge of that Court in *Renuka Ramnath Vs. Yes Bank Limited* decided on 18.7.2012. It was held that the Companies Act is silent about the resignation of any Director. Therefore, the resignation is to be governed by the common law principles and would come into effect from the date of submission of the resignation. In other words, the resignation of a Director of company takes effect from the moment the resignation is sent and is acknowledged by the company.

In ***Mother Care (India) Ltd. Vs. Prof. Ramaswamy P. Aiyar ILR 2004 Karnataka 1081*** a learned Single Judge of the Karnataka High Court following ***Glossop Vs. Glossop (Supra)*** come to the conclusion that once a resignation letter is submitted to the Board, the date on which the intention to relinquishment is communicated to the Board, that is the date from which a Director ceases to be a Director of the company.

No contrary law in context with the resignation of a Director of a company was cited before us. Thus to our mind, the controversy in this regard stands concluded compelling us to hold that the resignation of a Director would be effective from the date it was submitted, as nothing contrary was shown to us either by placing the letter of resignation or the Memorandum or Articles of Association to the company.

In view of the aforesaid facts and circumstances, we are of the opinion that the Chartered Accountant Satish Kumar Gupta had resigned as Director of BLF before opening of the public issue of BLF irrespective of the fact that his resignation was allegedly accepted on 9.9.1997, in respect whereof no material was brought on record. Having resigned before the commencement of the public issue, his name could not have appeared in the prospectus which in fact was there. This was nothing but lending his name to the prospectus to the aforesaid public issue and misleading the investors. It is immaterial whether any investor was actually mislead. However, the Act of mis-conduct gets completed.

In view of the above, we find that the disciplinary Committee has rightly held him guilty for “other mis-conduct” under Section 22 read with 21 of the Act.

We do not even find that the recommendation made for removing the name of the Chartered Accountant from the register of the members for a period of three months is in any way illegal or is otherwise disproportionate to the charge he has been found guilty by the disciplinary Committee. We therefore, answer the reference in affirmance confirming the recommendation that the Chartered Accountant Satish Kumar Gupta is guilty of “other mis-conduct” and his name be removed from the register of members of the Chartered Accountants for a period of three months.

A copy of this order be sent to the Institute of Chartered Accountants of India for necessary consequential action.

Order date: 2.8.2017
SKS