

[PR/G/187/2018-DD/247/2018-BOD/546/2020]

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/G/187/2018-DD/247/2018/BOD/546/2020]

CORAM (present in person):

CA. Prasanna Kumar D., Presiding Officer
Ms. Dolly Chakrabarty (IAAS, Retd.), Government Nominee
CA. (Dr.) Raj Chawla, Member

In the matter of:

Shri Ramesh Gholap
Deputy Registrar of Companies
Ministry of Corporate Affairs, Govt. of India
O/o Registrar of Companies
"Everest", Ground Floor,
100, Marine Drive,
Mumbai – 400 002

Versus

.....Complainant

CA. Girish Ravindra Amonker... (M.No.042163)
A/6, Skyland Society,
Irla Bridge, Andheri (West),
Mumbai-400058

.....Respondent

DATE OF FINAL HEARING : 26th July, 2022
PLACE OF FINAL HEARING : New Delhi / through video conferencing

PARTIES PRESENT (through video conferencing):

Respondent : CA. Girish Ravindra Amonker
Authorised representative of the Respondent : CA. Sunil Naik

FINDINGS:



BRIEF BACKGROUND OF THE CASE:

1. The Ministry of Corporate Affairs vide its letter No. 8/28/2016/CL.II dated 28/3/2017, ordered inspection of Swargamrut Agro Estate Private Ltd. (hereinafter referred to as the 'company') u/s 206-207 of the Companies Act, 2013. The inspection of Books of Accounts of the said company was carried out by the Inspecting Officer during December 2017. During the course of inspection of books of accounts and other records etc., the Inspecting Officer reported adversely in part "D" of the said Inspection Report dated 26/12/2017 that the Respondent was a director in the Company for the period from 01/09/2018 to 22/03/2014. However, he had not taken permission from ICAI. He was requested by Inspecting Officer to produce the copy of permission, if any taken by him from ICAI for appointment as director. However, he did not produce the permission obtained from ICAI.

CHARGE ALLEGED:

2. The Respondent being the Executive Director in the Company during the period 01/09/2008 to 22/3/2014 was also holding full time Certificate of Practice without obtaining the prior and specific permission of the Council of ICAI in this regard.

BRIEF OF PROCEEDINGS HELD:

- 2.1 At the time of hearing held in the case on 26th July 2022, the Respondent along with his Counsel was present before the Board through video conferencing. However, none appeared on behalf of the Complainant Department despite the due service of the Notice for hearing. Accordingly, the Board decided to proceed ahead with the hearing in the case. The Respondent was put on oath. On being asked by the Board as to whether the Respondent pleaded guilty in respect of the charges alleged against him, he replied in negative and his Counsel made detailed oral submissions on the charges alleged against the Respondent. The Respondent was examined by the Board.

On consideration of the documents and submissions on record, the Board decided to conclude the proceedings in the case with the direction to the Respondent to provide the following:

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(a) an Affidavit to the effect that he had been wrongly designated as the Executive Director of the company M/s Swargamrut Agro Estate Private Limited and that his name was wrongly included in the list of Key Managerial Personnel (KMP) in the Notes to Accounts attached to the audited Financial Statement of the said company for the F.Y. 2011-2012 and 2012-13.

(b) Whether any inspection had been carried out by the ROC with respect to the said company and if so, the result thereof.

The Board also directed the office to send a copy of the response so received from the Respondent to the Complainant Department for their comments thereon, if any. Accordingly, the decision on the conduct of the Respondent was kept reserved by the Board. Thereafter, the Respondent vide communication dated 26th July 2022 filed an Affidavit, a copy of which was also shared with the Complainant Department. However, no response on the same was received.

2.2 Thereafter at its meeting held on 02nd November 2022, the Board on consideration of the documents and submissions on record decided on the conduct of the Respondent.

BRIEF SUBMISSIONS OF THE RESPONDENT:

3. The Respondent in his written submissions, inter-alia, stated as under:
 - 3.1 He was appointed as "Independent Professional Director" or "Additional Director" in his professional capacity as Chartered Accountant on 01.09.2008 by the company. The said fact is witnessed by Form No. 32 vide SRNO. A44280808 dated 04.09.2008 along with the payment of requisite fees of Rs. 300/-. The Respondent had signed the Financial Statements of the company for the F.Y. 2008-2009, 2010-2011, 2011 - 2012 and 2012-2013 in his capacity as Professional Director. The Respondent had signed the Director's Report of the company for F.Y. 2008-2009, 2010-2011, 2011-2012 and 2012-2013 in his capacity as Professional Director.

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- 3.2 The required/correct Form no. 32 was filed with the office of the Registrar of Companies, Maharashtra on 4th September, 2008 and the said Form clearly states that Respondent is a Non Executive Professional Director. The Respondent was not a shareholder of the company at anytime during his association or subsequently. At the time of Respondent's appointment, Form no. 32 was prepared by the company staff wherein his status was wrongly stated as 'Executive Director' and digital signature was attached. The Respondent had pointed out the error and made necessary corrections to Form no. 32. The erroneous Form no. 32 was never uploaded. Hence, the Form no. 32 presently filed with the Office of Registrar of Companies, Maharashtra, correctly states his status as 'Professional Director'.
- 3.3 The Institute of Chartered Accountants of India initiated disciplinary action against the Respondent and instructed him to submit the relevant documents relating to his appointment. At the time of submission, the incorrect Form 32 stating Respondent status as 'Executive Director', which was lying in the file was erroneously submitted. Due to which, the matter was misrepresented and the disciplinary action was initiated against the Respondent for holding office as 'Executive Director'. The Respondent was a member of the Board of Directors in his capacity as 'Independent professional Director' and there were other directors who were managing the business of the company. The Respondent did not draw any remuneration and also did not accept any Sitting fees or Professional fees during his association with the company.
- 3.4 This is further corroborated by the Annual Returns and Form 20B filed by the company to the ROC's site for Financial Years 2008-09, 2009-10, 2010-11 and 2011-12. In none of these, the Respondent was mentioned as Executive Director. In all the documents uploaded on the ROC website, the Respondent was always mentioned as Additional Director. This can be verified independently by referring to the ROC's website. It was a mistake committed by him due to oversight on the part of office staff that wrong Form No. 32 of the company was submitted to the Disciplinary Directorate. The said Form wrongly mentioned the Respondent's status as 'Executive Director'. Due to this mistake, wrong conclusion was drawn by Shri. Ramesh Gholap, Dy. Registrar of Companies, Maharashtra, Mumbai that Respondent has committed misconduct. The Respondent sincerely apologized for this mistake on his part which led to misunderstanding of the



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matter by the learned Shri. Ramesh Gholap, Dy. Registrar of Companies, Maharashtra, Mumbai.

- 3.5 Regarding signing of Directors' Report and Financial Statements, the Respondent stated that it was only for the sake of compliance. The Respondent had an honest belief that this in itself would not be treated as indicating his active involvement in the management of the company. He never signed any cheques, contracts or other documents for the company. The Respondent never chaired any of the Board meetings. The Respondent was genuinely active in his profession and had really no time to get himself involved in the management of the company. It was the genuine feeling of the other directors that since Respondent is a Chartered Accountant, it would be better that he signs the Financial Statements on behalf of the company.

OBSERVATIONS OF THE BOARD:

- 4.1 On perusal of the documents and submissions on record, the Board observed that the Complainant has alleged that Respondent being the Executive director in the Company during the period 01.09.2008 to 22.03.2014 was also holding full time Certificate of Practice without seeking prior and specific approval of the Council of the ICAI in this respect.
- 4.2 In this regard, 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

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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 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.

In the said connection, the Board noted that the Ethical Standards Board of ICAI at its Meeting held on 23rd April, 2011 after discussions decided as under:

"A CA in practice can be a 'Director Simplicitor', which includes an independent director. The independent directors are part of the Board where the Accounts are approved, they being party to approval of financial statement. As such, there is no bar in their signing the financial statement. However, they cannot be involved in the day to day affairs of the company."

- 4.3 Further, the Board perused the copy of the Form 32 filed with the ROC on 04th September, 2008 as regard the Respondent's appointment as director of the Company with effect from 1st September 2008 showing his designation as 'Non-Executive Additional Director'. Further, in Form 20-B through which the Annual Return of the Company for the Financial Year 2008-2009 to 2011-2012 had been filed, it was shown

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that the Respondent was appointed as an Additional Director of the Company with effect from 1st September 2008.

- 4.4 The Board also noted the Financial Statements of the Company for financial years 2008-09, 2010-11, 2011-12, 2012-13 were authenticated by the Respondent in the capacity of one of the directors of the company. Also, the Directors' Report of the Company for the Financial Year years 2008-09 to 2012-13 was signed by the Respondent in the capacity of one of the directors of the company. The Board noted that the name of the Respondent was included in the list of Key Managerial Personnel (KMP) in the Notes to Accounts attached to the audited Financial Statement of the said company for the F.Y. 2011-2012 and 2012-13.
- 4.5 Also, on perusal of Form No.DIR-11 filed by the Respondent with the ROC on 24th December 2014 as regards his resignation from the directorship of the company with effect from 22nd March 2014, the Board noted that his designation was shown as 'Professional Director'. Also, on perusal of Form No.DIR-12 filed by the company with the ROC on 30th January 2015 as regards the resignation of the Respondent from the directorship of the company with effect from 22nd March 2014, the Board noted that his designation was shown as 'Director'.
- 4.6 The Board also perused the Income Tax Return of the Respondent filed for the Assessment Year 2009-10 to 2014-15 and noted that the Respondent never drew any remuneration or received any Sitting Fees from the company.
- 4.7 The Board also noted that the Respondent filed an Affidavit dated 26th July, 2022 before the Board affirming that he was appointed as an 'Independent Professional Director' by the company and he was neither an Executive Director of the company nor was ever a shareholder of the company. The Respondent further affirmed the following in the Affidavit:-

"In the Notes to Accounts forming part of the Audited accounts of the company, my name is included as "Key Management Personnel" in the Notes to Accounts for F.Y. 2012-13 and F.Y. 2011-12. This is a mistake on reporting made by the company and since I was having limited capacity as "Independent Professional Director". I seek pardon for this mistake."

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- 4.8 Thus, the Board observed that apart from authenticating the Financial Statements of the company or signing the Directors' Report during 1st September 2008 to 22nd March 2014, there was no other document signed/authenticated by the Respondent in the capacity of the director of the company. Thus, there was no evidence to indicate that the Respondent was involved in the management of the day to day affairs of the company. Accordingly, the Board held that the Respondent was only a Director Simplicitor in the company and was not required to obtain the prior and specific permission of the Council before holding such position along with holding the full time Certificate of Practice. Thus, the Board held the Respondent not guilty in respect of the charge alleged.
- 4.9 The Board also noted that it had asked the Respondent to provide information regarding whether any Inspection has been carried out by the ROC in respect of the company for which no information was provided by him. However, the Board observed that the Complainant Department has filed another separate complaint against the Respondent on the basis of adverse reporting by the Inspecting Officer in para (i) of Part "A" of the Inspection Report dated 22nd December 2017 on a different charge which is being dealt with separately by the Disciplinary Directorate under reference no. DD/246/2018.

CONCLUSION:

5. 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. Prasanna Kumar D.
(Presiding Officer)

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

Sd/-
CA. (Dr.) Raj Chawla
(Member)

DATE: 13th December 2022

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

बिना नाथ तिवारी / Bishwa Nath Tiwari
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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