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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 7674/2019 & CM No. 31881/2019**

SSAY & ASSOCIATES ..... Petitioner
Through: Mr Siddharth Garg, Advocate.

versus

INSTITUTE OF CHARTERED ACCOUNTANTS
OF INDIA THROUGH ITS SECRETARY
& ORS .....Respondents
Through

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **22.07.2019**

VIBHU BAKHRU, J

1. The petitioner has filed the present petition impugning an order dated 02.02.2019 (hereafter 'the impugned order') passed by the Board of Discipline of the Institute of Chartered Accountants of India (hereafter 'ICAI'). By the impugned order, the Board of Discipline (hereafter 'the Board') has found respondent no.3 (M/s KNA Associates – hereafter 'KNA') not guilty of professional misconduct within the meaning of Clause (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949. Accordingly, the Board has closed the case instituted at the instance of the petitioner.

2. The petitioner (earlier known as 'Vinod Sanjeev Bindal & Co.') is a firm of Chartered Accountants and claims that it was appointed as an auditor to audit the accounts of respondent no.4 (Tracon

International Limited –TIL) for the financial year commencing 01.04.2006. The petitioner asserts that it continues to be the statutory auditor of TIL, as it has neither resigned nor has it been removed. The petitioner claims that it did not complete the audit for the financial year ending 31.03.2007, since it did not receive complete records for finalising the accounts.

3. It is apparent that there were certain disputes and differences between the petitioner and TIL. This is evident from the fact that on 21.11.2007, the petitioner had sent a letter to TIL calling upon it to send the complete records for finalising the accounts for the financial year ending 31.03.2007 and 31.03.2008. It is relevant to note that by that time, the period for holding an Annual General Body Meeting of the company for acceptance of the final accounts for the year ending 31.03.2007 had already expired on 31.11.2007.

4. It is also clear that the claim made by the petitioner that it continued to be the statutory auditor of TIL, is incorrect. The learned counsel appearing for the petitioner was pointedly asked whether the petitioner had any letter of appointment, appointing the petitioner as an auditor to audit the accounts of TIL for the financial year ending 31.03.2008 and thereafter; or a copy of the resolution appointing the petitioner as such. His response was in the negative.

5. It is also settled law that an auditor holds its office till the next Annual General Body Meeting of the company. In the present case, the time for holding the Annual General Body Meeting for the year

ending 31.03.2007 had lapsed on 30.09.2007. In these circumstances, it is difficult to accept that the petitioner continued to be the statutory auditor of TIL as claimed by it.

6. The fact that there were disputes between the petitioner and TIL is also evident from a letter dated 11.02.2009, whereby the petitioner had made allegations that certain properties of TIL had been sold at a value much lower than the prevailing market rate.

7. Having stated the above, it is necessary to note that the controversy in the present petition is limited and relates to whether KNA is guilty of any professional misconduct.

8. It appears that the accounts of TIL were not audited by the petitioner firm after the year 2005-06. The final accounts for the year ending 31.03.2007, 31.03.2008 and 31.03.2009 were purportedly signed by respondent no.6 (Sh. Manu Sharma). There is some controversy in this regard as it is alleged that the said accounts had been signed on a back date. It is also alleged that respondent no.6 had, in fact, not signed the said accounts and his signatures had been forged. However, there is no dispute that TIL had submitted the accounts purportedly audited by respondent no.6, with the Registrar of Companies and other authorities.

9. It is not necessary to examine this controversy, as there is no allegation that KNA was involved in any manner in auditing the accounts of TIL for the said period.

10. KNA was appointed as an auditor of TIL for auditing the accounts for the financial year 2009-2010. It appears that on becoming aware that TIL was proposing to pass a resolution to appoint another auditor (KNA), the petitioner sent a letter dated 13.09.2011 to TIL, asserting that the petitioner continued to hold office as an auditor and alleging that appointment of any statutory auditor would be illegal. In the same breath, the petitioner also stated that it is not known who the present auditor of TIL is, as respondent no. 6 (Manu Sharma) had allegedly disclaimed that he was appointed as an auditor of TIL. Thus, the petitioner was fully aware that another auditor was to be appointed by TIL at the AGM to be held on 30.09.2011.

11. The petitioner has also placed on record a letter dated 10.07.2013 addressed to KNA, *inter alia,* alleging that KNA had accepted the auditor's assignment without communicating with the earlier auditors and the same amounted to professional misconduct. The petitioner also called upon KNA to tender its resignation, failing which the petitioner would file a complaint with ICAI. It appears that KNA did not cower to the threat held out by the petitioner and therefore, the petitioner filed a complaint with the ICAI.

12. In its complaint dated 30.09.2013, the petitioner made several allegations against the Board of Directors of TIL. Insofar as KNA is concerned, it was alleged that KNA had taken up the assignment without communicating with the petitioner. It was also stated that Sh. Alok Shukla, partner of respondent no.3, had signed the annual accounts for the financial years ending 31.03.2010 to 31.03.2012 in

his capacity as a statutory auditor without obtaining the "no objection certificate" (NOC) from the petitioner which the petitioner alleged was against the code of conduct.

13. In view of the above, the only question to be ascertained by the Board was whether KNA or its constituent partner, CA Alok Shukla, was guilty of professional misconduct on account of not obtaining a NOC from the petitioner.

14. KNA defended the allegations made against it before the Board. It is KNA's case that it had informed M/s Manu Sharma and Co. that it had been approached by TIL to act as a statutory auditor and had further requested M/s Manu Sharma and Co. to inform it if there was any objection, professional or otherwise, to them accepting the appointment. KNA had also stated that they did not elicit any response from the petitioner, since the petitioner was not the previous auditor considering that the accounts for the three years ending 31.03.2007 to 31.03.2009 had been audited by M/s Manu Sharma and Co. In order to further ascertain whether M/s Manu Sharma and Co. were the previous auditors, KNA had examined the books of accounts of TIL and had noticed that the audit fees had been paid to M/s Manu Sharma and Co. KNA also pointed out that there were various disputes pending between Sh. Sanjeev Bindal, one of the constituent partners of the petitioner firm and other entities.

15. The Board examined the complaint and had concluded that the copies of the returns filed by TIL with the Registrar of Companies

indicated that final accounts for the financial years 2006-07 to 2008-09 had been audited by M/s Manu Sharma and Co. The Board also noted the submission made on behalf of KNA that the bank statement of the TIL established that professional fees had been paid to M/s Manu Sharma and Co. The Board also observed that M/s Manu Sharma and Co. had not lodged any complaint with either the Registrar of Companies, Income tax authorities or the police alleging that they had not audited the accounts of TIL for the financial years 2006-07 to 2008-09.

16. In view the above, the Board held that KNA was not guilty of any professional misconduct as alleged, as the petitioner was not the previous auditor with which KNA was required to communicate before accepting the assignment to audit the accounts of TIL.

17. At the outset, it is relevant to note that there is no requirement for an auditor to secure a no objection from the previous auditor. Therefore, the premise that respondent no.3 required to obtain a "no objection certificate" from the petitioner, is fundamentally flawed. The only requirement is that the Chartered Accountant, who accepts the position as an auditor, must communicate with the previous auditor about the same. Clause (8) of the First Schedule of the Chartered Accountants Act, 1949 is produced hereunder:

> "A chartered accountant in practise shall be deemed to be guilty of professional misconduct, if he—
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> (8) accepts a position as auditor previously held by another chartered accountant or certified auditor who has been issued certificate under the Restricted Certificate Rules, 1932 without first communicating with him in writing;"

18. In the present case, the accounts filed with the Registrar of Companies for the years 2006-07 to 2008-09, that is, for the three years prior to the period for which KNA was appointed, had been audited by M/s Manu Sharma and Co. and therefore, there was no necessity for KNA to correspond with the petitioner, since the petitioner was not the previous auditor of TIL.

19. As observed above, the petitioner was not appointed as an auditor for the financial year 2007-08. The assertion made by the petitioner that it continued to be a statutory auditor of TIL for the said period, is incorrect.

20. KNA had produced a letter dated 31.08.2010 sent to M/s Manu Sharma and Co., eliciting whether he had any objection to them accepting the appointment as an auditor of TIL. The said letter also bears a noting indicating that M/s Manu Sharma and Co. had no objection to KNA accepting the audit of TIL. The said notings also bears the signatures and the stamp of M/s Manu Sharma and Co. Admittedly, M/s Manu Sharma and Co. has not filed any complaint against KNA with ICAI or any other authority.

21. In view of the above, this Court finds no infirmity with the

impugned order. It is also relevant to note that the complaint filed by the petitioner is, essentially, motivated on account of *inter se* disputes between the petitioner and TIL. The entire correspondence placed on record clearly indicates that the petitioner had made all efforts to dissuade other Chartered Accountants from taking up the assignment to audit the accounts of TIL. This, clearly, is not the object of requiring an auditor to correspond with the previous auditor. It is also material to note that the petitioner is not associated with TIL as an auditor since 2008. Nonetheless, the petitioner continued to assert that it was TIL's auditor. This Court is in no manner of doubt that the actions of the petitioner are directed to pressurise TIL. The language of the letters sent by the petitioner and the threats held out do no credit to the profession.

22. In view of the above, the present petition is dismissed with costs quantified at ₹25,000/-. The pending application is also disposed of.

VIBHU BAKHRU, J

JULY 22, 2019
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