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

\+ W.P.(C) 12584/2019 & CM APPL.21345/2020

KDP BUILDWELL PRIVATE LIMITED ..... Petitioner

versus

UNION OF INDIA AND ORS. ..... Respondents

\+ W.P.(C) 91/2020 & CM APPL.21391/2020

MGI DEVELOPERS AND PROMOTERS AND ORS. ..... Petitioners

versus

UNION OF INDIA AND ORS. ..... Respondents

Present: Dr. Harshvir Pratap Sharma, Sr. Adv. with Mr. Tejas Patel and Mr. Ajay Sharma, Advs. for petitioners.
Mr. Rajesh Gogna, CGSC with Mr. Karan Chhibber and Mr. Vedansh Anand, Advs. for R-1 in W.P.(C) 12584/2019.
Mr. Asheesh Jain, CGSC with Mr. Amrit Singh, Adv. for R-1 in W.P.(C) 91/2020.
Mr. K.C. Mittal with Mr. Yugansh Mittal, Advs. for R-2/ICAI.
Mr. Jagdeep Bakshi with Mr. Gautam Khazanchi & Mr. Pradyuman Kaistha, Advs. for R-3.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE PRATEEK JALAN

O R D E R

% **02.12.2020**

The proceedings in the matter have been conducted through video conferencing.

W.P.(C) 12584/2019 & CM APPL.21345/2020

In this writ petition, learned Senior Counsel appearing for the petitioner submitted that the respondent no. 3 was appointed as a Chartered Accountant in the petitioner-Company. The Learned counsel appearing for respondent no. 3 submitted that now, he has resigned from the petitioner-Company.

The decision rendered by the learned Single Judge of this Court in ***SSAY & Associates vs Institute OF Chartered Accountants Of India Through Its Secretary & Ors*** [W.P.(C) 7674/2019, order dated 22.07.2019], which is at 'Annexure-C' to CM No.21345/2020 in W.P.(C) 12584/2019 has interpreted the provisions of the Ist Schedule of the Chartered Accountants Act, 1949 especially Clause 8 thereof. **Paragraph 17** of the said decision reads as under :

> *"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. <u>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.</u> 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;"

(emphasis supplied)

In view of the facts and looking to the order passed by the learned Single Judge of this Court in W.P.(C) 7674/2019, there is no need of obtaining "No Objection Certificate" from the previously appointed Chartered Accountant. What is required is a mere communication by subsequently appointed Chartered Accountant to the previous Chartered Accountant as per Clause 8 of I^st Schedule of the Chartered Accountants Act, 1949.

In view of this position, this writ petition is hereby disposed of. Liberty is reserved with this petitioner to approach appropriate authority in case of any difficulty. CM APPL.21345/2020 also stands disposed of.

W.P.(C) 91/2020 & CM APPL.21391/2020

In this writ petition also, learned Senior Counsel appearing for the petitioner submitted that respondent No.3 was appointed as a Statutory Auditor in the companies, being petitioners No.5 to 13 and petitioners No.15 to 27. Counsel for respondent no. 3 has submitted that now, the respondent No.3 has resigned from the position of statutory Auditor of the aforesaid companies. The fact is also stated in order dated 17th November, 2020 passed by Regional Director in the Company Application No. 5/434/T-2/UP/R57552572 at page 661 of the paper book.

The decision rendered by the learned Single Judge of this Court in

SSAY & Associates vs Institute OF Chartered Accountants Of India Through Its Secretary & Ors [W.P.(C) 7674/2019, order dated 22.07.2019], which is at 'Annexure-C' to CM No.21345/2020 in W.P.(C) 12584/2019 has interpreted the provisions of the I[st] Schedule of the Chartered Accountants Act, 1949 especially Clause 8 thereof. **Paragraph 17** of the said decision reads as under:

> *"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. <u>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.</u> 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;"*
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> *(emphasis supplied)*

In view of the facts and looking to the order passed in W.P.(C) 7674/2019, there is no need of obtaining "No Objection Certificate" from the previously appointed Chartered Accountant. What is required is a mere communication by subsequently appointed Chartered Accountant to the previous Chartered Accountant as per Clause 8 of I[st] Schedule of the Chartered Accountants Act, 1949.

In view of these facts and as the earlier Statutory Auditor has already resigned, this writ petition is hereby disposed of. Liberty is reserved with the petitioners to approach the appropriate authority in case of any difficulty. CM No.21391/2020 also stands disposed of.

CHIEF JUSTICE

PRATEEK JALAN, J

DECEMBER 2, 2020
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