



JAYESH SANGHRAJKA & CO. LLP

CHARTERED ACCOUNTANTS

CASE: NCLT Hyderabad rejected non-ratification of appointment of auditor at AGM without valid reasons and for not providing opportunity of being heard to auditor

Facts and Conclusion:

1. The Application was filed between SPC & Associates (**Petitioner**) and DVAK & Co (**Respondent 1**) and NISC Export Services Private Limited (**Respondent 2**).
2. The present Petition was filed against the illegal removal of SPC & Associates who was originally appointed as auditor of NISC Export Services Private Limited (NISC), in collusion with DVAK & Co and in gross violation of Section 140, 134 and prevailing rules.
3. CA Dilli Kumar N and CA Vamsi Krishna Borra are partners of DVAK & Co who have worked with SPC & Associates for a period of 3 years and quit the petitioner firm on 31.01.2016. After departing from SPC, both of them established DVAK & Co and immediately started soliciting and poaching the clients of Petitioner firm with acquaintance and relationship developed while working for petitioner firm.
4. Directors of the NISC Export Services Private Limited were not satisfied with 10% raise in audit fee and this was the main reason for the change of auditor, subsequently they sent a mail stating that they have not been satisfied working with the petitioner firm staff and therefore finalised another auditor for all their companies and requested for resignation letter from the petitioner firm at the earliest.
5. It is further submitted that DVAK & Co committed breach of trust, unethical professional practises by misusing the confidential information and taking undue advantage of relationships gained and developed with the clients of petitioner firm while working for the petitioner firm.
6. When analysed the facts of DVAK & Co, it is observed that the Company is a new firm with just six months of experience whereas the petitioners' firm had an experience of 27 years in the field with impeccable track record and no disciplinary action was taken against the petitioner by ICAI as per the information submitted in the Petition. From the records the reason for nonratification/removal of the petitioners' firm is apparently because the petitioners sought for an increase of 10% of Audit fee.
7. For removal of the petitioner U/s 140(5) a special resolution must be passed and previous approval of Central Government is required to be obtained. However, in the present case central Government's approval is not obtained.

Therefore, Members of NCLT have directed as follows:

1. The removal of SPC & Associates as the auditor and appointment of DVAK & Co as Auditor of NISC is improper.
2. We direct NISC to continue the Petitioner firm as the Auditor of the Company till the next AGM and subsequently necessary course of action can be taken by NISC regarding the continuation of Petitioner firm, in accordance with law.
3. We further direct NISC to take necessary steps to appoint the petitioners' firm as Auditor of the Company.
4. We direct DVAK & Co to submit all the records available in their possession, if any, and to cooperate with SPC & Associates to conduct the audit of books of accounts of NISC.