



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

[PR-299/13-DD/290/2013/DC/459/16]

**ORDER UNDER SECTION 21B(3) OF THE CHARTERED ACCOUNTANTS ACT, 1949 READ WITH
RULE 19(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATION OF
PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007.**

In the matter of:

Ms. Seema Lunker, Chennai

-VS-

CA. Nirenchand V. P. (M.No.025773), Chennai

[PR-299/13-DD/290/2013/DC/459/16]

MEMBERS PRESENT:

- 1. CA. Atul Kumar Gupta, Presiding Officer**
- 2. CA. Amarjit Chopra, Government Nominee**
- 3. CA. Rajendra Kumar P, Member**
- 4. CA. Chandrashekhar V. Chitale, Member**

1. That vide report dated 06.02.2017, the Disciplinary Committee was of the opinion inter-alia that **CA. Nirenchand V.P. (M. No. 025773)** (hereinafter referred to as the “Respondent”) was **GUILTY** of professional Misconduct falling within the meaning of Clauses (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 as amended from time to time.

2. That an action under Section 21B (3) of the Chartered Accountants (Amendment) Act, 2006 was contemplated against the Respondent and communication dated 29th April, 2019 was addressed to him thereby granting an opportunity of being heard in person and/or to make a written representation before the Committee on 18th May, 2019 at Chennai.

3. The Respondent appeared before the Committee on 18th May, 2019 and submitted his written representations dated 14/04/2017 and 22/04/2019 on the findings of report of Disciplinary Committee.

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4. The Committee noted the following findings as contained in the report of the earlier Disciplinary Committee, holding the Respondent Guilty of professional misconduct:-

4.1. The Committee took perusal of CODICIL deed of the firm dated 01/04/1992 and noted that partners of the firm are entitled to interest on capital invested in firm @ 18% per annum. In view of this deed, the Committee out-rightly rejected the resolution entered between remaining partners of the firm debarring the Complainant to her right for interest on capital. The Committee was of the view that partnership deed was a charter to govern the business of the firm and as per this deed the Complainant was entitled to get interest on her capital invested in the firm. The Committee was also of the view that as this resolution severely affects the Complainant, the Respondent should have obtained written confirmation/intimation from/to the Complainant in this regard. But the Respondent failed to do so. Hence, the Respondent was guilty of professional misconduct for not exercising due diligence and obtaining sufficient information which is necessary for expression of an opinion in the performance of his professional duties.

4.2 The Committee noted the defense of the Complainant and was of the view that the personal creditors of the Complainant should not have been paid by the firm without the knowledge or consent of the Complainant. Moreover, the Respondent as an auditor had merely relied upon the instructions of the other partners of the firm and evidences that these payments had been made through cheques and same were acknowledge by said recipients being paid by the firm on behalf of the Complainant. The Committee was of the view that since it was in the knowledge of the Respondent that these were personal creditors of the Complainant, he should have exercised professional skepticism by verifying as to whether there were written instructions/consent from the Complainant in this regard. This aspect was required to be considered especially since he was aware of differences wherein the Complainant and other partners leading to non-payment of salary and interest on capital to her. Thus, the Committee opined that the Respondent failed to obtain sufficient information which were necessary for expression of an opinion and thereby did not exercise due diligence in the performance of his professional assignment.

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5. The Committee considered the written submissions made by the Respondent as above and findings of the earlier Committee holding the Respondent guilty of professional misconduct. The Committee was of the view that due to negligence on the part of the Respondent, the Complainant has lost her money i.e. interest on capital invested in the firm. Further, the Committee was surprised to note that without consent of the Complainant, creditors of the Complainant were paid off on behalf of the Complainant and there was no intimation/confirmation obtained by the Respondent in this respect.

6. Thus, keeping in view the facts and circumstances of the case as aforesaid, the material on record, submissions of the Respondent before it, this Committee orders that the name of the Respondent i.e. CA. Nirenchand V.P. (M.No.025773) be removed from the register of members for a period of 01 (one) month and a fine of Rs. 25,000/- (Rupees Twenty Five Thousand only) plus applicable taxes (i.e. total sum of Rs. 29,500/- including GST as applicable) be also imposed upon him to be paid within 30 days of receipt of this order.

Sd/-
CA. ATUL KUMAR GUPTA)
PRESIDING OFFICER

Sd/-
(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

Sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

Sd/-
(CA. CHANDRASHEKHAR V. CHITALE)
MEMBER

DATE : 18/05/2019

PLACE : CHENNAI

CA. Nirenchand V. P. (M.No.025773), Chennai



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CONFIDENTIAL

REPORT OF THE DISCIPLINARY COMMITTEE

[Constituted under Section 21B of the Chartered Accountants (Amendment) Act, 2006]

Ms. Seema Lunker, Chennai

-VS-

CA. Nirenchand V. P. (M.No.025773), Chennai

[PR-299/13-DD/290/2013/DC/459/16]

MEMBERS PRESENT:

CA. Nilesh Shivji Vikamsey, (Presiding Officer)

Shri Amit Chatterjee, (Government Nominee)

Ms. Bindu Agnihotri, (Government Nominee)

CA. Naveen ND Gupta, (Member)

CA. Mangesh Pandurang Kinare, (Member)

In the matter of:

CA. Nirenchand V. P. (M.No.025773), Chennai



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[PR-299/13-DD/290/2013/DC/459/16]

Ms. Seema Lunker,

No.12, Rama Naicken Street,

Nungambakkam

Chennai-600 034

..... Complainant

Versus

CA. Nirenchand V.P. (M.No. 025773)

M/s. Niren & Associates (FRM No. 002469S)

No.9/10, Vepey Church Road,

D-5, Siddarth Palace,

Vepey,

Chennai – 600 007.

..... Respondent

1. **Ms. Seema Lunker, Chennai** (hereinafter referred to as the “**Complainant**”) has filed complaint in Form ‘I’ dated 07th November, 2013 against **CA. Nirenchand V.P. (M. No. 025773)**, M/s. Niren & Associates, (FRM No. 002469S), Chennai hereinafter referred to as the “**Respondent Firm**”). The Complainant in his complaint has alleged as under:-

1.1 The Complainant is one of the founding partners of the partnership firm “**M/s Harsha Construction**” having its Office at Hunters Road, Chennai-600 112. The Complainant has not been paid any salary, share of profits and interest on capital for the past several years. The Complainant have written many times in this regard to the firm requesting the firm and its other partners to furnish her a true copy of the statement of accounts of the firm and also to pay the Complainant the amount outstanding in her account.

1.2 The firm and its other partners have refused to furnish the Complainant a copy of the audited financial statements. The Complainant obtained under the RTI Act, a copy of the **CA. Nirenchand V. P. (M.No.025773), Chennai**



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Tax Audit done by the Respondent firm for the Assessment Year 2012-2013 from the Income Tax Department. On perusal of the Balance Sheet and Profit and Loss Account audited by the Respondent firm, it is noticed that no interest on capital was paid / provided to the Complainant even though all other partners were paid / provided Interest on Capital.

- 1.3 Though nothing was received by the Complainant from the firm during the assessment year 2012-13, the tax audit reveals an amount of Rs.3,34,469/- as withdrawn by the Complainant. These entries as to withdrawal are not true and totally false.
- 1.4 The Complainant had issued letter dated 22.03.2013 to the Respondent asking him to certify in the context of factual discrepancies noted by the Complainant, that the entries relating to her salary, withdrawal, non-payment and or non-provision of interest on her Capital were based on original of documents submitted by the firm, and verified by him before certifying the tax audits.
- 1.5 The Complainant was shocked and surprised by the Respondent's reply dated 13.04.2013 that he had completed the tax audit of the partnership firm solely based on instructions and documentary evidence provided by them. He further audaciously stated that the entries relating to her salary withdrawal, non payment and non provision of interest of capital were based on instructions and after verifying original documents submitted by the partnership firm. The Respondent added that he duly verified the entries relating to the Complainant before certifying the tax audit for the Assessment Year 2012-2013.
- 1.6 The Complainant has not signed any documents and no payments have been received by her as stated in the tax audit conducted by the Respondent claiming that he has seen the original documents.
- 1.7 The Respondent, without verifying the original documents and in collusion with the partnership firm, has certified the tax audit for the Assessment Year 2012-2013.



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2. The aforesaid charges, if proved, rendered the Respondent guilty within the meaning of Clauses (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 [as amended by the Chartered Accountants (Amendment) Act, 2006].

3. The prima facie opinion formed by the Director (Discipline) (enclosed without its enclosures as Annexure 'A') on the Complaint, written statement and Rejoinder were considered by the Disciplinary Committee at its meeting held on September, 2015 at Chennai.

3.1 The Disciplinary Committee on consideration of the same agreed with the prima facie opinion of the Director (Discipline) and decided to proceed further under Chapter V of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. The Committee also directed the Directorate that in terms of the provisions of sub-rule (2) of Rule 18 the prima facie opinion formed by the Director be sent to the Respondent and he be asked to submit his Written Statement as per the time that shall be specified in the notice.

4. The Respondent has submitted his Written Statement dated 29th April, 2016 and 04th July, 2016 (enclosed without its enclosures as Annexure 'B') as per the requirement of Rule 18 (4) of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

5. The detail(s) of the hearing fixed and adjourned/held in the said matter are given as under:-

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SI. No.	Date(s) if any	Status
1	04 th July, 2016	Heard and Concluded

PROCEEDINGS :

6. At the hearing held on 04th July, 2016 at Chennai, the Committee noted that the Complainant with her Counsel CA. Prashanth Bothra was present. The Respondent with his Counsel CA. R. G. Rajan and CA. Bhanusekar was also present. The Complainant and the Respondent were put on Oath. The Counsel for the Complainant read out the charges against the Respondent as per Prima Facie opinion. The Committee drew the attention of the Respondent to Rule 18 (7) of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rule, 2007. The Respondent pleaded not guilty and opted to defend these charges. The Counsel for the Respondent made his detailed submissions and the Committee examined the Respondent. After hearing both the parties, the hearing was concluded.

FINDINGS :

7. On perusal of the documents on record, namely, the Complaint, Written Statement, Rejoinder and Prima Facie Opinion and further written/oral submissions of the Complainant and the Respondent, the Committee gives its findings as under:-

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8. The Committee noted that allegations against the Respondent is that the Complainant being a partner in M/s Harsha Construction has not been paid any salary, share of profits and interest on capital for the past several years in the Balance Sheet and Profit and Loss Account audited by the Respondent firm. It is noticed that no interest on capital was paid / provided to the Complainant even though all other partners were paid / provided Interest on Capital. The Respondent has conducted the Tax Audit for assessment year 2012-13. Moreover, the tax audit report revealed an amount of Rs.3,34,469/- as having been withdrawn by the Complainant, which is totally false since nothing was received by the Complainant from the firm during the year.

9. During the hearing, the Counsel for the Respondent submitted that in regard to withdrawal of an amount of Rs.3,34,469/- from the firm in the name of the Complainant, it was clarified by the firm that the same was withdrawn to discharge the Complainant's creditors. The Respondent has verified all required original documents and evidences to support this fact. It was seen that these payments were made by means of account payee cheques from the account of the firm to the creditors.

10. Further, the Counsel for the Respondent stated that confirmation of receipt was also obtained not just from one or two of the creditors or a sample of creditors, but from every single creditor that clearly state that the amount received from Harsha Constructions "is towards amount receivable from Smt. Seema Lunker. Each of these receipt confirmations have been signed by the respective creditors along with his/her PAN number. Any learned Chartered Accountant will agree to the fact that these verifications are adequate proof of payment and nothing more should be expected from a tax auditor.

11. In so far as salary, share of profit and non-provision of interest on capital is concerned, the Respondent/Counsel submitted that during the course of the tax audit, it was duly noticed by the Respondent that salary and interest on capital has not been provided to the complainant. As it is the duty of a diligent and responsible Chartered Accountant, the Respondent raised this issue with the partners of Harsha Constructions, who are the agents of the firm and they clarified these issues as below:-

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- A.** With regards to salary, it was clarified that the firm had resolved not to pay salary to any of the partners in order to “augment internal resources and prevent a financial mishap (as stated in the resolution provided by the firm”).
- B.** With regard to interest on capital, it was clarified that it was the decision of the majority Partners of the firm not to provide interest to the Complainant.

12. It was therefore, submitted by the Counsel for the Respondent that as per documents and evidences produced by the firm, the Complainant was not entitled for salary. Further, the Respondent/Counsel stated there is a Board resolution dated 01/04/2012 passed by the majority Partners stating that the Complainant is not entitled to interest on capital. Based upon such kind of evidences, salary and interest was not provided to the Complainant. But as far as share in profit is concern, then the duty of the Auditor was just to ensure that same has been correctly calculated as per deed and credited to her personal account and he was not supposed to check that same have been paid to the Complainant or not.

13. On other side, the Complainant/Counsel for the Complainant submitted that salary was not part of the partnership deed but same was being paid off in earlier years and in case of Complainant it was suddenly stopped without any message to her but all others partners were being paid regularly. The Counsel for the Complainant admitted that she was not working partners for years under question.

14. In respect of non payment salary, share in profit and interest on the capital of the Complainant, the Committee noted the submissions of the Respondent in this respect, in which he has submitted that he has conducted the Tax Audit under due instructions of partners of the

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said partnership firm and after thoroughly verifying the supporting documents like Board Resolution of the partners of the firm to the effect that the Complainant being a non-active partner is not entitled for any salary or interest on her capital due to her hostile attitude and non co-operative behavior. Because of her attitude, the partnership firm had incurred heavy loss of turnover and since the said resolution stated that the Complainant would not be entitled to any salary or interest, according to the Respondent, the issue stood finally resolved.

15. The Committee perused of Board resolution dated 01.04.2012 passed among partners of the firm (other than the Complainant) and noted the contents which read “.....Mrs. Seema Lunker, w/o Sri. P. Mahaveer Chand would not be entitled to any salary or interest on her capital due to her attitude of being non-committal in the business activity despite our best efforts. She has also been non-cooperative in the business activity. Her continued absence, non-cooperation and hostile attitude had a severe bearing on the affairs of the business resulting in heavy loss of turnover.”

16. The Committee considered the documents/papers on record and after noting the submissions of the Respondent came to the conclusion that as far as non payment of salary is concern, then as per CODICIL deed dated 01/04/1992, only working partners of the firms are entitled to get salary from the firm. As in this case and self admission by the Counsel for the Complainant, the Complainant was non-working partner for the period under question. In view of these findings, the Committee is of the view that the Complainant was not entitled for salary and non-payment of the same is not a misconduct on part of the Respondent.

17. Further, the Committee took perusal of CODICIL deed of the firm dated 01/04/1992 and noted that partners of the firm are entitled to have interest on capital invested in firm @ 18% per annum. In view of this deed, the Committee out-rightly rejected the resolution entered between **CA. Nirenchand V. P. (M.No.025773), Chennai**



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remaining partners of the firm debarring the Complainant to her right for interest on capital. The Committee is of the view that partnership deed is a charter to govern the business of the firm and as per this deed the Complainant is entitled to get interest on her capital invested in the firm. The Committee is also of the view that as this resolution severely affects the Complainant, the Respondent should have written confirmation/intimation from/to the Complainant in this regard. But the Respondent failed to do so. Hence, the Respondent is guilty of professional misconduct for not exercising due diligence and obtaining sufficient information which is necessary for expression of an opinion in the performance of his professional duties.

18. In respect of second charge that in audited accounts an amount of Rs.3,34,469/- has been certified to be withdrawn by the Complainant, which is totally false since nothing was received by the Complainant from the firm during the year, the Committee noted the submissions of the Respondent that the partnership firm had furnished three receipts, being acknowledgement of dues received from the creditors of the Complainant viz. (1) Rs.3,00,000/- of Jaichander Kochar; (2) Rs.16,730/- of Mr. J. Amarchand (HUF) and (3) Rs.17,739/- of Mr. Jaichander Kochar. Further all the payments were made through Account Payee cheques to third party creditors of the Complainant.

18.1 The Committee noted the counter defense of the Complainant in this regard, in which she submitted that she has never authorised the firm, Harsha Constructions to make payment to her creditors. Therefore, the payments allegedly made to her creditors are without any authority, unlawful and illegal and payment without the knowledge of her are totally unacceptable even if such payments are made by account payee cheques and receipts are obtained, as they were never authorised by her. The payments to personal creditors is her own botheration and business and Harsha Constructions (firm) has no right and also have no need to bother about her Creditors. These payment entries are nothing but bogus entries whereby payment is made by account payee cheques and cash is returned by the alleged creditor after deducting commission and by these methods withdrawals is shown in her account thereby reducing her Capital Account Credit Balance.



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18.2 The Committee noted the defense of the Complainant and was of the view that the personal creditors of the Complainant should not have been paid by the firm without the knowledge or consent of the Complainant. Moreover, the Respondent as an auditor had merely relied upon the instructions of the other partners of the firm and evidences that these payments have been made through cheques and same were acknowledge by said recipients being paid by the firm on behalf of the Complainant. The Committee was of the view that since it was in the knowledge of the Respondent that these were personal creditors of the Complainant, he should have exercised professional skepticism by verifying as to whether there were written instructions/consent from the Complainant in this regard. This aspect was required to be considered especially since he was aware of differences wherein the Complainant and other partners leading to non-payment of salary and interest on capital to her. Thus, the Committee opined that the Respondent failed to obtain sufficient information which is necessary for expression of an opinion and thereby did not exercise due diligence in the performance of his professional assignment.

CONCLUSION :

19. Thus, in the considered opinion of the Committee, the Respondent is **GUILTY** of Professional Misconduct falling within the meaning of Clauses (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

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Sd/-

(CA. Nilesh Shivji Vikamsey)

Presiding Officer

Sd/-

(Amit Chatterjee)

Government Nominee

Sd/-

(Mrs. Bindu Agnihotri)

Government Nominee

Sd/-

(CA. Naveen ND Gupta)

Member

Sd/-

(CA. Mangesh Pandurang Kinare)

Member

Date : 6th February, 2017

Place : New Delhi

CA. Nirenchand V. P. (M.No.025773), Chennai



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