



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)

[PR-107/13/DD/133/2013/DC/509/16]

**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:

Mrs. Vasanti Neelakantan, Chennai

-Vs-

CA. Varghese Thakaran P. (M. No. 202259), Chennai

[PR-107/13/DD/133/2013/DC/509/16]

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 findings under Rule 18 (17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 dated 09.07.2018, the Disciplinary Committee was of the opinion inter-alia that **CA. Varghese Thakaran P. (M. No. 202259)** (hereinafter referred to as the “Respondent”) was **GUILTY** of professional Misconduct of professional misconduct falling within the meaning Clause (10) of Part I of First Schedule and Clause (10) 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 14/05/2019 on the findings of report of Disciplinary Committee.

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4. The Committee noted that there are two charges against the Respondent, in which he has been held guilty of professional misconduct. These are as under:-

4.1 The Respondent was the Statutory Auditor of M/s. Brilliant Tutorials Private Limited and has arranged various loans and facilities to the Company through its sister concerns and charged fees for said arrangement based on percentage basis, which is a clear violation of Clause (10) of Part I of First Schedule to the Chartered Accountants Act, 1949.

4.2 The Respondent failed to utilise the money given by his client for the discharge of his professional duties and keeping the same with him only without returning it back to the Complainant.

5. The Committee considered the written submissions made by the Respondent and findings of the earlier Committee holding the Respondent guilty of professional misconduct. The Committee was of the view that the Respondent has violated the provisions of code of ethics by charging fees based upon percentage/commission and he also fails to keep client assets in a separate account.

In view of said violations/charges, the Committee was of the view that said acts of the Respondent impacted the faith of auditee concerns vested in the auditor. Hence, the Committee hereby was of the view that end of justice would be served, if a punishment being awarded to the Respondent in commensurate with his professional misconduct narrated in findings of earlier Committee.

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

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Respondent i.e. CA. Varghese Tharakan P (M.No.202259) be reprimanded and a fine of Rs. 10,000/- (Rupees Ten Thousand only) plus applicable taxes (i.e. total sum of Rs. 11,800/- 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)
CHITALE)
MEMBER

Sd/-
0 (CA. CHANDRASHEKHAR V.
MEMBER

DATE : 18/05/2019

PLACE : CHENNAI



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[PR-107/13/DD/133/2013/DC/509/16]

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2018-2019)]

[Constituted under Section 21B of the Chartered Accountants (Amendment) Act, 1949]

Findings under Rule 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007

File No. : [PR-107/15-DD/133/2013/DC/509/2016]

In the matter of:

Mrs. Vasanti Neelakantan,

24 Gilchrist Avenue,

Harrington Road,

Chennai 600 031.

-Vs.

CA. Varghese Thakaran P. (M. No. 202259)

2-A, Palace Enclave, F-148,

8th Street, Annananagar East,

CHENNAI - 600102

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Respondent

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MEMBERS PRESENT:

CA. Prafulla P. Chhajed, Presiding Officer
CA. Amarjit Chopra, Government Nominee
CA. Mangesh P. Kinare, Member

CA. Sushil Kumar Goyal, Member

DATE OF FINAL HEARING : 23.04.2018

PLACE OF FINAL HEARING : ICAI Bhawan, CHENNAI

PARTIES PRESENT:

Respondent : CA. Varghese Thakaran P.



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Charges in Brief:-

1. Mrs. Vasanti Neelakantan, Managing Director, M/s Brilliant Tutorials Private Limited, Chennai (hereinafter referred to as the “Complainant”) has filed complaint In Form ‘I’ Dated 9th June, 2013 against Mr. Varghese Tharakan P.(M. NO. 202259), Chennai of M/s Tharakaran and Associates (hereinafter referred to as the “Respondent” and “Respondent Firm” respectively). The Complainant in her Complaint has alleged as under:-

- 1.1 Violation of Clause 10 of Part I of the First Schedule - Charging fees based on percentage or commission basis:
- 1.2 Violation of Section 270 of the Code of Ethics read with Clause 10 of Part 1 of Second Schedule - Failure to keep client assets in a separate account or to use such moneys for intended purpose in a reasonable time.

Brief facts of the Proceedings:

2. At the time of hearing held on 23.04.2018 at Chennai, the Committee noted that the Respondent was present and appeared before it. The Office apprised the Committee that there is an e-mail dated 23/04/2018 from the Complainant in which she has expressed her inability to appear before the Committee as she is travelling and requested to reschedule the case in last week of May or first week of June.

2.1 The Committee noted the contents of request mail of the Complainant and looking into long pendency of this case and last minute adjournment request of the Complainant, decided to go ahead with the hearing with ex-parte the Complainant.

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2.2 The Respondent was put on oath. Office explained the charges. On being asked whether he pleads guilty, the Respondent replied in negative but during the proceeding and after examining by the Committee, he accepted the first charge and stated that he was the real person who was working for the client, however, he is not in agreement of second charge. The Respondent gave his submissions on the second charge. The Committee examined the Respondent. After recording the submissions of the Respondent, the Committee directed him to file his submission and further documents, if any in respect of charges against him within 15 days time.

With these directions, the Committee concluded the hearing in captioned matter.

2.3 *Thereafter, in compliance of above directions of the Committee, the Respondent vide letter dated 28th May, 2018 filed his submissions stating as under:-*

2.3.1 *Tharakan Consulting is run by his wife and he has no stake in it. Lighthouse Business Solutions is also an entity in which he has no interest whatsoever. Tharakan Consulting has done some work for the complainant. There is no conflict of interest between the work he do and the work Tharakan Consulting does. Even during examination by the Disciplinary Committee no conflict of interest has been demonstrated.*

2.3.2 *Further, he stated that during the proceeding before the Committee, even he told the Committee that he has "No problem" in the examination of M/s. Tharakan Consulting or it's Proprietor.*

2.3.3 *The Complainant also knew that Tharakan Consulting was being run by wife of the Respondent. He also in his written statement dated 10.08.2013 in Para 4(iii) specifically stated that he used his contacts to help the complainant get out of her financial mess. He has admitted that he helped her in preparing financial statements and to that extent he was in the front. The accounts are always the responsibility of the management.*



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2.3.4 Furthermore, he stated that he welcome the Committee to examine the Bankers and the proprietor of Tharakan Consulting etc., this will bring out the role of each one of them in the entire process.

2.3.5 He was not in front for Tharakan Consulting. He would have been happy if the Complainant be examined by the Committee The complainant did not come for the hearing. Cross examination by him will reveal the truth. Furthermore, he submitted that he has not agreed to the first charge, putting words into his mouth is not a method of finding out facts.

2.3.6 Moreover, in so far as the cash is concerned, he has enclosed a receipt of M/s. Muthoot Finance Limited indicating a receipt of Rs. 18,54,323/- from him (Varghese Thakaran P.) However, the signature of the party in the receipt is that of the Complainant, Mrs. Vasanti Neelakantan and therefore there can be no doubt that the money borrowed from Muthoot Finance Limited was returned since the Complainant has signed the receipt. She cannot take a stand that she never received the money that was borrowed in name of the Respondent for her benefit.

2.3.7 The Respondent also enclosed an "Authorization to deliver the Jewels to a third party". This authorization will show that the complainant's ornaments were pledged by him on her behalf and therefore he has now given an authorization to collect the jewellery back from Muthoot Finance Limited, this authorization has been witnessed by the Complainant's Counsel, Mr. NRR Arun Natarajan.

2.3.8 The above documents and the altered circumstances together with e-mail dated 23.03.2012 clearly show that the complainant is using some circumstances to create a fictitious wrong doing by him with an ulterior motive.

Findings of the Committee:

3. The Committee noted that the Respondent was the Statutory Auditor of M/s. Brilliant Tutorials Private Limited and has arranged various loans facilities to the Company through its sister



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concerns and charged fees for said arrangement based on percentage basis, which is a clear violation of Clause (10) of Part I of First Schedule to the Chartered Accountants Act, 1949.

3.1 Further, during the hearing, the Committee noted that the Respondent had admitted that M/s. Tharakan Consulting was operated by his wife who is a B.Sc. computer science graduate. Further, during the hearing on 23rd April, 2018 at Chennai, he also admitted that all said working was done by him and only billing was done through sister concerns.

3.2 Further the Committee also perused the documents on record and noted that the Complainant has brought on record a copy of reply of legal notice of the Respondent dated 19th July 2012 wherein the Respondent has himself admitted that M/s. Tharakan Consulting is his own firm.

3.3 Furthermore, vide point no. 5 of said reply, the Respondent has shown the calculation of his professional fee which has been calculated @ 1% of total loan arranged for the Complainant. From documents on record, it is observed that Para 5 of said letter of Respondent dated 19.07.2012 calculate combined fees and it does not calculate the fees firm wise indicating that all the loans have been arranged by Respondent and only for the sake of splitting of income, he has billed it under different sister concerns, which he even admitted before the Committee. Therefore, it is apparent, that the Respondent was charging fee on the basis of the percentage of the total loan sanctioned to the Complainant/Company and though it was being done in the garb of business concern run by his wife, yet since it is clearly coming out that the Respondent was the actual kingpin of such financial loan arrangements being arranged on percentage basis, hence it is clear violation of Clause (10) of Part I of First Schedule to Chartered Accountants Act, 1949.

3.4 Further, the Respondent vide his further written submissions dated 08/02/2017 has stated that amendments to Regulation 192 also stands in his support. Though, funds has been arranged between 2006 to 2011, the benefit of notification dated 01/08/2012 should be given to him since the captioned complaint was filed in the year 2013.

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3.5 In context of above plea of the Respondent, the Committee noted that Council vide notification dated 01.08.2012 has made certain amendments in Regulation 192 permitting charging of fees on percentage basis in the case of certain fund raising services. But in the instant case, the funds have been arranged by the Respondent during 2006 to 2011 i.e. much before the above said notification. Therefore, the benefit of above notification could not be extended to the Respondent, hence, plea of the Respondent has no bearing on the decision of the Committee.

3.6 Furthermore, it may be noted that during the hearing, the Respondent has accepted the first charge, however, vide submissions dated 28/05/2018 he has made contradictory statement to this effect by stating that *“he has not agreed to the first charge, putting words into his mouth is not a method of finding out facts”*. However, in view of above findings, it is noted that the Respondent has violated the provisions of Clause (10) of Part I of First Schedule to the Chartered Accountants Act, 1949.

4 Thereafter, the Committee noted that the second charge against the Respondent was that he failed to utilise the money given by his client for the discharge of his professional duties and keeping the same with him only without returning it back to the Complainant.

4.1 The Committee observed that the Complainant has claimed that the Respondent took the jewels from the Complainant and got it pledged in his name with Muthoot Finance and collected Rs. 17 lakhs. But this amount was neither used to settle the claims of the litigants (of the Complainant) in New Delhi nor was it returned to the Complainant.

4.2 The Respondent during the hearing has claimed that Rs. 17.00 Lakhs was taken in cash by him from Muthoot Finance and same was given to one Mr. Vidyanand in presence of the Complainant who was supposed to settle the litigations of the Company in their New Delhi location.



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4.3 On the basis of above submissions of the Respondent and papers on record in this regard, the Committee observed that it is an admitted fact that jewels of Complainant were pledged by the Respondent in his name on 10.11.2011 with Muthoot Finance. It is also an admitted fact that Rs. 17.00 lakhs was received by the Respondent as admitted by him before the Committee from Muthoot Finance.

4.3.1 However, the Respondent has failed to produce any evidence or receipt which may prove that said amount was received by him in cash from M/s. Muthoot Finance on behalf of Complainant against pledging of her jewels and same was handed over to the Complainant or to Mr. Vidyanand as claimed by him in his written statement and before the Committee.

4.3.2 Moreover, the Committee was of the view that being such a heavy amount and Muthoot Finance being a Company, it appears illogical and incomprehensible that the Respondent could have received the amount of Rs. 17.00 lakhs in cash from Muthoot Finance as claimed by him and the same was handed over to the Complainant or Mr. Vidyanand.

4.3.3 As per the directions of the Committee, the Respondent brought on record an authorization letter signed by him on 28th August, 2012 directing Muthoot Finance Pvt. Ltd. to deliver ornaments pledged by him on behalf of the Complainant to her. Furthermore, the Respondent brought on record a receipt dated 11/09/2012, in which it has been acknowledged that *“received an amount of Rs.1854323/ (eighteen lakhs fifty four thousand three hundred twenty three) from Varughese Tharakan P”*. Further, this receipt has been signed by the Complainant only

4.3.4 On perusal of above documents brought on record by the Respondent, the Committee observed that from the receipt, it is coming out that the Complainant has paid said amount to release her ornaments from M/s. Muthoot Finance Limited. There is no evidence which may prove that money so received in cash by the Respondent on behalf of the Complainant was handed over to her or her representative, which is the main charge of this complaint.



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4.4 In view of above, the Committee is of the opinion that as there is nothing positive to support the above defense of the Respondent. Hence, on this charge, the Committee holds the Respondent guilty of professional misconduct falling within the meaning of Clause (10) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

Conclusion

5. Thus, in the considered opinion of the Committee, the Respondent is **GUILTY** of professional misconduct falling within the meaning Clause (10) of Part I of First Schedule and Clause (10) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

Sd/-
(CA. PRAFULLA P. CHHAJED)

PRESIDING OFFICER

Sd/-
(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

Sd/-
(CA. MANGESH P. KINARE)
MEMBER



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Sd/-

(CA. SUSHIL KUMAR GOYAL)

MEMBER

DATE :09th July, 2018.

PLACE : New Delhi