



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

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.

File No. : PR-194/13-DD/225/13/DC/587/2017

In the matter of:

Shri P. Balachander
Plot No. 8 B, Jai Flats
F-2-1st Floor,
Kamaraj Garden Street
Medavakkam
CHENNAI – 600 100

..... Complainant

Versus

CA. G. Sivaprakash (M. No. 024556)
No.5 (Old No.2), 5th Cross Street
West Shenoy Nagar
CHENNAI – 600 030

..... Respondent

Members present:

Smt. Anita Kapur, Govt. Nominee & Presiding Officer
Shri Ajay Mittal, Member (Govt. Nominee)
CA. Manu Agrawal, Member

Date of Final Hearing: 13th August 2020 through Video Conferencing

Place of Hearing: New Delhi

1. Vide report dated 10th February, 2020 (copy enclosed), the Disciplinary Committee was of the opinion that **CA. G. Sivaprakash (M. No. 024556)** was **GUILTY** of Professional Misconduct falling within the meaning of Clauses (6), (7) and (8) of Part I of the Second Schedule to the Chartered Accountant Act 1949 with respect to the following allegations:

- wrong network certificate dated 29th Jan 2013 issued by the Respondent as well as
- in relation to audited financial statements of M/s. Metafilms India Ltd. (hereinafter referred as the "**Company**") for the F.Y. 2011-12 certified by the Respondent in respect of the following:

- List of shareholders of the Company holding more than 5% of the shares was not disclosed as a part of financial statements as per the requirement of Schedule VI of Companies Act, 1956.
- The Financial Statements were audited without signature of the Director of the Company on them
- Non-disclosure of transactions with related parties.
- Loan waiver of Rs. 3.75 crores was shown as other income instead of exceptional income.
- Fraud in dating of preparation of account.
- Audited Financial Statements of the Company did not give true and fair view.



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It is noted that the Respondent is held guilty under Clause (6), (7) and (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949 as per which the Respondent:

“(6) fails to report a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity;

(7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties; and

(8) fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion;”

2. An action under Section 21B (3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and communication dated 1st August, 2020 read with communication dated 6th August, 2020 addressed to him thereby granting him an opportunity of being heard in person and/or to make a written representation before the Committee on 13th August 2020 through video conferencing.

3. The Respondent appeared before the Committee on 13th August 2020 through video conferencing from his own personal location and made oral submissions wherein he inter-alia stated that he had gone through various requirements of the Revised Schedule VI of the Companies Act 1956 applicable from F.Y. 2011-12 and that in extant case only wrong disclosures were made. Since, the F.Y. 2011-12 was the transitional year for adoption of revised format for Schedule VI and that no damage had been caused to the Complainant on account of the same. He accordingly requested that lenient view might be taken in the extant matter.

4. The Committee considered the oral submissions made by the Respondent. As regard the **first charge**, the Committee viewed that the Respondent had not acted diligently when the share application money pending allotment was treated as a part of share capital in the computation of networth for certificate issued by him on 29/01/2013 which was a blatant violation of statutory provisions of the Companies Act, 1956 by the Respondent. As regard **second charge**, the Committee was of the view that non-compliance of the requirement of the Revised Schedule VI regarding disclosure of the particulars of the shareholders holding more than 5 per cent shares of the company was not pointed out by the Respondent. As regard the **third charge**, the Committee viewed that Respondent did not act diligently as violation of provisions of Section 215 of the Companies Act, 1956 relating to certifying the financials without authentication by the management had been established. As regard the **fourth charge and fifth charge** relating to non-disclosure of loan waiver disclosure under Related party disclosures and also treating the same as other income rather than exceptional income, the Committee was of the opinion that substantial amount was involved in the said transaction, hence, non-verification of the fact as to whether the party was related party or not, non-disclosure of information in relation thereto and wrong treatment of said income arising therefrom was established. It signifies that the Respondent had not only failed to obtain sufficient audit evidence, there was material misstatement which he failed to report. So the Respondent had failed to exercise due diligence in this respect also. The Committee similarly noted that non-exercise of due diligence was also established in the **sixth charge** relating to fraud in dating of preparation of account. All the given charges together resulted into the **Last charge** that the audited financial statements of the Company did not give true and fair view.

5. In the light of aforesaid facts, the Committee was of the opinion that the grave errors committed by the Respondent not only gave a misleading picture to the readers of the financial statement, he failed to report material misstatements appearing in the Financial Statements with which he was concerned being the statutory auditor of the Company that had resulted out of his failure to gather sufficient information to form an expression of opinion.



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6. The Committee noted that the Respondent has been held guilty within the meaning of clauses (6), (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 and keeping in view the facts and circumstances of the case as aforesaid, ordered the removal of name of Respondent **CA. G. Sivaprakash (M. No. 024556)** from the Register of Members for a period of 2(two) years.

Sd/-

[Smt. Anita Kapur]
Member, (Govt. Nominee) & Presiding Officer

Sd/-

[Shri Ajay Mittal]
Member, (Govt. Nominee)
(approved & confirmed through e-mail)

Sd/-

[CA. Manu Agrawal]
Member
(approved & confirmed through e-mail)

Date: 13th August 2020 through Video Conferencing

Certified True Copy


Mukesh Kumar Mittal
Assistant Secretary
Disciplinary Directorate

The Institute of Chartered Accountants of India
ICAI Bhawan, I.P. Marg, New Delhi-110 002

[_____]
CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2019-2020)]

[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.

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Versus

CA. G. Sivaprakash (M. No. 024556)
No.5 (Old No.2), 5th Cross Street
West Shenoy Nagar
CHENNAI – 600 030

..... Respondent

MEMBERS PRESENT:

CA. Atul Kumar Gupta, Presiding Officer
CA. Amarjit Chopra, Government Nominee
CA. Rajendra Kumar P, Member
CA. Chandrashekhar V. Chitale, Member

DATE OF HEARING : 05.06.2019

PLACE OF HEARING : ICAI Bhawan, Chennai

PARTIES PRESENT:

Respondent : CA. G. Sivaprakash

Counsel for Respondent : Advocate S. Kartik





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Charges in Brief:-

1. The Committee noted that there are seven charges against the Respondent, in which he has been held Prima Facie Guilty of professional misconduct. These are as under:-

1.1 The first charge is in respect of wrong certificate dated 29/01/2013 issued by the Respondent.

1.2 The list of shareholders of the Company holding more than 5% shares was not part of financial statements audited by the Respondent which is requirement of Schedule VI of Companies Act, 1956.

1.3 The Financial Statements has been audited without signature of the Director of the Company.

1.4 The next charge is in respect of non-disclosure of transactions with related parties.

1.5 Further, the Complainant alleged that the loan waiver of Rs. 3.75 crores has been shown as other income instead of exceptional income.

1.6 The second last charge of the Complainant is that there is fraud in dating of preparation of account.

1.7 The last charge of the Complainant is that the audited Financial Statements of the Company set out does not give true and fair view.

Brief facts of the Proceedings:

2. The Committee noted that the Respondent along with his Counsel was present and appeared before it. It was also informed to the Committee by the office that the notice issued to the Complainant received back with postal remark, 'No such person' available. Moreover, Advocate R. Subramanian, authorized representative of M/s. Vis-ram Financial Services Pvt. Ltd, whose complaint was merged with this complaint wish to present this case as co-Complainant. However, the Committee rejected this pleas giving ruling that there is no concept of Co-complainant as per Chartered Accountants Act and Rules framed thereunder. ✓

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2.1 Since this was the first hearing, the Respondent was put on oath. In the absence of the Complainant, the office explained the charges to the Respondent. On being asked whether the Respondent plead guilty or not, the Respondent replied in negative and wished to defend the charges.

2.3 The Committee recording the submissions of the Counsel for the Respondent/Respondent and concluded the matter.

Findings of the Committee:

3. The Complainant is Mr. P. Balachander in this matter. The Respondent submits that the Complainant is a stranger and a third party and is not in any manner connected with the Company i.e. M/s. Metafilms India Ltd.

The charge of the Complainant is that the Respondent had rendered professional services to M/s. Metafilms India Ltd., wherein deficiencies have been noticed by the Complainant.

An affidavit of the Complainant dated 26/09/2015 is also placed before the Committee wherein the Complainant has submitted that he was instigated and compiled to file the complaint by Mr. R. Subramanian (who was Managing Director of M/s. Subhiksha chain of stores in the city of Chennai and subsequently the Managing Director of M/s. Viswapriya Financial services Limited).

Vide said affidavit the Complainant has withdrawn all the complaints made by him including this one. The Committee takes cognizance of this affidavit. However, after perusing the complaint along-with the documents annexed and the irregularities noticed therein, the Committee rejects the claim and withdrawal.

Thus, the Committee proceeded to hear the complaint in the absence of the Complainant. The Respondent appeared before the Committee and placed his defence.

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The Committee finds that there are six charges in which the Director (Discipline) has found the Respondent guilty.

3.1 The first charge on record is that the Respondent has treated the share application money as share capital in a certificate of net worth issued by him on 29/01/2013. In the Balance Sheet attested by the Respondent the Committee finds that share application money is of Rs. 890 lacs. The issued subscribed and paid up share capital stands at Rs.100 lacs.

The Committee finds that the net worth certificate issued by the Respondent includes the share application money as part of share capital. The following are the net worth used by the Respondent:-

Sl. No.	Particulars	Rs./lacs
1.	Share Capital: Issued Subscribed and paid up equity shares	990.00
2	Less: Accumulated losses	561.20
	Net Worth	428.80

Share application money pending allotment cannot form part of share capital, the term net worth is defined in the Companies Act, 1956 is re-produced here as under:-

"net worth" means the sum total of the paid-up capital and free reserves after deducting the provisions or expenses as may be prescribed.

Explanation. - For the purposes of this clause, "free reserves" means all reserves created out of the profits and share premium account but does not include reserves created out of revaluation of assets, write back of depreciation provisions and amalgamation ;]"

The Respondent in his defence submitted that he included the same as a part of net worth as a special resolution was passed to allot the said shares. The Committee noted that if there was a resolution passed as claimed by the Respondent then the Balance Sheet signed by him on 31/12/2012 for the period ended 31st March 2012 contradicted his statement. This certificate of net worth is issued on 29/01/2013 i.e. after the completion of 28 days of signing of the Balance Sheet for the year ended 31st March 2012. There is no evidence brought on record by the Respondent to prove his claim that these shares were allotted.

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The Committee is pained to note the blatant violation of all statutory provisions by the Respondent and therefore the Committee finds him guilty.

3.2 The Second charge is that the list of shareholders of the Company holding more than 5 per cent share capital was not part of financial statement which is the requirement of Schedule VI of the Companies Act, 1956.

The Committee noted that the revised Schedule VI is applicable for financial statement prepared for all financial purposes taken on or after 1st April 2011. It is the requirement of the revised Schedule VI that a disclosure of the shareholders holding more than 5 per cent shares of the company has to be made.

The Committee has perused the financial statement certified by the Respondent for the period ended 31st March 2012. The Committee does not find the compliance as required by the revised Schedule VI as the list of shareholders is not annexed to the financial statements.

It is the claim of the Respondent that the same is filed with registrar of the companies. The claim is not tenable as the Respondent should have checked compliance with the requirement of revised Schedule VI in letter and spirit and having not followed the same. The Committee holds the Respondent guilty on this charge.

3.3 The third charge is violation of Section 215 of the Companies Act, 1956, authentication of Balance Sheet and profit and loss account. It is the requirement of this Section that the Balance sheet and profit and loss account of a Company shall be authenticated by the Managing agent, Secretary and treasures, Manager or Secretary, if any, and by not less than 2 Directors of the Company one of whom shall be the Managing Director where there is one.

The Committee finds that the financial statements annexed to the complaint for the year ended 31st March 2012 which have been signed by the Respondent do not carry the signature of the Director of the said company. The Auditor's report C-19 which also attested by Respondent does not contain a date whereas the annexure to the auditor's report at page C-21 is dated 20/08/2012.



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The Committee is surprised to note that the annexure to the auditor's report is signed by the Respondent much before the date on which he has certified the Balance sheet and profit & loss account i.e. on 31/12/2012. The Committee is further surprised to note that the Director's report is dated 03/09/2012. How the Director's report can contain the financial figures of a balance sheet and profit and loss account which is signed on 31/12/2012. These are summarise as under:-

Sl. No.	Particulars	Date of certification	Page No.
1.	Director's Report	03/09/2012	C-17
2.	Auditor's Report	Nil	C-19
3.	Annexure to Auditor's Report	20/08/2012	C-21
4.	Balance Sheet and Profit & loss a/c	31/12/2012	C-22 & 23

In view of above table, the gross negligence and careless attitude of the Respondent is reflected and therefore the Committee held the Respondent guilty.

3.4 The Fourth charge is about non-disclosure of transactions with related parties. The Complainant alleges that the wife of Mr. Satish Raj and wife of Mr. V. Rajendran, the Directors of the Company are the partners of M/s. V.R. Packers and that the said firm has waived the loan advanced to the Company amounting to Rs. 3.75 Crores and that the audited accounts do not contain any disclosure with respect to this transaction.

During the course of the personal hearing, the Respondent admitted that he has not verified whether M/s V.R. Packers is a group Company. The loan waiver is as substantial amount and the Committee is surprised to note that the Respondent pleaded ignorance.

When the Respondent was questioned whether M/s V.R Packers is a group Company or not, his reply was *"I have verified, I have to see papers"*. On further questioning the Respondent replied that *"It is not a group of Company"*.

The Respondent has clearly accepted that he has not taken confirmation from the parties, which is a clear violation of SA -505 i.e. External confirmations. It is not in dispute that the



spouse of the Director of the Company are partners of M/s V.R. Packers who have granted loan waivers.

The Respondent has displayed gross negligence by not disclosing this fact in his report. The Committee holds him guilty of professional misconduct.

3.5 The fifth charge of the Complainant is that the loan waiver has resulted in an exceptional income and as per Accounting Standards 5, extraordinary Items should have been disclosed in the statement of profit and loss as part of net profit and loss for a period separately.

The Committee noted that as per the provision of AS – 5, the nature of an amount of each extraordinary item should have been separately disclosed in the statement of profit & loss in a manner so that its impact on current profit or loss can be perceived.

The amount of loan waiver by M/s. V.R Packers and is not part of ordinary/regular business income of the Company. The Respondent must have followed practice laid down in standard AS-5. The Respondent had no answer for this non-disclosure and hence the Respondent is held guilty of professional misconduct.

3.6 The sixth charge of the Complainant is that there is fraud in dating of preparation of account.

The said charge stands established in view of tabular figures given in para 3.3 above.

3.7 The Last charge of the Complainant is that the audited financial statements of the Company does not give true and fair view.

The Committee noted that in view of reasoning (s) given in above para, charge against the Respondent is established.

4. In Conclusion, "the Committee has noted that the Complainant in this matter is not connected with the Company, however he has brought on record startling facts which reflect careless attitude on the part of a member of the ICAI. The Respondent has failed to apply proper professional acumen and has merely towed the dictum of the auditee. The Committee has noted with anguish, the grave errors committed by the Respondent which gives a misleading picture to the readers of the financial statement. The Respondent does

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not deserve any mercy and in conclusion the Committee holds him guilty in all 7 charges premised upon.

Conclusion:

5. Thus in conclusion, in the considered opinion of the Committee, the Respondent is held **GUILTY** of 'Professional Misconduct' falling within the meaning of Clauses (6), (7) and (8) of Part I of the Second Schedule to the Chartered Accountant Act 1949.

Sd/-
(CA. ATUL KUMAR GUPTA)
PRESIDING OFFICER

Sd/-
(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

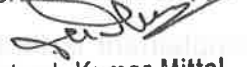
Sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

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

DATE : 10th February, 2020

PLACE : NEW DELHI

Certified True Copy



Mukesh Kumar Mittal
Assistant Secretary
Disciplinary Directorate
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