



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. PPR/P/419/2017/DD/354/INF/2017/DC/935/18

In the matter of:

CA. C.V. Varghese (M. No. 020644)

Door no. TMC/33/601,
Cheerans, Mundupalam,
1st Cross Road,
Thrissur – 680001

.....Respondent

Members present:

CA. Atul Kumar Gupta, Presiding Officer
Smt. Anita Kapur, Member (Govt. Nominee)
Shri Ajay Mittal, Member (Govt. Nominee)
CA. Chandrashekhar Vasant Chitale, Member
CA. Manu Agrawal, Member

Date of Final Hearing: 17th August 2020 through Video Conferencing

Place of Hearing: Gurugram

Party Present:

CA. C.V. Varghese (M. No. 020644) – Respondent

1. Vide report dated 3rd February, 2020 (copy enclosed) the Disciplinary Committee was of the opinion that **CA. C.V. Varghese (M. No. 020644)** was **GUILTY** of Professional Misconduct falling within the meaning of Clauses (6) & (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 with respect to statutory audit of M/s. Radhakrishna Finance Private Limited (hereinafter referred to as the "**Company**") for Financial Years 2014-2015 to 2016-2017 when during the F.Y. 2015-16 & 2016-17, the Company had pre-closed/redeemed 21 subordinate debts before maturity at the instance of investors without consent of RBI which was in violation of Para 2(1)(xxvi) of the instructions contained in the RBI Circular DNBR, (PD).CC.No.O44/03.10.119/2015-16 dated July 01, 2015 and item (xvii) of Para 3 in Chapter II of Master directions on Acceptance of PD Directions 2016 dated 25th August, 2016 issued by RBI for which the Respondent had failed to submit the exception report to RBI in pursuance to Para 5 of the Non-Banking Financial Companies Auditor's Report (Reserve Bank) Directions 2008. It is noted that the Respondent was held guilty under Clause (6) and (7) 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, and

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

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2. An action under Section 21B (3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and communication dated 7th August 2020 was addressed to him thereby granting him an opportunity of being heard in person and/or to make a written representation before the Committee on 17th August 2020 through video conferencing.

3. The Respondent appeared before the Committee on 17th August 2020 through video conferencing from his personal location, and made oral submissions wherein he had inter-alia stated that out of total subordinates debts received by the Company, only few of them were repaid due to unavoidable circumstances when during that time there were strict orders from Home Ministry, Govt. of Kerala that if any depositor was aggrieved in receiving back the deposit, the aggrieved party could approach the Police department. He further stated that he accepted his mistake before the RBI to avoid unnecessary confrontation with the Regulator and also to maintain a healthy relationship with it.

4. The Committee considered the both the oral as well as written submissions dated 8th August 2020 along with its annexures made by the Respondent and noted that the Company had fore-closed subordinate debts during financial year 2015-2016 and 2016-2017 without seeking the consent of RBI whereas circular of the RBI (C-1) dated 01st July, 2015 provides that subordinate debts could not be redeemed without the consent of the RBI. In view of the fact that such requirement was categorical in order to secure the claims of other creditors, it was noted that such debt also form part of Tier II. Hence, the Respondent had failed to report material fact and also to exercise due diligence as was warranted under the circumstances when being the statutory auditor he failed to file an exception report to the RBI in pursuance to Para 5 of the "Non-Banking Financial Companies Auditor's Report (Reserve Bank) Directions 2008.

5. The Committee was thus of the opinion that the misconduct on the part of the Respondent has been held and established within the meaning of Clause (6) and (7) of Part-I of Second Schedule to the Chartered Accountants Act, 1949 and keeping in view the facts and circumstances of the case as aforesaid, ordered that the Respondent be reprimanded in this matter.

sd/-
[CA. Atul Kumar Gupta]
Presiding Officer

sd/-
[Smt. Anita Kapur]
Member, (Govt. Nominee)
(approved & confirmed through e-mail)

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

sd/-
[CA. Chandrashekhar Vasant Chitale]
Member
(approved & confirmed through e-mail)

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

Dates: 17th August 2020 through Video Conferencing

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Certified to be True Copy

Mohita Khanna

(Mohita Khanna)
Assistant Secretary
Disciplinary Directorate
The Institute of Chartered Accountants of India

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DISCIPLINARY COMMITTEE [BENCH-III (2019-20)]

**(Constituted under section 21B of the Chartered Accountants 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. PPR/P/419/2017/DD/354/INF/2017/DC-935/18

In the matter of:

CA. C.V. Varghese (M. No. 020644)
Door no. TMC/33/601,
Cheerans, Mundupalam,
1st Cross Road,
Thrissur – 680001

.....Respondent

Members Present:

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

Date of Final Hearing: 31st October, 2019 (decided on 15th January 2020)

Place of Final Hearing: Bangalore

Parties Present:

Shri K. Ravi – Counsel for Respondent

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Allegations of the Deputy General Manager, Reserve Bank of India (RBI) :

1. The Respondent was the statutory auditor of M/s. Radhakrishna Finance Private Limited (hereinafter referred to as the "Company") for Financial Years 2014-2015, 2015-2016 and 2016-2017. It was alleged against the Respondent that during the F.Y. 2015-16 & 2016-17, the Company had redeemed 21 subordinate debts before maturity at the instance of investors without consent of RBI for which the Respondent had failed to submit the exception report to RBI.

Proceedings:

2. At the time of hearing on 31st October, 2019, the Committee noted that the Respondent's Counsel was present. On being asked by the Committee, whether the Respondent was aware of the charges, the Counsel replied in affirmative and stated that he was aware of the charges. Further the Committee asked him, whether the Respondent pleaded guilty, the Counsel replied that the Respondent did not plead guilty and opted to defend his case. Thereafter, the Committee asked the Counsel to make his oral submissions.

The Counsel for the Respondent made his submission before the Committee. Thereafter, the Committee examined the Counsel on the submissions made by him. The Counsel for the Respondent made his final submissions in the matter. After hearing the submissions made by the Counsel, the Committee concluded the hearing in the matter with a direction to the Counsel to submit his written submissions in the matter within 2 days from the date of hearing. Accordingly, the matter was heard and concluded.

3. On 15th January, 2020, The Committee noted that the Respondent vide his letter dated 4th December 2019 had made his final written submissions in the matter. Accordingly, based on written and oral submission as well as documents available on record, the Committee took decision on the matter.

Findings of the Committee:

4. It has been noted that the main allegation raised against the Respondent was that he being the Statutory auditor of the Company for FY 2014-15 to 2016-17 failed to file an
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exception report to the RBI in pursuance to Para 5 of the "Non-Banking Financial Companies Auditor's Report (Reserve Bank) Directions 2008 when the Company had pre-closed/ redeemed 21 subordinate debts before maturity at the instance of investors without consent of RBI which was in violation of Para 2(1)(xxvi) of the instructions contained in the circular DNBR, (PD).CC.No.044/03.10.119/2015-16 dated July 01, 2015 and item (xvii) of Para 3 in Chapter II of Master directions on Acceptance of PD Directions 2016 dated 25th August, 2016 issued by RBI.

5. The Committee noted that the Respondent in this regard has submitted that subordinate debts were not redeemable at the instance of holder without sanction of Reserve Bank of India, even after maturity period but in the extant case the redemption of subordinate debts was done in peculiar circumstances of either health issues or marriage in the family. He further submitted that the same had not significantly affected the financial position of the Company for financial year 2015-16 and 2016-17 as the percentage the subordinated debts which were redeemed were less than 1% of the total debts and 11.25% of the total subordinate debts. Further, he had enquired with auditors of other NBFC's and the management of some of the NBFC's regarding such issue beside seeking an independent legal opinion and was accordingly of the view that the stand taken by him on the subordinate debt was not wrong.

6. The Committee on perusal of audited Financial Statements of the Company for financial years 2015-2016 (A-53 to A-86) and 2016-2017 (A-88 to A-118) and in view of above submissions of the Respondent, noted that the Company had fore-closed subordinate debts during financial year 2015-2016 and 2016-2017 without seeking the consent of RBI whereas circular of the RBI (C-1) dated 01st July, 2015 provides that subordinate debts could not be redeemed without the consent of the RBI when it defines "Sub-ordinated debt" as follows :-

"Sub-ordinated Debt" means an instrument which is fully paid up, is unsecured and is sub-ordinated to the claims of other creditors and is free from restrictive clauses and is not redeemable at the instance of the holder or without the consent of the supervisory authority of the Non Banking Financial Company". It is noted that in extant case, the Company had failed to obtain consent of RBI for such redemption. It was viewed that the said requirement is categorical in order to secure that claims of other creditors. It is noted

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that the said debt also form part of Tier II Capital. Hence, the Respondent's plea that the said subordinate debts redeemed were only 11.25% of the total subordinate debts and thus not material so as to affect the financial position of the Company was not found tenable.

7. The Committee also noted that the Respondent argued about practice being followed in Industry by stating that none of his clients NBFC had taken consent to redeem subordinate debts even after maturity and RBI had not objected to the same and was of the opinion that the same was clearly indicative of the fact that the said violation of RBI guidelines were well within the knowledge of the Respondent but due to past practices, he never reported said violation of RBI guidelines as he was of the view that a stringent view was not being taken by the RBI in this regard.

8. It was viewed that being an auditor of NBFC, an auditor was expected to adhere to various NBFC directions applicable on the Company, instead of being guided by the past practice. Thus, it was evident that the Respondent had failed to submit exception Report for non-compliance with the provision of RBI circular relating to redemption of subordinate debts and had accordingly, failed to exercise due diligence in performance of professional duties while acting as Statutory Auditor of the auditee Company.

Conclusion:

9. 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) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

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Sd/-
(CA. Prafulla Premsukh Chhajed)
Presiding Officer

Sd/-
(Smt. Anita Kapur)
Member (Govt. Nominee)

Sd/-
(Shri Ajay Mittal)
Member

Sd/-
(CA. Manu Agrawal)

Date: 3rd February, 2020
Place: New Delhi

Certified to be a true copy


(Mohita Khanna)
Assistant Secretary
Disciplinary Directorate
The Institute of Chartered Accountants of India