



**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/46/2014/DD/76/2014/DC/566/2017]

**In the matter of:**

**Superintendent of Police**

Central Bureau of investigation

Economic Offences Wing

A Wing, III Floor

Rajaji Bhawan, Besant Nagar

**CHENNAI – 600 090**

**.....Complainant**

**Versus**

**CA. M Hariharan (M. No.022412)**

304/B, HVS Courts

21 Cunnigham Road

**Bangalore-560 052**

**.....Respondent**

**Members present:**

**CA. Atul Kumar Gupta, Presiding Officer**

**Smt. Anita Kapur, Member (Govt. Nominee)**

**Shri Ajay Mittal, Member (Govt. Nominee)**

**CA. Manu Agrawal, Member**

**Date of Final Hearing: 13<sup>th</sup> August 2020 through Video Conferencing**

**Place of Hearing: Gurugram**

1. Vide report dated 16<sup>th</sup> December, 2019 (**copy enclosed**), the Disciplinary Committee was of the opinion that **CA. M Hariharan (M. No.022412)** was **GUILTY** of Professional Misconduct falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949 with respect to issuance of Utilization of Funds Certificate to M/s. Nexsoft Infotel Ltd. Ltd (hereinafter referred as the "**Company**") for disbursement of term loan from United Bank of India without proper verification of relevant documents. It is noted that the Respondent is guilty under Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949 as per which the Respondent : *"does not exercise due diligence, or is grossly negligent in the conduct of his professional duties."*

2. An action under Section 21B (3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and communication dated 31<sup>st</sup> July 2020 was addressed to him thereby



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

granting him an opportunity of being heard in person and/or to make a written representation before the Committee on 13<sup>th</sup> August 2020 through video conferencing.

3. The Respondent appeared before the Committee on 13<sup>th</sup> August 2020 through video conferencing from Branch Office of ICAI at Bangalore and made oral submissions wherein he inter-alia stated that he issued the certificate based on the bank statement only and he could not see any confirmation from the supplier. He also stated that he had not addressed the alleged utilization certificate to the Bank and that the loan had already been disbursed by the Bank to the Company before he issued the certificate.

4. The Committee considered the oral submissions made by the Respondent. The Committee was of the view that the Respondent did not act diligently as he failed to verify the invoices and the confirmation from the suppliers and thus required level of due diligence was not carried out by him before carrying out an attestation function as an independent examination of relevant documents by the Respondent was warranted under the circumstances. The Committee further was of the opinion that the contentions of the Respondent that utilization certified was issued after the loan had been disbursed by the Bank or that the certificate issued was not addressed to the Bank could not be accepted in view of the fact that he had issued a wrong certificate.

5. The Committee noted that the Respondent has been held guilty within the meaning of clause (7) 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. M Hariharan (M. No.022412)** from the Register of Members for a period of 3(three) years beside imposing a fine of Rs. 25,000/- which shall run concurrently with the punishment awarded in another matter against the Respondent in case reference no. PR/354/14/DD/375/2014/DC/537/2017.

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)

sSd/-

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

**Date: 13<sup>th</sup> August 2020 through Video Conferencing**



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

**CONFIDENTIAL**

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

**[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. [PR/46/2014/DD/76/2014/DC/566/2017]**

**In the matter of:**

**Superintendent of Police**  
Central Bureau of investigation  
Economic Offences Wing  
A Wing, III Floor  
Rajaji Bhawan, Besant Nagar  
**CHENNAI – 600 090**

.....Complainant

**Versus**

**CA. M Hariharan (M. No.022412)**  
304/B, HVS Courts  
21 Cunnigham Road  
**Bangalore-560 052**

.....Respondent

**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**

**DATE OF FINAL HEARING : 04.07.2019**  
**PLACE OF FINAL HEARING : ICAI, CHENNAI**

**PARTIES PRESENT:**

**Complainant : Mr. Ashesh Kumar, HOB/CBI/EOB/Chennai**



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

**Respondent : CA. M. Hariharan**

**Charge in brief:-**

1. The Charge in which the Respondent had been prima facie held guilty by the Director (Discipline) is as under:-

1.1. The United Bank of India had sanctioned term loan Rs. 1600 lacs to M/s Nexsoft Infotel Ltd. to acquire softwares from M/s. Logass Infosolutions LLC, Dubai and M/s Valuemark Info Technologies Ltd., Bangalore. However, on investigation, it was revealed that there was no such purchase of softwares from either of the parties and the disbursements were ultimately diverted and reached to the accounts of the borrower Company M/s Nexsoft Infotel Limited without actual buying.

This term loan account has now been declared as NPA as per the Rule and the outstanding balance of the same as on 30.04.2013 was Rs. 1834.55 lakhs with principal and interest. The main conditions of sanction was, *“Disbursement will be allowed only after obtaining the certificate issued by a Chartered Accountant for having utilized the fund released earlier for the purpose of which it is sanctioned, in order to ensure the end use of the Bank’s Fund.”*

The Respondent has issued an undated Utilization of Funds Certificate to M/s. Nexsoft Infotel Ltd. with regard to the disbursement of term loan from United Bank of India, without proper verification of relevant documents.

**Brief of Proceeding :**

2 At the outset, the Committee noted that the Complainant and the Respondent in person were present and appeared before it.



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

2.1 Since this was the first hearing, the Complainant and the Respondent were put on oath. The Complainant explained the charges to the Respondent and on being enquired by the Committee, the Respondent pleaded not guilty and wished to defend the charges.

2.2 The Respondent made submissions before the Committee in his defense. After recording the submissions of the Respondent, the Committee concluded the hearing in the caption matter.

**FINDINGS :**

3. The Committee noted that on 4<sup>th</sup> of July, 2019, the hearing was scheduled in subject case and the Complainant and the Respondent were available and the matter was heard. The parties to the subject case submitted oral submissions.

3.1 The Committee noted that the matter is related to the issuance of certificate by the Respondent which is undated and without proper verification of relevant documents.

3.2 The Respondent submitted that he had gone through the bank statement, confirmation from the supplier for the various software to the Company who took loan from the bank i.e. United Bank of India. When it was being asked from the Respondent that whether he has the confirmation available which he is mentioning, the Respondent replied that he issued the certificate based on the bank statement only and he could not see any confirmation.

3.3 The Committee noted that whereas in the complaint filed by the Complainant allegation was that the Respondent could not see the invoices and the confirmation from the supplier and he accepted the same in the statement given before the CBI.



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

3.4 When the Committee asked from the Respondent whether he want to retract with the statement given on the earlier occasion before the CBI or he agrees with the statement then he mentioned that he agrees with the statement before the CBI.

3.5 Further, the Committee noted that the Respondent submitted that whatever he has given in the statement before the CBI on earlier occasion, he admit the same before this Committee also.

3.6 Hence, the Committee based on the fact that the Respondent had already accepted before the CBI and today also before this Committee that he did not verify the invoices and the confirmation but has issued the certificate based on the bank statements.

3.7 In view of above admissions by the Respondent, the Committee is of the opinion that it is a case of negligence on the part of the respondent.

3.8 It was also being reviewed by the Committee that whether there was any case being filed against the bank officers. Because, the Bank was supposed to disburse the money after obtaining said CA certificate. Before having any CA certificate the amount was disbursed, which is evident from the certificate given by the Respondent which is undated post facto of the disbursement.

So, looking into the charge, a doubt arises as to whether the bank suffered the loss only on account of the Respondent's negligence in issuing certificate and that at the same time was it the duty of the Respondent while giving the certificate to apply caution and the professional judgment that he has to not only verify the invoices but also to obtain confirmations from the supplier. The Bank Management needs to pursue this aspect of reason for loss equally seriously.



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

3.9 Thus, it is a case of the negligence on the part of the Respondent. Accordingly, the Committee is of view that he is guilty of a professional misconduct.

**CONCLUSION :**

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

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

**Sd/-**  
**(CA. AMARJIT CHOPRA)**  
**GOVERNMENT NOMINEE**

**Sd/-**  
**(CA. RAJENDRA KUMAR P)**  
**CHITALE)**  
**MEMBER**

**Sd/-**  
**(CA. CHHANDRASHEKHAR V.**  
**MEMBER**

**DATE : 16<sup>th</sup> December, 2019**

**PLACE : New Delhi**