

**CONFIDENTIAL**

**DISCIPLINARY COMMITTEE [BENCH – III (2020-21)]**  
**[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 118/18- DD/136/18-DC/1241/2019]**

**In the matter of:**

**Shri Rajiv Pradhan,**  
Authorized Signatory,  
M/s Cascade Energy Pte. Ltd.,  
Flat No.7, Door No. 10,  
Madhans, South Canal Bank Road,  
**CHENNAI - 600 028**

**...Complainant**

**Versus**

**CA. Kesava Prasad KS... (M.No. 027315),**  
**Partner, M/s Srinivasan & Shankar,**  
F 6, B Block, Sayani Complex,  
354, Konnur High Road,  
Ayanavaram,  
**CHENNAI - 600 023**

**...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: 24<sup>th</sup> August, 2020 through Video Conferencing**

**PARTIES PRESENT:**

**The following parties were present :**

- (i) CA Kesava Prasad KS – the Respondent (appeared from his residence at Chennai)**
- (ii) CA. C V Sajjan – Counsel for the Respondent (appeared from his office at New Delhi)**

**Allegations of the Complainant:**

1. The Complainant alleged that the Complainant Company, being 51% shareholder of M/s Zynergy Solar Projects & Services Ltd., Chennai (hereinafter referred to as the **Company**"), sought its audit report from the Respondent (being the Internal auditor) vide letter dated 9<sup>th</sup> March, 2018 (**C-7 to C-9**) but the Respondent did not respond to the same.

**Proceedings:**

2. At the time of hearing on 24<sup>th</sup> August 2020, the Committee noted that the Respondent along with his Counsel was present. However, the Complainant was neither present nor any communication was received from him. The Committee, thereafter, decided to proceed in the matter. The Respondent and his Counsel both gave a declaration that there was nobody except them in their respective room from where they were appearing and that they would neither record nor store the proceedings of the Committee in any form. Being first hearing, the Respondent was put on oath. Thereafter, the Committee asked the Respondent whether he wished the charges to be read out or it could be taken as read. The Respondent stated he was aware of the charges made against him and the same might be taken as read. On being asked, as to whether the Respondent pleaded guilty, his Counsel replied that the Respondent pleaded not guilty and made his submissions in the matter.

Thereafter, the Committee examined the Counsel for the Respondent and thereafter, he made final submissions in the matter. Based on the documents available on record and after considering the oral and written submissions made by the Counsel for the Respondent before it, the Committee concluded hearing in the matter.

**Findings of the Committee:**

3. The Committee noted that the Director(Discipline) in his prima facie opinion dated 29<sup>th</sup> August 2019 had held the Respondent not guilty of alleged misconduct but the Board of Discipline, at its 130<sup>th</sup> meeting held on 25<sup>th</sup> Nov, 2019, considered the prima facie opinion of the Director (Discipline) along with the Complaint and Written Statement

on record. The Board on perusal of the letter dated 9<sup>th</sup> March 2018 together with the copy of the consolidated internal audit report of the Company for the F.Y. 2016-17 was of the view that the conduct of the Respondent was required to be examined. Accordingly, the Board did not agree with the prima facie opinion of the Director(Discipline) and held the Respondent Guilty of Professional Misconduct falling within the meaning of Clause (7) of Part I and Clause (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949 and referred the matter to the Disciplinary Committee to proceed under Chapter V of the CA Rules 2007. Accordingly, the Committee conducted further inquiry in the extant matter against the Respondent that being the internal auditor of the Company of the F.Y. 2016-17, if he failed to provide audit report of the Company to M/s. Cascade Energy Pte. Ltd., Singapore which was holding 51% shares of the Company being represented by the Complainant.

4. The Committee noted the oral as well as the written submissions made by the Counsel for the Respondent in the matter wherein he inter-alia submitted that the Respondent was appointed as Internal auditor of the Company vide Board Resolution dated 4.3.2016 and he received the appointment letter from the Company signed by the Managing Director on 5.3.2016. He further submitted that the said appointment letter clearly mentioned to report the findings of the internal audit to the Managing Director of the Company who would take up the same with the Board of Directors and the respective process owners for necessary corrective action. The Counsel further stated that he submitted the draft report for discussion for the year ended 31.3.2017 on 1.6.2017 to the Company which had been acknowledged by it and that in the said letter he had also clearly mentioned to circulate the draft report to the Board of Directors and inform him as to when they could meet for final discussion. Thereafter, the Respondent received a letter from the Company on 1.6.2017 itself, issued under the signature of the Managing Director of the Company stating that the shares and debentures of the Company held by M/s. Cascade Energy Pte Ltd. Singapore had been provisionally attached by the Income Tax Department under Benami Transactions (Prohibition) Amendment Act, 2016 and that it was categorically mentioned in the letter not to part with any information about the Company to M/s. Cascade Energy Pte Ltd. Singapore

being the Order under operation. Accordingly, the Respondent submitted that he was duty bound not to part with any information regarding the Company to anybody.

4.1 With respect to the letter dated 09.03.2018, the Respondent stated that he only received that letter seeking information about the Company from one Mr. V Sankarnarayanan, who claimed to be acting as counsel for M/s. Cascade Energy Pte. Ltd., Singapore but there was nothing enclosed by him proving the fact that he was so authorised by the Company. The Respondent submitted that at no point of time M/s. Cascade Energy Pte. Ltd., Singapore ever approached him for any information. As such, his failure to respond to the letter dated 09.03.2018 issued by the person who was virtually stranger to him was not a sound basis to hold him guilty of professional misconduct.

5. The Committee, thereafter, perused the contents of letter dated 9<sup>th</sup> March, 2018 (C-7 to C-9) and noted that no authorization was attached to the same and hence in such a scenario the decision and approach of the Respondent in not sharing the documents and information with third party was warranted under the circumstances and quite justified more so when he had received an explicit direction from the Managing Director of the Company not to part with any information about the Company in light of shares held by M/s Cascade Energy Pte Ltd. Singapore being provisionally attached by the Income Tax Department. The Committee also noted that the notice/letter dated 9.3.2018 was received from an Advocate asking for some information about the internal audit report and other matters but there was no proof that he represented the other shareholder.i.e. the Singapore Company and if due to the management dispute and the provisional attachment of shares, the Respondent using his prudence and professional judgment did not respond, then it could in no way be construed as Professional Misconduct more so when Code of Ethics, issued by the Institute clearly advocates that the member in practice should not disclose information acquired in the course of professional engagement to any person other than client so engaging him. It further states that

*"If disclosure is required in other cases, it would be necessary to ensure that the consent of the client is given by a person who is competent to accord such consent. Thus, in the case of a soleproprietory concern, the consent may be given by the proprietor or his constituted attorney who is legally empowered to give such consent. In the case of a partnership firm, since in turn, every partner has the authority to bind the firm by his acts, the consent may be given by any partner. In the case of a Company, by virtue of Section 291 of the Companies Act, the Board of Directors is empowered to do all that the Company in a general meeting may do unless a resolution by the Company in a general meeting is required by the Act or by the Memorandum or Articles of the Company. Hence, the consent may be given by the Managing Director if the powers of the Board of Directors are delegated to him comprehensively enough to include the power to give such consent, but if the powers of the Board of Directors are not so delegated, the consent should be obtained by means of resolution of the Board of Directors of the Company.*

In view of above, it was felt that the Respondent was duty bound of not sharing information with the third party without obtaining the consent of his client and when he had explicit advisory not to share any document or information in view of the then prevailing circumstances, the Respondent cannot be held guilty of the alleged misconduct.

6. The Committee also noted the casual approach being adopted by the Complainant whereby firstly , he raised unsubstantiated allegations against the Respondent and thereafter failed to file either the Rejoinder before the Director (Discipline) or any submissions before the Disciplinary Committee in the matter which gave an impression to the Committee that either he was non-serious to pursue the extant case against the Respondent or was satisfied with the conduct of the Respondent.

**Conclusion :**

7. Thus in conclusion, in the considered opinion of the Committee, the Respondent is held **NOT GUILTY** of professional misconduct falling within the meaning of Clause (7) of Part I and Clause (1) of Part II of Second Schedule of Chartered Accountant Act 1949.

8. The Committee, accordingly, ordered the closure of this case against the Respondent.

(14)

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)

Date: 16<sup>th</sup> December, 2020 (passed through VC)

Certified to be true copy  
*Mohita Khanna*  
CA. Mohita Khanna  
Assistant Secretary,  
Disciplinary Directorate  
The Institute of Chartered Accountants of India,  
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

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