



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

[PR-295/2014-DD/313/2014/DC/550/2017]

**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.**

[PR-295/2014-DD/313/2014/DC/550/2017]

Sh. Girjashankar G. Gupta
Proprietor,
M/s Alsecure & Protection Services (India),
C-227, Durian Estate, 2nd Floor,
Goregaon Mulund Link Road, Goregaon (E),
MUMBAI – 400 063.

.....Complainant

-Vs.-

CA. K V SHANKARAN (M.No.033960)
C-909 Mahavir Trinkets,
Opp. Kanjur Marg Rly Station,
Kanjur Marg (west)
MUMBAI - 400 078

.....Respondent

MEMBERS PRESENT:

1. CA. Atul Kumar Gupta, Presiding Officer
2. CA. Amarjit Chopra, Government Nominee
3. CA. Rajendra Kumar P, Member
4. CA. Pramod Kumar Boob, Member

DATE OF MEETING : 18.08.2020 (Through Video Conferencing)

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 10.02.2020 the Disciplinary Committee was inter-alia of the opinion that **CA. K V SHANKARAN (M.No.033960)** (hereinafter referred to as the **Respondent**) was **GUILTY** of professional
CA. K V SHANKARAN (M.No.033960)



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misconduct falling within the meaning of Item (10) of Part I and Item (4) of Part II of Second Schedule to the Chartered Accountant Act, 1949.

2. The Respondent was not present before the Committee despite notice being issued with an email dated 05th August 2020. The Committee noted that the Respondent in response to same vide email dated 15th August 2020 requested to adjourn the hearing since he was out of station due to the pandemic. The Committee noted that further facility of appearance from the residence or any place is also provided to the Respondent but there is no response from the Respondent. The Committee in his absence and considering the facts, law, and papers on record decided to proceed the matter ex-parte.

3. The Committee while looking into the matter and the conduct of the Respondent was of the opinion that the Respondent, at any point of time during hearing, did not appear before the Committee and his non-cooperative behavior justified that he had nothing to add in his defense nor did he want to defend his case before the Committee. Despite giving the opportunity to appear from his residence/place, the Respondent was shying away himself to appear before the Committee. On the other hand, the Committee noted that the Respondent had committed a serious offence for taking blank cheques and depositing the same in his bank account for personal use and also utilized the cash given for service tax payments and embezzled the money by using the same for his personal benefit. At the same time, the Respondent also caused revenue loss to the tune of Rs.90 lacs to the Government exchequer. Accordingly, ends of justice can be met if reasonable punishment is given to him.

4. Therefore, keeping in view the facts and circumstances of the case, material on record, and submissions of the Respondent before it, the Committee ordered that the name of the Respondent i.e. CA. K V SHANKARAN (M.No.033960) be removed from the register of

CA. K V SHANKARAN (M.No.033960)



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members for a period of 05 (Five) years along with the fine of Rs.1,00,000/- (One Lakh Rupees), to be payable within 30 days from receipt of the Order.

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

(approved & confirmed through email)
(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

(approved & confirmed through email)
(CA. PRAMOD KUMAR BOOB)
MEMBER

Certified to be true copy

Mukesh Kumar Mittal
Assistant Secretary,
Disciplinary Directorate
The Institute of Chartered Accountants of India,
ICAI Bhawan, Vishwas Nagar, Shadra, Delhi-110032

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

Ref. No. PR-295/2014-DD/313/2014/DC/550/2017

In the matter of:

Sh. Girjashankar G. Gupta
Proprietor,
M/s Alsecure & Protection Services (India),
C-227, Durian Estate, 2nd Floor,
Goregaon Mulund Link Road, Goregaon (E),
MUMBAI – 400 063.

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.....Respondent

MEMBERS PRESENT:

CA. Atul Kumar Gupta, Presiding Officer,
Shri Rajeev Kher, IAS (Retd.), Government Nominee
CA. Rajendra Kumar P, Member
CA. Chandrashekhar Vasant Chitale, Member

DATE OF FINAL HEARING : 30.05.2019

PLACE OF FINAL HEARING : ICAI Tower, Bandra Kurla Complex, Mumbai

PARTIES PRESENT:

Complainant : Shri Girjashankar G. Gupta

Respondent : Not Present



2

CHARGES IN BRIEF:-

1. The Committee noted that the crux of the allegations was that the Respondent was employed on a part-time basis as a Chartered Accountant with M/s Alsecure & Protection Services (India) (hereinafter referred to as the "Complainant firm") by the Complainant in/about the year 2000 for the work of preparing and maintaining the books of income tax and other statutory taxes payable and for filling monthly, quarterly or yearly returns and making appropriate deposit of taxes with concerned Departments of Income Tax, Sales Tax, Service Tax etc. However, the Respondent failed to deposit the amount of service tax of Complainant firm with Service Tax Department and instead he used the said amounts for personal use and also siphoned and/or embezzled amounting to the tune of Rs. 65,79,436/- by cheques and Rs.34,49,436/- by cash making a total of Rs.1,04,28,872/-. Out of Rs.1,04,28,872/-, the Respondent paid a sum of Rs.5,00,000 vide cheque no.523750 dated 19.07.2014. In this regard, the Complainant filed a civil suit for recovery of the embezzled amount of Rs.99,28,872/- from the Respondent in the Bombay City Civil Court, Dindoshi division, Mumbai. The Complainant also stated that the Respondent also caused financial loss by embezzlement to the tune of Rs. 8,08,590/- and cash amounting to Rs. 5,00,000/- making a total of Rs.13,08,590/- for another concern known as M/s. She's Fashion Pvt. Ltd. owned by Mrs. Rekha G. Gupta, the wife of the Complainant.

BRIEF OF THE DISCIPLINARY PROCEEDINGS:-

2. On the day of hearing i.e. on 30th May, 2019, the Complainant was present. The Respondent was not present. Since there was no intimation from the Respondent about his absence for the hearing and last hearing was adjourned at his request, the Committee decided to proceed ahead with the matter ex-parte the Respondent. The Complainant was put on oath. The Complainant stated that the hearing can be continued from the stage as left in last hearing. Thereafter, the Complainant explained the charges against the Respondent and made his contentions on the same. The Committee posed questions to the Complainant. After noting the submissions, the Committee decided to conclude the hearing in the above matter.

FINDINGS OF THE DISCIPLINARY COMMITTEE

3. First of all, it is noted that the Respondent neither at the stage of prima facie opinion nor at the stage of personal hearing submitted his written submissions on the charges levelled against him in spite of providing him reasonable opportunities to submit the same. It appears that the Respondent has adopted very casual approach in the present case. In absence of any written submissions from the Respondent, the Committee decided to go through the documents available on record and as well the oral submissions made by the Complainant during the time of hearing.

4. In respect of the charges, on perusal of letter dated 3rd January, 2014 written by the Respondent addressed to the Complainant while replying to complainant's letter dated 26th December, 2013. The Respondent admitted the following facts which were alleged against him in the letter dated 26th December, 2013 of the Complainant:-

- i) *He has taken the blank cheques signed by the Complainant on the assurance to the Complainant that he would fill the relevant amount of Service Tax due and payable by the Complainant firm in the blank space and deposit the same in complainant firm service Tax Account in the State Bank of India.*
- ii) *But instead of depositing the cheque in the Complainant firm Service Tax Account, he deposited the Cheque in his own Bank account no. 10871012602 in the State bank of India and drawn the money from the Complainant firm account and used the money.*
- iii) *Similarly he has also received and taken cash from the Complainant on many occasion to deposit in the Complainant Service Tax Account no. AACPG9533A but has not deposited the same in the said Service Tax account and utilized the money for his personal purpose.*
- iv) *He also agrees that as per his advice and having faith and confidence, the Complainant issued him Tax Liability signed blank cheques in the manner only writing SBI A/c. No.....and used to handover him the said cheques with the faith and belief that he shall mention the*

concerned tax account number on the cheque and deposit the same in the Govt. Account with their challan which he has not done due to his selfish motive.

- v) He has committed and he is ready to compensate, refund the entire amount and rectify the lapses committed by him, without any grouse and hesitation.
- vi) He, therefore, request the Complainant to allow him two month time to rectify all the irregularities and lapses committed by him with relation to complainant firm Service Tax liabilities.

5. Apart from above admissions, the Respondent vide his Affidavit dated 18th February, 2013, also admitted as under:-

- i) He has been rendering his professional services to (1) Mrs. Rekha G. Gupta, proprietor, She's Fashion and Rekha Fashion House having her office at B/218, Durian Estate, Goregaon Mulund Link Road, Goregaon (E) Mumbai – 460 063 and to Mr. Girja Shankar Gupta, M.D., Alsecure & Protection Services (India) Ltd., and his other business concern, on retainership basis for last 6-7 years.
- ii) As professional retainer, he was responsible for the entire IT, ST Sales Tax, VAT, Annual return, Assessment return, deposit of tax amount obtaining copy of paid challan / receipt, Refund of IT amount etc. for his said clients.
- iii) During his association with the above said clients and their business venture, he gained their confidence and account took their various Tax Payment cheques from them regularly to deposit with the concerned tax authorities.
- iv) After taking the said cheques in the said manner, he used to fill his personal Bank account No. in the blank space of the cheque and

5

deposit the cheques in his personal Bank A/c and then withdraw and use the money for his personal and private benefit and did not deposit the cheques / money in the concerned Tax Account.

6. It is seen that the Complainant brought on record details of cheques which the Respondent had fraudulently deposited in his bank account no. 10871012602 maintained with State Bank of India. The Complainant also brought on record bank statement to show withdrawal of the amount from the bank account of the Complainant firm. Apart from these documents, the Complainant brought on record copy of show cause notice dated 22.04.2013 received from the Directorate General of Central Excise Intelligence regarding non-payment of service tax during the period 2009 to 2012 and copy of FIR and civil complaint filed against the Respondent in the City Civil Court at Dindoshi, Mumbai. During the course of the hearing, the Complainant stated that the Respondent has not returned his money as assured by him in affidavit.
7. Further, on perusal of the e-mail dated 27th July, 2018 received from the Complainant, forwarding the order passed by the Court of Metropolitan Magistrate, Mumbai, it is noted that the Metropolitan Magistrate rejected the bail application of the Respondent. It is also noted that the Respondent has stated before the Metropolitan Magistrate that he is an innocent person and he has been falsely implicated in the offence. He also stated that the Complainant is a habitual tax evader. The Respondent, however, did not dispute his letter dated 26th December, 2013 address to the Complainant and his Affidavit made on 18th February, 2013.
8. After taking into consideration all the facts and circumstances of the case, the law and submissions made earlier and notings thereon, the Committee noted that in spite of receiving notice of hearing and copy of prima facie opinion, the Respondent neither denied the charges nor raised any question on the authenticity of the documents submitted by the Complainant. The admissions by the Respondent of taking blank cheques and depositing the same in his bank account for personal use and also utilising the cash given for Service tax payment for his personal use, clearly prove that he failed to keep the money in a separate bank account and embezzled the money by using the same for his personal benefit which causes loss to the

6

Complainant and also causes revenue loss of Rs.90 lac approximately to the Government. Hence, the Committee is of the view that the Respondent is guilty of professional misconduct falling within the meaning of Clause (10) of Part I and Clause (4) of Part II of the Second Schedule to the Chartered Accountants Act, 1949

Conclusion

9. Thus in the considered opinion of the Committee, the Respondent is **Guilty** of professional Misconduct falling within the meaning Clause (10) of Part I and Clause (4) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

-Sd-

(CA. ATUL KUMAR GUPTA)
PRESIDING OFFICER

-Sd-

(SHRI RAJEEV KHER, IAS (Retd.))
GOVERNMENT NOMINEE

-Sd-

(CA. RAJENDRA KUMAR P)
MEMBER

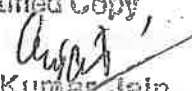
-Sd-

(CA. CHANDRASEKHAR VASANT CHITALE)
MEMBER

DATE: 10.02.2020

PLACE: NEW DELHI

Certified Copy


Ajay Kumar Jain
Deputy Secretary
Disciplinary Directorate

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