



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

[PR/291/2017/DD-299/17/BOD/474/2018]

ORDER UNDER SECTION 21 A (3) OF THE CHARTERED ACCOUNTANTS ACT, 1949 READ WITH RULE 15(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATIONS OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007.

In the matter of:-

**Shri Buddaram Sudhakar,
Managing Director,**

M/s. Swagruha Projects Pvt. Ltd., SECUNDRABAD

.....Complainant

-Vs-

CA. Siva Sankar Reddy (M.No.216219),

**M/s SS Reddy & Co., Chartered Accountants,
HYDERABAD**

.....Respondent

[PR/291/2017/DD-299/17/BOD/474/2018]

MEMBERS PRESENT:

CA. Prasanna Kumar D., Presiding Officer

Mrs. Rani Nair, (IRS, Retd.), Government Nominee

CA. Durgesh Kumar Kabra, Member

Date of final hearing: 10th September, 2020(through video conferencing)

1. The Board of Discipline vide Report dated 6th January, 2020 was of the opinion that **CA. Siva Sankar Reddy** is guilty of "Other Misconduct" falling within the meaning of Clause (2) of Part-IV of the First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act.
2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against **CA. Siva Sankar Reddy** and communication dated 02nd September 2020 was addressed to him thereby granting him an opportunity of being heard in person and/or to make written representation before the Board on 10th September, 2020.
3. **CA. Siva Sankar Reddy** appeared before it through video conferencing and made his oral representation. The Board also noted that the Respondent had also submitted his written representation in the matter.
4. The Board noted that **CA. Siva Sankar Reddy**, in his written representation, inter-alia, submitted as under:-

4.1 The complaint is incorrect and baseless as request has been made to



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- the Respondent in the month of March 2017 by which time the ROC (MCA-21) Returns and Financial Statements for the years 2014, 2015 and 2016 were overdue and unfiled.
- 4.2 Though it is not in the scope of his professional work, upon studying the matter he had calculated and arrived at a filing fee of Rs.70,200 (Approximately) payable to the ROC as per the then applicable fee structure for delayed filing of the returns. This was informed to the Complainant through the accountant who has been coordinating with his office for professional work. He had advised that the fee needs to be paid by the company and he also informed that further delay would cost the company in the form of additional fees and further penal actions under the Companies Act 2013.
- 4.3 An amount of Rs.13,500 has been paid to him as balance of his audit fees but it is incorrect to say that the amount has been paid to him for filing the required documents with the ROC.
- 4.4 The Complainant made a complaint against the Respondent on 24th Oct-2017 after a strike off notice was received on 19/07/2017 from Registrar of Companies (MCA-21) for non-filing of annual returns continuously for the Financial Year 2014 , 2015 and 2016 which were overdue and unfiled.
- 4.5 That time the Respondent was regularly attending GST Seminars, in that pressure time he has replied through whatsapp conversation, but not intentionally to mislead the Complainant.
- 4.6 The filing fee was never forthcoming from the Complainant nor was there any indication of willingness on part of the client company to pay the fees as required by law and companies' filing fee regulations.
- 4.7 All along he has been kept in the dark about the complaint and while keeping him in the dark about the complaint, the Complainant and his company viz., Swagruha Projects Private Limited continued to avail his professional audit services to the said company for the year ended March 31, 2017 and 2018 and he continues to hold the office of statutory auditor of the said company under the Companies Act, 2013 for the year 2018-19. The Complainant is the Director of the said company and a substantial shareholder.
- 4.8 The complaint appears to have been made with an intention to cause duress to the Respondent on a mistaken notion that the Respondent was



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- responsible for defaults in filing of the ROC returns. The Respondent does not see any reason for the Complainant (a) to keep the Respondent in the dark about the complaint and (b) to continue his services as Auditor of Complainant's company, the fee for which is yet to be paid to him.
- 4.9 The Respondent asked the Complainant, through the Hon'ble Disciplinary Directorate, why and how his services have been continued (even after the complaint was lodged with the Hon'ble Directorate) and how his opinion on the audit of their accounts has been accepted (with the financial statements duly countersigned by him and the Complainant and another director) if the Respondent is a person of "unethical" and "criminal activities" as claimed by the Complainant.
- 4.10 The Respondent has been in practice since 2006 and till date there was no occasion for any of his clients to make any kind of complaint.
5. The Board has carefully gone through the facts of the case alongwith the written and oral representation of **CA. Siva Sankar Reddy**.
6. As per the findings of the Board as contained in its report, inter-alia, stating that in view of the categorical admission by the Respondent in his whatsapp conversation with the Complainant that he had already processed ROC filing and will get it approved in 3 days brought on record by the Complainant which is contradictory to the statement of the Respondent, it has already been conclusively proved that **CA. Siva Sankar Reddy** is Guilty of Other Misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule of the Chartered Accountants Act, 1949 read with Section 22 of the said Act.
7. Upon consideration of the facts of the case, the consequent misconduct of **CA. Siva Sankar Reddy** and keeping in view his oral and written representation before it, the Board decided to impose a fine of **Rs.10,000/- (Ten thousand only)** upon **CA. Siva Sankar Reddy (M.No.216219)** payable within a period of 60 days from the date of receipt of the Order.

Sd/-
CA. PRASANNA KUMAR D.
(PRESIDING OFFICER)

Certified to be true copy

Mukesh Kumar Mittal
Assistant Secretary,
Disciplinary Directorate
The Institute of Chartered Accountants of India
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110002

BOARD OF DISCIPLINE (BENCH- I)
Constituted under Section 21A of the Chartered Accountants Act 1949

Findings under Rule 14(9) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007

File No. : PR/291/2017-DD/299/2017/BOD/474/2018

QUORUM:

CA. Sushil kumar Goyal , Presiding Officer
Mrs. Rani Nair (IRS, Retd.), Government Nominee
CA. Durgesh Kabra, Member

In the matter of:

Shri Buddaram Sudhakar
Managing Director,
M/s. Swagruha Projects Pvt. Ltd.,
Flat No.304, Amarchand Sharma Complex,
SD Road,
SECUNDRABAD – 500 003

..... Complainant

Versus

CA. Siva Sankar Reddy (M. No. 216219)
M/s. S.S. Reddy & Co.,
Chartered Accountants,
No.8-2-269, Flat No. 10,
2nd Floor, Lumbini Jewel Mall,
Road No. 2, Banjara Hills,
HYDERBAD -500 034

.....Respondent

DATE OF FINAL HEARING : 2nd August, 2019
PLACE OF HEARING : HYDERABAD

PARTY PRESENT:

Respondent : CA. Siva Shankar Reddy

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FINDINGS:

1. The Board noted the charge against the Respondent, is that failed to file annual return and Balance Sheets of M/s Swarguha Projects Pvt. Ltd. despite being paid Rs. 13,500/- vide cheque no. 014212 towards filing fees of ROC.

2. The Board noted that Respondent was present before it at the time of hearing. However, neither any representative of the Complainant Company nor their authorized representative was present before it and also there was no intimation as regards their non-appearance. In this regard, the Board took into view the provisions of Rule 14(7) of Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 relating to "Procedure to be followed by the Board of Discipline" which provides as under:

"(7) On the date of hearing, if the Respondent, inspite of the service of notice, under sub rule (6) does not appear either in person or through his authorised representative the Board of Discipline may proceed ex-parte and pass such orders as may think fit or direct fresh notice to be served."

3. The Board viewed that same principle applies in case of the Complainant also. Accordingly the Board decided to take up the matter ex-parte the Complainant and on consideration of the submissions and the documents on record, concluded the hearing with the direction to the Respondent to file the copy of the audited financial statement of the company wherein his pending fees is reflected, the copy of the invoice raised by him in respect of filing the financial statement with the ROC for the relevant period, copy of communication with the Complainant as regards pendency of the audit fee, the reason for continued association with the Complainant company despite pendency of the audit fee alongwith his further submissions, if any, within 15 days with a copy marked to the Complainant Company. However, decision on the misconduct of the Respondent was reserved by the Board subject to receipt of aforesaid documents/submissions from the Respondent.

4. Thereafter, the Board at its meeting held on 11th September 2019, on consideration of the further submissions of the Respondent together with the papers on record took decision on the misconduct of the Respondent.

5. The Board noted that the Complainant had brought on record copy of his whatsapp conversation with the Respondent whereby the Respondent informed him that he had already processed ROC filing and would get it approved in 3 days. The Board observed that date of sending this message by the Respondent to the Complainant is not appearing in the said communication. However, the series of whatsapp conversation shows that the same is around June-July, 2017.

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6. The Board also noted that although the Complainant had alleged that he had paid fee through cheque no. 014212 on 30/3/2017 for Rs. 13,500/- towards filing fee of ROC, however whatsapp conversation only provides for pre-payment of fee without any specific mode of payment. Further, the Complainant had neither brought on record copy of any invoice raised by the Respondent for conducting such work nor any copy of appointment letter in this regard.

7. The Board noted that the Respondent during course of hearing submitted that he was not paid any fee in respect of filing of return. As regards payment of Fee of Rs. 13,500/- to him by the Complainant, he submitted that the same was his pending audit fee appearing in financial statements. The Board also noted that the Respondent vide his letter dated 09th August, 2019 had brought on record copy of Balance Sheets which were also signed by the Complainant.

8. The Board on perusal of Balance Sheet of the Complainant company for the F.Y. 2016-17 noted that as per Profit & Loss Account, the amount of audit fee appearing under heading 'Other Charge' was Rs. 20,000/-. Further, the amount of audit fee payable was reflected as under:

<u>Short Term Provisions</u>	<u>31.03.17</u>	<u>31.03.16</u>
Audit Fee Payable	26,500	40,000

Hence, the Board noted that the payment of Rs. 13,500/- made on 30.03.2017 by the Complainant was adjusted and reflected in the Balance Sheet and is deducted from audit fee payable.

9. The Board, hence, noted that the payment of Rs. 13,500/- made by the Complainant is in respect of pending audit fees and not in respect of filing of return as alleged by the Complainant. However, in view of the categorical admission by the Respondent in his whatsapp conversation with the Complainant that he had already processed ROC filing and will get it approved in 3 days, it is difficult to exonerate the Respondent in respect of the charge alleged against him.

10. Further, the Board noted that although the Respondent in his submissions has stated that he had informed the Complainant that filing with ROC is not in the scope of his professional engagement and that a company secretary be engaged for the same. However, he has not adduced any evidence in support of the same and whatsapp conversation brought on record by the Complainant is contradictory to the statement of the Respondent. Accordingly, the Board held the Respondent guilty in respect of the charges alleged against him.

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CONCLUSION:

11. Thus, the Board concluded that the Respondent is **GUILTY** of "Other Misconduct" falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with section 22 of the said Act.

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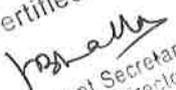
Sd/-
CA. SUSHIL KUMAR GOYAL
(PRESIDING OFFICER)

Sd/-
MRS. RANI NAIR (IRS, Retd.)
(GOVERNMENT NOMINEE)

Sd/-
CA. DURGESH KUMAR KABRA
(MEMBER)

DATE: 6TH JANUARY, 2020

PLACE: NEW DELHI

Certified Copy

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