



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

PR/288/16/DD/316/2016/BOD/431/2018

ORDER UNDER SECTION 21A(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 C.S. Muraleedharan, Kochi

.... Complainant

-Vs-

CA. Kumar Gorave (M.N. 402545), Delhi

.... Respondent

[PR/288/16/DD/316/2016/BOD/431/2018]

MEMBERS PRESENT(through video conferencing):

CA. Prasanna Kumar D, Presiding Officer
Mrs. Rani Nair, (IRS, Retd.), Government Nominee
CA. Durgesh Kumar Kabra, Member

Date of Final Hearing: 27th October, 2020

1. The Board of Discipline vide Report dated 6th January, 2020 was of the opinion that **CA. Kumar Gorave (M.N. 402545)** 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.
2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against **CA. Kumar Gorave** and communication dated 9th October, 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 27th October, 2020.
3. **CA. Kumar Gorave** did not appear before the Board on 27th October, 2020. He vide email dated 23rd October 2020 informed that he will not be able to appear before the Board on the scheduled date of hearing. Since the written representation of the Respondent was already on record and the case had been placed earlier also before the Board for award of punishment and the Respondent chose not to appear, keeping in view the provisions of Rule 15 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Board decided to proceed ahead in the matter presuming that the Respondent had nothing more to represent before it.
4. **CA. Kumar Gorave**, in his written representation, inter-alia submitted as under:-

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- (a) The decision on matters falling within the scope of the Clause (2) is not valid unless the Council of the Institute forms an Opinion in each of the specific case that is dealt under this Clause.
- (b) It would be premature to take a decision on the allegation as the matter is a civil dispute in progress in Courts and therefore the decision of the Civil Courts in the matter would make it clear about the role of Respondent. It was necessary, in the interest of justice, for the Board, to wait for the decision of the Courts.
- (c) The Hon Courts have pronounced its decision in Case No. 5432/2016 on the matter of loan agreement and have declared in Para No. 13 of the Order that the Complainant has totally failed to produce any oral or documentary evidence to show that Rs. 44,00,000/- (claimed as loan given) was paid. The decision of the Court was pronounced after the hearing of the case by the Board (that was in June 2019).
- (d) There were no conclusive evidences on record against the Respondent that enabled the Board to make the conclusion in Para 9 of the Finding. There was no finding by Board that whether the Respondent owed any money to the Complainant. Therefore, the theory concocted by Board that the Respondent had no intention to pay monies to the Complainant, was nothing more than figment of imagination. The Board had no information about the context of the alleged return of cheques discussed in the allegation. Conclusions were made out of nothing and without any basis. Therefore, conclusion in Paragraph 9 of the finding is perverse.
- e) The Hon BOD has been grossly unfair in concluding that a Chartered Accountant who failed to repay a loan had compromised with his integrity particularly when the relationship was just personal and not professional.
- f) Clause (2) of Part IV of First Schedule cannot be invoked on a CA merely because he had some delinquency over some alleged dues to another person. From a pure analytical point of view, the delinquency of a creditor is a pure question of civil dispute and the reason for delinquency could be something beyond the control of a creditor, and not necessarily a wilful default at all times. Unless and until the Hon BOD reaches to a conclusion that a CA was a wilful defaulter, question of integrity cannot be invoked on a CA. However, as the facts suggest the Hon Board had no information, whatsoever on any of those angles, in this case, about the alleged default or Respondent's financial position. Therefore, the Order was made without any basis and hence unjust, perverse and deserves to be revoked.

5. The Board has carefully gone through the facts of the case and the written representation of **CA. Kumar Gorave**. Considering the same, the Board was of the following view:

- i) As regards the submission of the Respondent regarding the opinion of the Council as referred to in Clause (2) of Part IV of the First Schedule, the Board relies on para 17 of the Order dated 18th



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October, 2018 passed by the Hon'ble Appellate Authority in Appeal no.14/ICAI/2017 and 12/ICAI/2017 as under:

"17. It is pertinent to note here that this Authority has already dealt with and decided this issue in the Appeals earlier namely Gyan Prakash Agarwal (Appeal No. 08/ICAI/2014), Rajiv Maheshwari (Appeal No. 05/ICAI/2014) and Sameer Kumar Singh Vs. ICAI (Appeal No. 07/ICAI/2014) and has held as under:- "15. Based on the above and by taking note of the written submissions made on behalf of the Institute of Company Secretaries of India, the Institute of Cost Accountants of India and the Institute of Chartered Accountants of India containing the detailed Page 9 of 14 analysis of the issue in question, we are of the considered view that the proper and correct interpretation which can be given to Clause (2) of Part-IV of the First Schedule to the respective Acts, in the light of the principles laid down and having regard to the case laws of various courts and further considering the basic objects, reasons and purpose of the amendment brought in the statutes as quoted above is that, 'Prima facie Opinion (PFO)' formed by the Director (Discipline) in all such complaints / information cases serves the purpose for proceeding further for taking disciplinary action against the errant members as in terms of the amended mechanism for conduct of cases, it is the Director (Discipline) who has to form the first Prima Facie Opinion for the disciplinary proceedings to be initiated. Therefore, the opinion of council as is mentioned in the clause (2) of Part-IV of the First Schedule to the Act has to be given a purposive meaning and has to be read in consonance with the letter and scheme of the enactment".

Hence, the issue has already been decided by the Hon'ble Appellate Authority, and therefore, there is no merit in the argument of the Respondent in this regard. Also, there is no inclusive definition of 'Other Misconduct' as per Section 22 of the Chartered Accountants Act 1949 read with Clause (2) of Part IV of the First Schedule of the Chartered Accountants Act, 1949 and thus, what constitutes 'Other Misconduct' is decided upon the facts and circumstances of each case.

ii) Also, proceedings before the Board of Discipline are quasi-judicial in nature which are distinct from civil/criminal proceedings and where the misconduct can be proved by preponderance of probabilities having regard to the conduct of the Respondent. While coming to the said view the Board took into consideration the decision of the Hon'ble Supreme Court in the matter of "Ajit Kumar Nag –vs- General Manager (PJ) Indian Oil Corporation Limited-AIR 2005 SC 4v217 wherein the Hon'ble Apex Court held as under :-

"The degree of proof which is necessary in order to conviction is different from the degree of proof necessary to record the commission of delinquency. The rules relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused beyond reasonable doubt he cannot be convicted by a Court of law. In a departmental enquiry penalty can be imposed on the delinquent officer on a finding recorded on the basis of preponderance of probability."

Similarly in the matter of Capt. M Paul Anthony –vs- Bharat Gold Mines Limited - AIR....1999 SC 1416 the Hon'ble Supreme Court held as under:-

"In departmental proceedings, factors prevailing in the mind of the disciplinary authority may be many, such as enforcement of discipline or to investigate level of integrity of delinquent or other staff. The standard of proof required in those proceedings is also different from that required in a criminal case. While in departmental proceedings, the standard of proof is one of preponderance of probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt."



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Further, there is no legal precedent to the effect that disciplinary proceedings must be stayed in each and every case where a case is pending before the Civil/Criminal Court on the very same facts/charges. The stay Orders are passed by the competent Courts in specific cases keeping in view the facts of the case and cannot be applied in general to stay/keep in abeyance all the disciplinary proceedings before it.

iii) Also, as per the findings of the Board as contained in its report, it is clear that the Respondent and the Complainant had entered into a financial transaction between themselves on account of which the Respondent owed money to the Complainant and it appeared that he did not have any intention to repay the same to the Complainant since three cheques signed by the Respondent were returned due to "insufficiency of funds" and the fourth cheque also did not get cleared on account of "Stop Payment" instruction issued by the Respondent to bank which is punishable under the aforesaid Act and thus, it has already been conclusively proved that **CA. Kumar Gorave** 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.

6. Upon consideration of the facts of the case, the consequent misconduct of **CA. Kumar Gorave** and keeping in view his written representation before it, **the Board decided to Reprimand CA. Kumar Gorave (M.N. 402545) and also imposed a fine of Rs.1,00,000/- (Rs. One Lakh only) upon him payable within a period of 60 days from the date of receipt of the Order.**

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

Certified to be true copy
Harleen Bhalla
CA. Harleen Bhalla
Assistant Secretary,
Disciplinary Directorate
The Institute of Chartered Accountants of India,
ICAI Bhawan, Vishwas Nagar, Shalada, Delhi-110022

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/288/2016/DD/316/2016/BOD/431/18

QUORUM:

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

In the matter of:

Sh. C.S. Muraleedharan,
2-D, Antarosedale,
Opp. RLV Music College
Mini Bypass,
Tripunitura,
Kochi - 682301

..... Complainant

Versus

CA. Kumar Gorave ... (M. No. 402545)
Flat No. - 49, Ekta Apartments,
Geeta Colony,
Delhi-110031

.....Respondent

DATE OF HEARING : 16th May, 2019

PLACE OF HEARING : New Delhi

PARTIES PRESENT:

Complainant : Shri C.S. Muraleedharan

Counsel for the Complainant : Harpreet Singh Uppal, Mohit Dewan
Yash Prakash Sharma

Counsel for the Respondent : CA. C.V. Sajan

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Findings:

1. The Board noted the charge against the Respondent that he has deliberately misappropriated the hard earned money of the Complainant, and thus, acted grossly negligent in regard to his professional duties.

2. The Board noted that the Complainant alongwith his counsel and the Counsel for the Respondent was present before it and also considered the submissions made by both the parties. The Board thereafter concluded the hearing in the case with the direction to the Respondent to make further submissions in the matter, if any, within 15 days with a copy marked to the Complainant's bank. Thereafter, the Board at its meeting held on 11th September 2019 duly considered the further submissions of the Respondent together with the papers on record and took a decision as regards the misconduct of the Respondent.

3. The Board noted the following submission made by the Respondent:

(a) he never acted in the capacity of a Chartered Accountant or rendered any professional services to the Complainant.

(b) cheque numbers 045323, 045324, 045322, 043129 amounting Rs. 5,00,000/-, Rs. 5,00,000/- , Rs.7,00,000/- and Rs. 10,00,000/- respectively bearing the signatures of the Respondent were stolen by the Complainant from his office, and thereafter, fraudulently deposited by him in his account which got dishonored.

(c) he had never borrowed Rs. 44,00,000/- from the Complainant as alleged by him.

4. The Board also perused the Complainant's submission as stated hereunder:

(a) loan agreements were executed between the Complainant and the Respondent. The Complainant's PAN Account, ITRs and other Income Tax files are in possession of the Respondent and he has failed to return the same despite repeated requests.

(b) three out of four cheques issued by the Respondent got dishonoured vide return memos dated 09.01.2015 and 12.01.2015 with remarks "Funds Insufficient" while the remaining one got dishonoured due to "Stop Payment" on 15.01.2015.

(c) the Respondent was paying the Complainant and his daughter Tanya Menon, a monthly interest of Rs.32,500/- against the loan taken by him.

(d) the post-dated cheques issued by the Respondent as security against the said Loan were not encashed and which eventually got expired due to the false

assurances given by the Respondent that he would honor his commitment and payback the loan amount. As a consequence, the Complainant being a layman did not deposit the cheques for encashment and did not realize the fraudulent and ill intention of the Respondent to defraud him.

5. The Board, considering the above submissions and documents available on record, noted that the four loan agreements dated 1st July 2012 of Rs. 11 lacs each were executed between the Complainant and the Respondent categorically stating therein that the loan has been disbursed in lump sum on or before 1st July 2012, duly signed by the Respondent and the Respondent has not disputed the existence of the said agreements. Further, at the time of hearing, the complainant specifically stated that the said loans were disbursed in cash to the Respondent. Moreover, it is apparent from the bank statement provided by the Complainant that a transaction of Rs. 10 lacs is appearing as a deposit into the Complainant's bank account i.e. being paid by the Respondent to the Complainant on 30.05.2014, whereas the Respondent has denied that he took any loan from the Complainant.

6. The Board also perused the transcript of the telephonic conversation between the Complainant and the Respondent from which it is evident that there was a professional relationship between the two and thus, the denial of this fact by the Respondent is not accepted.

7. The Board also perused the copy of the bank statement brought on record by the Complainant and observed that there is fund movement between the Complainant and the respondent/his wife. Further, on perusal of bank statement of Ms. Tanya Menon (Complainant's daughter), the Board noted that an amount of Rs. 32,500/- has been deposited by the Respondent on 12.02.2013 into her account and same amount is credited in her account on a regular basis till December, 2013 which seems to be paid by the Respondent into her bank account. Also, the same can be corroborated by the email sent by the Respondent to Tanya Menon wherein the Respondent has accepted to pay Rs. 32,500/- per month on an invested amount of Rs. 17.50 lacs @ 1.85% per month. It is moreover noted that in reply to the email of Ms. Tanya dated 30.04.2014, the Respondent has mentioned regarding payment of some instalments to her. This clearly implies that there were financial dealings

between the Respondent and the Complainant/his daughter which the Respondent is denying.

8. The Board also noted the provisions of Section 138 of the Negotiable Instruments Act, 1881 which provides as under:-

“Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both....”

9. The Board, in view of the above, opined that it is clear that the Respondent and the Complainant had entered into a financial transaction between themselves on account of which the Respondent owed money to the Complainant and it appeared that he did not have any intention to repay the same to the Complainant since three cheques signed by the Respondent were returned due to ‘insufficiency of funds’ and the fourth cheque also did not get cleared on account of “Stop Payment” instruction issued by the Respondent to bank which is punishable under the aforesaid Act.

10. Keeping in view the above, the Board viewed that the submission of the Respondent that he did not undertake any loan amount is not tenable and also the act of the Respondent in not repaying the said loan amount was not expected on the part of the Respondent being a professional. In this background, the Board was of the view that any act of a Chartered Accountant compromising integrity and public trust and committing an offence under the Negotiable Instruments Act, 1881, needs to be penalised so that the public at large continues to repose its trust in professionals and the chartered accountants render credibility to the profession.

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CONCLUSION:

11. Thus, in conclusion, in the considered opinion of the Board, the Respondent is held **GUILTY** of Other Misconduct falling within the meaning of Clause (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act.

Sd/-

CA. SUSHIL KUMAR GOYAL
(PRESIDING OFFICER)

Sd/-

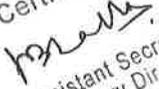
MRS. RANI NAIR (IRS, Retd.)
(GOVERNMENT NOMINEE)

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

