



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

PPR/P/382/17/DD/03/INF/18-DC/1353/2020

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. : [PPR/P/382/17/DD/03/INF/18-DC/1353/2020]

In the matter of:

CA. M Jayaraman (M.No.207004),
51 A V M Avenue First Main Road,
Virugambakkam,
Chennai 600 009

-----Respondent

Members present:

CA. Nihar N Jambusaria, Presiding Officer
Smt. Anita Kapur, Member (Govt. Nominee)
Shri Ajay Mittal, Member (Govt. Nominee)
CA. Chandrashekhar Vasant Chitale, Member
CA. P.K. Boob, Member

Date of Final Hearing: 29th April, 2021 through Video Conferencing
Place of Hearing: Mumbai

Party Present:

CA. M Jayaraman (M.No.207004) (appeared from his personal location)

1. That vide report dated 3rd February 2021 (copy enclosed), the Disciplinary Committee was of the opinion that CA. M Jayaraman (M.No.207004), was **GUILTY** of Professional Misconduct falling within the meaning of Items (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949 in respect to allegation made against the Respondent on the basis of investigation conducted by Serious Fraud Investigation Office into the affairs of M/s Subhiksha Trading Services Limited (in liquidation) (hereinafter referred to as '**the Company**') whereby it was alleged that the Respondent had issued end use certificate without verifying payments made from the Bank account of the Company in acquiring fixed assets vis-a-vis bills, invoices, vouchers etc.

It was noted that Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949 states as under:-

Second schedule

Part I

"(7) 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 12th April 2021 was addressed to him thereby granting

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him an opportunity of being heard in person and/or to make a written representation before the Committee on 29th April 2021 through video conferencing.

3. The Respondent appeared before the Committee on 29th April 2021 through video conferencing from his personal location and made his oral representations on the findings of Disciplinary Committee. The Committee considered both the oral submissions as well written submissions made by the Respondent vide his letter dated 20th March 2021. It was noted that the Respondent, at the outset, submitted that the SFIO Report as well as Prima Facie Opinion of the Director (Discipline) contained no evidences for the allegation made against him. He further argued that the Committee, however, in its Findings claimed to have been able to find evidence which as per him was in gross violation of Rule 18(2) of CA Rules, 2007. The Respondent submitted that based on evidences so collected hearing was concluded by the Committee without giving him sufficient opportunity to counter the said evidences. The Respondent argued that the Committee had wrongly relied upon two unrelated documents as evidence against the Respondent. As per him, the certificate dated 29th September 2007 issued by CA K Sridhar, another Respondent in same matter, from the same Respondent Firm and another certificate dated 10th July 2008 issued by him were related to different phases of the project i.e. 3/4 of the project and not Phase 5 for which the contentious certificate dated 27th February 2008 was issued. He also stated that by presenting these two certificates (which were related to Phase 3 and 4) alongside the contentious certificate in the table given in Para 6 of the Committee's Findings, the whole process of adjudication was vitiated as all four certificates were considered together and there was no evidence or facts on record to support the view of the Committee that all the four certificates were related to same set of assets. He also stated that findings of the Committee that he had not verified the essential records before issuing the certificate was not supported with any reason or evidence as he had affirmed in his written statement that payment for assets were cross verified with Bank statements to the extent of certification done.
4. The Committee considered both the oral as well written submissions of the Respondent and noted that at the outset that the Director(Discipline) had sought the working papers of the Respondent as retained by him for issuance of alleged certificate which he failed to provide stating that the documents were lying with the Company which he sought from the Managing Director of the Company vide his letter dated Jan, 2014 but was unable to obtain them. In the absence of any documents being produced by the Respondent, the Committee considered the facts as available on record. It was noted that the Respondent had argued that the Committee had compared unrelated documents to arrive at its conclusion which is completely unacceptable because both the partners of the firm, the Respondent and his partner, issued four separate certificates dated

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29th Sept, 2007, 27th Feb, 2008, 16th April, 2008 and 10th July 2008 alternatively that provided contradictory information. Even if certificates of other phases, as being argued by the Respondent, were ignored, still there was certain information available on record which was not only difficult to comprehend but illogical to accept as well unless the Respondent would have given any evidence to justify the following difference:-

- Two certificates pertaining to same phase viz the alleged certificate dated 27th Feb, 2008 and certificate dated 16th April, 2008 issued by another Respondent, though both were related to same phase i.e. Phase 5, explained the said phase differently though both certificates certified the same value of investments that is Rs. 136.40 crores. While in the alleged certificate, Phase 5 was described as opening of 390 stores and one warehouse but the other described it as acquisition of 500 stores and one warehouse.
- Further, the Respondent had certified in the alleged certificate to have not availed any long term loans from the Bank but as per the Investigation Report, Rs. 15cr had been disbursed by Bank of Baroda as on 15.02.2008 (A-82) prior to the date of the alleged certificate.

Further, the Committee noted that the Respondent had certified the value of investments and source of financing the same which were stated to have been verified from the books of accounts and other records/ information as received from the Company as stated by the Respondent before the Informant Department. It was viewed that the value of investments and its source of finance could not be verified without referring to the bank statements and valuer's report. It was viewed that books of accounts/ records/bill/voucher could never be considered as sufficient evidence for verification of value of investments because value does change with time. Further neither the books of accounts nor the bills could corroborate the evidence for sources of finance.

4.1 Thus, the Committee while noting the content of paragraph 2.2 of 'Guidance Note on Audit Reports and Certificates for Special Purposes', issued by the Institute, viewed that being a professional, the Respondent was responsible for the factual accuracy of the facts certified therein and his examination of the facts were required to be more intense at the time of issuing certificate than that issuing audit report. However, in view of the contradictions, as reflected in the Certificate issued by the Respondent vis a vis his partner and also an incomplete verification done by him with respect to term loan taken from bank, it was viewed that he had not performed his professional duties diligently.

5. The Committee thus viewed that the misconduct on the part of the Respondent has been held and established within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949 and keeping in view the facts and circumstances of the case as aforesaid,



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ordered that the name of the Respondent, **CA. M Jayaraman (M.No.207004)**, be removed from the Register of members for a period of 1(one) year along with a fine of Rs. 1,00,000/- be levied upon him that shall be payable within a period of 3 months from the date of receipt of the Order. In case the Respondent, failed to pay the same as stipulated, the name of the Respondent, **CA. M Jayaraman (M.No.207004)**, be removed for a further period of 1(one) month from the Register of members on the lines of Section 64 of the Indian Penal Code.

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Sd/-
[CA. Nihar N Jambusaria]
Presiding Officer

Sd/-
[Smt. Anita Kapur]
Member (Govt. Nominee)

Sd/-
[Shri Ajay Mittal]
Member (Govt. Nominee)
[approved and confirmed through e-mail]

Sd/-
[CA. Chandrashekhar Vasant Chitale]
Member
[approved and confirmed through e-mail]

Sd/-
[CA. P.K. Boob]
Member
[approved and confirmed through e-mail]

Date: 29th April, 2021

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

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. : [PPR/P/382/17/DD/03/INF/18-DC/1353/2020]

In the matter of:

**CA. M Jayaraman (M.No.207004),
51 A V M Avenue First Main Road,
Virugambakkam,
Chennai 600 009**

-----Respondent

MEMBERS PRESENT:

**CA. Atul Kumar Gupta, Presiding Officer
Smt. Anita Kapur, Member (Govt. Nominee)
Shri Ajay Mittal, Member (Govt. Nominee)
CA. Chandrashekar Vasant Chitale, Member
CA. Manu Agrawal, Member**

Date of Final Hearing: 22nd January, 2021

Place of Final Hearing: New Delhi (through Video-conferencing)

PARTIES PRESENT:

- (i) CA. M Jayaraman – Respondent**
- (ii) CA C.V. Sajan– Counsel for Respondent**

Charges in Brief:

1. The Committee noted that in the Prima Facie Opinion formed by Director (Discipline) in terms of Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Respondent was *prima facie* held guilty of Professional Misconduct falling within the meaning of Clause (7) of Part

I of the Second Schedule to the Chartered Accountants Act, 1949. The said Clause to the Schedule state as under:-

“(7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties; and

Brief Background and Allegations against the Respondent:

2. SFIO, the Informant, had conducted investigation under section 235 of the Companies Act, 1956 into the affairs of M/s Subhiksha Trading Services Limited (in liquidation) [hereinafter referred to as “**Company/ STSL**”]. During the Investigation, SFIO came to conclusion that the promoter directors of the Company conducted the business by adopting various fraudulent method and fabrication of financial statements and certain deficiency on the part of Respondent was observed who had certified (**A-85 and A-112**) end use certificate without verifying payments made from the Bank account of the Company in acquiring fixed assets vis-a-vis bills, invoices, vouchers etc.

Proceedings:

3. At the time of hearing on 22nd January 2021, the Committee noted that the Respondent along-with his authorized Counsel were present before it from their respective personal location. Thereafter, they 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 the 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 Counsel for the Respondent stated before the Committee that 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, he did not plead guilty and opted to defend the case.

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Thereafter, the Counsel for the Respondent made his submissions on the allegations.

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:

4. The Committee noted that it was alleged against the Respondent that he had issued the end use certificate dated 27.02.2008 (**C-24**) to AGM, Bank of Baroda without verifying payments made from the Bank account of the Company in acquiring fixed assets vis-a-vis bills, invoices, vouchers etc. The Committee noted the oral as well as the written submissions made by the Respondent wherein inter-alia he stated that

- (i) During the investigation of STSL, SFIO, the Informant, summoned him and took his statement. It wanted him to provide the invoices, bills, vouchers, bank records etc. that were verified to issue the said certificate. The Respondent expressed his helplessness over the fact that these records were with the Company. It was contended before them that the certificates were issued by the Respondent after thorough verification of the records including the account books, bank records, invoices /vouchers but SFIO, the Informant, while concluding its report made the allegations that the certificate issued by the Respondent was issued without verification of bills, vouchers, bank payments etc.
- (ii) He also stated that Certificate issued by him on 27.02.2008 to the Company (**B-3 to B-4**) for obtaining loan from Bank of Baroda was not an end use certificate. The SFIO had wrongly assumed the same. The

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alleged certificate confirmed only the purchase of fixed assets by the Company on the basis of bills and books of accounts.

- (iii) As per the Respondent, the allegations were made on the basis of differences observed in the Certificates issued by the two different chartered accountants who were the partners of the same audit firm. The Respondent argued that there was no difference in the amount certified by them except the number of stores which occurred because certain number of units that were not fully ready for operation had not been included in the certificate issued by the other chartered accountant which was as certified by the management. He stated that the said number was non-financial number and hence insignificant.

5. The Committee noted that both cases under reference number PPR/P/382/17/DD/02/INF/18-DC/1352/2020 and PPR/P/382/17/DD/03/INF/18-DC/1353/2020 have emanated out of a common Investigation Report of SFIO given in the case of the Company, M/s Subhiksha Trading Services Limited (in liquidation), accordingly, the documents available in both the matters have been considered while conducting the enquiry so as to arrive at a logical conclusion.

6. The Committee on perusal of the certificate dated 27.02.2008 noted that the Respondent had certified that total sum of Rs. 136.40 crores (being project cost of phase 5) was fully invested in opening of 390 stores and 1 warehouse in Phase V of the project which was financed out of residual charge short term loans raised by the Company- in lieu of equity- to the extent of Rs 1250 mn from ICICI Bank, Yes Bank and Centurion Bank of Punjab and the balance was met from internal accruals. It was further certified that the company had not availed any long term loan from the Bank others in respect of these stores or warehouse. Further, it was noted that another certificate dated 10.07. 2008 as



issued by the Respondent himself and certificates dated 29.09.2007 and 16.04.2008 as issued by another Chartered Accountant who was also the partner of the same Respondent Firm were also available on record. On review of the all the certificates as available on record, the Committee observed certain variations in the information given therein as tabulated below:

| Sl. No | Date of Certificate | 29 th September 2007 | 27 th February, 2008 | 16 th April 2008 | 10 th July 2008 |
|--------------------------|---|--|--------------------------------------|--|--|
| 1. | Name of Chartered Accountant who issued certificate | CA K. Sridhar | CA M Jayaram | CA K. Sridhar | CA M Jayaram |
| | Issued to | Centurion Bank of Punjab | Bank of Baroda | Bank of India | The Fedral Bank Ltd. |
| 2. | Amount Certified | Rs.136.35 Cr | Rs.136.40 Cr | Rs.136.40 Cr | Rs.168.45 Cr |
| 3. | Phase described as | Phase 3 | Phase 5 | Phase 5 | Phase 3 |
| 4. | Nature of Assets & their location | Acquisition of assets for stores & Warehouse as part of expansion in Pune, Rest of Maharashtra, Punjab, Haryana, Chandigarh & UP | Opening 390 stores and one warehouse | Acquisition of assets for 500 stores & 1 Warehouse | Acquisition of assets for stores & Warehouse as part of expansion in Pune, Rest of Maharashtra, Punjab, Haryana, Chandigarh & UP |
| Items /Components | | | | | |
| 1. | Warehouse | 3,26,01,107 | NA | 6,99,61,048 | 4,42,26,433 |
| 2 | Plant and Machinery | 5,70,74,741 | NA | 19,70,45,262 | 9,61,28,784 |
| 3 | Furniture and fixtures | 30,95,98,729 | NA | 27,91,59,813 | 41,52,22,231 |
| 4. | Office equipment | 30,80,26,240 | NA | 19,87,16,912 | 34,52,89,330 |
| 5 | Computers | 26,74,35,091 | NA | 27,05,04,230 | 33,90,54,592 |
| 6 | Electrical fittings | 28,41,66,270 | NA | 27,93,71,302 | 33,08,05,940 |
| 7 | sign board | 10,46,25,110 | NA | 6,92,94,882 | 12,37,96,731 |
| | Total | 136,35,27,288 | | 136,40,53,449 | 168,45,24,041 |
| Source of Finance | | | | | |

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|----|----------------------|----|---|---|---|
| 1. | Source 1 | NA | 1250 million from residual charge short term loans raised from ICICI Bank, Yes Bank, Centurion Bank of Punjab | 1250 million from residual charge short term loans raised from ICICI Bank, Yes Bank, Centurion Bank of Punjab | - |
| 2 | Source 2 | NA | Balance from internal accruals | Rs. 11.4 Crores from internal accruals | Rs. 92.45 Crores from equity and internal accruals |
| 3 | Regarding Term loans | NA | The Company has not availed any long term loans from Bank or others in respect of stores or warehouses. | In terms with company's plans to substitute the short term finance of Rs. 1250 million with equity of Rs. 65 Crores and balance Rs. 60 Crores by way of term loan financing from banks/institutions, the company has already raised Rs. 35 Crores as Term Loan for phase 5 from Bank of Baroda and proposed to be raised for Rs. 25 Crores from Bank of India. | a) ABN Ambro for 20 Crores b) Centurion Bank of Punjab for Rs 15 Crores c) Fedral Bank of Rs. 16 Crores d) Bank of Baroda for Rs. 15 Crores |

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7. It was noted that firstly the Respondent, in his alleged certificate dated 27.02.2008, had not only contradicted the facts certified by his partner vide certificates dated 29.09.2007 & 16.04.2008 but also contradicted his own other certificate dated 10.07.2008. It was noted, at the outset, that the certificates dated Sept, 2007, Feb, 2008 & April, 2008 were issued for same value of investments i.e. Rs.136.35cr or Rs.136.40cr but while the certificate dated Sept 2007 (issued by his partner) described the investment done for Phase 3 but the alleged certificate as well as certificate dated 16th April, 2008 issued by the other chartered accountant described it as Phase 5 investment. It was viewed the same value of investments could never describe the different phases and even if it is assumed that the Respondent had certified the correct phase, then again contradiction had arisen because he described the investment being done for 390 stores and 1 warehouse while the other chartered accountant, who was also his partner, described the same value of investment as done for 500 stores and 1 warehouse. So contradictions did exist. Further, there was a trend that both of them were issuing on alternate basis and for different banks/financial institutions.

Further, it was also noted that whereas the Respondent had certified in the alleged certificate to have not availed any long term loans from the Bank but as per the Investigation Report Rs. 15cr had been disbursed by Bank of Baroda as on 15.02.2008 **(A-82)** prior to the date of the alleged certificate.

8. Further, the Committee noted that the Respondent had certified the value of investments and source of financing the same. However, the same was stated to have been verified from the books of accounts and bills/ information as received from the management. It was viewed that the value of investments and its source of finance could not be verified without referring to the bank statements and valuer's report. It was viewed that a bill/voucher could never be considered as sufficient evidence for verification of value of investments

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because value does change with time. Further neither the books of accounts nor the bills could corroborate the evidence for sources of finance.

9. In this regard, the Committee noted paragraph 2.2 of 'Guidance Note on Audit Reports and Certificates for Special Purposes', issued by the Institute, which states that a "certificate" is a written confirmation of the accuracy of the facts stated therein and does not involve any estimate or opinion. A "report", on the other hand, is a formal statement usually made after an enquiry, examination or review of specified matters under report and includes the reporting auditor's opinion thereon". Thus, it was viewed that when a professional issues a certificate, he is responsible for the factual accuracy of what is stated therein. In fact his examination of the company records should be more intense at the time of issuing certificate than that issuing audit report. However, in view of the contradictions, as reflected from the Certificates issued by the Respondent himself and also an incomplete verification done by him, it was viewed that he had not performed his professional duties diligently. In fact, the Committee did not find merit in the submission of the Respondent regarding his working papers lying with the Company as he contended to have sent letters to the Company for relevant documents since the working papers are widely acknowledged to be the property of the Chartered Accountant and that of his firm who undertake the professional assignment and are required to be retained by him to form records of the work done by him/firm and the basis for arriving at a conclusion. The Committee thus was of the considered view, in light of the reasons stated in the preceding paras, together with the fact that there was failure on part of the Respondent to bring on record the information based on which the certificate dated 27th Feb 2008 was issued by him. It was viewed that the Respondent had failed to exercise due diligence in carrying out his professional duties and was thus held guilty of professional misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

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Conclusion:

10. Thus in conclusion, in the considered opinion of the Committee, the Respondent is held 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/-
[Smt. Anita Kapur]
Member, (Govt. Nominee)

Sd/-
[Shri Ajay Mittal]
Member, (Govt. Nominee)

Sd/-
[CA. Chandrashekhar Vasant Chitale]
Member
(approved & confirmed through e-mail)

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

DATE: 3rd February, 201

PLACE: New Delhi

Certified to be True Copy
Mohita Khanna
(Mohita Khanna)
Assistant Secretary
Disciplinary Directorate
The Institute of Chartered Accountants of India