



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

PR/97/2016-DD/131/2016-DC/750/2018

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. : PR/97/2016-DD/131/2016-DC/750/2018

In the matter of :

Shri Amaresh Kumar, IRS

Deputy Director

Directorate General of Central Excise Intelligence

Hyderabad Zonal Unit, Hyderabad

.....Complainant

Versus

CA. K.J.D.Srinivas (M.No. 200487)

49-24-52, Upstairs

Sankaramatt Road

Visakhapatnam - 530016

.....Respondent

Members present:

Smt. Anita Kapur, Member (Govt. Nominee) & Presiding Officer

CA. Chandrashekhar Vasant Chitale, Member

CA. P.K.Boob, Member

Date of Final Hearing: 8th July, 2021

Place of Final Hearing: New Delhi

1. That vide report dated 23rd September 2019 (copy enclosed), the Disciplinary Committee was of the opinion that CA. K.J.D. Srinivas (M.No. 200487) was GUILTY of Professional Misconduct falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountant Act 1949 in respect of certification of two sets of Annual Reports/ Balance sheets of M/s Sai Concrete Pavers Pvt. Ltd (hereinafter referred to as "Company") for the financial year 2012-13. It was alleged that in one set (submitted to the Central Excise Department) the Respondent had certified the contract receipts at Rs 3,42,46,344/- whereas in the other set for same period (submitted to the Registrar of Companies) the contract receipts was certified at Rs. 20,86,46,344/-. It was noted that Clause (7) of Part I of the Second Schedule states as under:

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 19th June 2021 was addressed to him thereby granting him an opportunity of being heard in person and/or to make a written representation before the Committee on 8th July 2021 through video conferencing.

3. During hearing on 8th July 2021, the Committee noted that the Respondent did not appear before it for hearing. However, he had sought adjournment vide his email dated 5th July 2021

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on medical grounds stating that he was struggling for kidney transplantation due to which he was confined to bed and Doctor suggested him dialysis on daily basis. In view of COVID 19 scenario, Doctors had suggested him not to come out of the house and as such he was striving for survival and sought adjournment of the case. The Committee, further, noted that vide his subsequent email dated 7th July, 2021 the Respondent stated to have sent communications giving consent for submissions through video conference and that requested the Committee to provide opportunity for personal appearance. It was noted that the apparent contradictions of his health conditions vis-a-vis his request to appear in person before the Committee and were pointed out immediately to the Respondent on which he remained silent.

Further, it was noted that at the last hearing held on April 29, 2021, while acceding to his request for adjournment, the Committee had granted him last opportunity to defend his case before the Committee and/or to give his additional submissions if any to the Committee. It was also noted that the Respondent had been seeking adjournments on health grounds since Sept, 2020 and that the Committee had given sufficient time gaps before fixing next hearing(s) since Sept 2020. Accordingly, it was viewed that sufficient opportunity had been given to the Respondent as envisaged under proviso to Rule 18 of CA Rules, 2007. So, the Committee rejected the request for further adjournment made by the Respondent and decided to proceed in the matter. As the written representation of the Respondent was available on record, the Committee concluded the case based on documents/information available on record.

4. The Committee noted the written representation dated 29th November 2019 as submitted by the Respondent on the findings of Disciplinary Committee. The Respondent had inter-alia submitted that the aspect of reconciliation of financial statements and there being no difference/deviation was not at all considered by the Committee despite the fact that the reconciliation of both the statements were submitted and need for re-grouping was clearly explained during the adjudication proceedings. As per him, it clearly proved beyond doubt that there were no two sets of financial statements and it was only a case of Regrouping of figures. He further submitted that the Company was a closely held Company with 2 Directors and every document was signed by them together and thus the provisional statements were also signed by them where the word 'Provisional' was not mentioned. However, no purpose was served by signing the provisional statements as the bank authorities did not use the said statements for continuation of limits but classified the accounts of the Company as NPA and enforced the securitization proceedings, seized the properties of the Company and sold and recovered their entire dues. Thus, no reader of the statements was affected including the Complainant's Department.

5. The Committee considered the written submissions of the Respondent and noted that the on the one hand, he submitted that the said difference in "contract receipt" was only on account of regrouping of figures i.e. inclusion of work in progress in net sales whereas on the other hand, he had also emphasized that he had certified provisional statements where he did not mention the word 'provisional' but wrongly mentioned the words "As per our report of even date" on the provisional financial statements. The Committee further noted that the Respondent had nowhere mentioned by way of either any note/explanation that the stated



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financials were provisional and in absence of same, they were considered as based on final accounts and were thus not only misleading but reflective of lack of diligence in conduct of his professional duties.

6. The Committee thus viewed that the misconduct on the part of the Respondent has been held and established within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 and keeping in view the facts and circumstances of the case as aforesaid, ordered that the name of the Respondent, **CA. K.J.D.Srinivas (M.No. 200487)** be removed from the Register of members for a period of 3 (three) months along with a fine of Rs. 50,000/- (Rupees Fifty Thousand Only) 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. K.J.D.Srinivas (M.No. 200487)** 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.

(2)

Sd/-

[Smt. Anita Kapur]

Member (Govt. Nominee) & Presiding Officer

Sd/-

[CA. Chandrashekhar Vasant Chitale]

Member

[Approved and confirmed through e-mail]

Sd/-

[CA. P.K. Boob]

Member

[Approved and confirmed through e-mail]

B

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, Shahrda, Delhi-110032

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH-III (2019-20)]

(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/97/2016-DD/131/2016-DC/750/2018

In the matter of :

**Shri Amaresh Kumar, IRS
Deputy Director
Directorate General of Central Excise Intelligence
Hyderabad Zonal Unit, HyderabadComplainant**

Versus

**CA. K.J.D.Srinivas (M.No. 200487)
49-24-52, Upstairs
Sankaramatt Road
Visakhapatnam - 530016Respondent**

Members Present :

**CA. Prafulla Premasukh Chhajed, President
Smt. Anita Kapur, Member (Govt. Nominee)
Shri Ajay Mittal, IAS (Retd.), Member (Govt. Nominee)**

**Date of Final Hearing: 29th July, 2019
Place of Final Hearing: Chennai**

Parties Present :

(i) CA. K J D Srinivas – Respondent



Allegations of the Complainant :

1. Shri Amaresh Kumar, IRS, Deputy Director, Directorate General of Central Excise Intelligence, Hyderabad Zonal Unit, Hyderabad (hereinafter referred to as the "Complainant") has filed complaint in Form 'I' dated 6th June, 2016 (C-1 to C-20) against CA. K.J.D.Srinivas (M.No.200487) Visakhapatnam (hereinafter referred to as the "Respondent"). The allegation raised against the Respondent is as under:

1.1 It has been alleged against the Respondent that he had certified two sets of Annual Reports/ Balance sheets of M/s Sai Concrete Pavers Pvt. Ltd (hereinafter referred to as "Company") for the financial year 2012-2013. In one set, the contract Receipts was shown as Rs 3,42,46,344/- whereas in the other set it was shown as Rs. 20,86,46,344/-. It was further alleged that the financial having contract receipts of Rs 3,42,46,344/- was submitted by the Company to the Central Excise Department and the other one showing the contract receipts at Rs 20,86,46,344/- was submitted to the Registrar of Companies and both these were issued/certified by the Respondent. In the complaint it was further stated that the statement of Respondent was recorded under Section 14 of the Central Excise Act, 1944 wherein he had admitted to have certified both the financial statements of the Company for the financial year 2012-2013 (R4-R8).

Proceedings :

2. At the time of hearing on 29th July 2019, the Committee noted that the Respondent was present in person before it. As regard the Complainant-Department, the Committee noted that it had been stated in the rejoinder received from them that they would not appear in person. Since, it was the first hearing in the matter, the Respondent was put on oath. Thereafter, the Respondent was asked if he wished the charges to be read out or these could be taken as read. The Respondent stated that he was aware of the charges against him. The Committee asked the Respondent as to whether he pleaded guilty or not. The Respondent pleaded not guilty and opted to defend his case. Thereafter, the Respondent made his submission before the Committee. The Committee examined the Respondent on the submissions made by

him. Based on the documents available on record and after considering both oral submissions made by the Respondent and written submissions made by both the parties, the Committee concluded the hearing in the matter.

Findings of the Committee :

3. The Committee noted that the charge against the Respondent was that he certified two sets of Annual Reports/ Balance sheets of M/s Sai Concrete Pavers Pvt. Ltd (hereinafter referred to as "**Company**") for the financial year 2012-2013. In one set, the contract Receipts was shown at Rs 3,42,46,344/- (**C-17**) whereas in the other set it was shown at Rs. 20,86,46,344/- (**C-9**). The Balance sheet having contract receipts of Rs 3,42,46,344/- was submitted by the **Company** to the Central Excise Department and the other one showing contract receipts of Rs 20,86,46,344/- was submitted to the Registrar of Companies and both these Balance sheets were issued/certified by the Respondent. It was further alleged that in the Statement of Respondent, recorded under Section 14 of the Central Excise Act, 1944, he admitted to have certified both the financial statements of the Company for the financial year 2012-13 (**R4-R8**).

4. The Committee noted the submissions made by the Respondent wherein he stated that financials issued in April, 2013 were certified based on book results and these were not audited. The audit for the financial year had taken place subsequently and reports of the same were signed on 01-09-2013. He was informed by his client company that for the purpose of bank and their workings for arriving the drawing power, they required monthly stock and book debt statements duly signed by the borrower and since the financial year was closed, the bank insisted that the financials be certified by a qualified CA. Accordingly, in the first week of April, books results were certified by the respondent and filed before the bankers as otherwise their computer systems did not permit the drawing power which was an established practice in the banking sector. However, on the provisional financial statements, it was wrongly mentioned as "*As per our report of even date*" and this terminology had caused much confusion to the Excise Authorities. He also submitted that the formal complaint was filed by the Complainant department against CA. Khambampati Jala Durga Prasad which was not his name.

5. The Committee further noted that the Complainant department vide its letter dated 25th July, 2019 had submitted before the Committee that a complaint against the Respondent was filed in respect of fabrication of false financial statements of M/s. Sai Concrete Pavers Pvt. Ltd. wherein it was categorically stated that the facts of certification of two different sets of Financial statements for the same Company was already established. The said statements for the year 2012-13 submitted by the Company in question to the Complainant Department as well as to the Registrar of Companies were duly countersigned by the Respondent on 22.01.2016. It was further stated that the issue involved in the matter was the evasion of Service tax to the tune of Rs.2.16 crores which was collected but not deposited to the Government Exchequer.

6. The Committee before going into the findings of the case relating to merits, deemed it fit to note the contention of the Respondent which he raised before the Committee that the Complainant while filing the complaint had mentioned the name of one CA. Khambampati Jala Durga Prasad as the answering Respondent which was different from the name against which case was being proceeded. It, however, noted that the membership number as provided by the Complainant department was that of present Respondent i.e. KJD Srinivas. Hence, the case had been proceeded ahead correctly against the Respondent.

7. The Committee perused the two sets of the financial statements available on record and noted that both the sets were certified by the Respondent for the Financial year 2012-2013 (C5-C20) and the figures under the head "contract receipts" in certified statement and audited financial statement were at variance. In the certified statement, the contract receipt were shown Rs. 20,86,46,344 (C-9) read with report of the audit and in the audited statement the same appeared at Rs 3,42,46,344/- (C-17 read with D-18) In this regard, the explanation offered by the Respondent in written submission was that the said difference in "contract receipt" was only on account of regrouping of figures i.e. inclusion of work in progress in net sales whereas during hearing, he emphasized that one has certified provisional statements and the other was audited financial statements.

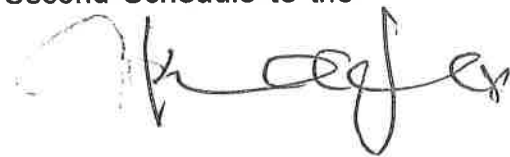
8. The Committee viewed that in the financial statements alleged to be provisional and thus certified by the Respondent, he had nowhere mentioned by way of either any note/explanation that the stated financials were provisional. It was viewed that once any set is signed by a professional as well as a Director, it signifies submission of documents which if made without mentioning those to be 'provisional' would be legally considered as based on final accounts and would be misleading. It was an act of commission which is reflective of lack of diligence and gross negligence.

9. In light of the above, the Committee was of the view that the defense of the Respondent does not hold any merit and accordingly, he was guilty of professional misconduct for not exercising his due diligence and for being grossly negligent in conduct of his professional duties.

Conclusion:

10. Thus in conclusion, in the considered opinion of the Committee, the Respondent was held **GUILTY** of "Professional Misconduct" in terms of Section 22 of the Chartered Accountants Act, 1949 read with Clause (7) of Part-I of the Second Schedule to the Chartered Accountants Act, 1949.


(CA. Prafulla Prem Sukh Chhajed)
Presiding Officer


(Anita Kapur)
Member (Govt. Nominee)


[Ajay Mittal, IAS (Retd.)]
Member (Govt. Nominee)

Date : 23rd Sept 2019
Place : New Delhi