



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

PR-271/2014-DD/323/14/BOD/257/2017

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 T Raja Meyyappan, Devakottai

...Complainant

-Vs.-

CA. R. Sridharan (M.No.021768), Madurai

...Respondent

[PR-271/2014-DD/323/14/BOD/257/2017]

MEMBERS PRESENT: (Through video conferencing)

CA. Prasanna Kumar D., Presiding Officer

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

CA. Satish Kumar Gupta, Member

Date of Final Hearing: 5th October, 2021

1. The Board of Discipline vide Report dated 11th February, 2021 held that **CA. R. Sridharan (M.No.021768)** is guilty of "Other Misconduct" falling within the meaning of Item (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. R. Sridharan** and communication dated 11th August, 2021/16th September, 2021 was addressed to him thereby granting him an opportunity of being heard in person and/or to make written representation before the Board on 5th October, 2021. Thereafter, he submitted his written representation dated 23rd August, 2021 on the Findings of the Board.
3. **CA. R. Sridharan** appeared before the Board on 5th October, 2021 through video conferencing and made his oral representation thereat.
4. **CA. R. Sridharan** in his written representation dated 23rd August, 2021, inter-alia, submitted as under:-
 - a. In 2012, the Respondent and his partner were forced to vacate the premises in which they were running their office since 2005. The earlier office was also in the same complex named Anmol Bouganvillaea. In fact, the Respondent and his partner have been having their office in the same complex since 2003. During the short time available to locate an alternate premises,



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the Respondent was forced to sign the Tenancy Agreement under the dotted lines which the Complainant has taken full advantage of.

- b. Ignoring the compelling circumstances and even assuming without admitting for a moment that the Respondent signed a document which misrepresented the facts (and which led ultimately to the Board of Discipline holding him guilty of "Other Misconduct"), the Respondent stated that the averred misstatement of facts, namely the premises was put to commercial use instead of residential use, did not cause any pecuniary or other loss to the Complainant. Even the differential charge for electricity was fully borne by the Respondent. Whether a premises used by a professional for his work comes under commercial use or not, is a vexed question of law with most of the Courts/Tribunals holding that a CA's office cannot be considered as a commercial use at par with the use of premises for businesses like wholesale or retail trade.
 - c. In arriving at the finding the Board of Discipline has relied on the obiter dicta of the Hon'ble Apex Court in the matter of The Council of ICAI vs Gurvinder Singh and Anr (Civil Appeal No 11034 of 2018). The words of the Apex Court are to be read in the light of the grave allegations levelled against the member in that case. In that case, the member was dealing in shares and in the course of such dealings appropriated to himself the dividend on the transferred shares (pending registration of transfer) without passing on the same to the buyer as dictated by law and equity. In that case, the member enjoyed a pecuniary gain because of his conduct and the Complainant suffered a pecuniary loss of a like amount which made the charge levelled against the member quite serious and hence, the Council held the member guilty even though the issue was settled between the Complainant and the Respondent.
 - d. In this case, the Respondent has been having his office in the same Complex since 2003 which the Complainant was fully aware of and the nature of use can at best be termed as technical misstatement as the same has not caused any direct specific loss to the Complainant.
5. The Board has carefully gone through the facts of the case and also the oral and written representation of **CA. R. Sridharan**.
 6. As per the Findings of the Board as contained in its report, the Respondent has unnecessarily prolonged the litigations for breach of terms of rental agreement without any plausible justification and has used the premises of the Complainant for the purpose of his practice as the Chartered Accountant in clear breach of terms of the agreement in question. The Board further observed that the Respondent was the signatory to the rent Agreement dated 13th December 2012 with the Complainant in the capacity of the tenant and thus, was expected to be aware of the terms on which the agreement had been entered into i.e. rented for residential purpose, no right to sub-let the premises or to transfer the tenancy occupation to anybody else. Despite having knowledge of the same, the said premises were not occupied for residential purpose by the Respondent, but for running his chartered accountants' firm and



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the payment of the monthly rent had been made from the firm's account. Further, despite being requested by the Complainant to vacate the said premises, the said premises were vacated by the Respondent's firm only after a Decree by the Hon'ble Additional District Munsif, Madurai had been passed in this respect and the appeal filed against the said Decree had not been allowed. The Board was also not convinced with the plea of the Respondent that the matter is civil in nature, the Complainant had already availed the legal remedy available to him and the Respondent was forced to sign the Tenancy Agreement under the dotted lines as Chartered Accountants are expected to maintain the professionalism and their standards of conduct not only in dealing with their clients but also with the public in general.

7. Further, as regards the plea of the Respondent that the Complainant did not suffer any pecuniary or other loss from the alleged use of the rented out premises for commercial use instead of residential, the Board held that in the current Disciplinary proceedings, the issue that has been examined of is whether the conduct of the Respondent arising out of the circumstances clearly explained in its Findings has brought disrepute to the profession and thus, amounting to 'Other Misconduct' as provided under the Chartered Accountants Act 1949 and whether the Complainant has suffered any pecuniary or other loss out of the same is not germane to the issue.
8. Thus, it has already been held that **CA. R. Sridharan** is Guilty of Other Misconduct falling within the meaning of Item (2) of Part IV of the First Schedule of the Chartered Accountants Act, 1949 read with Section 22 of the said Act.
9. Upon consideration of the facts of the case, the consequent misconduct of **CA. R. Sridharan (M.No.021768)** and keeping in view his oral and written representation before it, the Board decided to Reprimand **CA. R. Sridharan (M.No.021768)**.

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

Date: 1st February, 2022

सही प्रतिलिपि होने के लिए प्रमाणित /
Certified to be true copy


नीलम पुंडीर / Neelam Pundir
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इन्स्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
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CONFIDENTIAL

BOARD OF DISCIPLINE

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-271/2014-DD/323/14/BOD/257/2017]

CORAM:

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

In the matter of:

Shri T Raja Meyyappan
24/1, Manthoppu Street
A V K Compound
Sivagangai Distt.
DEVAKOTTAI – 630 302

....Complainant

-Vs-g

CA. R. Sridharan (M.No.021768)
11, Venkataraman Road
Chinnachokkikulam
MADURAI – 625 002

....Respondent

DATE OF FINAL HEARING : 29th January, 2021
PLACE OF HEARING : Mumbai Office / through video conferencing

PARTIES PRESENT: (through Video Conferencing)

Complainant : Shri T Raja Meyyappan
Complainant Counsel : Shri Rahmadulla, Advocate

Background of the case:

1. The brief background of the case is as under:-

- (a) The Complainant had let his premise at Madurai on a monthly rent of Rs.5,500/- to the Respondent for residential purpose. The rent agreement was for the period of (11) eleven months from 13th December 2012 to 13th November 2013.
- (b) The Complainant contacted the Respondent in person on 1st June, 2014 to vacate the house for his personal needs but to his surprise and shock, the Respondent refused to vacate and he also asked the Complainant to contact CA. P. Suryanarayanan, apparently his business partner with whom the Complainant has no privity of contract. The Respondent refused to vacate the house even after expiry of contract, despite the Complainant's personal request on 1st June, 2014.
- (c) The house was let out for residential purposes to the Respondent alone but the Respondent has used the said premises for running his office M/s Sridhar & Suri in contradiction of the rent agreement dated 13th December 2012. Further, he did not respond to the legal notice dated 6th June, 2014 issued by the Complainant.
- (d) The Complainant filed a civil suit in the Court of Rent Controller cum District Munsif, Madurai (Case Ref R.C.O.P. No 191 of 2014) against the Respondent.

Charges alleged :

2. The charge alleged against the Respondent is that he used the premises taken on rent from the Complainant for commercial purpose whereas the rent agreement executed between the parties stated it to be for residential purpose and also did not vacate the premises of the Complainant despite being specifically requested for the same even after expiry of the contract. The Complainant had to approach the Court of Rent Controller cum District Munsif, Madurai (Case Ref R.C.O.P. No 191 of 2014) against the Respondent for eviction of the said premises.

The Director(Discipline) in his prima facie opinion had held the Respondent not guilty. However, the Board on consideration of the same noted that since the rent agreement specifically provided the premises to be used for residential purposes, the alleged act on the part of the Respondent for using it for commercial purposes clearly points towards dishonest intentions of the Respondent and accordingly, did not agree with the prima facie opinion of the Director that the Respondent is not guilty of Other Misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 and referred the case for enquiry.

Brief of proceedings held:

3. During the hearing held on 19th January 2021, the Board noted that the Complainant along with his Counsel were present before it through video conferencing. However, the Respondent was not present before it although his written submissions had been received. Thereafter, the Counsel for the Complainant made his oral submissions to substantiate the charges alleged against the Respondent. Thereafter, the Board adjourned the hearing in the case so as to grant a final opportunity to the

Respondent to appear before the Board and also directed the office to forward the written submissions of the Respondent to the Complainant for his comments thereon, if any and vice versa.

4. During the hearing held on 29th January 2021, the Board noted that the Complainant alongwith his Counsel was present before it through videoconferencing. However, the Respondent was not present before it and had sent his written submissions. Since the case had been listed earlier also on several occasions and adjourned either at the request of the Respondent or the Complainant, the Board decided to proceed ahead with the hearing in the case. Thereafter, the Counsel for the Complainant made his detailed submissions before the Board.

Upon consideration of the documents and submissions on record, the Board decided to conclude the proceedings in the case with the following direction:

1. to the Respondent:
 - to file reply, if any on the documents filed by the Complainant and shared with him by the office
2. to the office:
 - to share the submissions filed by the Respondent, if any, in the case with the Complainant so as to file his comments thereon, if any.

Accordingly, the decision on the conduct of the Respondent was kept reserved by the Board.

In compliance of above, the Respondent vide email dated 6th February, 2021 submitted his reply to the documents filed by the Complainant. Thereafter, the Board at its meeting held on 11th February 2021 on the basis of the documents and submissions thus on record arrived at its findings.

Submissions of the parties:

5. The brief of the submissions of the Respondent is as under:-
 - a. The dispute between the Complainant and the Respondent is purely that of lessor and lessee.
 - b. The Complainant has filed a RCOP case against the Respondent in Civil Court at Madurai throwing false accusations against the Respondent which the Respondent defended through proper legal means.
 - c. The Complainant has published in vernacular newspapers in Madurai on 4th May 2017 about the nature of civil dispute and details of the proceedings and by this act he has caused disrepute to the Respondent and his firm. The Complainant has purposely done only to defame the Respondent and his firm. The Respondent also submitted copy of advertisements which appeared in 'Dinamalar Paper' on 04/05/2017 and in 'The Hindu' newspaper on 15/05/2017.

- d. With regard to the rent payable to the Complainant, the same has been correctly paid on due dates every month with two revisions of 10% hike taking place on 01/12/2014 and on 01/12/2016. Neither the Respondent nor his firm owe any sum of money to the Complainant as on date.
 - e. Respondent's firm was denied bank audits due to note from ICAI that there is a case against the Respondent and this resulted in a loss of fee of Rs. 2,00,000.
 - f. The Respondent requested to drop the proceedings initiated against him by the Complainant and reprimand the Complainant for defaming the Respondent Firm and partners by publishing the details of a civil dispute in the print media which was done with malafide intentions.
 - g. Several Courts and tribunals have held that using residential premises for trade or business is quite different from using it for profession.
6. The brief of the submissions of the Complainant is as under:-
- a. On 04/02/2017, the Additional District Court pronounced the judgment allowing the petition of the Complainant and directed eviction of property of the Complainant and handover of the possession to the Petitioner (Complainant herein) within two months from the date of Order.

Observations and findings of the Board:

7. The Board on consideration of the submissions of the parties and other documents available on record observed as under:-
- a. The bone of contention in the instant case is the copy of rent agreement entered between the Complainant and the Respondent dated 13th December, 2012 wherein premises were rented for residential purpose for a period of eleven (11) months from 13th December, 2012 to 13th November, 2013 on monthly rent of Rs.5,500/- duly signed by the Respondent and witnessed by CA. P Suryanarayanan, partner of the Respondent firm.
 - b. The Complainant during the proceedings submitted copy of Decree dated 04/02/2017 passed in the matter between the parties by Hon'ble Additional District Munsif, Madurai Town in RCOP No. 191/2014 wherein the Ld. Court after examination of witnesses and after going through the evidences available on record observed as under:-
"5. The Points for consideration is
 1. *Whether it is true that the Respondent (Respondent herein) violated the rental agreement and used for non residential purpose as alleged by the petitioner (Complainant herein)?*
 2. *Whether it is true that the Respondent has sublet the petitioner premises?*
 3.
 4.
 5. *Whether the petition is liable to be allowed or not"*

"Point No. 1:-

....

6.6. On considering the above said discussion that Ex. P1 the recital of the document reveals that petition mentioned property was rented out for residential purpose and agreed by the Respondent. In the present case the landlord has established (Sic. established) that the tenant use was breach in terms of the lease and the landlord has proved the burden.....The respondent has not produced any documentary evidence to show that the landlord has given written consent to that if the building let our were be used for purpose other than for which it was leased. Hence in this case such absence of written consent from the land lord or from the controller to use residential building into a non-residential building attracts a tenant under the ground of different user. This point is answered accordingly in favour of the petitioner."

"Point No. 2:-

7.1. The petitioner alleged that the Respondent has specifically prohibited from subletting. In order to prove the petitioner has produced Ex.P5 shows that 2nd respondent also running a business in the petition mentioned premises. The petitioner counsel argued that the Respondents shared the rent amount and this would be that the 1st Respondent sublet to the 2nd respondent. The respondents alleged that the 2nd Respondent is a partner in his firm and running the name and style of M/s. Sridhar and Suri since from the year 1994.....

7.2.....In such absence of documentary evidence to proof of partner and also as per Ex.P1 recital and Ex.P5 the shows landlord has not given consent to the 2nd Respondent it is presumed as a sublet. This point has been answered in the favour of the Petitioner."

"Point No. 5:-

9.1. As far as his (Sic. this) point is considered this petition is allowed only on the ground of different user as alleged by the petitioner that the Respondent has violated the rental agreement and used as residential building for non-residential purpose.

In the result, this petition is allowed and the Respondent is directed to eviction of the petition mentioned property and handover the possession to the petitioner within a period of two months from the date of this Order..."

On perusal of said Decree, the Board observed that the Ld. Court held that the Respondent alongwith his partner used the premises of the Complainant taken on rent for commercial purpose, i.e. for practice of profession of chartered accountancy and the Respondent even after issue of notice for eviction, failed to handover the possession of the said premises to the Complainant. The Board



further observed that the Respondent appealed against the said Order and the Principal Rent Appellate Authority, Madurai vide its Order dated 1st August 2018 dismissed the appeal with costs and directed the Respondent to hand over the premises within 2 months of making of this Order to the Complainant.

- c. The Board also noted that the Respondent disputed the present proceedings on the ground that the issue under consideration is purely civil in nature. The Board took into view the judgment of Hon'ble Apex Court in the matter of Council of The Institute of Chartered Accountants Of India V/s. Gurvinder Singh & Anr. [Civil Appeal No. 11034 OF 2018] wherein the Hon'ble Apex Court in its Judgment dated 16/11/2018 observed as under:-

"5) We are afraid that the High Court has not correctly appreciated Section 21(3) of the Chartered Accountants Act, 1949 which states as follows:-

"(3) Where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the First Schedule, he shall place the matter before the Board of Discipline and where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the Second Schedule or in both the Schedules, he shall place the matter before the Disciplinary Committee."

Schedule-I Part-IV reads as follows:-

"Other Misconduct in Relation to Members of the Institute Generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he-

- (1) is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term not exceeding six months;*
- (2) in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work."*

6) The Disciplinary Committee has, on facts, found the Chartered Accountant guilty of a practice which was not in the Chartered Accountant's professional capacity. This, it was entitled to do under Schedule I Part-IV subclause(2) if, in the opinion of the Council, such act brings disrepute to the profession whether or not related to his professional work.

7) This being the case, it is clear that the impugned judgment is incorrect and must, therefore, be set aside. We thus remand the matter to the High Court to be decided afresh leaving all contentions open to both parties."

Thus, the Board observed that the Hon'ble Apex Court distinguished the case on the ground of member acting in his individual capacity and not in his professional capacity as a Chartered Accountant and that clause (2) of Part IV of the First Schedule to the Chartered Accountant Act 1949 is applicable even if the member alleged has not acted in his professional capacity.

The Board was also of the view that Item (2) of Part-IV of the First Schedule to the Act is of wide import and would include within its scope, any conduct that would tend to bring disrepute to the profession or the Institute. In the extant proceedings, the Board noted that the Complainant has challenged the conduct of the Respondent alongwith his partner in another matter reference no. (PR-271A/2014-DD/322/2014/BOD/258/2017) wherein both the partners were misusing the rental premises by carrying out their profession of chartered accountants from the said premises and the Complainant had to approach the judicial forum for eviction of the said premises. Thus, the Board was of the view that the Respondent appears to have conducted himself against the interest of the profession and tried to derive benefits out of the said premises of the Complainant not in his personal/individual capacity but as a member of the Institute and actively approached the litigation process where the said premises were located which is also conclusive from the observation of Hon'ble Court in the matter.

- d. The Board further took into view judgment of Hon'ble Apex Court in case titled Nand Kishore Vs. Yashpal Singh [Civil Appeal No. 4578 OF 2009] dated 21/07/2009 wherein while dealing with the issue of use of rented property for commercial purpose, the Hon'ble Court observed as under:-

"27. For this purpose, we may safely rely on the observation of this Court in Rajinder Singh's Case (Supra) as under :-

"Section 11 of the Act prohibits an owner and occupier of the premises to convert a residential building into a non-residential building except with the permission in writing by the Controller. Therefore, a residential premises could not be used for non-residential purpose, namely, for running a school. In view thereof, we are of the opinion that the judgment of the High Court suffers from serious infirmity and deserves to be set aside." [Emphasis supplied]

30..... Therefore, the only question that remains to be seen is whether a person who has converted the purpose for which the premises was let out without the permission of the Rent Controller, can be punished only with fine under Section 19 or can he also be evicted under Section 13(2)(ii)(b) of the Act. Looking at the object of the Act and the provisions made therein, and considering the fact that the Act is a beneficial legislation not only for the tenant but also for the landlord, it can safely be inferred that both the sections namely, Section 13 and Section 19 can be applied when there is a violation of Section 11. If this can be accepted, the purpose and object of the Act for

which this Act was introduced would be frustrated as the residential area would be converted into commercial-cum-residential area or vice-versa, which was not the intention of the Legislature and therefore, it cannot be said that for violation of Section 11 of the Act, the only remedy available was under Section 19 of the Act i.e. imposition of fine. In view of our discussions made herein above, we are of the view that the appellant had successfully made out a case for eviction of the respondent on the ground mentioned herein above."

8. Considering the above, the Board, viewed that the justification offered by the Respondent does not inspire confidence as the Respondent has unnecessarily prolonged the litigations for breach of terms of rental agreement without any plausible justification. The Board observed that the Respondent was a signatory to the rent agreement dated 13th December 2012 with the Complainant in the capacity of the tenant and thus, was expected to be aware of the terms on which the agreement had been entered into i.e. rented for residential purpose, no right to sub-let the premises or to transfer the tenancy occupation to anybody else. Despite having knowledge of the same, the said premises were not occupied for residential purpose by the Respondent, but for running his chartered accountants' firm and the payment of the monthly rent had been made from the firm's account. Further, despite being requested by the Complainant to vacate the said premises, the said premises were vacated by the Respondent's firm only after a Decree by the Hon'ble Additional District Munsif, Madurai had been passed in this respect and the appeal filed against the said Decree had not been allowed. The Board was also not convinced with the plea of the Respondent that the matter is civil in nature and the Complainant has already availed the legal remedy available to him in this context as chartered accountants are expected to maintain the professionalism and their standards of conduct not only in dealing with their clients but also with the public in general. The said conduct on the part of the Respondent clearly brings disrepute to the profession and tarnishes the image of the Chartered Accountants in general who otherwise command respect and trust of the stakeholders.
9. Thus, having regard to the attendant circumstances, the evidence put forth during the proceedings and the submissions of the Complainant and the Respondent on record, the Board is of the considered view that the Respondent has brought disrepute to the profession and is thus, guilty of "Other Misconduct" falling within the meaning of Item (2) of Part IV of the First Schedule to the Chartered Accountants Act 1949 read with Section 22 of the said Act.

CONCLUSION:

10. The Board of Discipline, in view of the above, is of the considered opinion that the Respondent is Guilty of "Other Misconduct" falling within the meaning of Item (2) of Part IV of First Schedule to the Chartered Accountants Act 1949 read with Section 22 of the said Act.

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

DATE: 11th February, 2021

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-110032**