



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

PR/250/2017/DD-260/2017/DC/996/2019

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/250/2017/DD-260/2017/DC/996/2019

In the matter of:

CA. Sridhar Gopinathan,
C/o. Mr. M Venkata Ramanachary
10-1-18/35, Shyam Nagar,
Hyderabad 500 004

.....Complainant

versus

CA. Ramakrishna M (M.No.207169)
House No.7-7-52,
First Floor, Kumar Galli,
Nizamabad - 503 001.

.....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: 31st March 2021 through Video Conferencing

Place of Hearing: Mumbai

Party Present:

CA. Ramakrishna M – Respondent (appeared from his personal location)

1. That vide report dated **03rd February, 2021 (copy enclosed)**, the Disciplinary Committee was of the opinion that **CA. Ramakrishna M (M.No.207169)**, was GUILTY of Professional Misconduct falling within the meaning of Clauses (5), (6) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 with respect to the allegation that the Respondent, being the statutory auditor of the M/s I Service Globe (P) Ltd (hereinafter referred to as the “**Company**”) for the financial years ending on 31st March, 2014 and 31st March, 2015 had failed to report in his audit report in respect of there being no basis and/or accuracy for including Rs.65,19,251/- as “Sridhar Gopinathan Misappropriation Amount” in the audited balance sheet of the Company for the said financial years under Schedule 15 –‘Short Term Loans and Advances’ and that an amount of Rs.10,11,754/- (**D-30**) payable to the Complainant was missing in the financial statement of said financial years which was running loan from previous years and was not repaid or confirmed.

It was noted that Clauses (5), (6) and (7) of Part I of Second Schedule state as under:-



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Second schedule

Part I

“(5) fails to disclose a material fact known to him which is not disclosed in a financial statement, but disclosure of which is necessary in making such financial statement where he is concerned with that financial statement in a professional capacity;

(6) fails to report a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity;

(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 March 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 31st March 2021 through video conferencing.

3. The Respondent appeared before the Committee on 31st March 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 12th March 2021 before it wherein the Respondent, inter-alia, submitted that there were certain anomalies in the proceedings of the Committee to arrive at its Findings i.e. non-involvement of Director (Discipline) in the said proceedings as laid in Rule 18 of The Chartered Accountants (Procedure Of Investigation Of Professional And Other Misconduct And Conduct Of Cases) Rules, 2007 due to which as per him there was violation of Principles of Natural Justice. As per the Respondent, the alleged transactions were not material. The Respondent further stated that the Committee had arrived at its Findings without considering his submissions and that reasons of arriving at the said Findings were also not given which was against the pronouncement of the Apex court of India. The Respondent further submitted that he was not involved in the misconduct. There could be some non-performance of a duty or some default in performance or disclosure but that too without culpability.

4. The Committee considered the submission made by the Respondent and at the outset, it was noted that the Committee had provided its comprehensive Findings arrived at after threadbare evaluation of the facts and documents available on record. It was noted that the Respondent had primarily relied on the books of accounts and Management representation letter as provided to him.

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He blindly trusted on the management of the Company rather than obtaining independent confirmation from the party concerned. It was viewed that in extant case not only the amount involved was material but during audit if an auditor comes across any matter involving misappropriation, it becomes material irrespective of the amount involved. Hence, the Respondent was expected to diligently audit the said matters. However, the Respondent opted to merely rely on journal entries passed in the books of accounts that too incomplete entries in case of writing off loans account which signified that the Respondent had failed to obtain sufficient reasonable evidence to verify the alleged transactions. It was viewed that the purpose of an audit was to enhance the degree of confidence of intended users of the financial statements. However, in extant case, the Respondent neither obtained sufficient evidence nor modified his opinion to disclaim on the matter when there was material misstatement in the financial statements audited by him. The Committee, accordingly, viewed that the Respondent had failed to perform 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 Clauses (5), (6) and (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, ordered that the name of the Respondent, **CA. Ramakrishna M (M.No.207169)** be removed from the Register of Members for a period of 3(three) months along with a fine of Rs. 25,000/- (Rupees Twenty Five Thousand Only) be levied upon him that shall be payable within a period of three months from the date of receipt of this Order. In case, the Respondent failed to pay the same as stipulated, the name of the Respondent, **CA. Ramakrishna M (M.No.207169)**, 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. Nomincc)
[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 : 31st March, 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. : [PR/250/2017/DD-260/2017/DC/996/2019]

In the matter of:

CA. Sridhar Gopinathan (M.No.202318)
10-1-18/17, Shyam Nagar,
Masab Tank,
HYDERABAD – 500 004

..... Complainant

Versus

CA. Ramakrishna M (M.No.207169)
House number: 7-7-52,
First Floor, Kumar Galli,
NIZAMABAD-503 001

..... Respondent

MEMBERS PRESENT:

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

Date of Final Hearing: 21st September, 2020 through Video Conferencing

PARTIES PRESENT:

- (i) CA. Sridhar Gopinathan – the Complainant (appeared from his personal location)
- (ii) CA. Ramakrishna M. – the Respondent
- (iii) CA Suneel Appaji – the Counsel for the Respondent
(appeared from ICAI Centre of Excellence, Hyderabad)

CA. Ramakrishna M (M.No.207169)



Brief Charges

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 held prima facie guilty under Items (5), (6) & (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949. The said Clause to the Schedule state as under:-

Second schedule

Part I

"(5) fails to disclose a material fact known to him which is not disclosed in a financial statement, but disclosure of which is necessary in making such financial statement where he is concerned with that financial statement in a professional capacity;

(6) fails to report a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity;

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

Allegations of the Complainant:

2. **CA. Sridhar Gopinathan (M.No.202318), Hyderabad** (hereinafter referred to as the "**Complainant**") has filed complaint in Form 'I' dated 11th August, 2017 (**C-1 to C-66**) against **CA. Ramakrishna (M.No.207169), Nizamabad** (hereinafter referred to as the "**Respondent**"). It was alleged that the Respondent, being the statutory auditor of the M/s I Service Globe (P) Ltd (hereinafter referred to as the "**Company**") for the financial years ending on 31st March, 2014 and 31st March, 2015 had failed to report in his audit report in respect of the following:-

- 2.1 that there was no basis and accuracy for including Rs.65,19,251/- as "Sridhar Gopinathan Misappropriation Amount" in the audited balance sheet of M/s I Service Globe (P) Ltd as on 31.03.2014 and 31.03.2015 under Schedule 15 –'Short Term Loans and Advances'
- 2.2 that an amount of Rs.10,11,754/- (**D-30**) which was payable to the Complainant was missing in the financial statement for 2014-& 2015 while this was running loan from previous years and the said amount carried simple interest @15% p.a. which was never repaid nor confirmed by the Respondent from him

CA. Ramakrishna M (M.No.207169)

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- 2.3 that disqualification of one of the Directors of the Company (Mr. Katta Jagadeesh) who was convicted of a criminal offence under Negotiable Instrument Act, 1881 on 4th June 2015 and was absconding was not reported by the Respondent inspite of non-bailable warrant issued against him. It was further stated that accordingly the Director suffered disqualification u/s 164 of the Companies Act 2013 and by virtue of this disqualification, the office of the director stood vacated as on 4th June, 2015 by operation of law u/s 167 of the Companies Act, 2013. Still Mr. Katta Jagadeesh continued to hold office and manage the affairs of the Company including signing of the financial statements, Board Meetings and Resolutions etc. The Respondent signed the financial statements for the year ending 31.03.2015 as statutory auditor.

Proceedings:

3. At the time of hearing on 21st September, 2020, the Committee noted that the Complainant and the Respondent along with his Counsel were present before it for the hearing. Thereafter, the Complainant gave a declaration that there was nobody except him in the room from where he was appearing and that he would neither record nor store the proceedings of the Committee in any form. Before proceeding further in the matter, the Committee noted that there was change in the constitution of the Committee since its last hearing and accordingly decided that the submissions of both the parties would be again heard.

Thereafter, the Counsel for the Complainant presented the allegations raised against the Respondent. The Committee examined the Complainant in the matter. The Counsel for the Respondent made his submissions on the allegations. Both the Complainant and the Respondent were examined by the Committee on the submissions made by the parties.

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

Findings of the Committee:

4. At the outset, the Committee noted that the Complainant raised three charges against the Respondent and that third charge (as mentioned in sub-para (1.3) of Paragraph (1) above) was dropped by the Director (Discipline) while forming his prima facie opinion.

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Accordingly, the Committee held the inquiry against the Respondent only in respect of first and second charge.

5. The Committee noted the oral submissions made by the Complainant as well as that by Counsel for the Respondent at the time of hearing as well as written submissions made by them. The Respondent vide letters dated March 2019, 16th Dec 2019 and 3rd January, 2020, inter-alia, submitted that:

- i) With respect to Misappropriation account of Rs.65,19,251/-, the Respondent submitted that pending investigation, there was no conclusion as to some fraud was committed by the Complainant (who was the then director who had then left the Company). The Company decided to show all the transactions under suspicion under misappropriation account. Thus, the misappropriation account was arrived at by the management of the Company comprising of the transactions pertaining to FY 2013-14 that was year under audit and all those transactions to which there was no explanation or information or were suspicious etc. were transferred to that account. It included the following:
 - a) An amount of Rs.26,00,000 was on account of cash missing which comprised primarily of cash withdrawn and payments made etc which were unexplained to the management and causing suspicion.
 - b) An amount of Rs. 35,50,251.21/- was originally a balance receivable from the foreign group company owned by the other director Mr. Katta Srinivasa Rao. While finalising the accounts of the said financial year, the said director Mr. Katta Srinivasa Rao informed the auditors that his company was not liable to pay the same and demonstrated certain emails etc where during the financial year, 2013-14, the Complainant had asked Mr. Srinivasa Rao to send advance against the exports. It was stated that the said director had contended that if his foreign company was liable to pay any amounts to the Indian company then why Indian company asked for advance instead of demanding payment of the receivables. Looking at the circumstantial evidences and also various other aspects about how the company was running, the Respondent agreed to the transfer of the opening balance receivable from the foreign company to the misappropriation account.
 - c) In addition, there were 9 payments which were under suspicion and unexplained by the management as they too were not having any clarity, those 9 payments were stated to have also been debited to the misappropriation account.
- ii) With respect to writing back of Rs.10,11,754/- during 2013-2014 which was shown as payable to the Complainant during immediate previous year, the Respondent submitted that it was the balance of the current account in the name of the Complainant. After the Complainant left the Company and was not providing the information regarding certain transactions/authorisations, the management decided to inquire into the current account balance and found the following:

CA. Ramakrishna M (M.No.207169)

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- a) In the said ledger account, there were Journal entries which were not agreed upon by it. As those entries were booked to expenditure and corresponding liability was created in the name of the Complainant, it was decided to write back to that extent
 - b) It was also observed that there were few cash entries of cash being deposited by the Complainant into the companies account and his loan account was being credited. These amounts were above Rs. 20,000/- and thus treated as fictitious entries and discarded.
 - c) Payments made to staff and others for and on behalf of the Company and his account being credited.
- iii) The Respondent argued that, in the normal cases, a director might lend amounts to the company and company releases the amount for various payments and persons. In this case, it could have been assumed that the Complainant used to release payments to third parties and incur expenses on behalf of the Company by making payment from his personal monies and then pass a journal entry. However, in extant case, the management felt that such situation never arose and that all such credits to the Complainant were fictitious to boost up his receivables from the Company.
- iv) The Respondent stated that they had verified the relevant bank statements which did not depict such a bad position for the Company although they could look at certain difficult times for release of payments. Thus, they arrived at an opinion that the amount shown as payable in the books did not constitute a liability and was created out of various transactions that were suspicious and therefore agreed with the management's treatment of writing back the said amount as income.
- v) The amounts were kept in "misappropriation account" for want of information and explanation from the person who had authorised such transactions and were suspicious to the management. Further, the management thought it fit to investigate on its own and to arrive at the real amount of misappropriation and then recover from the Complainant. Until the actual amount was determined the said amount could not be considered as fraudulent. Thus, the amount was shown as a separate line item as receivable under misappropriation. These amounts were neither taken to Profit and loss nor written off. Hence, the Respondent did not consider the said item as fraud and not reported about it.
- vi) The Respondent also produced on record a copy of the criminal complaint filed against the Complainant by one of the Directors of the Company

6 It was noted that the matter pertains to short term loan/advance shown as receivable from the Complainant under the head "Sridhar Gopinathan Misappropriation" for

CA. Ramakrishna M (M.No.207169)

Rs.65,19,251/- which had been raised during the financial year 2013-14 only and that the loan of Rs.10,11,754/- which was stated to be payable to the Complainant in the immediate previous year i.e. 2012-13 was written off in 2013-14 itself which as per the Complainant was not correct and the Respondent failed to report about the same in the Audit Report. It was noted that the Respondent while giving his submissions in the matter also raised preliminary objection on the locus standi of the Complainant. It was noted that the Complainant was the ex-managing director of the Company and had stated to be aggrieved by the alleged adjustments made in the books of accounts, so there was the locus standi of the Complainant in the matter.

7. With respect to the amount standing in the name of misappropriation by the Complainant, on review of submissions made and documents available on record, it was noted that the Respondent had primarily relied on the books of accounts and Management representation letter as provided to him. While, the Respondent has submitted that the said amount comprises of the amount receivable from I Service Globe LLC, cheque payments that need clarity and the cash withdrawn on various dates for which the management stated that no expenses were incurred and hence treated to be receivable from the Complainant. On review of the related documents as available on record, it was noted that the said transfer from I Service Globe LLC account to the misappropriation account appeared to have verified based on confirmation received from I Service Globe LLC that no amount was due from it. Further amounts were debited on account of lack of clarity on the part of the Company regarding the said cheque payments and cash withdrawals. The Respondent verified the Company's bank statement to understand if there was cash crunch which required director's finances but failed to obtain any independent confirmations to verify if the related transfers to the account were correct. He seemed to have accepted the amounts as arrived at by the Company moreover, when the alleged amounts were still under investigation to arrive at conclusion. He had failed to provide any evidence as to the bank statements or cheques which signify that the Complainant was involved in misappropriation. Merely making journal entries in the books of accounts could not be regarded as sufficient evidence to verify the material transactions. This signifies that the Respondent had failed to obtain sufficient reasonable evidence to verify the same. Further, in respect of writing off the loan accounts payable to the Complainant, it was observed from the financial statements of 2013-14 that though the 'loans from directors' were reduced but such writing back was neither routed through profit and loss account nor adjusted to any other account. Such incomplete treatment of entries in the accounts should have raised doubt on the part of the Respondent. It was viewed that before accepting the said writing off of loan, the Respondent should have obtained the counter confirmation from the Complainant that the said amount was no longer payable.

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However, the Respondent seemed to have blindly accepted the reasons of the management. It was viewed that the purpose of an audit was to enhance the degree of confidence of intended users of the financial statements. The Respondent should have obtained sufficient appropriate audit evidence and explanations to reduce audit risk. However, in extant case, the Respondent neither obtained sufficient evidence nor modified his opinion to disclaim on the matter when there was material misstatement in the financial statements audited by the Respondent.

8. In view of discussions as made in the foregoing paragraphs, the Committee was of the view that there were ample evidence that in extant case the Respondent had not only failed to exercise due diligence in discharging his professional duties as auditor of the Company for relevant financial years but he certified the state of affairs of the Company as True & Fair without obtaining sufficient audit evidence to form his opinion on financial statements which lead to material misstatement. Hence, the Respondent is held guilty of professional misconduct falling within the meaning of Clauses (5), (6) and (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

Conclusion :

9. Thus, in the considered opinion of the Committee, the Respondent is **GUILTY** of professional misconduct falling within the meaning of Clauses (5), (6) and (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

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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, 2021

PLACE: New Delhi
CA. Ramakrishna M (M.No.207169)

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