



भारतीय सनदी लेखाकार संस्थान

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THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

[PR-39/2017-DD/131/2017/DC/1348/2020]

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.: PR-39/2017-DD/131/2017/DC/1348/2020

In the matter of:

Shri M Rajan Isaac, CMD,
Gambion Electronics (Madras) Pvt. Ltd.
CIN No. 3/35, Maduraiveeran Kovil Street,
Senthamil Nagar, Medavakka,
Chennai - 601 302

.....Complainant

Versus

CA. K Gopalakrishnan (M. No. 206519)
C/o. M/s. Seetha K Gopalakrishnan,
Chartered Accountants,
New No.30, Old No. 15, Pulla Avenue,
Shenoy Nagar,
Chennai – 600 030

.....Respondent

MEMBERS PRESENT:

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

Date of Final Hearing: 09.09.2021 through Video Conferencing

Place of Final Hearing: New Delhi

Party Present:

1) CA. K Gopalakrishnan – the Respondent (appeared from ICAI, Chennai Office)

1. That vide report dated 11th February 2021 (copy enclosed), the Disciplinary Committee was of the opinion that CA. K Gopalakrishnan (M. No. 206519) was **GUILTY** of Professional and Other Misconduct falling within the meaning of Item (8) of Part I and Item (2) of Part IV of First Schedule as well as Item (7) and Item (8) of Part I of Second Schedule to the Chartered Accountant Act 1949 in respect of the Balance sheets of M/s Gambion Electronic (Madras) Pvt. Ltd. (hereinafter referred to as the "Company") prepared and filed by one Mrs. Anitha Vijaykumar and Mrs. Divya Praba Ravichandran for financial years 2008-09 (C-151), 2009-10 (C-153) & 2011-12 (C-158) containing incorrect/false information, with all bogus figures in order to temporarily activate the Company from 'Dormant status' to 'active status'. These balance sheets were signed by Directors who did not have qualifying shares and were certified by the Respondent without giving any mandatory auditor's report. It was alleged against the Respondent that he fabricated counterfeit balance sheets of the Company for the said three years and certified them without issuing any audit report as required under Section 227(2) of the Companies Act 1956. He further failed to intimate ROC about his appointment in Form 23B and also failed to communicate in writing with the previous

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auditor. It was noted that Item (8) of Part I and Item (2) of Part IV of First Schedule as well as Item (7) and Item (8) of Part I of Second Schedule to the Chartered Accountant Act 1949 state as under:

Item (8) of Part I of First Schedule

“(8) accepts a position as auditor previously held by another chartered accountant or a certified auditor who has been issued certificate under the Restricted Certificate Rules, 1932 without first communicating with him in writing”

Item (2) of Part IV of First Schedule

“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.”

Item (7) and (8) of Part I of Second Schedule

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

“(8) fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion”

2. An action under Section 21B (3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and communication dated 25th August 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 9th September 2021 through video conferencing.

3. The Respondent appeared before the Committee on 9th September 2021 through video conferencing from Chennai Office of ICAI and made his oral representations on the findings of Disciplinary Committee. The Committee considered both the oral submissions as well written submissions made vide letter dated 7th March 2021 by the Respondent. The Respondent, at the outset, submitted that the Court had accepted Mrs. Anitha Vijaya Kumar and others as Director representing the Board of Directors and the single Director, Shri Rajan Issac could not represent the Board and thus there was no question of fabricated documents. He further stated that a balance sheet without audit report and an intimation with ROC about appointment is a procedural lapse which can be rectified at any point of time as ROC accepts belated Form 23B with late fees. As regard, charge of non-communication with the previous auditor, he submitted that on getting the details of the previous auditor, he had immediately communicated with him through courier acknowledgment.

4. The Committee considered the oral as well as the written submissions of the Respondent and noted that the Financials statements attested by the Respondent were only a two page document for each year (2008-09:C-150 and C-151; 2009-10 : C-152 and C-153 and 2011-12: C-158 and C-



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159) without any audit report or any schedules and notes to the accounts attached thereto and reflected only three heads namely Rental Income, Administrative expenses and Director Salary with Net loss being shown for all the three years whereas the same attested by another Chartered Accountant were not only more comprehensive and detail (D-18, D-21 and D-23) but the figures were also in huge variance to the figures attested by the Respondent. It further noted that Section 227(2) of the Companies Act, 1956 requires that the auditor should make a report to the members of the company on the accounts examined by him, and on every balance sheet and profit & loss account and on every other documents whereas in the present case, the omission of audit report was a major lapse which signified that the Respondent was ignorant of the basic essence of auditing which involves issuing an audit report after independent examination in relation to information contained in the financial statements of the Company. Further, it was noted that filing of form 23B is a mandatory requirement of the Companies Act 1956 and in case there was delay, late fee was required to be paid but the Respondent had failed to submit evidence to substantiate that he had, thereafter, tried to rectify the same. In respect of the charge of non-communication with the previous auditor before accepting the appointment as statutory auditor with the Company, the Committee noted that the Respondent failed to meet the requirement as envisaged in this regard to retain in his hand positive evidence of communication.

5. The Committee thus viewed that the misconduct on the part of the Respondent has been held and established within the meaning of Item (8) of Part I and Item (2) of Part IV of First Schedule as well as Items (7) and (8) of Part I of Second Schedule to the Chartered Accountant Act 1949 and keeping in view the facts and circumstances of the case as aforesaid and ordered that the name of the Respondent, **CA. K Gopalakrishnan (M. No. 206519)** be removed from the Register of members for a period of 2(two) years along with a fine of Rs. 25,000/- (Rupees Twenty Five Thousand Only) that shall be payable within a period of 3 months from the date of receipt of this Order and in case the Respondent failed to pay the same as stipulated, the name of the Respondent, **CA. K Gopalakrishnan (M. No. 206519)** 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. (R)

Sd/-

[Smt. Anita Kapur]

Member (Govt. Nominee) & Presiding Officer

Sd/-

[Shri Ajay Mittal]

Member (Govt. Nominee)

Sd/-

[CA. Chandrashekhar Vasant Chitale]

Member



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Sd/-

[CA. P.K. Boob]

Member

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प्रमाणित सत्य प्रतिलिपि / Certified true copy

Mohita Khanna
सीए. मोहिता खन्ना / CA. Mohita Khanna
सहायक सचिव / Assistant Secretary
अनुशासनालयक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
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-39/2017-DD/131/2017/DC/1348/2020

In the matter of:

**Shri M Rajan Isaac, CMD,
Gambion Electronics (Madras) Pvt. Ltd.
CIN No. 3/35, Maduraiveeran Kovil Street,
Senthamil Nagar,
Chennai - 600 100**

.....Complainant

Versus

**CA. K Gopalakrishnan (M. No. 206519)
C/o. M/s. Seetha K Gopalakrishnan,
Chartered Accountants,
New No.30, Old No. 15, Pulla Avenue,
Shenoy Nagar,
Chennai - 600 030**

.....Respondent

MEMBERS PRESENT:

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

Date of Final Hearing: 21st January, 2021

Place of Final Hearing: New Delhi (through Video Conferencing)

PARTIES PRESENT:

- (i) CA. K Gopalakrishnan (M. No. 206519)
(appeared from Chennai Office of ICAI)**

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

B/A

Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Respondent was *prima facie* held guilty of Items (7) and (8) of Part I of Second Schedule and Item (2) of Part IV of First Schedule to the Chartered Accountant Act 1949. The said Item to the Schedule state as under:-

Item (2) of Part IV of First Schedule

"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."

Item (7) and (8) of Part I of Second Schedule

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

"(8) fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion"

Brief Background and Allegations against the Respondent:

2. **Sh. M Rajan Isaac, CMD, Gambion Elecronic (Madras) Pvt. Ltd.** (hereinafter referred to as the "**Complainant**" and "**Company**" respectively) filed a complaint against **CA. K. Gopalakrishnan (M. No.206519), Chennai** (hereinafter referred to as the "**Respondent**"). It was alleged that the Balance sheets of the Company prepared and filed by one Mrs. Anitha Vijaykumar and Mrs. Divya Praba Ravichandran for financial years 2008-09 (**C-151**), 2009-10 (**C-153**) & 2011-12 (**C-158**) were incorrect with false information, with all bogus figures in order to temporarily activate the Company from 'Dormant status' to 'active status'. These balance sheets were signed by Directors who did not have qualifying shares and were audited by the Respondent without giving any mandatory auditor's report. The Complainant also pointed out various lacunae in the said Balance Sheets filed by Mrs. Anitha and audited by the Respondent.

3. Against the aforesaid background, the allegation raised against the Respondent in the extant case is as under: -

- a) **Allegation No 1:** He had fabricated counterfeit Balance sheets of the Company for the years 2008-09, 2009-10 and 2011-12 which were signed by Smt. Anitha Vijayakumar and Divya Praba Ravichandran who were stated to be not having enough shares of the Company to qualify as Directors. It was alleged that the

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Respondent had helped the fake Directors to change the dormant status of the Company to active and also deleting the name of legitimate Directors and replacing them by introducing fake people as Directors. It had also enabled the imposters to alter authorised signatories list in the website.

- b) Allegation No 2:** The Respondent had signed the balance sheet as statutory auditor for the financial years 2008-09, 2009-10 and 2011-12 but had not given his audit report on them as required under Section 227(2) of the Companies Act, 1956. In the present case as there was no auditor's report attached to the balance sheet, the filing of balance sheet was not complete and hence the same was not valid.
- c) Allegation No 3:** *Non intimation to RoC about auditor's appointment:* It was alleged that the Respondent in the extant case had failed to intimate ROC about his appointment as required under Section 224(1A) of the Companies Act.
- d) Allegation No.4:** The Respondent had signed the Balance Sheets as statutory auditor which were fabricated by Smt. Anitha Vijayakumar. He had not obtained NOC from Mr. Shankaranarayan who had filed all the Balance sheets with ROC from the time the Company started ie F.Y. 1989-90.
- e) Allegation No.5:** The imposters had gone to SBI Branch from where the Company was operating its account and Mrs. Anitha Vijayakumar had stolen a sum of around Rs. 2 Crores from the Company account claiming herself to be Managing Director of the Company. Even NEFT facility was introduced in the Company without the knowledge of the authorised signatory i.e. the Complainant.

Proceedings:

4. On January 21, 2021, the Committee noted that Respondent appeared before it through videoconferencing. Thereafter, he gave declaration that there was nobody present 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. Being first



hearing, the Respondent was put on oath. Thereafter, the Committee asked the Respondent whether he was aware of the charges made against him and whether he pleaded guilty. The Respondent submitted to be aware of the charges alleged against him and the same could be taken as read but he pleaded not guilty and opted to defend in the matter.

The Committee, thereafter, asked the Respondent to make his submissions on the matter. The Committee examined the Respondent and, thereafter, considered the submissions received from both the parties.

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

Findings of the Committee:

5. At the outset, the Committee noted the Complainant in his complaint had raised 5 (five) allegations against the Respondent out of which the Director (Discipline) in his prima facie opinion dated 13th July 2020 had held the Respondent prima facie guilty of 4(four) allegations as enumerated in Para no 3 under sub points (a), (b), (c) and (d) and exonerated the Respondent of remaining 1 (one) allegation. Accordingly, the Committee held the enquiry on the date of hearing on said four allegations only as discussed above.

6. The **first and second allegation** against the Respondent was that he had signed on Balance sheets of the Company for the years 2008-09, 2009-10 and 2011-12 which were stated to be prepared and fabricated by Smt. Anitha Vijayakumar and signed by her alongwith Divya Praba Ravichandran who did not have shares to qualify as Directors. Thus, the Respondent helped the fake Directors to change the dormant status of the Company to active, thereby deleting the name of legitimate Directors and replacing them by introducing fake people as Directors. It was further alleged that the Respondent had signed the balance sheet as statutory auditor for the said financial years but failed to give his audit report on them as required under Section 227(2) of the Companies Act, 1956. It was noted that the Respondent had denied the same stating that Mrs. Vijayakumar Anitha being the daughter-in-law of the Founder late

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J.N. Williams had approached the Respondent to sign the Financial Statement of the Company for the Financial years 2008-09, 2009-10 and 2011-12 and accordingly he had signed the above-mentioned Financial Statement after auditing them with due diligence. He also contended to have brought on record the Court order of City Civil Court at Chennai on the Civil petition filed by the Complainant and.

7. The Committee in this regard perused the Financials statements attested by the Respondent and found them to be nothing more than a two page document for each year **(2008-09: C-150 and C-151; 2009-10: C-152 and C-153 and 2011-12: C-158 and C-159)** without any audit report or any schedules and notes to the accounts attached thereto. Further, on perusal of the profit and loss accounts attested by Respondent for all the said three years, it was noted that it reflected only three heads namely Rental Income, Administrative expenses and Director Salary with Net loss being shown for all the three years whereas the profit and loss accounts attested by another Chartered Accountant who as per the Complainant was the Company's duly appointed Chartered Accountant since inception, CA. R. Sankaraarayanan, were not only more comprehensive and detailed **(D-18, D-21 and D-23)** but the figures were also in large variance to the figures attested by the Respondent. It was noted that profit and loss accounts attested by CA. R. Sankaraarayanan, another Chartered Accountant, showed net profit at Rs.19,808 for FY.2008-09, at Rs.34,052/- for F.Y. 2009-10 and at Rs. 1,36,166/- for F.Y 2011-12 whereas the Profit and loss certified by the Respondent reflected Net loss suffered by the Company. Similar observations were made in context to the balance sheet also wherein even the figures of share capital were not matching in both the set of financial statements. Further, in the balance sheet attested by the Respondent, limited figures were reflected which gave an impression of them being incomplete. It was noted that the figure of fixed asset was being reflected at a fixed amount of Rs 1,04,959/- for all the three years in the Balance sheet certified by the Respondent meaning thereby that no depreciation was charged whereas in the Balance sheet attested by another chartered accountant, CA. R. Sankaranarayanan, Fixed Assets were reflected to include, land, Building and Machinery beside charging depreciation on the gross block of Machinery **(D-19, D-20 and D-22)**.



8. On perusal of above, it was, thus, noted that for same financial years, different sets of financial statements were reflecting different financial state of affairs for same company. One of the said set of financial statements was attested by the Respondent **(2008-09: C-150 to C-151; 2009-10: C-152 to C-153; 2011-12: C-158 to C-159)**. The Committee in this regard found it difficult to comprehend the reasons for said differences same and was of the view that it gave way to a probability that one of the Financials was fabricated which did not depict the actual state of affairs and was fabricated and attested to suit ill-designs of some involved persons. The Committee, thereafter, noted the admission made by the Respondent in his Written Statement that he signed the Financial Statements of the Company for the said three years which were brought to him by Mrs. Anitha Vijayakumar and signed by the Board with 2/3rd majority. The Committee noted that the attested financial statements were not accompanied with the audit report of the Respondent. Accordingly, the Respondent was asked the capacity in which the said financials were certified to which he stated to have done in the capacity of being the statutory auditor and that he had only attested the financials, no audit report was issued.

9. The Committee in this regard noted that Section 227(2) of the Companies Act, 1956 requires that the auditor should make a report to the members of the company on the accounts examined by him, and on every balance sheet and profit & loss account and on every other documents declared by this Act to be part of or annexed to the balance sheet and profit & loss account. In the present case, the Committee noted the reply offered by Respondent and viewed that being the statutory auditor it was his prime responsibility to issue audit report on the financials being certified by him. The omission of audit report was a major procedural lapse and signifies that the Respondent was ignorant of the basic essence of auditing which involves issuing an audit report after independent examination in relation to information contained in the financial statements of the Company. The Committee, accordingly viewed that the Respondent not only failed to exercise due diligence as was expected of him while acting as the statutory auditor but also failed to comply with the provisions of Companies Act 1956 which lays a statutory obligation upon him to issue audit report based on audit conducted by him. It was, thus, clear that the Respondent had signed

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the balance sheets for all the three years without examination of any relevant records of the Company thereby failing to gather sufficient evidence before certifying the financial statements of the Company. It was noted that the Respondent had failed to submit any evidence to corroborate his defence that he exercised due diligence while certifying the said financial statements. In view of the serious lapse on his part, other arguments were found pointless.

10. In light of said discussion, the Committee was of the considered view that the Respondent was guilty of professional and other misconduct for the first and second charge whereby while acting as the statutory auditor, he had not only failed to exercise due diligence and to gather sufficient appropriate audit evidence as warranted in the circumstances but also assisted Mrs. Anitha Vijayakumar in her ill-motives of changing the status of the Company from dormant to active and thereby providing her a platform to misuse her position thereby falling within the meaning of Items (7) and (8) of Part I of the Second Schedule and Item (2) of Part IV of the First Schedule to the Chartered Accountant Act 1949.

11. The Committee noted the **third allegation** alleged against the Respondent was that no intimation was made to ROC about auditor appointment as required under Section 224(1) of the Companies Act, 1956; the Respondent submitted that it was a procedural lapse which could be rectified at any point of time by paying late fee with the ROC.

12. The Committee in this regard noted the provisions of Section 224(1B) of the Companies Act, 1956 which casts responsibility of the appointed auditor to inform the Registrar about his appointment within thirty days of the receipt of the intimation of appointment from the Company. It is done vide filing Form 23B. In case there is delay in filing the form 23B, late fee is required to be paid which depends upon the period of delay but filing of form 23B is a mandatory requirement of the Companies Act. The Committee, accordingly, noted that although the Respondent submitted that there was a procedural lapse of non-filing Form 23B. However, it could have been rectified but in extant case, the Respondent had failed to submit any defence and/or evidence to substantiate that he had, thereafter, tried to rectify the same. Accordingly, it was

viewed that the Respondent had failed to exercise due diligence in his professional assignment and had omitted to comply with the mandatory requirement of filing Form 23B as laid under Section 224(1A) of the Companies Act, 1956 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 Accountant Act 1949.

13. The Committee noted the **fourth allegation** alleged against the Respondent was that he had not obtained NOC from Mr. Shankaranarayan who had acted as auditor of the Company since its inception ie. F.Y. 1989-90. It was noted that the Respondent in his Written statement dated September 2020 submitted that he had communicated with Mr. R Sankaranarayanan on 21/07/2017 seeking NOC from him. However, no reply was received. It was noted that a courier receipt was produced on record by the Respondent wherein neither the details of recipient were legible nor was accompanied with the copy of letter written to the previous auditor. It also raised the doubt if the Respondent was aware of the address of the previous auditor.

14. The Committee, in this regard, noted that the provision of Item (8) of Part I of the First Schedule of the Chartered Accountants Act, 1949 it is incumbent on part of the incoming auditor to communicate with the previous auditor in writing. It was further noted that **as per Code of Ethics**, Members of ICAI should communicate with a retiring auditor in such a manner as to retain in their hands positive evidence of the delivery of the communication to the addressee. In the opinion of the Council, communication by a letter sent through "**Registered Acknowledgement due**" or by hand against a written acknowledgement would in the normal course provide such evidence (**Pg. 165-166 of Code of Ethics, Eleventh Edition, 2009**). In this regard, on perusal of records of the Company, it was evident that CA .R. Sankaranarayanan was the auditor of the Company who had previously certified the Financial statements of the Company (**C-31 to C-39**). Accordingly, the Respondent was required to communicate in writing with him. However, the evidences produced on record by the Respondent failed to meet the requirement of positive evidence of communication. Accordingly, it was viewed that the Respondent was guilty of professional misconduct falling within the meaning of Item (8) of Part I of First Schedule to the Chartered Accountants Act 1949.



Conclusion:

17. Thus in conclusion, in the considered opinion of the Committee, the Respondent is **GUILTY** of Professional and Other Misconduct falling within the meaning of Item (8) of Part I and Item (2) of Part IV of First Schedule as well as Item (7) and Item (8) of Part I of Second Schedule to the Chartered Accountant Act 1949.

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Sd/-
[CA. Atul Kumar Gupta]
Presiding Officer

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


Sd/-
[CA. Chandrashekhar Vasant Chitale]
Member

Sd/-
[CA. Manu Agrawal]
Member

DATE: 11th February, 2021

PLACE: New Delhi

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(Mohita Khanna)
Assistant Secretary
Disciplinary Directorate
The Institute of Chartered Accountants of India