

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/227/15-DD/277/2015/BOD/522/2019]

CORAM: (Through Video Conferencing)

**CA. Prasanna Kumar D., Presiding Officer
Mrs. Rani Nair (IRS, Retd.), Government Nominee
CA. Satish Kumar Gupta, Member**

In the matter of:

**Sh. Shaik Shamshuddin
Managing Director,
Global Infra Villas Private Limited
C/o Global Infra Villas
GF-3, Crescents Majestic Complex,
Beside Bank of India, Ramakrishnapuram,
Secundrabad-500056**

.....Complainant

-Vs.-

**CA. Komandoor Mohan Acharya (M. No.029082)
M/s. Komandoor & Co.,
Chartered Accountants,
I-504, 7-1-58, 5th Floor, Divya Shakti Complex,
Dharam Karan Road, Ameerpet,
Hyderabad- 500016**

.....Respondent

**DATE OF FINAL HEARING : 30th July, 2021
PLACE OF HEARING : New Delhi/ Through Video Conferencing**

PARTIES PRESENT:

Respondent : CA. Komandoor Mohan Acharya

Findings:

Background of the case:

1. The Complainant is the Managing Director of M/s. Global Infra Villas Pvt. Ltd (hereinafter referred to as the "Company") and approached the Respondent for arranging Bank/ Private loan for his real estate projects during July, 2012. The Complainant also requested the Respondent to check the eligibility of his Company and arrange any type of equity based or debt funding after conducting thorough due diligence of the source. The Respondent told the Complainant to transfer files of his Company and M/s. Global Enterprises from then auditors M/s. Loya & Associates as the Respondent had promised for immediate loan arrangement stating he had genuine contacts and sources of private funding, the Complainant requested M/s. Loya & Associates to give NOC to the Respondent on 17/07/2012.

Charge alleged:

2. The Complainant alleged that the Respondent on the pretext of assurance to arrange loans had taken property documents, cheques but no loan was arranged by him. It is further alleged that manipulations were carried out by the Respondent through fake entries, fake work orders, fake turnover, cash transfer with the help and proximity with his client's Companies (M/s Mustang Infra Pvt Ltd, Core India Enterprises), and Companies related with the Complainant and his wife i.e. (Global Infra Villas Pvt. Limited and M/s Global Enterprises). It was also alleged that required qualification was not possessed by the Respondent's firm and branch offices were not there while shown on records. Thus, the Respondent who is a master mind through decoy operation and with hidden planning in the garb of helping the Complainant cheated him through illegal guidance. The allegations raised by Complainant in seriatim are as under:
 - a. Introducing the Complainant to one CA. Shankar (associate of the Respondent) for the purpose of arranging loans to the Complainant for expansion of his business. Despite incurring Rs. 3.00 lacs for travel to Bangalore and other expenses, no loan could be arranged by the Respondent and his associate Mr. Shankar.
 - b. Further, a fake demand draft for 52,000£ was arranged from London by Mr. Shankar and Respondent in the name of the Respondent but unfortunately got bounced when sent for clearing in Axis Bank. 



- c. Using unethical and unprofessional means and taking the Complainant into confidence to pay tax to Income Tax Department by showing fake turnovers through different enterprises such as through his client's Companies (M/s Mustang Infra Pvt Ltd, Core India Enterprises), and Companies related with the Complainant and his wife i.e. (Global Infra Villas Pvt. Limited and M/s Global Enterprises) in the guise of arranging quick loans. Accordingly, fake turnover, fake work order was prepared and M/s Mustang Infra Pvt Ltd owned by Sh. Anil Dundoo (one of client Company of the Respondent) extended into works contract with M/s Global Infra Villas Pvt Ltd and same was subcontracted to M/s Global Enterprises and once again sub contracted to M/s Core India enterprises showing land levelling work in Mustang Infra's (client Company of the Respondent) own property which was not allowed for commercial purpose and construction activity as the land was in G.O.number 111.
- d. Assurance for arranging gold loans for paying taxes as the Complainant was not having enough money by mortgage of Complainant Gold but inspite of using the money of Rs 19 lakhs to pay taxes as given by the bank, the Respondent asked the Complainant to give a cheque to Mr. Anil Dundoo (Managing Director of M/s Mustang Infra Pvt Ltd which is client Company of the Respondent) for Rs. 1,80,050/- (sic. Rs. 18,00,000/-) and to deposit cash of Rs. 1,00,000/- in professional saving account.
- e. Manipulation of figures in the Balance Sheet without approval of the Complainant which resulted into tax dues payment of Rs 7 lakhs and as the Complainant was having no money, the Respondent assured him of arranging a Loan of Rs 7,00,000/- from his close associate (CA. Surya Narayana).
- f. Despite taken his letter addressed to funding agency dated 12th September, 2012 along with two blank cheques (vide nos. 594794 and 594795), original property papers for 10 acres land at Masaipet in Yadagirigutta Mandal, the Respondent failed to arrange loan and return property documents and blank cheques.
- g. Responsible for the loss of Rs 26 Lakhs and interest thereon of Rs 12 lakhs and threatened of dire consequence.
- h. Promise to pay back the total tax amount paid and refund of Rs 3 lakh but the same was not paid and to give NOC to the Complainant but not given.
- i. Information to ICAI that the Respondent Firm has total 13 branches was false as branch offices of the Respondent's firm (M/s. Komandoor & Co.) separately managed by individual practising Chartered Accountants in their own individual names and not practicing under the Respondent's firm name (M/s. Komandoor & Co.) but for name sake are partners on paper. As an example Mrs CA. Karunasree Samudrala (sister of the Respondent and qualified

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Chartered Accountant) taking care of only bank auditing work while working in main office. Therefore, there was no such branch office of the firm.

- j. The Respondent's firm does not possess required qualifications and Mr. Kanneboina Ramprasad (qualified CA.) is shown as partner in place of one Mr. Komandoor Narasimha Moorthy who is eldest brother of the Managing Promoter of the firm (M/s. Komandoor & Co.) and not a qualified Chartered Accountant but in reality partner in the firm and signing documents and acting in the name of Mr. Kanneboina Ramprasad.
 - k. Arranging black money to white transactions through fake entries and cash transfer from one place to another through bank accounts of small Entrepreneurs and small Companies. The Respondent's legal source of income and his acquired properties did not match to legal income of a normal Chartered Accountant.
3. The Board noted that the Director (Discipline) in his Prima Facie Opinion dated 1st March, 2019 held the Respondent prima facie Not Guilty in respect of the charges alleged. The Board, on consideration of the Prima Facie Opinion, while concurring with the reasons given against the charge(s) mentioned in point (i) and (j) of para 7.1 of the Prima Facie Opinion did not concur with the reasons given against the charge(s) mentioned in point (a) to (h) and (k) of para 7.1 of the Prima Facie Opinion and was of the view that from the available documents, it is coming out that the Respondent was having role in arrangement of loan for the Complainant company, therefore the Board was of the view that the exact role of the Respondent is required to be examined in detail and thus, did not agree with the Prima Facie Opinion of the Director against the said charges 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 read with section 22 of the said Act and thus, decided to proceed under Chapter IV of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

Accordingly, the conduct of the Respondent was examined by the Board as far as the charge(s) mentioned in point (a) to (h) and (k) of para 7.1 of the Prima Facie Opinion dated 1st March, 2019 [point (a) to (h) and (k) of para 2 above] are concerned.

Brief of Proceedings held:

4. During the proceedings held on 7th April 2021, the Complainant was not present before the Board. However, the Respondent was present in person before the



Board. Thereafter, the Respondent was put on oath. On being asked whether he is being aware of the charges alleged against him, the Respondent replied in affirmative. On further being asked by the Board as to whether the Respondent pleaded guilty in respect of the charges alleged against him, he replied in negative and made detailed oral submissions.

On consideration of the documents and the submissions on record, the Board directed the Respondent to submit following documents/ information with a copy marked to the Complainant for submitting his comments thereon, if any:

1. Details of the specific account maintained for foreign receipt of money.
2. Confirmation letter from Mr. R. Subramanyam about the purpose for which the cheque of 52,000£ was issued in the name of the Respondent.
3. Confirmation from CA. Ankit Soni that he shared the information about the cheque of 52,000£ with the Complainant.
4. Breakup of turnover of the Complainant company for the F.Y. 2011-12 audited by him together with the TDS thereon and Form 26AS statement of the Company.
5. Personal bank account(s) statement of the Respondent for the relevant period.
6. Letter from Mr. Suryanarayana regarding the borrowal of Rs. 7 Lakh by the Complainant from him and its repayment together with the role of the Respondent, if any in the arrangement of the said loan.
7. Copy of the bank account maintained separately to route transactions carried out on behalf of the Complainant Company during the relevant period along with the explanation for the transactions.
8. Details of all the Companies with which Mr. R. Subramanian is connected along with the capacity in which he is connected with these Companies together with addresses of all such Companies.

In compliance of the above directions, the Respondent vide letter dated 17th April, 2021 submitted certain documents/ information as called for from him.

4.1 Thereafter, during the proceedings held on 5th July 2021, the Respondent who was present before the Board through video conferencing made his further submissions and was examined by the Board. The Board adjourned the hearing with the direction to the Respondent to provide the following:-

1. To file confirmation letter from Mr. R. Subramanian about the purpose for which the cheque of 52,000£ was issued in the name of the Respondent.
2. To file confirmation from CA. Ankit Sonee that he shared the information about the cheque of 52,000£ with the Complainant.

3. To file details of all the Companies with which Mr. R. Subramanian is connected along with the capacity in which he is connected with these Companies together with addresses of all such Companies.
4. Respondent was also requested to share details of SRN or Membership Number of CA. Ankit Sonee to the office.

The Board also directed office that after receipt of information from Respondent with respect to point no. 4 above, clarification be sought from said CA. Ankit Sonee regarding the transaction(s) in question.

Thereafter, vide email dated 14th July 2021 clarification was sought from CA. Ankit Kumar Sonee that whether he had shared the information about the cheque/ demand draft of 52,000£ with the Complainant i.e. Shri Shaik Shamshuddin, MD, Global Infra Villas Private Limited, Secundrabad. CA. Ankit Kumar Sonee through email dated 14th July, 2021 in response to above email, inter-alia, submitted as under:

- (i) He was just an Article Staff at M/s Komandoor & Co., and had no access to any of the confidential documents. He has not taken any document/ cheque/ demand draft from his office and has not deposited it into the Bank. It was issued in the name of Mohan Acharya Komandoor and it was deposited by him (Respondent) only.

In compliance of above directions of the Board, the Respondent vide email dated 15/07/2021 submitted his reply.

4.2 Thereafter, during the next hearing held on 23rd July, 2021, the Respondent was present before the Board through video conferencing. The Board noted that the Respondent furnished the email id of CA. Ankit Sonee together with the screenshot of the whatsapp communication with him asking to share his email id and to further provide information to ICAI in compliance of last direction of the Board but failed to submit the following and sought some more time to furnish the same:

- (a) Confirmation letter from Mr. R. Subramanian about the purpose for which the cheque of 52,000£ was issued in the name of the Respondent
- (b) Details of all the Companies with which Mr. R. Subramanian is connected along with the capacity in which he is connected with these Companies together with addresses of all such Companies.

The Board acceded to the request of the Respondent and directed him to furnish the aforesaid information within 5 days.

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4.3 On 30th July 2021, the Board noted that the Respondent was present before it through video conferencing and that the Complainant was not present before it and vide email dated 20th July 2021 had submitted that he has submitted the relevant documents for taking action. The Board also noted that the last hearing held in the case on 23rd July 2021 was adjourned with the direction to the Respondent to submit the following documents:-

1. Confirmation letter from Mr. R. Subramanian about the purpose for which the cheque of 52,000£ was issued in the name of the Respondent.
2. Details of all the Companies with which Mr. R. Subramanian is connected along with the capacity in which he is connected with these Companies together with addresses of all such Companies.

The Board noted that vide email 29th July 2021 and 31st July, 2021, the Respondent forwarded the declaration given by Mr. R. Subramanian. The Respondent was, thereafter examined by the Board. Upon consideration of the documents and submissions on record, the Board decided to conclude the proceedings in this case with the direction to the Respondent to seek the following from Mr. R. Subramanian:

1. Copy of his Identification proof.
2. Confirmation as regards the genuineness of the declaration dated 27th July, 2021 submitted by him regarding cheque of 52,000£.

Accordingly, the decision on the conduct of Respondent was kept reserved by the Board. Thereafter, the Respondent submitted the Declaration and Confirmation from Mr. R. Subrahmanian, Director Raja Global Trading, London, UK dated 27/07/2021. Thereafter, at its meeting held on 31st August 2021, on consideration of the documents and submissions on record, Board decided on the conduct of the Respondent.

Brief of the submissions of the parties:

(a) Complainant:

5. The Board noted that the Complainant did not attend the inquiry proceedings before it. However, he made various written submissions during the proceedings and the brief of the same is as under:-
 - a. Due to losses incurred, the Complainant closed his business activity. The Complainant's Company was already struck off by concerned ROC.
 - b. The Complainant submitted the copy of reply to Notice under Section 142(1).

addressed to the Assistant Commissioner, Hyderabad wherein he stated as under:-

- i. The Complainant has filed the revised tax return for the AY 2012-13 on 08/11/2019.
 - ii. Regarding the land taken for development and leased on subcontract for a consideration of Rs. 10.68 crore to Smt. Zarina Tabassum Proprietor of M/s. Global Enterprises, the Complainant confirmed that he had not deducted TDS against this expenditure because the said expenditure was not incurred at all. He obtained the contract originally from M/s. Mustang Infra Projects Private Limited and gave sub contract to M/s. Global Enterprises who in turn sub-contracted to M/s. Core India Enterprises represented by Proprietor, Mr. Akhilesh Sood. Because of severe operational difficulties M/s. Core India Enterprises could not execute the contract. Accordingly, the said contract was cancelled. Since the contract to M/s. Core India Enterprises was cancelled, the other two contracts between 'M/s. Global Infra Villas Private Limited and M/s. Global Enterprises' and 'M/s. Global Infra Villas Private Limited and M/s. Mustang Infra Projects Private Limited' also became infructuous. Accordingly, neither M/s. Global Infra Villas Private Limited received the contract price of Rs. 12 Crores nor M/s. Global Infra Villas Private Limited made any payment to M/s. Global Enterprises. Since no payment was made to M/s. Global Enterprises, the Complainant prayed that no addition be made for payment without TDS.
 - iii. Expecting the receipt from M/s. Mustang Infra Projects Private Limited provision was made in the books for both receipt of Rs. 12 Crores as well as payment of Rs. 10.68 Crore, and in reality neither of the two events could take place as the original contract had become infructuous.
- c. The Respondent damaged M/s. Core Enterprises where he booked expenditure without actually executing the work. This led to the Income Tax case of Rs. 3 crore payment Order and the said case is still pending in Income Tax Department.

(b) Respondent:

6. The Respondent, in his defence, inter-alia, submitted as under:
- a. The Complainant is known to him since more than 20 years and developed good relations with him as he used to visit the Respondent's office for filing IT Returns of his superior Mr. Venkat Reddy. In 2012, the Complainant approached him and informed about his business and intended to expand his business by availing loan with the help of the Respondent. The



- Complainant also sent the mail to the previous auditor, M/s. Loya & Associates to give NOC to the Respondent for transferring files to his office.
- b. There was no role in introducing the Complainant to Mr. Shankar, only recommendation was there. The Complainant might have approached Mr. Shankar personally. As far as transaction of cheque 52,000 £ is concerned, it was a different transaction.
 - c. There was no planning to help client Mr. Anil Dundoo of M/s Mustang Infra villas Pvt Ltd and to pay tax to Income Tax Department. Further, it is false that fake work order and fake turnover was prepared and not concerned with the Companies.
 - d. Arrangement of gold loan and demanding for cheque and cash is also denied. However, as the Complainant was short of cash in case of contract with Mr. Anil Dundoo which was awarded to him on the recommendation of the Respondent, amount of Rs 6 lakhs was paid to client Mr. Anil Dundoo's account and Rs 5 lakhs was paid in cash to the Complainant. But, the contract was cancelled due to failure on the part of the Complainant to complete the Contract. The Complainant had already taken Rs 10 lakhs as hand loan by selling the Respondent's property.
 - e. The Respondent denied manipulation of figures and recommended the Complainant to Mr. Surya Narayana in good faith. The Complainant borrowed Rs 7 lakhs from close associate of Mr. Surya Narayana by offering property documents and cheques on his own and the Respondent is not responsible for the same.
 - f. The Respondent is not responsible for loss of Rs 26 lakhs and interest thereon and never threatened of dire consequences.
 - g. The Respondent never promised about payment of tax amount and refund. Since the Complainant and his family were entitled for TDS credit, the same was done. The Respondent never refused for NOC, instead requested the Complainant to provide details of CA. to issue NOC.
 - h. All the branch offices of the Respondent firm are separately managed by individual practicing Chartered Accountants and all the partners move from one branch to other branches on need basis.
 - i. M/s Komandoor & Company possesses all the required qualifications and wrong details were not furnished. Further, it is false that Mr. Kanneboina Ramaprasad is shown as a partner in place of Mr. Komandoor Narasimha Murthy. In fact name of Mr. Komandoor Narasimha Murthy is wrongly mentioned while his correct name is Mr. Nambi Narasimha Murthy.
 - j. The Respondent denied the averments related to arrangement of black money to white and charge related to properties not matching with legal income. (B)

Observations of the Board:

7. The Board observed that the Complainant has made various allegations against the Respondent which in effect point out that in the garb of helping the Complainant, the Respondent cheated him through illegal guidance. The Board on consideration of submissions and documents on record observed the following with respect to the various allegations as under:-
- a. As regard the charge that Respondent introduced the Complainant to one CA. Shankar for the purpose of arranging the loans for expansion of his business, the Complainant also incurred Rs. 3 Lacs as travel and other expenses but no loan could be arranged by the Respondent and his associate CA. Shankar, the Respondent submitted that Mr. Shankar is not a CA and the Respondent never introduced Mr. Shankar. The Board on perusal of overall facts and documents on record observed that an email dated 17th July 2012 had been sent by the Complainant to M/s Loya and Associates stating that since project finance for their land and construction projects were arranged by the Respondent firm, they had decided to get their accounts audited from the Respondent firm only. Further, there is another email dated 19th October 2014 from the Complainant to the Respondent stating that he had told the Respondent to arrange loan for his company from his known genuine sources by verifying the company documents and project details. In another email of the same date addressed to the Respondent, the Complainant stated that the Respondent recommended Mr. Shankar to him despite knowing that he had already cheated his client. The Board also observed that email dated 22nd October 2014 had been sent by the Respondent to the Complainant stating as hereunder:

"First two mails of you I thought you are sending with frustration.

I can give reply to each point you have raised, still I want to maintain good relation with you. I am going to introduce you to HSBC and Indus Bank Top executive to leverage Collateral properties and increase liquidity position. There are two methods cool and prudent method which I want to adopt second fight and spoil health, wealth and peace of mind. Choice is yours decide and come to me. Stop sending non-sense mails other wise."

Further, there was an email dated 23rd September 2012 from the Respondent to Mr. Shankar requesting for immediate arrangement of funds for the Complainant. On perusal of the contents of the said email it is seen that



although it is coming out that the Respondent was having knowledge of transaction between the Complainant and Mr. Shankar, but wordings of said e-mail never established that the Respondent arranged funds for the Complainant, the Respondent introduced CA. Shanker to the Complainant and that he failed to discharge his duty. Further, the Respondent seemed to be helping the Complainant as evident from the wordings "*Please look into with human face.*" The Board also noted that Mr. Shankar is not a CA. He is a businessman and moneylender under the brand name M/s Shankar & Finances, based in Bangalore.

Also, neither the Complainant nor the Respondent brought on record any formal agreement executed between the Respondent and the Complainant company showing the exact nature and terms of professional relationship between them and the determining factor for the payment of remuneration, if any. As regards incurring expenses on travel etc., the Board noted that there are no documentary evidence to establish the connection of said expenses with the Respondent. The Board viewed that burden of proof lies on the Complainant, as one who asserts must prove that those facts exists, however, in the instant case, the Complainant could not bring on record any evidence to corroborate the alleged misconduct on the part of the Respondent. Also, if a client acts on the advice of his auditor and subsequently incurs loss, he cannot hold the auditor liable for the same as the work of an auditor is to advice or give his opinion and it is upto the client whether to act or not on the advice/opinion of the auditor. Accordingly, the Board viewed that the Respondent is not guilty in respect of the said charge.

- b. As regard the charge that a fake demand draft for 52,000£ was arranged from London by Mr. Shankar and the Respondent which unfortunately got bounced when sent for clearing with AXIS Bank, the Board noted that the Respondent submitted that a cheque of Barclays Bank for 52,000 Pounds has nothing to do with the Complainant as it is a different transaction. The said DD was a separate transaction between the Respondent and Mr. Subrahmanian drawn on Barclays Bank. The said document was taken out from his office through connivance of one of his Article staff (Mr. Ankit Soni, now a CA).

The Board observed that in the row titled customer name in the agreement with UTI Bank Ltd. dated 23rd October 2012 for collection of clean instruments in foreign currency, the name of the Respondent is given, amount of GBP (Great Britain Pound) 52000 is given and the name of remitter is Mr. R. 

Subramanian, London UK with the purpose of remittance being shown as 'Incorporation of company in India- advance'.

The Board, noted that the Respondent brought on record 'Declaration and Confirmation of Mr. R. Subrahmanian (aged 82 years), Director, Raja Global Trading, London, UK wherein he confirmed that an amount of 52,000£ was given to the Respondent by way of cheque for incorporation of company and for procurement of telecommunication equipment for medical transcription and the said project was shelved due to political disturbances in AP state and due to the said reason the cheque was asked to be detained by his bankers as suggested by his auditors. The Complainant however through his email dated 16/08/2021 denied the said submission of the Respondent.

The Board also noted vide email dated 14th July, 2021 clarification was sought from CA. Ankit Kumar Sonee as to that whether he had shared the information about the cheque/ demand draft of 52,000£ with the Complainant. In response to above email CA. Ankit Kumar Sonee through email dated 14th July, 2021 submitted as under:-

- (i) He was just an Article Staff at M/s Komandoor & Co., & had no access to any of the confidential documents. He has not taken any document/ cheque/ demand draft from his office and has not deposited it into the Bank. It was issued in the name of Mohan Acharya Komandoor and it was deposited by him (Respondent) only.

Hence, the Board observed that nothing is given on record to establish that the demand draft was fake and was related with the transactions of the Complainant. Accordingly, the Board viewed that Respondent is not guilty in respect of the said charge.

- c. As regard the charge that the Respondent used unethical and unprofessional means, took the Complainant into confidence to pay tax to Income Tax Department by showing fake turnover through M/s Mustang Infra Pvt Ltd, Core India Enterprises, and Companies related with the Complainant and his wife i.e. (Global Infra Villas Pvt. Limited and M/s Global Enterprises) on the guise of arranging quick loans, the Respondent submitted that the Complainant and Mr. Anil Dundoo had entered into a business transaction through documents to develop Earth Excavation Works through M/s. Mustang Infra Pvt. Ltd. As the Complainant was in Real Estate business and having good experience in

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development of Plots. The role of the Respondent was to introduce the Complainant to Mr. Anil Dundoo only. The email of the Complainant addressed to Mr. Akhilesh Sood dated 19.02.2016 where the Complainant clearly agreed that contract was getting cancelled due to operational issues and the Complainant himself agreed that he had paid Rs. 19 lakhs towards EMD (Total Amount was Rs 24 Lakhs only). The Respondent further submitted its owner i.e. Mr. Anil Dundoo was his client since long time. It was the contract of work between the Complainant's Company and M/s. Mustang Infra Villas Pvt. Ltd. for excavating and leveling the earth of 57 acres of agricultural land located at Bahdurguda village.

The Board on perusal of the said agreement dated 23/10/2011 noted that the work order was executed between two companies and the agreement on record bears signatures of the MD of both the Companies i.e. Complainant Company and M/s. Mustang Infra Projects Pvt. Ltd. The Board further viewed that the Complainant's Company had given work order dated 7th November, 2011 received from M/s. Mustang Infra Villas Pvt. Ltd. to M/s. Global Enterprises in which the Complainant's wife was proprietor and the same was further given to M/s. Core India Enterprises whose Proprietor was Mr. Akhilesh Sood. The work orders were accepted by the Companies themselves. Upon perusal of said agreements, the Board viewed that the parties had themselves undertaken work. The Board also noted that although the Complainant had submitted certain emails which show the knowledge of the Respondent about the agreement and probably certain involvement of the Respondent in the matter of work order with Mr. Anil Dundoo, but it does not establish that any action of the Respondent was unethical. The Board also noted that signatures of the Respondent is not there in case of work orders entered between the Complainant's Company (M/s Global Infra Villa Pvt. Ltd) and M/s. Mustang Infra Villas Pvt. Ltd. showing that the contract entered between them is independent of the Respondent.

Further, the Complainant in his statement on Oath to Income Tax Department on 10/03/2015 in matter of M/s. Global Enterprises had admitted of procuring and sub-contracting the work.

The Board also asked the Respondent during inquiry to provide the following i.e. breakup of turnover of the Complainant company for the F.Y. 2011-12 audited by him together with the TDS thereon and Form 26AS statement of the Company and Personal bank account(s) statement of the Respondent for the relevant period in order to arrive at logical Findings in the matter. Upon perusal of the said documents submitted by the Respondent, the Board

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viewed that the Complainant has raised the plea of fake turnover shown in the books of his own Company and from the documents on record, it could not be established that the Respondent was in any way related/beneficiary of the same. The Board observed that the Complainant failed to corroborate the said allegation of fake turnover and creation of various documents in the guise of arrangement of quick loan. Although, the Complainant submitted that Respondent was involved in the matter, but looking into agreements, admission of the Complainant on Oath about genuineness of the transaction, the Board viewed that the Respondent is not guilty in respect of the said charge.

- d. As regard the charge of assurance for arranging gold loans for paying taxes, the Respondent submitted that the Gold Loan was raised by Complainant to meet his personal needs and for his daughters' marriage which he was linking to M/s Mustang Infra. The role of the Respondent was to introduce the Complainant to get a mortgage loan against Gold through M/s Karur Vysya Bank and the then DGM was Mr. A. Ramesh.

The Board noted that the Complainant brought on record copy of his bank passbook wherein it was shown that an amount of Rs. 19,00,000/- was credited in his account and thereafter two debit entries were shown of Rs. 18,00,050/- and Rs. 1,00,000/- during the month of September, 2012. On perusal of bank statement it was noted that the said loan was immediately transferred to Mr. Anil Dundoo's account on 26.09.2012. The Board further observed that the Complainant vide his email dated 20.05.2015 addressed to the Respondent admitted that Gold Loan was taken to remit cash into account of Mr. Anil Dundoo and that he wanted settlement of his 100% repayment. The Board, thus, noted that the said transactions were between Mr. Anil Dundoo and the Complainant and the role of the Respondent cannot be drawn merely on the ground that Complainant emailed to the Respondent seeking settlement of repayment. Accordingly, the Board viewed that the said charge is not sustainable against the Respondent.

- e. As regard the charge of manipulation of figures in the Balance Sheet without approval of the Complainant which resulted into tax dues payment of Rs. 7 lakhs and as the Complainant was having no money, the Respondent assured him of arranging Loan of Rs. 7,00,000 from his close associate (CA. Surya Narayana), the Respondent denied the said charge and stated that Mr. Vadali Suryanarayana's loan was conveniently added for payment of taxes and it was pure mortgage loan against property with Post Dated Cheques given by the



Complainant to Mr. Koteswara Rao and from the same the Complainant raised mortgaged loan. A clear declaration was given by Mr. Vadali Suryanarayana dated 16.01.2016 stating that the Complainant raised the said funds independently without the involvement of the Respondent. The Respondent further submitted that the Complainant was close to him and on one day Complainant requested Respondent to arrange some loan to perform his daughter's marriage. Considering the relationship, the Respondent recommended Complainant to CA. V. Surya Narayana. The said CA. V. Surya Narayana assessed the credentials of the Complainant and his Company and opined that his Company was not eligible for funding from banking institutions.

The Board in this regard during inquiry called for letter from Mr. Suryanarayana regarding the borrowal of Rs. 7 Lakh by the Complainant from him and its repayment together with the role of the Respondent, if any in the arrangement of the said loan. The Respondent vide letter dated 17th April 2021 submitted the copy of confirmation letter dated 14th April 2021 from Mr. V. Suryanarayana wherein he confirmed that he and his cousin Mr. C Sridhar had lent an amount of Rs. 7 Lakhs to the Complainant during October 2017 as a hand loan from their personal savings. The Complainant paid bank interest for a period of 9 months and defaulted on interest and failed to repay the loan corpus as agreed in October, 2018. The said loan was finally settled with outstanding interest in the month of October, 2020. The said confirmation letter was also counter signed by Mr. C Sridhar.

The Board observed that the Complainant did not bring on record any evidence to show manipulations carried out in the Financials of the Complainant company without the knowledge of the Complainant and that Respondent had any role in obtaining the loan of Rs. 7 lakh. Accordingly, the Board viewed that the Respondent is not guilty in respect of the said charge.

- f. As regard the charge that despite taken his letter addressed to funding agency dated 12th September, 2012 along with two blank cheques (vide nos. 594794 and 594795), original property papers for 10 acres land at Masaipet in Yadagirigutta Mandal, the Respondent failed to arrange loan and return property documents and blank cheques, the Respondent denied that he had taken intent letter addressed to funding agency dated 12/09/2012 and took original property document of 10 acres land at Masaipet in Yadgirigutta Mandal alongwith two undated cheque numbers 594794 and 594795 of M/s. Syndicate Bank for availing loans, had sent those documents Delhi to Funders Office by Blue Dart Courier and that no loan was arranged or no property

documents or cheques were returned to the Complainant. The Board noted that the Complainant vide email dated 22.05.2015/23.05.2015 addressed to the Respondent enclosing therewith email of October, 2013 sought the alleged documents. The Respondent in response to the same vide email date 22.05.2015 denied of receiving said documents and also advised the Complainant to clarify the same by arranging meeting with the person who is alleging of having the documents in his (Respondent's) possession. The Respondent vide letter sent with e-mail dated 06.06.2015 also clarified the issue to the Complainant and also advised to issue stop payment notice to the banker in respect of alleged cheques. The Board also noted that the original email was sent by the Complainant to Mr. Surya in October, 2013 which was forwarded by the Complainant to the Respondent in May, 2015 without any justifiable reason for getting the same clarified from the Respondent after a gap of around 1.5 years. Thus, looking into the fact that appropriate clarification/reply was given by the Respondent to the Complainant in response to the said email and there is no documentary evidence that the documents were handed over to the Respondent, the Board viewed that the Respondent is not guilty for the said charge.

- g. As regard the charge that Respondent is responsible for the loss of Rs 26 Lakhs and interest thereon of Rs 12 lakhs and threatened the Complainant of dire consequences, the Respondent submitted that Complainant has not furnished any proof that the Respondent is responsible for the loss of Rs. 26 Lakhs and threatened the Complainant for dire consequences. The Board viewed that the Complainant has though produced the email correspondence between him and the Respondent but the said charge is not substantiated by the said email correspondence. The Board further viewed that the client cannot ask the auditor to reimburse the loss incurred by him/ her. A Chartered Accountant provides his advice to his clients based on his knowledge and experience concerning his domain. It is up to the client whether to accept the said advice. He cannot hold the Chartered Accountant to ransom if he suffers financially or otherwise on acting on the advice of the Chartered Accountant or for that matter any other professional. The Board observed that the Complainant has clubbed numerous issues with extant case which needs corroboratory material/ evidence.

The Board further viewed that the conduct of a professional cannot be proved merely on the basis of oral allegation without any cogent material/ evidence for loss of any sum or interest thereon or of threat for dire consequences.

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Accordingly, the Board viewed that Respondent is held not guilty for the extant charge too.

- h. As regard the charge that Respondent promised to pay back the total tax amount paid and refund of Rs. 3 lakh but the same was not paid and to give NOC to the Complainant but not given, the Respondent denied the said charge and submitted that this was a refund to be claimed from Income Tax Department after filing was done and shall be given automatically credited after assessing which shall be paid directly into the Party's bank account and as an auditor, the Respondent has no role. IT returns were handed over to Company's Accounts Officer Smt. Basheer Unnissa who maintains books of accounts. The refund was on account of personal Returns of the Complainant and his wife for the Assessment Year 2014-15. The Respondent further submitted that NOC was requested by the Complainant for protection from future investigation as stated by the Complainant in his rejoinder. The said requirement of NOC is for the incoming auditor. The Complainant failed to provide any plausible justification as to how the tax paid to the Income Tax Department by or on behalf of his Company can be refunded back by an independent professional. Further, the charge that NOC as requested by Complainant was not given also seems to be general charge without any substance. Accordingly, the Board held that the Respondent is not guilty for the said charge.
- i. As regard the charge that Respondent arranged black money to white transactions through fake entries and cash transfer from one place to another through bank accounts of small Entrepreneurs and small Companies, the Respondent's legal source of income and his acquired properties did not match to legal income of a normal Chartered Accountant, the Respondent vehemently denied the said charge being baseless. The Board viewed that said charge was also not substantiated by the Complainant and no such document was provided by the Complainant at the stage of Prima Facie Opinion or during inquiry before the Board. Accordingly, the Board held that the Respondent is not guilty for the said charge.
7. Thus, having regard to the attendant circumstances, the documents/ email correspondence and other material put forth during the proceedings and the submissions of the parties on record, the Board is of the considered view that the Respondent is Not 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.

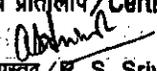
CONCLUSION:

8. The Board of Discipline, in view of the above, is of the considered view that the Respondent is **Not 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. Accordingly, the Board passed Order for closure of the case in terms of the provisions of Rule 15(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

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

DATE: 1st February, 2022

प्रमाणित सत्य प्रतिलिपि / Certified true copy


आर. एस. श्रीवास्तव / K. S. Srivastava
सहायक सचिव / Assistant Secretary
अनुशासनात्मक निदेशालय / Disciplinary Directorate
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