



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

[PR/57/2017/DD-89/2017/DC/1421/2021]

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/57/2017-DD/89/2017/DC/1421/2021

In the matter of:

Dr. Abraham Thomas, BDS

Ex-Secretary

Lodge Mysore No: 34,

Thomas Eapen Dental Clinic,

Ashoka Road, Opp. Town Hall,

Mysore - Karnataka 570001

.....Complainant

Versus

CA. Peter Jaya Rao (M. No. 210919)

Chartered Accountants

No 39/1, ST Marya Road,

12th Cross, N R Mohalla,

Mysore - Karnataka 570001

.....Respondent

Members present:

CA. Aniket Sunil Talati, Presiding Officer

Smt. Anita Kapur, Member (Govt. Nominee)

Shri P.K. Srivastava, Member (Govt. Nominee)

CA. Vishal Doshi, Member

CA. Sushil Kumar Goyal, Member

Date of Hearing: 08.04.2022 through Video Conferencing

Place of Hearing: New Delhi

Party Present:

(i) CA. Peter Jaya Rao – Respondent (appeared from his personal location)

1. That vide report dated 17th December 2021 (copy enclosed), the Disciplinary Committee was of the opinion that **CA. Peter Jaya Rao (M.No.210919)** was **GUILTY** of Professional and 'Other Misconduct' falling within the meaning of Item (7) of Part-I of Second Schedule and Item (2) of Part-IV of First Schedule to the Chartered Accountants Act, 1949 in respect of the submissions/ 'findings' issued by him based on yearly Receipts and Payments Accounts (prepared by him) for the period of 10 years i.e. from 2006 to 2015 which were alleged to be conclusions based on surmises that led to filing FIR against the Complainant for the misappropriation of funds to the tune of Rs. 98 Lakhs. It was stated that the Respondent was appointed by the Ex-Secretary of Lodge Mysore No. 34 (hereinafter referred to as 'Lodge'/ 'Association') to compile its accounts for the period of 10 years i.e. from 2006 to 2015. It was alleged that the Respondent instead of first familiarizing himself with the Rules and Regulations governing the Lodge/ Association particularly with respect to the Accounts and seeking/ procuring all books, vouchers and other pertinent papers needed to compile the accounts, arrived at his own conclusions based on his surmises. The Respondent described his submissions to the Lodge/ Association as the 'findings' and called the yearly Receipts and Payments Accounts as the 'Report on the financial status of the Institution' which led to filing FIR against the Complainant for the misappropriation of funds to the tune of Rs. 98 Lakhs. It was alleged that for the said compilation, the Respondent had taken opening balance and the closing balance of bank



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accounts of each year in the receipt and payment account with imaginary figures which had no relation to the actual operation. There was wilful negligence with all the bank statement in his possession, he had arrived at its own cash balance.

It was noted that Item (7) of Part-I of Second Schedule and Item (2) of Part-IV of First Schedule states as under:-

Second Schedule

PART I : Professional misconduct in relation to chartered accountants in practice

A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he-

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

First Schedule

PART IV : Other misconduct in relation to members of the Institute generally

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

“(2) in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work.”

2. An action under Section 21B (3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and communication dated 25th March, 2022 was addressed to him thereby granting him an opportunity of being heard in person and/or to make oral/ written representation before the Committee on 8th April, 2022 through video conferencing.

3. The Respondent appeared before the Committee on 8th April, 2022 through video conferencing and made his oral representations on the findings of the Disciplinary Committee. The Committee considered the oral as well as the written representation dated 23rd February, 2022. The Respondent in his written representation inter-alia stated that during engagement he had carried out his duties to the best of his abilities in the given circumstance. He contended to have been appointed to review the financial statements and not to compile financial statements. He had to provide a due diligence assessment to the incumbents in context of financial and statutory duties. The accounts were compiled by incumbent office bearers based on reasonable assumptions including available legal documents such as rental agreements and subscriptions as well as interviews with the tenants. In the absence of any evidence furnished by the ex-office bearers, the review was based on documents provided by the office bearers, observations and interviews. Based on the available documents, it was sufficiently clear that there was gross non-compliance with regards to statutory tax obligations, further in the absence of any evidence of cash expenditure (regardless of capital in nature or not), it was clear that the incumbent had to be informed that an organisation founded for charitable purposes had to remedy the financial issue it had at hand. With respect to the FIR filed against the Complainant and the same was being published in the newspapers, the Respondent stated that neither he nor his letter to the worship master can be held responsible for it. The letter was addressed specifically to the worship master, who is the only expected audience to this review. It was worship master who had incorrectly utilized the alleged report without his consent for legal proceedings against the complainants.

4. The Committee considered the oral as well as written submissions of the Respondent. At the outset, the Committee noted that irrespective of the fact that whether the Respondent was appointed to review or compile the financial transactions, it was on record that the Respondent had certified receipt and payment account statements for the period 2006 to 2015 along with providing his report 'Comment on the Financial Status for the period January 2006 to December 2015' dated



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22.04.2016. Further, it was undisputed fact that in Point No. 7 of his said report, the Respondent had expressed his observation on the misappropriation of funds done by the office bearers during 2008 to 2015. The Committee viewed that in terms of 'Guidance Note on Audit Reports and Certificates for Special Purposes' as well as other pronouncements issued by the Institute, the Respondent was required to clearly bring out the nature of his engagement on the face of the Report itself. However, on perusal of the report available on record, the Committee noted that the Respondent had failed to point out the capacity in which he was issuing/certifying his observations/ receipts and payments accounts. Further, the Receipts and Payments account certified for each period were noted to have been prepared on adhoc basis based on opening balance of bank account, thereby adjusting, estimated rental and subscription income and average expenses and the difference between total receipts and payments were described as 'Cash in Hand' and thus depicted the financial status of the association. Further, it was noted that no efforts were made to identify the bank interest and bank charges from the bank statement instead interest from bank was shown at Rs. 6,800/- and bank charges was shown at Rs. 750/- constantly for 10 years. Similar reflection of other expenditures in Receipts and Payments account and that the said financials did not include any transactions of capital expenditure incurred, deposits made in the bank account as well as the cheque payments made during the period(s) shows that the Respondent had failed to apply his mind. The Respondent, being reviewer, as claimed by him had failed to give disclaimer for the said adjustments in the absence of information. As a result, he determined shortage of funds which he reported as misappropriation of funds. The Committee, thus, noted that the Respondent had without holding the requisite information/ documents, issued his findings with respect to siphoning off of funds of the Association in the report which hampered the public image of the Complainant and that the Respondent had exceeded the scope of work assigned to him in view of appointment letter available on record.

4.1 The Committee noted that when a professional certifies any financials/documents or issues any findings/ observations, an assurance is given by him on which the public in general is expected to rely upon. Irrespective of the fact as to whether it was worship master who utilised his report for filing FIR against the Complainant, it was a fact that there were categorical findings made by the Respondent which were not warranted in view of his engagement letter.

5. The Committee thus viewed that the Professional and Other misconduct on the part of the Respondent has been held and established within the meaning of Item (7) of Part-I of Second Schedule and Item (2) of Part-IV of First Schedule of 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. Peter Jaya Rao (M. No. 210919)** be removed for a period of 1 (one) month from the Register of Members.

Sd/-
[CA. Aniket Sunil Talati]
Presiding Officer

Sd/-
[Shri P.K. Srivastava]
Member (Govt. Nominee)

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

Sd/-
[CA. Vishal Doshi]
Member

Sd/-
[CA. Sushil Kumar Goyal]
Member

Jy. 01/15
प्रमाणित सत्य प्रतिलिपि / Certified true copy

सीए. ज्योति गवर्ग
Sd/-
Secretary
Disciplinary Directorate
The Institute of Chartered Accountants of India
अटल नगर, शाहदरा, दिल्ली-110002

Date: 14/06/2022
Place: New Delhi

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – III (2021-22)]
[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

Ref. No. PR/57/2017/DD/89/2017-DC/1421/2021

In the matter of:

Dr. Abraham Thomas, BDS

Ex-Secretary

Lodge Mysore No: 34,

Thomas Eapen Dental Clinic,

Ashoka Road, Opp. Town Hall,

Mysore,

Karnataka - 570001

..... Complainant

versus

CA. Peter Jaya Rao (M. No. 210919)

Chartered Accountants

No 39/1, ST Marya Road,

12th Cross, N R Mohalla,

Mysore,

Karnataka - 570001

..... Respondent

MEMBERS PRESENT:

CA. Nihar N Jambusaria, Presiding Officer

Smt. Anita Kapur, Member (Govt. Nominee)

CA. Chandrashekhar Vasant Chitale, Member

CA. P.K. Boob, Member

Date of Final Hearing: 30th September, 2021 through VC

Place of Final Hearing: New Delhi

Parties present:

- (i) Dr. Abraham Thomas – the Complainant
 - (ii) CA. Peter Jaya Rao- the Respondent
- (Both appeared from their respective personal location)

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 Investigations of Professional and Other Misconduct and Conduct of Cases) Rules,

2007, the Respondent was held *prima facie* guilty of Professional Misconduct falling within the meaning of Item (7) of Part-I of Second Schedule and 'Other Misconduct' falling within the meaning of Item (2) of Part-IV of First Schedule to the Chartered Accountants Act, 1949. The said Items to the Schedule state as under: -

Item (2) Part IV of the 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."

Part I of the Second Schedule

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

Charges alleged against the Respondent:

2. It was stated that the Complainant was the Ex-Secretary of Lodge Mysore No. 34 (hereinafter referred to as '**Association**') which was a charitable association. After the new management took over, the Respondent was appointed by the Association to compile its accounts (as stated by the Respondent) for the period of 10 years i.e., from 2006 to 2015. It is alleged that the Respondent instead of first familiarizing himself with the Rules and Regulations governing the Lodge/Association particularly with respect to the Accounts and seeking/ procuring all books, vouchers and other pertinent papers needed to compile the accounts, arrived at his own conclusions based on his surmises. The Respondent described his submissions to the Lodge/Association as the 'findings' (C-8 to C-9) and called the yearly Receipts and Payments Accounts (C-11 to C-30) that he had drawn up, as the 'Report on the financial status of the Institution' which led to filing FIR against the Complainant for the misappropriation of funds to the tune of Rs. 98 lakhs (C-31 to C-34).

2.1 It is alleged that for the said compilation, the Respondent had taken opening balance and the closing balance of bank accounts of each year in the receipt and payment account with imaginary figures which had no relation to the actual operation. There was willful negligence with all the bank statement in his possession, he had arrived at its own cash balance. Thereafter, the Complainant further specified certain wrong surmises presumed by the Respondent for accounting to complete the said compilation as under :

- a) Interest from bank received was shown as Rs. 6,800/- constantly for 10 years (C-12; C-14; C-16; C-18; C-20; C-22; C-24; C-26; C-28; C-30). Bank

charges were shown as Rs. 750/- constantly for 10 years (C-12; C-14; C-16; C-18; C-20; C-22; C-24; C-26; C-28; C-30). The Respondent did not make any effort to identify the bank interest and bank charges from the bank statements which were actually available with him.

b) The subscription fees was Rs.1,250/- per member till 2014. It was only in year 2015 that it was increased to Rs. 2,250/-.

c) All payments for telephone bills, electricity payment were made by cheques, the details of which were available in the bank statements, but were not considered by the Respondent. It was stated that these payments could also be obtained from the Electricity Board.

d) Expenditure for salary, electricity, water, GLI/GL subscription, telephone expenses, postage expenses, printing expenses and consumables were taken at Rs. 60,000/-, Rs. 15,000/-, Rs. 3,000/-, Rs. 45,000/-, Rs. 5,000/-, Rs. 5,000/- and Rs. 10,000/-respectively and had remained unchanged for 10 years (C-12; C-14; C-16; C-18; C-20; C-22; C-24; C-26; C-28; C-30).

e) In yet another instance, the Respondent firm had presumed a rent advance of Rs. 2,30,000/- every year from 2006 to 2011 and Rs. 9,30,000/- from 2012 to 2015 amounting to Rs. 51 lakhs. However, the tenant had paid advance once only at the commencement of the tenancy. Thus, all tenants paid the advance only in the year 2007 and a new tenant paid advance amounting to Rs 7 lakhs in the year 2013. It was stated that these facts could have been ascertained from the rental agreements or from enquiry with the tenants themselves or from the Bank Statements.

f) Based on such presumptions, the Respondent had arrived at a 'Cash in hand (balancing figure)' of Rs. 98,52,255/- (C-12) which the Respondent asserted in its letter / report dated 25/05/2016 (C-10) as the cash balance not yet handed over to the present office-bearers.

It was further alleged that the said Report / letter also contained many other assertions and remarks by the Respondent, which were beyond his scope and were baseless. It also reflected upon the poor understanding of the situation and poor work done by the Respondent.

Proceedings:

(14)

3. At the time of hearing on 30th September 2021, the Committee noted that both the Complainant and the Respondent were present before it during the hearing. Thereafter, they gave declaration that there was nobody except them in their respective room from where they were appearing and that they would neither record nor store the proceedings of the Committee in any form. Being the first hearing, the Complainant as well as the Respondent was put on oath. Thereafter, the Committee asked the Respondent whether he wished the charges to be read out or it could be taken as read. The Respondent stated he was aware of the allegations raised against him and the same might be taken as read. On being asked, as to whether the Respondent pleaded guilty, he replied that he pleaded not guilty and opted to defend his case.

Thereafter, the Respondent made his submissions on the allegations and was examined by the Committee on the facts of the case. The Respondent, thereafter, made his final submissions in the matter.

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

Findings of the Committee:

4. The Committee noted in the extant case that it was alleged against the Respondent that he was appointed by the Association to compile its accounts (for the period of 10 years (i.e., from 2006 to 2015) but he instead of first familiarizing himself with the Rules and Regulations governing the Lodge/Association particularly with respect to the Accounts and seeking/ procuring all books, vouchers and other pertinent papers needed to compile the accounts, arrived at his own conclusions based on his surmises and described his submissions to the Lodge/Association as the 'findings' (C-8 to C-9) and the drawn up yearly Receipts and Payments Accounts (C-11 to C-30) as the 'Report on the financial status of the Institution'

5. The Committee in this regard noted the submissions of the Respondent wherein he submitted that he was appointed by the incumbent Office bearers in April 2016 to provide a Due Diligence review of the financial details handed over to them by the then ex-Office bearers. This engagement was conducted over a brief period of 10 days (11th April to 22nd April 2016) to only conduct a due diligence review of the available

documents handed over and further provide a suggestive outline and review of the financial disciplinary responsibilities to be taken over by the new office bearers. The conclusion of this due diligence was an outcome based on the evidence provided as well as information received from the new office bearers of the operational nature of the Association itself. He further stated that the actions of the new office bearers to initiate legal proceedings was neither suggested by him either in his report or through any conversation nor mentioned anywhere in his report and thus he could not in anyway be held responsible for the actions of the new office bearers that led to the defamation of the complainant.

6. The Committee in this regard noted that the then Worshipful Master, Mr. G Manjunath of the Association had appointed the Respondent vide letter dated 11th April 2016 (W-6) , for conducting review of 'Financial Transactions & Statutory Liabilities' with specific reference to operation of Bank account of the Association for the period 2006 to 2015 thus reviewing its financial status.

6.1 Thus, the Committee noted that appointment of the Respondent was limited to compilation of financial transactions alongwith statutory liabilities of the Association, however, from his report 'Comment on the Financial Status for the period January 2006 to December 2015' dated 22.04.2016 (C-8 to C-9), it was noted that in Point No. 7 of his report (C-9), the Respondent had expressed his observation on the misappropriation of funds done by the office bearers during 2008 to 2015 when it states that:

"7. From the bank pass sheets, it is observed that a sum of about Rs. 25 lakhs cash has been drawn from the bank for which no receipts or vouchers or account has been maintained and produced and hence this categorically amounts to misappropriation or embezzlement of funds by the office bearers during 2008 to 2015 (emphasis added)."

6.2 It was further noted that vide separate communication on 'Observations on financial status of the above institution for the period from 1.1.2008 to 31.1.2015' (C-10), the Respondent had provided the following observations as reproduced below:

"From the records produced for scrutiny, it is observed that

1. The bank statements show that cash has been drawn in the name of the employees like, suresh, lokesh and Krishna.
- 2....
3. No specific expenditures have been incurred for the amounts drawn from the bank.
- 4....
5. it is also pointed out that cash balance as on 31.12.2015 is about **Rs 98** lakhs and has not yet been handed over to the present office bearers.”

6.3 Further, the Respondent provided the financial status in terms of cash flow statement prepared for each year stating as follows:

“...the cash flow statement which has been prepared, on the following lines:

1. Rent received are on the basis of the rental agreements
2. subscription: The institution has 109 members and the annual fees per member is **Rs 2,250**. I have been informed by the present office bearers that an annual statement of membership fees received has to be sent to Regional Grand Lodge of Southern India, Chennai and the same has been sent which shows that all the members have paid during the year.
3. The expenses per month have been taken on average basis as recommended by the present office bearers.”

It was noted that the re-produced portion was common across cash flow statements of each period from 2008 to 2015 and that in the year 2006 and 2007, the portion of rent was not given.

6.4 The Committee viewed that both in terms of ‘Guidance Note on Audit Reports and Certificates for Special Purposes’ as well as SRS 4410 – ‘Engagements to compile Financial Information’, the Respondent was required to clearly bring out the nature of his engagement while issuing the Report. However, on perusal of the reports available on record, the Committee noted that the subject of the report of the Respondent dated 25.05.2016 (C-10) reads as “**Observations on the financial status of the above institution for the period from 01.01.2008 to 31.01.2015**” (emphasis

added)” which gave a different meaning altogether to the report and the same no longer remained a compilation work. Thus, the Committee was of the view that it defeated the basic purpose of SRS 4410 – ‘Engagements to compile Financial Information’ (effective for all compilation engagements beginning on or after April 1, 2004) as laid in Para 1 which provides as under:-

“ when an engagement to compile financial statements or other financial information is undertaken, the form and content of the report to be issued in connection with such a compilation so that the association of the name of the accountant with such financial statements or financial information is not misconstrued by a user of those statements or information as having been audited by him. (emphasis added)”

6.5 It was further noted that the Respondent had prepared Receipts and Payments account of each period on adhoc basis based on opening balance of bank account, thereby adjusting, estimated rental and subscription income and average expenses in order and the difference between total receipts and payments were described as ‘Cash in Hand’ and thus derived the financial status of the association. It was noted that the Respondent had not only omitted to consider capital expenditure incurred, deposits made in the bank account as well as the cheque payments made during the period(s) but also failed to give disclaimer for the same in the absence of information. As a result, he determined shortage of funds which he reported as misappropriation of funds. It was noted that on the basis of report (C-8 to C-10) issued by the Respondent, a complaint (C-39 to C-42) was filed against the Complainant for misappropriation of funds to the tune of Rs. 98 lakhs and a FIR (C-31 to C-34) was also filed in this regard. The extant matter/case was also highlighted in the media (C-43 to C-44) which tarnished Complainant’s image in public.

6.6 The Committee, in light of the above mentioned facts and circumstances of the case was of the view that the Respondent had exceeded the scope of his assignment by drawing inappropriate conclusions rather than limiting himself to compiling the financial transactions. Further, he prepared ‘Receipts and Payments’ accounts on adhoc basis based on incomplete information with insufficient workings and derived the financial status. It was viewed that normally accounts are assumed to be compliant with the generally accepted accounting practices. In the extant case except the bank balances all other transactions incorporated under ‘receipts and payments

a/c' were based on estimation. The actual transactions were not considered and as such there was more probability of material departure from actual position. Still the Respondent instead of drawing attention of readers to the said fact, concluded on the accounts so prepared to the extent of defaming others. It was viewed that the Respondent failed to exercise due diligence as was warranted under the circumstances and caused wrongful loss to the Complainant which is an act highly unbecoming of a Chartered Accountant and he has brought disrepute to the profession / Institute as a result of his actions and is accordingly held **GUILTY** of Professional and 'Other Misconduct' falling within the meaning of Item (7) of Part-I of Second Schedule and Item (2) of Part-IV of First Schedule to the Chartered Accountants Act, 1949.

Conclusion

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

9 (H)

Sd/-
[CA. Nihar N Jambusaira]
Presiding Officer

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

Sd/-
[CA. Chandrashekhar Vasant Chitale]
Member

Sd/-
[CA. P.K. Boob]
Member

Date: 17th December, 2021
Place : New Delhi

प्रमाणित सत्य प्रतिलिपि / Certified true copy
Mohita Khanna
सीए. मोहिता खन्ना / CA. Mohita Khanna
सहायक सचिव / Assistant Secretary
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
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