



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

[PR- 184/17-DD/287/17/BOD/499/2019]

ORDER UNDER SECTION 21A(3) OF THE CHARTERED ACCOUNTANTS ACT, 1949 READ WITH RULE 15(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATIONS OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007

In the matter of:-

Shri V. Seshu Kumar,

Partner, M/s. Archana Ventures, Mumbai.

....Complainant

-Vs-

CA. Viren Vinayak Rao Jadhav (M.No. 106075),

M/s. Emercorp Capital Advisors Pvt. Ltd., Mumbai.

...Respondent

[PR- 184/17-DD/287/17/BOD/499/2019]

MEMBERS PRESENT(in person):

CA. Rajendra Kumar P, Presiding Officer

Ms. Dolly Chakrabarty (IAAS, reted.), Government Nominee

Date of Hearing and passing Order: 22nd May 2023

1. The Board of Discipline vide Findings dated 10th February 2023 was of the view that CA. Viren Vinayak Rao Jadhav (M. No.106075) is guilty of "Other Misconduct" falling within the meaning of Item (2) of Part-IV of the First Schedule of the Chartered Accountants Act, 1949 read with section 22 of the said Act.
2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against CA. Viren Vinayak Rao Jadhav and communication dated 11th May, 2023 was addressed to him thereby granting him an opportunity of being heard on 22nd May, 2023. However, he was neither present before the Board nor was there any intimation as regard his non-appearance despite the due service of the Notice of hearing for award of punishment. The Board also noted that the case was placed before it on 29th March 2023 for award of punishment wherein the Respondent was not present and had sent across an email stating that the matter under question is listed before the Honorable High Court of Karnataka on 30th March 2023. However, the consideration of the case was deferred to provide a final opportunity to the Respondent to be present before it. Subsequent thereto, no communication had been received from the Respondent. Accordingly, the Board took into view the provisions of Rule 15(1) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 and presumed that the Respondent has nothing more to represent before it. Thus, the Board decided to consider the case of the Respondent for award of punishment.
3. Thus, upon consideration of the facts of the case and the consequent misconduct of CA. Viren Vinayak Rao Jadhav (M. No.106075), the Board decided to impose a Fine of Rs.50,000/- (Rs. Fifty Thousand only) upon him.

Sd/-

CA. Rajendra Kumar P

(Presiding Officer)

Sd/-

Ms. Dolly Chakrabarty (IAAS, reted.)

(Government Nominee)

सही प्रतिलिपि होने के लिए प्रमाणित/
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गीतम पुंडीर / Geetam Pundir
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासन विभाग / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आइसीएआई, 100, न्यू इंडिया प्लाज़ा, लखनऊ
ICAI, 100, New India Plaza, Lucknow

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- 184/17-DD/287/17/BOD/499/2019]

CORAM (present in person):

CA. Prasanna Kumar D. (Presiding Officer)

Ms. Dolly Chakrabarty (IAAS, Retd., Government Nominee)

CA. (Dr.) Raj Chawla (Member)

In the matter of:

Shri V. Seshu Kumar,

Partner, M/s. Archana Ventures

Archana Arcade 10-3-189,

No.601, South Block, St. Johns Road

Secunderabad 500 025

.....Complainant

Versus

CA. Viren Vinayak Rao Jadhav (M.No. 106075)

M/s. Emercorp Capital Advisors Pvt. Ltd,

No.05 Level 1, Srikanth Chambers, (next to RK Studios)

Chembur, Mumbai - 400 074.

Alternate Address-

1502, A wing Vanamali CHS, Opp Shatabdhi Hospital

WT Patil Marg, Chembur(E)

Mumbai 400071

.....Respondent

DATE OF FINAL HEARING

: 5th July, 2022

PLACE OF FINAL HEARING

: New Delhi / through video conferencing

FINDINGS:

BACKGROUND OF CASE:

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- 1.1. The Complainant firm is carrying on the business of real estate and property development with the annual business turnover of around Rs. 400 lakhs as per provisional Balance Sheet of Financial Year 2015-16, subject to audit. The Complainant during its course of business finalized to develop an immovable property which was owned by Sri. Quresh S. Mogul. The Complainant entered into a Joint Development Agreement (JDA) dated 20/02/2014 with Sri. Quresh S. Mogul, for the construction of residential apartment on the said property.
- 1.2 The Complainant after entering into JDA tried to find out a financial assistance for the above said project. One of his friend namely Sri. Anil Sharma told that his friend Sri. Vijay Parvatikar does arrange private financial assistance for such big projects. The Complainant agreed to meet Sri. Vijay Parvatikar.
- 1.3 On 11/01/2016 the Complainant transferred commission charges of Rs. 3,50,000/- from one of their associate company called M/s. Bhavana Infra Developers Pvt. Ltd., having account in ICICI Bank Secunderabad, Telengana State, to Shri Vijay Parvatikar bank account bearing No. 0378301000011883, in Lakshmi Vilas Bank. Immediately on receipt of the said money Shri Vijay Parvatikar along with two persons came to Bengaluru on 24/01/2016 and visited above said property for evaluation of the property. The said valuers fixed the value of the property at Rs. 17.70 Crores. Shri Vijay Parvatikar told the Complainant that the value is sufficient for funding Rs. 15 Crores to the Complainant.
- 1.4 The Complainant demanded for letter of intent for the authenticity of project funding through his source. Then Shri Vijay Parvatikar communicated a Credit Arrangement Letter (CAL) dated 25/04/2016, which was written by the Respondent on behalf of his entity EmerCorp Capital Advisors Pvt. Ltd., (EmerCorp). In the said CAL, in Clause 14 they demanded initial non-refundable amount @ 2% of project funding fee towards legal processing charges and other expenses and in Clause 15 another 2% towards Syndication Fee, which was to be paid at the time of disbursement of project fund and with a condition that the said CAL is valid for 45 days.
- 1.5 The complainant was shocked to see the CAL. Because Sri Vijay Parvatikar had agreed and fixed their commission charges at 2% of funding amount in their first meeting and also collected initiation fee of Rs. 3,50,000/- but in CAL a total @ 4% of funding amount as commission was claimed, the complainant objected for the same and asked Sri Vijay Parvatikar to fix up a meeting with the Respondent for the negotiation. The meeting was fixed on 01-05-2016 held at about 12 noon in the office of the Respondent and Sri. Anil Sharma and Sri Vijay Parvatikar were also present in the said meeting. In the said meeting the Respondent said that he and his organization will act as Lender, representing on behalf of Non-Banking Finance Company (NBFC) owned by a High Networth Individual(HNI). There will be another entity called M/s- Milestone Trusteeship Services

Mumbai 400051, as a Trustee, which will act as facilitator between the Lender and Borrower and will also prepare requisite documentation for the entire transaction and enter into a Triparty agreement with the Lender and Borrower as part of the funding transaction. In the said meeting the Clause 14 & 15 of the CAL was renegotiated and finally complainant and the Respondent agreed that @ 2% of funding amount shall be paid initially, which is refundable if the deal or business is not materialized and remaining 7% shall be deducted at the time of disbursement of funds, and also funding amount was enhanced from Rs. 15 Crores to Rs. 15.60 Crores. Accordingly, Addendum was prepared and on 04/05/2016 it was sent to complainant for his approval.

- 1.6 The Complainant agreed to pay Rs. 32,22,400/- to the Respondent and requested him to send their bank account details for transferring of above said amount. Then the Respondent sent bank account details of M/s. Shreeji Associates having account in Bharat Co-operative Bank, bearing account No. 001412100014549 and IFSC Code BCBM00000015 and requested the Complainant to transfer the said amount in the said bank account.
- 1.6 On 13/05/2016, the Complainant transferred a sum of Rs. 32,22,400/- from their account with Axis Bank, Banashankari Branch, Bengaluru, to the account of M/s. Shreeji Associates having accounts in Bharat Co-operative Bank, bearing account No. 00141200014549 as per the instruction of the Respondent.
- 1.7 After the receipt of Rs. 32,22,400/- and even after fulfilling their entire requirements the Respondent delayed to arrange project funds on one or other pretext. After lot of persuasion by the Complainant, the Respondent arranged a meeting with M/s. Milestone Trusteeship Services Pvt. Ltd., on 13/07/2016 at their office in Mumbai. In the said meeting Mr. D. Venkatesh Prabhu, Assistant Vice President and Mr. Ravi Mishra Manager (Business Development & Operation) of M/s. Milestone Trusteeship Services Pvt. Ltd. raised some queries which was clarified by the Complainant and the Minutes of the said meeting were circulated to all the parties by M/s. Milestone Trusteeship Services Pvt. Ltd. in their email dated 15/07/2016.
- 1.8 On 19th July 2016, the Respondent issued CAL withdrawal letter stating terms were not met by the Complainant which was replied by the Complainant. Thereafter, the Complainant demanded his money back (which was refundable if the transaction is not materialized), since the Respondent was not able to arrange the project fund and no disbursement had taken place, hence, the Complainant demanded his money back.

CHARGE ALLEGED:

2. The Complainant alleged that on behalf of his partnership firm M/s. Archana Ventures he paid processing charges of Rs.3,50,000 to Sri Vijay Parvatikar and Rs.32,22,400 to M/s

Shreeji Associates on assurance of loan arrangement of Rs 15,60,00,000 (Rs. Fifteen Crores sixty lakhs only) for development of property in Bengaluru by Shri Vijay Parvatikar who was associated with the Respondent, Director of M/s. Emercorp Capital Advisors Pvt. Ltd, dealing with advisory services relating to raising of finance, but the finance was not arranged even after complying with all the requirements. When the refund was demanded, there was no response from the Respondent.

BRIEF OF PROCEEDINGS HELD:

3. The Board at its meeting held on 5th July 2022 noted that neither the Complainant/ Respondent/ their authorized representative was present before the Board nor was there any intimation as regard their non-appearance. Since the case had been placed before the Board on several occasions earlier also, but the parties to the case chose not to appear before it, the Board decided to conclude the hearing in the case on the basis of submissions and documents on record. Thereafter, the Board at its meeting held on 2nd November, 2022 decided on the conduct of the Respondent on the basis of submissions and documents on record.

OBSERVATIONS OF THE BOARD:

4. On perusal of the documents and submissions on record, the Board noted the prime document on which the instant case against the Respondent was Credit Arrangement Letter dated 25th April, 2016 issued by Emercorp Capital Advisers Pvt. Ltd., to the Complainant firm which was signed by the Respondent in the capacity of its Director containing terms and conditions and bifurcation of fee and provided as below:

"Please refer to our earlier discussions along with Mr. Vijay Parvatikar , for financial assistance to you. We at your request are agreeable to make available /extend the facility, subject to the terms and conditions set out in the Annexure 1 hereto and the agreements/ and documents to be executed in connection with the financial assistance/facility."

Thus, the Board noted that there was contract between the Complainant and the Respondent along with Mr. Vijay Parvatikar.

5. The Board observed that following were the important Terms of CAL as provided in its Annexure 1:

Annexure-1

S.No.	Head	Details
3.	Lender	NBFC owned by a High Networth Individual

7.	Average Cost of Funds spread over the tenor	10.5% p.a. stretched over the tenor of facility
14.	Loan Processing Fees	The borrower to pay a non-refundable, front ended, loan processing fee to the Lender/Lenders Nominee on acceptance of the Credit Arrangement Letter calculated at 2% of the facility amount along with applicable taxes and statutory levies thereon. The part of it is appropriated towards mortgage stamp duty/registration charges/security trustee fee or any cost/fee/charges associated towards processing of loan.
21	Last date of drawal	The facility will be available for draw down not later than June 9 th 2016.

Subsequently, vide email dated 2nd May, 2016 the terms of CAL were modified: -

Addendum of CAL Letter dated 25th April, 2016

S.No.	Head	Details
Old Clause 14	Loan processing Fees	The borrower to pay a non-refundable, front ended, loan processing fee to the Lender/Lenders Nominee on acceptance of the Credit Arrangement Letter calculated at 2% of the facility amount along with applicable taxes and statutory levies thereon. The part of it is appropriated towards mortgage stamp duty/registration charges/security trustee fee or any cost/fee/charges associated towards processing of loan.
New Clause 14	Loan processing Fees	The Borrower to pay a front ended, loan processing fee to the Lender/Lenders Nominee on acceptance of the Credit Arrangement Letter calculated at 2% of the facility amount along with applicable taxes and statutory levies thereon. The part of it is appropriated towards mortgage stamp duty/registration charges/security trustee fee or any cost/fee/charges/security trustee fee

		<p>or any cost/fee/charges associated towards processing of loan.</p> <p>The Borrower will be entitled for a refund of processing fees after deducting Cost and Overheads, expenses incurred towards the transaction if the transaction is not consummated.</p>
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The Board noted that after the addendum to the CAL, the terms of loan processing fee were modified. From being a non-refundable processing fee of 2% of the loan, the same was made a refundable processing fee subject to deducting Cost and Overheads, expenses incurred towards the transaction if the transaction is not consummated.

6. The Board noted that as per the terms of Credit Arrangement Letter dated 25th April 2016 as contained in its Annexure 1, the 'Lender' had been defined as 'NBFC owned by High Networth Individual (HNI)'. The Board noted that M/s Shreeji Associates had issued a Receipt for the payment of Rs. 32,22,400/- by the Complainant firm and the Debit note dated 10th August 2016 to the Complainant. Further, M/s Milestone Trustee Services in its letter dated 03/06/2016 stated as under:

"This is with reference to the captioned subject. Milestone Trusteeship Services Private Limited (MTSL) would be glad to act as a security trustee for the project finance facility from Aditya Birla Finance Limited (Emphasis provided)."

It indicated that the Security Trustee i.e. M/s Milestone Trustee Services had agreed to finance the project facility from Aditya Birla Finance Limited. However, it was observed that the Debit Note as well as the receipt of payment was issued to the Complainant firm by M/s Shreeji Associates. Hence, the question as to who was the actual lender is not clear in the present case.

7. The Board further noted that the CAL was withdrawn by the Respondent vide email dated 19th July 2016.
8. The Board further observed that in the Debit Note dated 10th August 2016 issued by M/s Shreeji Associates the following was provided:
- "We have debited your account towards recovery of following costs & expenses incurred on your behalf as per the CAL dated 25th April 2016.*

a) Cost of funds from 25 th April to 18 th July=85 days	38,14,521
from 19 July to 3 Aug = 15 days	6,73,151
@ 10.5% on Rs. 15.60 Crores"	

The Board observed that the CAL was entered on 25th April 2016. The CAL was withdrawn by the Respondent vide email dated 19th July, 2016. As per the general business practices, interest is charged when the amount is disbursed by the lender to the borrower. However, in the instant case, M/s Shreeji Enterprises charged cost of funds @10.50% on Rs. 15.60 Crores from 25th April, 2016 to 18th July, 2016 and from 19th July, 2016 to 31st August, 2016 which is not as per prudent business standards, unreasonable and unjustified.

The Board also noted that the CAL expressly stated as follows:

"Unless we receive the duly accepted letter within 15 days of issue and completion and execution of documentation within 45 days from the date of this letter, the offer shall lapse automatically."

Thus, the Board viewed that when the CAL had automatically expired on 9th June, 2016, the issue of CAL withdrawal letter by the Respondent after a period of more than one month of expiry was uncalled for.

9. The Board further observed that one of the submissions made by the Respondent in his defense at the prima facie stage was that the Complainant failed to comply with the requirements of the lender within the stipulated time frame even after repeated reminders. Another issue raised by the Respondent was the registration of JDA before disbursement of the loan amount.

In this regard, the Board took into view the following seriatim of dates and events in the matter:

S.No.	Date	Event
1.	25/4/2016	CAL entering date
2.	03/06/2016	Appointment of M/s Milestone Trustee Services
3.	07/06/2016	Objection raised by the Security Trustee w.r.t. registration of JDA
4.	09/06/2016	Expiry of 45 days as per the terms of CAL
5.	19/07/2016	Withdrawal of CAL by the Respondent

The Board was of the view that the CAL was an essential document highlighting the terms of the agreement entered into between the Complainant and the Respondent. The said agreement was equally binding on both the parties. Clause 18 of the CAL provided as under:

Clause 18:

Annexure-1

S.No.	Head	Details
18.	Documentation	<ol style="list-style-type: none"> 1. Facility Agreement 2. Mortgage Agreement 3. Existing Banker's solvency certificate 4. Personal Guarantees and Corporate Guarantee agreements 5. DPN/PDCs 6. No Change in Partners of Partnership Firm and Directors of the Corporate Guarantor 7. NOC from Mr Quereshi Mogul for mortgage of the Land 8. Any other document as stipulated by Legal Team

However, the JDA did not find mention in the list of essential documents as specified in the CAL.

Further, the CAL was entered on 25th April, 2016 wherein it was stated as follows:

"Unless we receive the duly accepted letter within 15 days of issue and completion and execution of documentation within 45 days from the date of this letter, the offer shall lapse automatically."

The objection with respect to the non-registration of JDA was not mentioned until 7th June 2016 i.e. 02 days prior to the expiry of the CAL i.e. 9th June, 2016.

Vide email dated 9th June 2016, the Complainant wrote to Shri Vijay Parvartikar stating as under:

"Dear Vijay,

The JDA document was not registered because we did not know whether prospective lender will accept Archana Ventures Inc.' or Bhavana Infra Developers Pvt. Ltd.' as borrower. Considering your request for registered JDA doc' we would like to ensure and undertake that JDA will be registered at the earliest before mortgage registration date is fixed from your end.

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Hence, I request you to consider the same and clarify by what date we are targeting for disbursement so that we register our JDA document 2 days prior to mortgage registration."

On bare perusal of the above stated email, it can be seen that the Complainant was unaware of the essential requirement of the registered JDA and never objected to the registration of the JDA. The registration of JDA being a prerequisite of the mortgage agreement was informed to the Complainant only 02 days prior to the expiry of the CAL. Also, the Respondent appointed the Security Trustee on 03/06/2016 i.e. more than one month after entering into CAL. Hence, the delay cannot be said to be made on the part of the Complainant, however, it clearly displays the delay made on the part of the Respondent.

Further, vide Memorandum dated 20th August, 2016, addressed to the Complainant by the Respondent, it was stated as under:

"On getting an update on these facts, the lender withdrew CAL as you were not ready to comply with ALL security conditions of the Loan even after he patiently waiting with ready funds for 100 days. Enough time and guidance was given to you to comply with the documentation. Your financial consultant and legal counsel were too of the view to close up the documentation part quickly by complying with the security clause, but you waited for reasons known to you. Time and again we told you that idle funds waiting for disbursement is a loss to Lender.

Further, I briefed your finance consultant Mr. Anil Sharma in Mumbai, (when we met post CAL withdrawal letter) that Lender has lost confidence in the Borrower as ALL security conditions are not met and would not re-consider the case. (A person who cannot protect his own development rights by way of registered documents, how can I as a lender trust him with my money). Hence, the Lender felt that there was no need to meet the borrower. As chosen by you, your balance money was refunded by RTGS on 10th Aug in accordance with the accepted terms and conditions mentioned in the accepted CAL and deal closed."

The Board observed that no lender details are available as to identify who was ready and willing to grant a loan of Rs 15.60 Crore to the Complainant at least in principle and "costs" are calculated @10.5% and deducted from processing fee even when no loan was sanctioned.

10. The Board also observed that the act committed by the Respondent i.e. of deceiving the customers has been reported by the Complainant to the police and a case is pending adjudication before the Chief Metropolitan Magistrate CMM Court, Bangalore in this regard. The Board also noted that the Complainant in his Rejoinder submitted at Prima Facie Opinion stage stated that as per police investigation, the Respondent is the authorized signatory for the bank account under the name of M/s Shreeji Associates having account in Bharat Cooperative Bank, bearing account No. 001412100014549, and

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the account was opened after he came in to contact with the Respondent. Whereas, when Complainant transferred Rs. 32,22,400-, he was given to believe that the account belongs to HNI, who is going to arrange funds after the upfront payment of 2% of Rs. 16 crores. However, during the course of hearing, the Respondent did not submit anything on the charge of having acted in dual capacities i.e. one as the Managing Director of M/s EmerCorp Capital Advisors Pvt. Ltd. and another as the authorized signatory for the bank account under the name of M/s Shreeji Associates having its account in Bharat Co-operative Bank which in a way points towards admission of having acted in both the capacities.

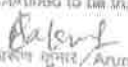
11. In the instant case, the Board observed that the Respondent was a facilitator in providing the loan and the actual lender is not clear in the present case. However, the way and the manner as explained above in which the Respondent acted clearly points towards his dubious intentions. Such a conduct is clearly not acceptable from a Chartered Accountant. A Chartered Accountant is expected to maintain his ethical standards and integrity while dealing not only with his clients but also with the general public at large which in the instant case is clearly missing. Accordingly, the Board held the Respondent guilty in respect of the charge alleged.

CONCLUSION:

12. Thus, in conclusion, in the considered opinion of the Board, the Respondent is **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.

Sd/-	Sd/-	Sd/-
CA. Prasanna Kumar D. (Presiding Officer)	Ms. Dolly Chakrabarty (IAAS, retd.) (Government Nominee)	CA. (Dr.) Raj Chawla (Member)

DATE: 10th February 2023

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अरुण कुमार / Arun Kumar
कार्यकारी अधिकारी / Executive Officer
अनुशासनानुयम, विभाग / Disciplinary Directorate
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