

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-227/2017/DD-243/17/BOD/644/2022]

CORAM (in Person):

CA. Rajendra Kumar P, Presiding Officer

Ms. Dolly Chakrabarty (IAAS, ret'd.), Government Nominee

CA. Priti Savla, Member

In the matter of:

Ms. Bhanu Prabha Krishna Hebbar, Director

M/s American Road Technology & Solutions Pvt Ltd.

No. 3/9, 5th Floor, Tower Block,

Unity Building, Mission Road,

Bengaluru- 560001.

.....Complainant

Versus

CA. K. Rajendra (M.No. 0207345)

109/1, NHCS Layout,

WCR 3rd Stage, 4th Block, Basaveswara Nagar

Bengaluru- 560079.

.....Respondent

DATE OF FINAL HEARING : 16th June, 2023

PARTIES PRESENT(in person):

Complainant : Ms. Bhanu Prabha Krishna Hebbar

Counsel for the Complainant : Shri M. L. Sharma, Advocate

Respondent : CA. K. Rajendra

Counsel for the Respondent : Shri Rohan Tigadi, Advocate

FINDINGS:

BRIEF BACKGROUND OF THE CASE:

1.1 The Respondent was appointed as Manager (Finance & Accounts) on 22nd November, 2013 of M/s American Road Technology & Solutions Pvt Ltd. – a Bangalore based company (hereinafter referred to as the "Company"). The main object of the Company was to carry out

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the business of constructing, developing, maintaining, repairing, excavating, renovating and operation of all types of roads, expressways, highways etc. The Complainant was the Additional Director in the same company not liable to retire by rotation.

1.2 The Respondent being in possession of books of accounts of the Company wilfully and with intend to defraud, falsifies the books of accounts of the Company and misappropriated money thereof. To this effect, the Complainant has given a written complaint to the SHO, Malleswaram Police Station, Bengaluru.

CHARGE ALLEGED:

2. The Complainant alleged against the Respondent as under:

2.1 On verification of the records, it was noted that the actual revenue invoices raised, submitted and acknowledged by BBMP is for Rs.13,18,86,425/- but as per the books of accounts of the Company maintained by the Respondent, it accounts for only Rs.6,70,46,506/-. There is no record for the balance Rs. 6,48,39,919/-. Thus, it is alleged that the Respondent along with those who were responsible at the helm of affairs of the Company entered into a criminal conspiracy to cause heavy loss to the Company and misappropriated Rs.6,48,39,919/-.

2.2 During audit, it was found that as on 31st December 2014 the service revenue from operations was Rs. 16,38,15,300/- for the period from 1st April 2014 to 31st December 2014 whereas the total service revenue from operation for the period as per books of accounts was Rs. 6,70,46,506/-. Thus, it is alleged that the Respondent along with CA. M G Mohan Kumar, who was at helm of affairs of the Company, misappropriated a sum of Rs.9,67,68,794/- by creating false records.

2.3 There were cash transactions of Rs. 88,29,948/-. It is alleged that the genuineness of such expenditure was not properly recorded in the books of accounts by the Respondent who was in charge of the accounts of the company.

2.4 It is seen from the audit report that a sum of Rs.18,76,56,109/- was shown as expenditure in the books of accounts by the Respondent but there were no bills/vouchers/invoices/receipts to substantiate such expenditure. Hence, it was alleged that the Respondent along with CA. M G Mohan Kumar have misappropriated the said amount by creating false accounts.

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The Investigation Report of M/s V. Raghavan and Co., Chartered Accountants covering the period from 7th May 2012 to 31st May 2015 highlights and confirms the irregularities relating to revenue recognised, high volume of cash transactions and expenditure being recorded without any supporting documents when it states as under: -

- (a) The sales/revenue invoices are not recognised and accounted on monthly basis as per the terms of contract but are recognised and accounted on yearly basis at the year end.
- (b) The billing/Invoice should be on the basis of completion of work and its approval/certification by the customer as per the contract and not on year-end basis.
- (c) No official communication record or document from the BBMP was provided certifying approving that the bills raised on the BBMP as on 31st March 2015 were accepted for payment.
- (d) In substantial heads of expenditure it is observed that the payments were made in cash and not through Bank payments.
- (e) In large number of transactions accounted wherein the bills/ vouchers/invoices/receipts are missing and as such the authenticity of such transactions could not be substantiated and hence there is scope of misappropriation of funds since such payments are not backed by relevant expenditure bills/invoices etc. The vouchers available are only initialled by the Accounts Manager and do not have verification and authorisation signature of the operations and finance in charge CA. M G Mohan Kumar.

BRIEF OF PROCEEDINGS HELD:

3.

<u>S.No.</u>	<u>Date of Hearing(s)</u>	<u>Status of Hearing(s)</u>
1.	20 th April, 2023	Adjourned due to non-appearance of both the Respondent and the Complainant.
2.	16 th June, 2023	Heard and concluded.

BRIEF SUBMISSIONS OF THE RESPONDENT:

4. The Respondent in his written submissions, inter-alia, stated as under:

4.1 The Report of V.Raghavan & Co., Chartered Accountants is based on wrong and falsified information given by the Complainant and many material facts are concealed. Whilst all pages

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from D64 to D78 is authenticated by CA P.Vijay Raghavan, pages D79 to D81 is not authenticated by him, therefore cannot be considered for the investigation purposes. The Respondent wanted to meet him personally to clarify but he learnt that during Oct 2019 he died committing suicide.

4.2 Regarding Accounting of invoices, aggregating to Rs.13,18,86,425, (the details of which are given in D94 to D109) it may be observed that that they are Running Bills certified by the Chief Operating Officer and also one of the Director. These Bills presents work done by the Complainant Company to Bruhut Bangalore Mahanagara Palike (BBMP) a local municipal Corporation. This work is done towards Road Maintenance contract awarded to the Complainant Company. The Work is in the nature of Civil Contract, is therefore subject to the certification by BBMP's Engineers. To keep tract of these Running Bills, it was accounted as it was raised, and the final revenue recognition was to be done at the Annual Financial Statements preparation in consultation with the Management and the Auditors.

4.3 Regarding the amount of Rs.6,70,46,506/- it is expenditure accounted in the books of account. It is not that out of total of Running Bills of Rs.13,18,86,425/- only Rs.6,70,46,506/- is accounted and the balance is left out. The Respondent enclosed a copy of the complaint dated 2nd June 2017 given by the Complainant to the High Grounds Police Station (HGPS), Bengaluru City, and referred to para 5(f) on page 5 of the same which is the main point in the above said complaint where large figures are shown to confuse the Investigation Authorities. Simple reading of the above para in the complaint says that the total billing to BBMP is Rs.13,18,86,425. As per Books of Account, expenditure accounted is Rs.6,70,46,506. Both these figures also appear in the Prima facie Opinion. But the second figure of Rs.6,70,46,506, instead of stating as expenditure, this has been stated as aggregate of accounted Bills which is factually wrong. Further, in the complaint to HGPS, it is further stated that "there is no record for spending Rs.6,48,39,919". It may be observed that this figure of Rs.6,48,39,919 is the difference of Rs.13,18,86,425 (which is the aggregate of Running Bills) and Rs.6,70,46,506 (which is the expenditure accounted). Further, in the Complaint to HGPS, it is stated that an amount of Rs.6,48,39,919 stated above is misappropriated to defraud the Complainant company.

4.4 In the circumstances, the Respondent failed to understand how this amount is misappropriated. To allege the misappropriation, the existence of the amount alleged to be

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misappropriated should be established, which is not done. Also, there is difference in the statement made to the Police and to the Disciplinary Directorate which is misrepresentation of facts.

OBSERVATIONS OF THE BOARD:

5.1 The Board noted that Respondent was employed by the Company as Manager (Finance and Accounts) with effect from 22nd November 2013. He continued to work with the Complainant company till 20th August 2015. The Respondent was reporting to CA. M.G. Mohan Kumar, Director of the company and Mr. Omprakash, designated as Chairman by the Promoter and the Complainant.

5.2 The Board observed that the Complainant brought on record copies of bills raised on BBMP during FY 2013-14 to 2014-15 when the Respondent was handling the responsibility of managing the books of accounts of the Company and such bills were issued under the signature of CA. M G Mohan Kumar. Furthermore, the Complainant brought on record the Investigation Report of an Independent Investigation Auditor viz. M/s V. Raghavan & Co., Chartered Accountants which covered the period 7th May, 2012 to 31st May, 2015. The role of the Respondent mentioned in the said report is as under:

"From November 2013 till March 2014

.....
Mr. K. Rajendra, Manager Finance & Administration was appointed as the overall head of the F&A and himself managing the financial accounting and reporting activities. He was reporting to Mr. M. G. Mohankumar.

From April 2014 to August 2014

.....
Mr. K. Rajendra, Manager Finance & Administration was appointed as the overall head of the F&A and himself managing the financial accounting and reporting activities. He was reporting to Mr. M. G. Mohankumar.

From September 2014 to October 2014

.....
Mr. K. Rajendra, Manager Finance & Administration was appointed as the overall head of the F&A and himself managing the financial accounting and reporting activities. He was reporting to Mr. M. G. Mohankumar.

From November 2014 to 17th April 2015

.....
Mr. K. Rajendra, Manager Finance & Administration was appointed as the overall head of the F&A and himself managing the financial accounting and reporting activities. He was reporting to Mr. M. G. Mohankumar.

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From 17th April 2015 to 21st April 2015

.....
Mr. K. Rajendra, Manager Finance & Administration was appointed as the overall head of the F&A and himself managing the financial accounting and reporting activities. He was reporting to Mr. M. G. Mohankumar.

From 22nd April 2015 till date

.....
Mr. K. Rajendra, Manager Finance & Administration was appointed as the overall head of the F&A and himself managing the financial accounting and reporting activities. He was reporting to Mr. M. G. Mohankumar."

5.3 As regard the charge(s) alleged, the Board noted that the charge(s) are primarily based on:

(a) FIR No 87 dated 2nd June 2017 filed against the Respondent amongst others.

(b) Investigation Report issued by M/s V. Raghavan & Co. for the period 7th May 2012 to 31st May 2015.

5.3.1 The Board noted that in respect of the aforesaid FIR, the Complainant informed that 3 Criminal Cases had been admitted by the Chief Metropolitan Magistrate Court at Bangalore for framing of charges.

5.3.2 As regard the investigation report, the Board noted that the Complainant could not bring on record copy of Board Resolution for ratification of appointment of M/s. V. Raghavan and Co., along with relevant extract of the minutes of the EGM wherein M/s. Raghavan and Co. had been appointed and the e-mail through which the write-up at (C26 to C28) which formed the basis of Charge Sheet was shared by the special Auditor (M/s V. Raghavan and Co., Chartered Accountants) with the Complainant Company. The Complainant also could not bring on record any evidence to show whether the queries were raised by the Investigation auditor to the Respondent or whether the Respondent was given an opportunity of being heard before issue of the Investigation Report or before relying upon the same. The Board also noted that the Investigation report was not based on the audited financial statements of the company, but on some accounts maintained on the Tally Software. The Board also noted that the said Investigation report was undated and without any salutations. The Board also noted the fact that the author of the Investigation Report had expired and thus, was not available for any examination as regard the basis of the issue

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of his report. In view of the said observations, the Board was of the view that credence could not be placed on the said Investigation report.

- 5.4 The Board also noted that the Respondent was an employee of the company with respect of the alleged period of misconduct and had no authority to sign the cheques and was under the instructions of the directors of the company.
- 5.5 Thus, in view of the facts that the matter was sub-judice before the Criminal Court, credence could not be placed on the Investigation report and the Complainant could not bring on record any other conclusive and/or corroborative evidence to prove the charge(s) alleged against the Respondent, the Board held the Respondent Not Guilty in respect of the charge(s) alleged.

CONCLUSION:

6. Thus, in conclusion, in the considered opinion of the Board, 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. Accordingly, the Board passed an 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. Rajendra Kumar P
(Presiding Officer)

Sd/-

Ms. Dolly Chakrabarty(IAAS, retd.)
(Government nominee)

Sd/-

CA. Priti Savla
(Member)

DATE: 02-02-2024

सही प्रतिनिधि होने के लिए प्रमाणित
Certified to be true copy
Charan Singh
Charan Singh / Charan Singh
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अनुशासनात्मक निदेशालय / Disciplinary Directorate
भारतीय सनदी लेखाकार संस्थान
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