



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

[PR/216/17-DD/214/17-DC/1418/2021]

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/216/17-DD/214/17-DC/1418/2021

In the matter of:

Shri Veera Durga Naresh Khanna S
Director, CVM Solutions Private Limited,
410, 4th Floor, Manjeera Trinity Corporate
JNTU-Hitech City Road, Kukatpally, Hyderabad
TELANGANA – 500 072

.....Complainant

Versus

CA. L. Janardhan Rao (M. No. 018474)
M/s Janardhan Rao Deshkumkh & Co.
H.No. 7-1-65/B, Flat No. 304
Lumbini Apartments,
Dharam Karan Road, Ameerpet
HYDERABAD-500016

.....Respondent

Members present:

CA. Aniket Sunil Talati, Presiding Officer
Smt. Anita Kapur, Member (Govt. Nominee)
Dr. K Rajeswara Rao, Member (Govt. Nominee)
CA. Sushil Kumar Goyal, Member
CA. Piyush S Chhajed, Member

Date of Final Hearing: 12.04.2023 through Video Conferencing

Place of Hearing: New Delhi

1. That vide report dated **07.12.2022**, the Disciplinary Committee was of the opinion that **CA. L Janardhan Rao (M. No. 018474)** was **GUILTY** of Professional Misconduct falling within the meaning of Items (6) and (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949 as being the Statutory Auditor of CVM Solutions Private Limited (hereinafter referred to as the "**Complainant Company**") from FY 2005-06 to FY 2014-15, he failed to report with respect to Tax Deducted at Source (TDS) defaults under the requirements of Companies (Auditor's Report) Order, 2003 and that of incorrect classification of loan of Rs. 12.90 lakhs received by the Company from its parent Company CVM, LLC, US which was shown as loan from the directors of the Company from FY 2005-06 to 2009-10.

It was noted that the Respondent Firm was removed as the Statutory Auditor of the Company by MCA vide order dated 6th February, 2017 due to the application filed by the Company in e-form ADT-2 for Removal of Auditor. The Complainant has alleged that the Company had suffered huge losses in the financial year 2015-16 and further expected to face potential penalties on account of the non-compliance majorly of FEMA and TDS which the Respondent, being statutory auditor, failed to report during the respective periods.

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It was noted that Item (6) and (7) of Part I of Second Schedule state as under:-



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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—

...

“(6) fails to report a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity;

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

2. An action under Section 21B (3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and communication dated **27th March, 2023** was addressed to him thereby granting him an opportunity of being heard in person and/or to make a written representation before the Committee on **12th April, 2023** through video conferencing.

3. During the hearing held on 12th April 2023, the Committee noted that the Respondent was not present before it for hearing. It was noted that the Respondent vide email dated 7th April, 2023 given his submissions and also expressed his inability to attend the hearing stating that there was bereavement in his family as he had lost his wife. Accordingly, the Respondent requested the Committee that his written representation dated 18th January, 2023 be taken on record to decide on the matter. Accordingly, as per Rule 19(1) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee decided to proceed in the matter. Upon consideration of the facts and circumstances of the case and after due deliberations on the Report, the Committee decided the matter.

4. The Committee considered the written representations of the Respondent dated 18th January 2023 and 7th April 2023. At the outset, it was noted that the Respondent reiterated his preliminary objection with respect to maintainability of the complaint stating that he was unable to produce the statement of the first directors who approved and passed the financial accounts of the Company in their Board minutes nor do he possess copies of the minutes of the meeting of that Board of Directors Meeting. Further, those directors who approved the accounts sold the Company and moved on. The Respondent further stated that he was unable to cross examine the Complainant who at the time of filing this complaint was the accountant and director of the Company and subsequently resigned and moved away from the Company after the Company was once again sold. On merits of the case, the Respondent inter-alia submitted with respect to non-reporting of TDS defaults that the Company was filing its returns through a consultant and being statutory auditor, he was not consulted. As per him, the delay in deposition of TDS was a mistake of the management since the management of the Company was based at USA and every payment had to go through the management and without their knowledge no payment was possible by the staff in India. He argued that the issue of TDS and late fee, interest, penalty etc. were required to be reported in Tax Audit Reports and not in CARO report. Further, regarding the misclassification of amount received from outside India, he submitted that the preparation of Financial Statements is primary responsibility of the management of the Company including maintenance of adequate accounting records and internal controls, selection and application of accounting policies and safeguarding the assets of the enterprise.

5. The Committee considered the submissions of the Respondent already placed on record and noted that the preliminary objection regarding maintainability of extant complaint and time limit on entertaining extant complaint has already been dealt at length in findings report issued to the Respondent. Regarding the issue of non-availability of working papers and other documentation, the Committee noted that the matter pertains to only disclosures and has accordingly been proceeded

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with and that during investigation by Director (Discipline) he had never expressed his difficulty in leading the evidence. Regarding opportunity to cross examine the Complainant, the Committee noted that the Respondent had never pressed about the cross examination of Complainant during enquiry and that the said plea is not tenable at this stage of award of punishment.

6. With respect to merits of the matter, the Committee noted with respect to first charge, that it is evident on perusal of Challan No 281 (TDS/TCS Challan) of the Company from the AY 2008-09 to AY 2015-16, noted that the Company had paid the interest on late deposition of TDS to the Income Tax Department for the said assessment years during 2015-2016 and that the amount involved is not material considering the size of the financial statements. Further, with respect to misclassification of amount received from the parent Company, it was noted that though the Respondent failed to exercise due diligence, the said non-compliances had neither caused huge loss to the Government nor *mens rea* is evident. Therefore, the Committee decided to keep these facts in view while considering the penalty to be imposed.

7. The Committee thus viewed that the misconduct on the part of the Respondent has been held and established within the meaning of Item (7) of Part-I of the Second Schedule to the Chartered Accountants Act, 1949 and keeping in view the facts and circumstances of the case as aforesaid, ordered that the Respondent **CA. L Janardhan Rao (M. No. 018474)** be Reprimanded.

Sd/-

[CA. Aniket Sunil Talati]
Presiding Officer

Sd/-

[Smt. Anita Kapur]
Member (Govt. Nominee)

Sd/-

[Dr. K Rajeswara Rao]
Member (Govt. Nominee)

Sd/-

[CA. Sushil Kumar Goyal]
Member

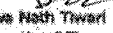
Sd/-

[CA. Piyush S Chhajed]
Member

Date: 1st May, 2023

Place: New Delhi

सही प्रतिलिपि होने के लिए प्रमाणित
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बिष्णु नाथ तिवारी / Bishwa Nath Tiwari
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahdara, Delhi-110032

[PR 216/17/DD/214/2017/DC/1418/2021]

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – III (2022-23)]
[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 216/17/DD/214/2017/DC/1418/2021]

In the matter of:

Shri Veera Durga Naresh Khanna S
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Dharam Karan Road, Ameerpet
HYDERABAD-500016

...Respondent

MEMBERS PRESENT:

Smt. Anita Kapur, Presiding Officer and Member (Govt. Nominee)
Dr. K Rajeswara Rao, Member (Govt. Nominee)
CA. Vishal Doshi, Member
CA. Sushil Kumar Goyal, Member

Date of Final Hearing: 3rd November, 2022 through Video Conferencing

PARTIES PRESENT (through video conferencing):

(i) Sh. Rajesh Pasupuleti, Finance Manager- the Complainant's Representative
(appeared from his personal location)

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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 in respect of both the charges *prima facie* guilty of Professional Misconduct falling within the meaning of Items (6) and (7) of Part-I of Second Schedule to the Chartered Accountants Act, 1949. However, it was noted that in the first charge, there were three legs of the said charge relating to FEMA, TDS and USA accounting and reporting policies wherein the Director (Discipline) in his opinion had held the Respondent *prima-facie* guilty only in respect of TDS. The Committee while considering the *Prima Facie* Opinion had also held the Respondent *Prima Facie* Guilty in respect of FEMA charge considering the requirements of SA 250, Compliance of Law and Regulations. The said Items to the Schedule states as under: -

“(6) fails to report a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity; and

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

Allegations of the Complainant:

2. It is stated that that the Respondent had on behalf of the Respondent Firm conducted the statutory audit of the **CVM Solutions Private Limited** (hereinafter referred to as the “**Complainant Company**”) from FY 2005-06 to FY 2014-15 and that the Respondent Firm was removed as the statutory auditor of the Company by MCA vide order dated 6th February, 2017 (**C-116 to C-118**) due to the application filed by the Company in e-form ADT-2 for Removal of Auditor. The Complainant has alleged that the Company had suffered huge losses in the financial year 2015-16 and further expected to face potential penalties on account of the non-compliance majorly of FEMA and TDS which the Respondent, being statutory auditor, failed to report during the respective periods in context of the following:

- (i) To quantify and report TDS defaults in pursuance to the requirements of clause vii (a) of Companies (Auditor's Report) Order, 2003 and

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- (ii) Non-compliances in respect of FEMA, thus, giving misleading impression that the Company was compliant of all statutory regulations.

2.1 It was further alleged that the Company had received an amount of Rs. 12.90 lakhs from its parent company CVM, LLC, US towards services rendered but the same was wrongly classified as loan from the directors of the Company which was to be treated as ECB (External Commercial Borrowing) as per FEMA regulations. However, the Respondent, being the Statutory Auditor of the Company, failed to report the said discrepancy in his audit report for FY 2005-06 to FY 2014-15 in this regard.

Proceedings held before the Disciplinary Committee:

3. During the hearing held on 3rd November 2022, the Committee noted that the Complainant's Representative was present before the Committee for the hearing through video conferencing. Thereafter, he gave declaration that there was nobody present except him in the room from where he was appearing and that he would neither record nor store the proceedings of the Committee in any form.

The Committee noted that the matter was substantially heard during the last hearing and that matter could not be concluded due to change in constitution of the Bench. The Committee further noted that the Respondent vide email dated 27.10.2022 requested the Bench to condone his personal appearance due to his poor health and that his written submissions be considered to conclude on the matter. Accordingly, the Committee decided to proceed in the matter.

The Committee asked the Complainant's Representative as to whether he wished to add to his submissions to which he replied in negative. Thereafter, the Complainant's representative submitted that the Company wished to concentrate on its operations and hence it did not want to further pursue the matter. The Committee noted the submissions of the Complainant and that based on the facts of the case, the Committee decided to consider the merits of the matter.

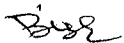
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Based on the documents and information available on record and after considering the oral as well as written submissions made in the matter, the Committee concluded hearing in the matter.

Findings of the Committee:

4. At the outset, the Committee noted that the Respondent had raised preliminary objection in the matter with respect to Rule 12 of CA Rules, 2007 - time limit for entertaining complaint or information. It was viewed that Rule 12 is applicable in the circumstances where on account of time lag, the Respondent faces any difficulty in securing proper evidence in his/her defense and that mere time lag does not ipso facto renders the Information/ Complaint as not maintainable. In the extant matter, it was noted that the Respondent had not expressed any difficulty, as such, being faced by him in leading the evidence in his defense. Accordingly, the plea of the Respondent relating to applicability of Rule 12 in extant matter could not sustain and accordingly, the Committee decided to proceed with its inquiry on merits of the matter.

5. In respect of **first charge** relating to non-reporting of TDS defaults in accordance to the requirements of Companies (Auditor's Report) Order, 2003, it was noted that the Respondent was statutory auditor of the Complainant Company since its inception i.e. from the FY 2005-06 and till FY 2014-15. Further, the Complainant to support his claim has brought on record copy of financial statements of Complainant Company for FY 2007-08 to FY 2014-15 alongwith respective Independent Auditor's Report signed by the Respondent and Challan No./ ITNS 281 for Assessment Year(s) 2008-09 to 2015-16. Further, the Complainant has also brought on record computation of total year-wise interest on TDS paid during 2015-16 pertaining to FY 2007 to 2015 and details of TDS defaults of earlier years as per Traces for FY 2007-08 to FY 2014-15 for such non-compliance on the part of the Company which the Respondent has failed to report in compliance with the requirements of clause vii (a) of Companies (Auditor's Report) Order, 2003. It is observed from the Audit Report of the Respondent from FY 2008-09 to FY 2013-14 (C-97, C-90, C-83, C-76, C-69, C-61) that the Respondent, while reporting in response to the said requirement of CARO, 2003, has



stated that the Company was regular in depositing applicable statutory dues with the appropriate authorities.

5.1 The Respondent, in this regard, had contended that the Company was incorporated on 15th March, 2005 and that the amounts of defaults as pointed out by the Complainant in various time period(s) were neither material nor involve income tax payments.

5.2 The Committee noted that clause (ix) (a) of the CARO, 2003 provides for the reporting of undisputed statutory dues of the Company. The said clause provides as under-

*“(ix) (a) is the company regular in depositing undisputed statutory dues including Provident Fund, Investor Education and Protection Fund, Employees' State Insurance, **Income-tax**, Sales-tax, Wealth Tax, Custom Duty, Excise Duty, cess and any other statutory dues with the appropriate authorities and if not, the extent of the arrears of outstanding statutory dues as at the last day of the financial year concerned for a period of more than six months from the date they became payable, shall be indicated by the auditor.”*

5.3 On perusal of the copies of Challan No 281 (TDS/TCS Challan) of the Company from the AY 2008-09 to AY 2015-16 (C-8 to C-48), it is noted that the Company had paid the interest on late deposition of TDS to the Income Tax Department for the said assessment years. The Committee viewed that such payments signify that the Company had defaulted in payment of its TDS liability and thus, was not regular in payment of Income Tax dues i.e. TDS liability during the said financial period(s). However, the Respondent, being statutory auditor, had reported that the Company was regular in depositing its statutory dues. It is noted that the Respondent had failed to submit any plausible explanation/ clarification on such late payments and non-reporting of same in his CARO Report for the said FYs. It was, accordingly, viewed that the Respondent had failed to report correctly against the requirements of clause vii (a) of Companies (Auditor's Report) Order, 2003 and thus failed to carry out his professional duties with due diligence. Keeping in view, the gravity of the allegation and continuous non-disclosure of irregularities in payment of TDS dues with the

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Income Tax Department for FY 2007-08 to FY 2014-15, clearly points out at misconduct on the part of the Respondent. Accordingly, the Committee viewed that the Respondent was **Guilty** for Professional Misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

6. In respect of second leg of first charge regarding reporting of non-compliance of FEMA regulations, it was noted that the said charge was arising out of the second charge relating to Rs. 12.90 lakhs received from its parent company CVM, LLC, US on 10th August 2005, which as per the Complainant, was received towards services rendered but was wrongly classified as loan from the directors of the Company that had to be treated as ECB (External Commercial Borrowing) as per FEMA regulations. In the absence of such treatment, it was alleged that the Respondent, being the Statutory Auditor of the Company, failed to report the said discrepancies as violation of FEMA regulation under the CARO Report.

6.1 It was noted that firstly the Complainant has failed to bring on record any substantial evidence viz correspondence with RBI etc. to show that there was indeed violation of FEMA regulation. Moreover, it was viewed that any discrepancy of FEMA regulation, if occurred, was not required to be reported under CARO requirements. Accordingly, the Committee viewed that the said charge was not sustainable against the Respondent.

7. In respect of **second charge** relating to Rs. 12.90 lakhs received by the Company from its parent company CVM, LLC, US on 10th August 2005, which as per the Complainant, was received towards services rendered but was wrongly classified as loan from the directors of the Company. The Committee noted that the Complainant has provided the certificate of foreign inward remittance (**C-111**) whereby the alleged remittance was received. On perusal of financial statements of the Company for the FY 2005-06 (**C-107**), it was observed that the said amount was classified as "unsecured loans from Directors" in the Balance Sheet. Furthermore, the said amount

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remained classified as such during all the financial years (C-104, C-99, C- 93 and C-86) from FY 2006-07 to FY 2009-10.

7.1 It was noted that the Respondent had submitted that the Company was incorporated on 15th March 2005 and the alleged amount was received in August 2005. He contended that the purpose for the said remittance to the Company was "NOT STATED" as per the certificate of Forward Inward Remittance issued by ABN-AMRO Bank bearing serial number 003785 dated 10th August 2005, and that it was with pen through separate noting (interpolated) in the certificate the purpose was stated to be as 'software development'. He further submitted that during the course of audit for the financial year 2005-06 the matter was brought to the notice of the Company and the Respondent was informed that the amount was sent to the Indian Subsidiary by the Foreign parent Company, directors were common in both the Company and LLC and their respective accounts were debited by the holding Company in their books of accounts.

7.2 Upon perusal of "Certificate of Foreign Inward Remittance dated 10/08/2005" placed on record by the Complainant at column "the purpose of remittance as stated by the remitter*/ beneficiary", it was mentioned "NOT STATED" and by hand, it is mentioned as "Software development" which, as per the Committee, did not appear to be part of said certificate at the time of issue of said certificate. Thus, the alleged foreign inward remittance could not be considered as received against service rendered. However, it was noted that though the Respondent has submitted that the alleged remittance was classified as "unsecured loans from Directors" based on information received from the management of the Company but he failed to bring on record any evidence thereto. It was viewed that when foreign inward remittance was received from a Company - CVM Solutions INC, Chicago, it was negligence on the part of the Respondent to be convinced to classify the same as "unsecured loans from Directors" not only for FY 2005-06 but for the ensuing financial years (C-104, C-99, C-93 and C-86) from FY 2006-07 to FY 2009-10 too. It was noted that the said transaction was material considering the size of balance sheet of the respective

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financial year (C-107, C-104, C—99, C- 92, C-86). In such scenario, the Respondent was under an obligation to report the material misstatement. It was viewed that if the Respondent had performed his professional duties with due diligence, being the statutory auditor of the Company for so many years, he could have easily detected the wrong classification of said amount in the Company's financial statements or would have reported about the said material misstatement in his Audit Report.

7.3 The Committee considering the evidences and documents placed on record viewed that said transaction was not reported properly in the financial statements. Accordingly, the Committee held that the Respondent **Guilty** of Professional Misconduct falling within the meaning of Items (6) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 for this charge.

Conclusion:

8. Keeping in view, the facts and circumstances as discussed hereinabove, the Committee is of the considered view that the Respondent was held **GUILTY** of Professional Misconduct falling within the meaning of Items (6) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

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


Sd/-
[Dr. K. Rajeswara Rao]
Member (Govt. Nominee)

Sd/-
[CA. Vishal Doshi]
Member

Sd/-
[CA. Sushil Kumar Goyal]
Member

Date: 7th December, 2022
Place: New Delhi

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बिष्वा नाथ तिवारी / Bishwa Nath Tiwari
कार्यकारी अधिकारी / Executive Officer
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ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032