



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

[PR-295/18/DD/315/2018/BOD/569/2020]

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 N. Anjaneya Verma
S/o late Shri Venkata Narayana,
Hyderabad

...Complainant

-Vs-

CA. Vinod Kumar Vishwanath (M.No.214598),
Hyderabad

....Respondent

[PR-295/18-DD/315/2018]/BOD/569/2020]

MEMBERS PRESENT(in present):

CA. Rajendra Kumar P, Presiding Officer

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

Date of Final Hearing: 19th April, 2023

Place of Final Hearing: Chennai

1. The Board of Discipline vide Findings dated **10th February 2023** was of the view that **CA. Vinod Kumar Vishwanath (M. No.214598)** is Guilty of Professional Misconduct falling within the meaning of Item (6) of Part-I of the First Schedule to the Chartered Accountants Act, 1949.

2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against **CA. Vinod Kumar Vishwanath (M. No.214598)**, and communication dated 27th March 2023 was addressed to him thereby granting him an opportunity of being heard in person and/or to make written representation before the Board on 19th April 2023.

3. **CA. Vinod Kumar Vishwanath (M. No.214598)** was not present before the Board on 19th April 2023. The Board also noted that the Notice dated 27th March 2023 sent at the professional/residential address of the Respondent as per the

Shri N. Anjaneya Verma S/o late Shri Venkata Narayana, Hyderabad -Vs- CA. Vinod Kumar Vishwanath (M.No.214598),
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Member records of ICAI informing the Respondent of the date of hearing for award of punishment had been received back undelivered with the comments 'left without instructions'. However, a scanned copy of the said Notice was also sent at the email-id of the Respondent which is registered with the Member records of ICAI and a delivery of the said communication to the said email-id was also complete as per intimation received. Further, since no request for adjournment had been received and the Respondent's written representation dated 23rd February 2023 on the Findings of the Board was already on record, the Board decided to consider his case for award of punishment keeping in 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.

4. CA. Vinod Kumar Vishwanath (M. No.214598), in his written representation, inter-alia, submitted as under:

- (i) On 24th February 2018 he shared his profile to the official email id of Mr. TVL Narasimha Rao- Practicing Insolvency Professional and a lawyer for working together as Insolvency Professional on future assignments and not related to CA work.
- (ii) He and Mr. TVL Narasimha Rao-Practicing Insolvency Professional and Lawyer were working together for assignments related to IBC (Insolvency and Bankruptcy Code 2016) and not related to CA work.
- (iii) Neither he requested nor he give any permission to Mr. T. V. L. Narasimha Rao to share his profile with his clients for any work.
- (iv) Just because after he got the fee amount from the Complainant, the payment of referral fees cannot be related to the assignment given by the Complainant.
- (v) The referral fees paid by him do not relate to the Assignment relating to the Complainant as the Board of Discipline itself stated that it is for the amenities by the Insolvency Professional. Then, how can above assignment get solicited with the fees paid by the Amenities.

Bod

5. The Board has carefully gone through the facts of the case along with the written representation of the Respondent.



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6. As per the Findings of the Board as contained in its report, the Respondent has not shared his fees with a professional but has admittedly gifted him a gold chain worth Rs. 55,000/- as referral fees which is a clear Professional Misconduct falling within the meaning of Item (6) of Part I of the First Schedule. The Board was of the view that the submission of the Respondent that he did not solicit work but only shared his CV with the lawyer who subsequently referred him to the Complainant for the assignment of preparation of statement of affairs and provisional accounts and he gifted gold chain out of courtesy from a small amount of his earnings to the lawyer for the amenities i.e. office space to work, food and accommodation to his assistant, etc. provided by him without demanding any rent for the same is not acceptable as the conduct and categorical admission of the Respondent that he gave the gold chain as referral fees clearly shows that he solicited his work through the lawyer which clearly amounts to Professional misconduct falling within the meaning of Item (6) of Part I of the First Schedule to the Chartered Accountants Act 1949. Accordingly, the Board held the Respondent Guilty of Professional Misconduct falling within the meaning of Item (6) of Part-I of the First Schedule to the Chartered Accountants Act, 1949.

7. Thus, upon consideration of the facts of the case, the consequent misconduct of CA. Vinod Kumar Vishwanath (M. No.214598) and keeping in view his written representation before it, the Board decided to Reprimand CA. Vinod Kumar Vishwanath (M. No.214598).

Sd/-

CA. Rajendra Kumar P
(PRESIDING OFFICER)

Sd/-

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

DATE: 22-05-2023

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

श्री नाथ तिवारी / Bishwa Nath Tiwari
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहपुरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahpura, Delhi-110032

[PR/295/2018/DD/315/2018-BOD/569/2020]

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-295/2018/DD/315/2018-BOD/569/2020]

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. N. Anjaneya Verma,
S/o. Late Shri Venkata Narayana,
R/o. 'F' Block, Flat No. 14A3,
Aparna Sarovar, Nallagandla,
Ligampally,
HYDERABAD – 500019.

.....Complainant

Versus

CA. Vinod Kumar Viswanath (M. No. 214598),
H.No. 8-3-318/11/27 & 27,
Sai Kesava Apartments,
J P Nagar, Yellareddyguda, Yusufguda,
HYDERABAD – 500073.

.....Respondent

DATE OF FINAL HEARING : 16th December, 2022
PLACE OF FINAL HEARING : New Delhi / through video conferencing

PARTIES PRESENT (through video conferencing):

Complainant : Shri N. Anjaneya Verma
Respondent : CA. Vinod Kumar Vishwanath

FINDINGS:



[PR/295/2018/DD/315/2018-BOD/569/2020]

BRIEF FACTS OF THE CASE:

1. The Complainant is an ex-Director of M/s. Apex Encon Projects Pvt. Ltd. (hereinafter referred to as 'the Company') which is under liquidation. The Respondent was engaged for the preparation of Statement of Affairs of the Company under liquidation together with preparation of back up provisional accounts for the financial year 2015-16 & 2016-17 and appearances before the Official Liquidator (OL) as and when required for presenting clarification that might be sought by (OL) or by the High Court.

CHARGE ALLEGED:

- 2.1. The Respondent resorted to black mailing the Complainant without parting with the soft data of the Statement of Affairs of the Company (in liquidation) solely maintained in his laptop while demanding payment of additional amounts of Rs. 5 Lacs as ransom to release the data with pre-meditated thought to extract unreasonable amounts from the Complainant in the eleventh hour.
- 2.2. The Respondent admittedly gifted a gold chain worth Rs. 51,000/- as reference fees in lieu of getting the assignment through a lawyer cum insolvency professional. Thus, the Respondent solicited the work of assignment of preparation of Statement of Affairs through a lawyer.

The Board noted that the Director (Discipline) held the Respondent Prima Facie Guilty in respect of the charge specified at 2.2 above and not guilty in respect of the charge specified at 2.1 above. The said view of the Director(Discipline) had been accepted by the Board. Accordingly, the conduct of the Respondent had been examined in respect of the charge specified at 2.2 above.

BRIEF OF PROCEEDINGS HELD:

3. At the time of hearing held in the case on 16th December 2022, the Complainant and the Respondent were present before the Board through video conferencing. The Complainant and the Respondent were put on oath. The charges alleged against the Respondent were taken as read with the consent of the parties present. On being asked by the Board as to whether the Respondent pleaded guilty in respect of the charges alleged against him, he replied in negative and made his detailed oral submissions before the Board. The



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Complainant also made his submissions to substantiate the allegations alleged against the Respondent. On consideration of the documents and submissions on record, the Board concluded the proceedings in the case.

BRIEF SUBMISSIONS OF THE RESPONDENT:

4.1. (1). Item (2) of Part I of the First Schedule is not maintainable on the following ground:

As per Clause (2) of Part I of the First Schedule: "A Chartered Accountant in practice is deemed to be guilty of professional misconduct if he pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business, to any person other than a member of the Institute or a partner or a retired partner or the legal representative of a deceased partner, or a member of any other professional body or with such other persons having such qualification as may be prescribed, for the purpose of rendering such professional services from time to time in or outside India."

It is in order for a member to share his fees or profits with another member of the Institute and/or a firm of Chartered Accountants. A practicing Member of the Institute can share fees or profits arising out of his professional business with such members of other professional bodies or with such other persons having such qualifications as may be prescribed from time to time by the Council. The Council has prescribed [Regulation 53A (1) of the Chartered Accountants Regulations, 1988] the professional bodies for Chartered Accountants. Further, the Council has also prescribed certain [Regulation 53A (3) of the Chartered Accountants Regulations, 1988] the persons qualified in India for Chartered Accountants.

4.2. Mr.T.V.L Narasimha Rao is a Practicing Insolvency Professional and also a member of the Bar Council of the State of Telangana - established under the Advocates Act, 1961- (Advocate Code 5799 & Bar Council Number: TS/634/1999). Hence paying consideration to the above member is not a professional misconduct as per Clause (2) of Part I of the First Schedule of Chartered Accountants Act.

4.3. (2). Item (6) of Part I of the First Schedule is not maintainable on the following ground:



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Clause (6) Solicits clients or professional work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means. In IA 2 of 2018 in COMPA 322/2018, the Affidavit given by the Complainant to Hon'ble High Court, dated 27.08.2018, referring Point No. 7 & 8:

"Quote:

7. I submit that we had identified ultimately one Auditor cum Registered Insolvency Professional by name Mr. Viswanath Vinod Kumar, (hereinafter mentioned as the Auditor) during the 1st Week of March, 2018 through our Advocate who has been dealing with our legal cases in the past 5 years.

8. I humbly submit that the Applicants decided to engage the Auditor referred by our Advocate for the Assignment of preparation of the Statement of Affairs and its supporting provisional accounts since 2015-16 as the Applicants were impressed with the following profile of the Auditor:

(a) The Auditor is a Public Servant in his status a Insolvency Professional:

(b) The Auditor claimed to have got exposure to Forensic Audit, Stock Audit and Statutory Audit by virtue of his professional qualifications namely FCA & DISA:

(c) The Auditor has got adequate exposure to insolvency laws through his IBBI Regulation and

(d) The Auditor has got adequate exposure to general statutes and commercial laws through his qualification of LLB (Final)."

4.4. The Complainant himself through Sworn Affidavit to Hon'ble High Court stated that the Assignment was given to Respondent based on his profile and merits, which he got from his Advocate and which was not from Respondent. Neither Respondent shared information to the Complainant nor requested him/anyone for the assignment. The Respondent forwarded his CV as an Insolvency Professional to OMNE INSOLVENCY SOLUTIONS on 21st Feb 2018. In response to email dated 1st May 2018 at 14.21 from Mr. TVL Narasimha Rao (OMNE INSOLVENCY SOLUTIONS) with regard to Form 2 of corporate insolvency resolution process in respect of M/s. Gati Infrastructure Private Limited, Hyderabad Respondent sent his CV and Form 2 to the Advocate for IBC purposes on 1st MAY 2018 at 16.02 hours and 16.03 hours respectively. The Respondent has not solicited this Assignment by circular, advertisement, personal communication or interview or by any other means and also no substantial evidence is there to prove the same.

OBSERVATIONS OF THE BOARD:



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- 5.1. The Board noted that the Respondent was hired by the Complainant to prepare Statement of Affairs of the Company which was under liquidation. The Board noted that both the Complainant and the Respondent stated that the engagement was orally agreed and no written appointment letter was there for the said assignment(s). The Board observed that there arose dispute between the Complainant and the Respondent primarily on the fees for the assignment of preparation of the Statement of Affairs of the company which was not executed by the Respondent.
- 5.2. The Board also noted that the Respondent admitted that he gifted a gold chain worth of Rs.55,000/- to the Lawyer as a referral Fee, on the date of First receipt of Professional Fees. In this regard, the Board took into view the provisions of Item (2) of Part I of the First Schedule which provides as under:

Item (2) of Part I of First Schedule:

"A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business, to any person other than a member of the Institute or a partner or a retired partner or the legal representative of a deceased partner, or a member of any other professional body or with such other persons having such qualifications as may be prescribed, for the purpose of rendering such professional services from time to time in or outside India.

Explanation – In this item, "partner" includes a person residing outside India with whom a chartered accountant in practice has entered into partnership which is not in contravention of item (4) of this Part;"

It is in order for a practicing member to share his fees or profits arising out of his professional business with another member of the Institute and/or a firm of Chartered Accountants or members of other professional bodies or with such other persons having such qualifications as may be prescribed from time to time by the Council.

The Council has prescribed [Regulation 53A (1) of the Chartered Accountants Regulations, 1988] the professional bodies, which are as under:-

(c) Bar Council of India established under the Advocates Act, 1961.

Further, the Council has also prescribed certain [Regulation 53A (3) of the Chartered Accountants Regulations, 1988] persons qualified in India, which are as under:

(10)

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(vii) Bachelor in Law from a University established by law or an institution recognised by law;

- 5.3. The Board noted that the Respondent mentioned in his written submissions as well as at the time of hearing that consideration given by him to the lawyer was not associated with the above assignment but the same was gifted by the Respondent in the form of Gold chain worth Rs.55,000/- for the services provided by the lawyer like office space to work for free, free food and accommodation to his assistant, etc.
- 5.4. The Board further noted that Mr.T.V.L Narasimha Rao is a Practicing Insolvency Professional and also a member of the Bar Council of the State of Telangana - established under the Advocates Act, 1961-(Advocate Code 5799 & Bar Council Number: TS/634/1999) and sharing of fees with the members of the Bar Council of India established under Advocates Act, 1961 as well as person having a degree of Bachelor of Law is permissible as per Regulation 53A (1) & 53A (3) respectively, of the Chartered Accountants Regulations, 1988 and thus, Item (2) of Part I of the First Schedule to the Chartered Accountants Act 1949 is not attracted. However, in the instant case, the Respondent has not shared his fees with a professional but has admittedly gifted him a gold chain worth Rs. 55,000/- as referral fees which is a clear Professional Misconduct falling within the meaning of Item (6) of Part I of the First Schedule, which states as under:

Item (6) of Part I of First Schedule:

"A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he solicits clients or professional work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means:

Provided that nothing herein contained shall be construed as preventing or prohibiting-

- (i) any chartered accountant from applying or requesting for or inviting or securing professional work from another chartered accountant in practice; or*
- (ii) A member from responding to tenders or enquiries issued by various users of professional services or organizations from time to time and securing professional work as a consequence (emphasis added);"*

- 5.5. The Board was of the view that the submission of the Respondent that he did not solicit work but only shared his CV with the lawyer who subsequently referred him to the



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Complainant for the assignment of preparation of statement of affairs and provisional accounts and he gifted Gold chain out of Courtesy from a small amount of his earnings to the lawyer for the amenities provided by him without demanding any rent is not acceptable as the conduct and categorical admission of the Respondent that he gave the gold chain as referral fees clearly shows that he solicited his work through the lawyer which clearly amounts to Professional misconduct falling within the meaning of Item (6) of Part I of the First Schedule to the Chartered Accountants Act 1949. Accordingly, the Board held the Respondent guilty in respect of the charge alleged.

CONCLUSION:

6. Thus, in the considered opinion of the Board, the Respondent is **GUILTY** of Professional Misconduct falling within the meaning of Item (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

Sd/-
CA. Prasanna Kumar D.
(Presiding Officer)

Sd/-
Ms. Dolly Chakrabarty (IAAS, rettd.)
(Government Nominee)

Sd/-
CA. (Dr.) Raj Chawla
(Member)

DATE: 10th February 2023

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मोहित कुमार / MOHIT KUMAR
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
भारतीय सनदी लेखाकार संस्थान
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