



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

[PR-306/16-DD/05/17/DC/783/18]

**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.**

In the matter of:

Shri Anil Kelkar,
No.55/1887, Pushkaraj – 2 CHS,
Subhash Nagar, Chembur,
Mumbai – 400 071

-Vs.-

CA. Hasmukh Bhanji Vora (M.No.042270),
501, Shree Padmini Building,
Telly Gully Cross Road,
Andheri East,
Mumbai – 400 069

[PR-306/16-DD/05/17/DC/783/18]

MEMBERS PRESENT:

- 1. CA. Atul Kumar Gupta, Presiding Officer**
- 2. CA. Amarjit Chopra, Government Nominee**
- 3. CA. Rajendra Kumar P, Member**
- 4. CA. Chandrashekhar V. Chitale, Member**

1. That vide findings under Rule 18 (17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 dated 06.08.2019, the Disciplinary Committee was inter-alia of the opinion that **CA. Hasmukh Bhanji Vora (M.No.042270)** (hereinafter referred to as the **Respondent**) was **GUILTY** of professional misconduct falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.



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2. That an action under Section 21B (3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and a communication dated 19th December, 2019 was sent to him thereby granting an opportunity of being heard in person and/or to make oral/written representation before the Committee on 07th January, 2020 at Mumbai.

3. Further, on 07th January, 2020, the Committee noted that the Respondent was present and made his submissions on the findings of the Committee holding him Guilty of professional misconduct within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

4. The Committee noted that there is only one charge against the Respondent in which he has been held guilty by the Committee, which is as under:-

4.1 Audited Balance Sheet of the Society for the financial year 2012-13 had an item amount of Rs. 1.04 crore shown as Deposit at MHADA towards the offer letter for NOC whereas the same item has been completely omitted from the Balance Sheet for subsequent years 2013-14 to 2015-16.

5. The Committee noted the findings contained in Report of the Disciplinary Committee dated 06/08/2019 holding the Respondent guilty of professional misconduct, which are as under:-

5.1 *"The Committee noted that the same amount i. e. Rs. 1.04 crore was well reflected in the Financial Statement of 2012-13, but later on, it was completely omitted in the Financial Statement which was not pointed out by the Auditor (i.e. Respondent). The argument of the Respondent was that the acknowledgement of Rs.1.04 crore in the hand of Society was actually paid by M/s Everest Construction who agreed to redevelop the Pushpkaraj-2 CHS Ltd. (Society) and to take NOC from MHADA. On being enquired from the Respondent as to whether there is any agreement between the Society and M/s Everest Construction to pay on behalf of the Society, the response of the Respondent was in negative. On being further enquired that in case, at any point of time, if MHADA refunded the money, then in whose account that money will be received, whether it will be refunded to the Society or to M/s Everest Construction. The response*



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of the Respondent was that it will certainly come to the Society's account whereas in the absence of any agreement M/s Everest Construction has paid Rs.1.04 crore on behalf of the Society and even the liability towards M/s Everest Construction in the books of accounts of the Society cannot be credited.

4.2 In view of the above said arguments, the Committee is of the view that the Society was liable to disclose the amount in the Financial Statement and in absence of above it was the duty of the Auditor (the Respondent) to disclose/qualify his report in which he failed to do so".

6. The Committee perused the above facts and looking into all these aspects noted that it is an established fact that the Respondent has failed to disclose the amount of Rs. 1.04 crores deposited with MHADA. Further, he has not submitted any clarification or note in the audited financial statements for this effect.

In view of above, the Committee is of the opinion that the Respondent has not exercised due diligence while performing said attest function of the Company.

Based on the above findings the Respondent being held guilty of professional misconduct, the Committee is of the view that ends of justice will be met, if the punishment awarded to the Respondent is commensurate with the seriousness of the nature of misconduct.

7. Thus, keeping in view the facts and circumstances of the case, the material on record before it, the Committee ordered that name of the Respondent i.e. CA. Hasmukh Bhanji Vora (M.No.042270) be removed from register of members for a period of fifteen (15) days.

**Sd/-
(CA. ATUL KUMAR GUPTA)
PRESIDING OFFICER**

**Sd/-
(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE**

**Sd/-
(CA. RAJENDRA KUMAR P)
MEMBER**

**Sd/-
(CA. CHANDRASHEKHAR V. CHITALE)
MEMBER**

**DATE : 07/01/2020
PLACE : MUMBAI**



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CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2019-2020)]

[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-306/16-DD/05/17/DC/783/18]

In the matter of:

**Shri Anil Kelkar,
No.55/1887, Pushkaraj – 2 CHS,
Subhash Nagar, Chembur,
Mumbai – 400 071**

.....Complainant

Vs

**CA. Hasmukh Bhanji Vora (M.No.042270),
501, Shree Padmini Building,
Telly Gully Cross Road,
Andheri East,
Mumbai – 400 069**

.....Respondent

MEMBERS PRESENT:

**CA. ATUL KUMAR GUPTA, PRESIDING OFFICER,
CA. AMARJIT CHOPRA, GOVT. NOMINEE,
CA. RAJENDRA KUMAR P, MEMBER,
CA. CHANDRASHEKHAR VASANT CHITALE, MEMBER**

DATE OF FINAL HEARING : 08.05.2019

PLACE OF FINAL HEARING : ICAI Tower, BandraKurla Complex, Mumbai

PARTIES PRESENT:

Complainant : Shri Anil Kelkar

Respondent : CA. Hasmukh Bhanji Vora



Findings of the Committee

1. On the day of hearing held on 8th May, 2019, the Committee noted that both the Complainant and the Respondent were present. The Complainant and the Respondent were put on oath. On being enquired from the Respondent as to whether he is aware of the charges levelled against him, the Respondent replied positively and pleaded not guilty. Thereafter, the Complainant and the Respondent made their respective submissions. The Committee posed questions to the Complainant and the Respondent. After hearing the final submissions of the Complainant and the Respondent, the Committee decided to conclude the hearing in the aforesaid matter.

2. The Committee noted that on the following two charges, the Respondent, CA. Hasmukh Bhanji Vora of M/s H B Vora & Associates, Chartered Accountant, was held prima facie guilty by the Director (Discipline):

- (a) MHADA Deposit amounting to Rs. 33.60 lakh had been illegally commissioned in the Balance Sheet of the Society for the financial year 2014-15 without the permission of AGM.
- (b) Audited Balance Sheet of the Society for the financial year 2012-13 had an item amount of Rs. 1.04 crore shown as Deposit at MHADA towards the offer letter for NOC whereas the same item has been completely omitted from the Balance Sheet for subsequent years 2013-14 to 2015-16.

3. In respect of the first charge, based on the submissions of both the parties, the Committee is of the opinion that there was an error of not reflecting an amount of Rs. 33.60 lakh related to FSI charges paid to MHADA and then error was continuing since last 7 years. It is observed that the Respondent being the auditor of the Society, diligent in his duties, treated that error and followed the process of rectification by reflecting in the Financial Statement so audited in the Financial Year 2014-15. Accordingly, the



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Committee could not find any Professional Misconduct on the part of the Respondent and held him **Not Guilty** under this charge.



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4. In respect of second charge, the Committee noted that the said charge relates to an amount of Rs.1.04 crore for which an acknowledgement in the name of the Society was issued by MHADA, was not disclosed in the Financial Statement for the financial year 2013-14 to 2015-16. The balance sheet of the Society as on 31.03.2013 reflects as under:-

LIABILITIES	Amount (current year)	ASSETS	Amount (current year)
<u>OTHER LIABILITIES</u> XXXXXXX Amount Payable to Everest Construction for MHADA NOC	1,04,81,575.00	<u>SUNDRY DEBTORS</u> XXXXXXX XXXXXXX Amount paid to MHADA for NOC	1,04,81,575.00

And the balance sheet of the Society as on 31.03.2014 reflects as under:-

LIABILITIES	Amount (current year)	ASSETS	Amount (current year)
<u>PROVISION & LIABILITIES</u> XXXXXXX Everest Constr. [MHADA NOC]	NIL	<u>LOAN</u> XXXXXXX XXXXXXX MAHADA NOC	NIL

4.1 The Committee noted that the same amount was well reflected in the Financial Statement of 2012-13, but later on, it was completely omitted in the Financial Statement which was not pointed out by the Auditor (i.e. Respondent). The argument of the Respondent was that the acknowledgement of Rs.1.04 crore in the hand of Society was actually paid by M/s Everest Construction who agreed to redevelop the Pushpkaraj-2 CHS Ltd. (Society) and to take NOC from MHADA. On being enquired from the Respondent as to whether there is any agreement between the Society and M/s Everest Construction to pay on behalf of the Society, the response of the Respondent was in negative. On being further enquired that in case, at any point of time, if MHADA refunded the money, then in whose account that money will be received, whether it will be refunded to the Society or to M/s Everest Construction. The response of the Respondent was that it will certainly come to the Society's account whereas in the absence of any agreement M/s Everest Construction has paid Rs.1.04 crore on behalf of the Society and



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even the liability towards M/s Everest Construction in the books of accounts of the Society cannot be credited.

4.2 In view of the above said arguments, the Committee is of the view that the Society was liable to disclose the amount in the Financial Statement and in absence of above it was the duty of the Auditor (the Respondent) to disclose/qualify his report in which he failed to do so. As per Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he “*does not exercise due diligence, or is grossly negligent in the conduct of his professional duties*”. The misconduct of the Respondent falls under the ambit of professional misconduct. Hence, looking into the facts and submissions made by both the parties (i.e. Complainant and Respondent), the Committee is of the view that the Respondent is **Guilty** under the above said Clause.

Conclusion

5. Thus in the considered opinion of the Committee, the Respondent is **GUILTY** of professional misconduct falling within the meaning Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

Sd/-

(CA. ATUL KUMAR GUPTA)

PRESIDING OFFICER

Sd/-

(CA. AMARJIT CHOPRA)

GOVERNMENT NOMINEE

Sd/-

(CA. RAJENDRA KUMAR P)

Sd/-

(CA. CHANDRASHEKHAR VASANT CHITALE)



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MEMBER

MEMBER

DATE : 06-08-2019

PLACE : New Delhi