

CONFIDENTIAL

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

[Constituted under Section 21B of the Chartered Accountants Act, 1949]

Findings cum Order under Rule 18(17) and Rule 19 (2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

Ref. No. PR-303/15-DD/268/15/DC/726/17

In the matter of:

**Shri Hemant Panchal & Others
Members, Rachanaa Cooperative Housing Society Ltd
B/304, Eksar Road,
Opp. MCF's Jogger's Park, Borivali (west),
Mumbai – 400091**

.....Complainant

-Vs.-

**CA. Tejas Hemant Nadkarni (M.No.122993)
Shop No.4, Lilac Garden CHS,
90 Feet Road, Near Ganesh Chowk,
Charkop Kandivali West,
Mumbai – 400 067**

.....Respondent

MEMBERS PRESENT:

**CA. ATUL KUMAR GUPTA, PRESIDING OFFICER,
SHRI RAJEEV KHER, IAS (RETD.), GOVT. NOMINEE,
CA. RAJENDRA KUMAR P, MEMBER,
CA. CHANDRASHEKHAR VASANT CHITALE, MEMBER**

DATE OF FINAL HEARING : 18.04.2019

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

PARTIES PRESENT:

**Complainant : Shri Hemant Panchal alongwith others
Respondent : CA. Tejas Hemant Nadkarni alongwith
his Assistant**

Finding of the Committee

1. On the day of hearing held on 18th April, 2019, the Committee noted that the Complainant(s) were present. The Respondent along with his assistant was present. The Complainants and the Respondent were put on oath. On being enquired from the Respondent as to whether he is aware about the charges levelled against him, the Respondent replied positively and pleaded not guilty to the charges. The Complainants explained their case and the Respondent made his submissions on the charges. The Committee heard the Complainants and the Respondent. The Complainants are members of Resident welfare Society and the Respondent was the auditor of the said Society. After hearing the submissions made by both the parties the Committee decided to conclude the hearing and proceed with pronouncing its verdict.

2. The Committee noted that the crux of the charge levelled against the Respondent was that old dues from members of the Rachanaa Co-operative Housing Society Limited amounting to Rs. 679225/-as appearing in the Balance Sheet as on 31st March, 2014 were written off and shown as NIL in the Balance Sheet as on 31st March, 2015 of Rachanaa Co-operative Housing Society Limited and the same is reflecting negligence on the part of the Respondent.

3. The Committee noted that the Respondent through his written and oral submissions made the following submissions in his defence:-

3.1 He conducted the Statutory Audit of Rachanaa CHS Ltd, Mumbai (hereinafter referred to as the “**Society**”) for the year ended 31st March 2015 in accordance with the Standards on Auditing issued by the Institute of Chartered Accountants of India (CAI) and also as per the rules framed under the Maharashtra State Cooperative Societies Act 1960. He relied on the audit evidence, explanations and documents made available to him by the Managing Committee during his period of audit 01.04.2014 to 31.03.2015 and accordingly, he expressed his independent opinion on the financial statements of the Society for the financial year 2014-15. During the period of his audit 01.04.2014 to 31.03.2015, the Managing Committee has given him details and explanations regarding adjusting of the old dues from the members amounting to Rs.6,79,225/-.

3.2 The Respondent stated that old dues from members amounting to Rs. 6,79,225/- during the period 2014-15 were carried forward from the earlier statutory audit reports of Shri Hemant Panchal & Others –Vs- CA. Tejas Hemant Nadkarni (M. No.122993)

the Society from 01.04.2005 to 31.03.2014 for last 9 consecutive years. It was also observed from the earlier statutory audit reports (audit report for the period 2008-2009) that the statutory auditor had advised the previous Managing Committee of the Society to take immediate action against the defaulting members to recover the outstanding dues by initiating recovery proceedings against defaulting members under Section 101 of the Maharashtra State Cooperative Societies Act 1960. The previous Managing Committee headed by Shri Sachin Parlikar and Mr Ashok Suryagandh, who are also the signatories to the present complaint during their tenure (2006-2010) had not taken any action under Section 101 of the Maharashtra State Co-operative Societies Act, 1960 for the recovery of old dues from defaulting Members. The aforesaid Complainant(s) failed to give explanation as to what prevented them from taking action of recovery of dues from defaulting members during their tenure 2006- 2010.

3.3 The Respondent further stated that the present Managing Committee with the Complainants had taken up steps to resolve the said long pending issue of old dues from members of Rs 6,79,225 /- as decided in the previous AGM dated 21.09.2014. One of the signatories to the complaint, Shri Sachin Parlikar during the AGM held on 21.09.2014 had asked the present Managing Committee for the correction of the figure of Rs 6,79,225/- which was appearing in the Balance sheet of 2013-14.

3.4 The complainants, Shri Hemant Panchal and others had filed complaints with Deputy Registrar, R Ward, Kandivali (East) office, Mumbai. An audit / inspection of the books of accounts, records and documents related to the Society was carried out by Mr Prakash Patil — Auditor Co-operative Societies Mumbai, N. Bank — 4 Mumbai. The Government Auditor mentioned that actual current outstanding dues from the 8 members amounted to Rs. 49,680 during the period of audit 01.04.2014 to 31.03.2015. Sundry Debtors (Current Dues from Members — Maintenance) of Rs 49,680/- actually recoverable from the members have been shown by him in his statutory audit report of 2014-15 as a separate schedule to the balance sheet of 31st March 2015.

3.4.1 After inspection of the books of accounts and records of the Society, the Government Auditor has not given any adverse observations and remarks on the adjustment of old dues of Rs 6,79,225/- from the defaulting members and also on the statutory audit report given by him for the financial year 2014-15.

4. The Committee queried the Complainants regarding their exact nature of grievance with respect to the act of the Respondent. The Complainants submitted that the dues outstanding from the members have been written off and the Respondent has not applied due diligence owing to which the Society stood at a loss amounting to Rs. 6,79,225/-. The Committee brought to the notice of the Complainants that the decision of write off is the prerogative of the management. The Complainants agreed to this statement. Upon this the Committee wanted to know whether they have taken any action against the management for their decision of write off. The Complainants replied that they have objected against the write off in the general body meeting and have brought the same to the notice of the authorities concerned.

5. Upon perusal of the documents and submissions on record, the Committee observed that the primary responsibility of preparation of the financial accounts is of the Management of the Society. As per explanation given by the Management Committee to the Respondent, old dues from members of Rs.6,79,225/- was appearing in the Balance Sheet since last 9 years i.e. from 2005-06. It was also informed by the Managing Committee that since the old dues from members of Rs.6,79,225/- were monetarily not existing and no such evidence and record for the same was available with the Society since last 9 consecutive years, the Managing Committee decided to adjust the amount of old dues from the members of Rs.6,79,225/- which is not recoverable at all.

5.1 It is also observed that there was typing error in Schedule IV – List of Bad & Doubtful Debts which was rectified by the Respondent and submitted to the Managing Committee on 10.09.2015 which was acknowledged by them. The Managing Committee circulated rectified audit report with changes in Schedule VI to all the members of the Society. The same audit report was also submitted to the Deputy Registrar of Co-operative Societies, R Ward, Kandiwali (East), Mumbai on 03.10.2015.

5.2 In view of above, it was evident that decision of adjustment of long pending old dues was taken by the Management of the Committee and was also approved by the members in the AGM. The Committee is of the view that it is the duty of the Auditor to vouch the genuineness and verify the accounting prudence of the transactions recorded in the books of accounts which the Respondent as auditor has done in the present case. In any case, if there are any grievances of the Complainant on the aforesaid adjustment made

in the book of accounts, the same should have been looked into by the Management Committee of the Society. Based on the submissions and clarifications made by the Respondent and Complainants and rectification report submitted to the Registrar of Co-operative Societies, the Committee felt that all efforts were put in by the Respondent to verify that the transactions are recorded in the books of accounts are correct and as per prudent Principles of accounting. The Respondent has applied proper due diligence and obtained all information and explanation for the purpose of Certifying the Financial Statement of the Society. The Committee wishes to record its deep sense of anguish against the Complainants for bringing a management related issue before it. If there was any grievance or any act of wrong doing it must have been against the Management and not the Respondent. Accordingly, the Committee decided to hold the Respondent Not Guilty of Professional misconduct falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

Conclusion

6. Thus in the considered opinion of the Committee, the Respondent is **NOT GUILTY** of professional misconduct falling within the meaning Clause(10) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

6.1 Accordingly, in terms of Rule 19 (2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee passes Order for closure of this case against the Respondent.

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

Sd/-
(SHRI RAJEEV KHER, IAS (RETD.))
GOVERNMENT NOMINEE

Sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

Sd/-
(CA. CHANDRASHEKHAR VASANT CHITALE)
MEMBER

DATE : 29-05-2019
PLACE : New Delhi