



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

[PR-116/2013-DD/139/2013/DC/476/2016]

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.

[PR-116/2013-DD/139/2013/DC/476/2016]

In the matter of:

Shri Motilal Bhatia
A-204, Sumer Nagar No.3 CHS Ltd.,
S.V.Road,
Borivali (West)
Mumbai – 400 092.

.....Complainant

-Vs.-

CA. Suresh Chandra Aythora (M.No.016268)
30, Maharashtra Bhawan,
2nd Floor,
12/14, Bora Masjid Street,
MUMBAI – 400 001.

.....Respondent

MEMBERS PRESENT:

1. CA. Atul Kumar Gupta, Presiding Officer
2. CA. Amarjit Chopra, Government Nominee
3. CA. Rajendra Kumar P, Member
4. CA. Pramod Kumar Boob, 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 10.02.2020, the Disciplinary Committee was inter-alia of the opinion that **CA. Suresh Chandra Aythora (M.No.016268)** (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.

2. That an action under Section 21B (3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and a communication dated 4th March, 2020 was sent to Shri Motilal Bhatia, Mumbai – vs – CA. Suresh Chandra Aythora (M.No.016268)



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him thereby granting an opportunity of being heard in person and/or to make oral/ written representation before the Committee on 17th March, 2020 at Delhi/Mumbai.

3. The Respondent was present before the Committee in the Mumbai office of ICAI through video conferencing mode. He also submitted his written submissions in his defense. The Respondent submitted that the Complainant was in the management of CHS Ltd and used the Institute mechanism against him to avoid any other adverse complication for his wrongdoing. As far as the concept of profitability is concerned he has a bonafide belief that every surplus does not constitute an income/profit. The Respondent further submitted that for 14 years he has a clean record that no other complaint is filed against him nor he had filed any complaint. He also prayed before the Committee to take a lenient view as there are no financial implications due to omission on his part.

4. The Committee while looking into the matter and the conduct of the Respondent is of the opinion that the charge in which the Respondent was held guilty was that he failed to report statutory requirement of transferring at least 25% of the surplus to the Reserve Fund. The Committee noted that it is a procedural requirement and compliance of above requirements is an omission on part of Society. Further no financial loss is incurred due to this omission. The Committee is of the view that the ends of justice would be met if CA. Suresh Chandra Aythora the respondent is reprimanded.

5. Therefore, the Committee ordered that the Respondent i.e. CA. Suresh Chandra Aythora (M.No.016268) be reprimanded.

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

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

Certified Copy
PARVESH BANSAL
Deputy Secretary
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Sd/-
(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

Sd/-
(CA. PRAMOD KUMAR BOOB)
MEMBER

DATE : 17/03/2020

PLACE : Delhi

Shri Motilal Bhatia, Mumbai – vs – CA. Suresh Chandra Aythora (M.No.016268)

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-116/2013-DD/139/2013/DC/476/2016]

In the matter of:

Shri Moti Lal Bhatia
A-204, Sumer Nagar No. 3 CHS Ltd.
S.V. Road,
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Mumbai – 400 092

....Complainant

-Vs-

CA. Suresh Chandra Aythora(M.No. 016268)
30, Maharashtra Bhawan,
2nd Floor,
12/14, Bora Masjid Street,
Mumbai – 400 001.

.....Respondent

MEMBERS PRESENT:

CA. ATUL KUMAR GUPTA, PRESIDING OFFICER,
CA. AMARJIT CHOPRA, GOVT. NOMINEE,
CA. RAJENDRA KUMAR P, MEMBER,

DATE OF FINAL HEARING/ORDER : 09.05.2019
PLACE OF FINAL HEARING/ORDER : ICAI, MUMBAI

PARTIES PRESENT:

Respondent : CA. Suresh Chandra Aythora,

Counsel for the Respondent: Shri Bhupendra Shah, Advocate





CHARGES IN BRIEF:-

1. The Committee noted that the Complainant in his complaint made number of allegations against the Respondent in form 'I' but the Respondent was held prima facie guilty only in respect of the charges as mentioned in paras no.1.1, 1.7, 1.9 and 1.10 of the Prima Facie Opinion as per findings mentioned in paras no. 7.1, 7.10 (including sub-allegation as mentioned in para 7.13), 7.15 and 7.16 of the said prima facie opinion. Since the Respondent was held prima facie guilty in respect of charges as mentioned in para no.1.1, 1.7, 1.9 and 1.10, the Committee considered only these charges. The brief of the charges are as under:-

- i) Entire audit report of Sumer Nagar No. 3 CHS Ltd. (hereinafter referred to as the "Society") for the year ended on 31-03-2011 is undated.
- ii) The Respondent as auditor did not insist on informing the members of society when society paid Rs. 225,000/- as N.A. Tax to Tehsildar, Borivali. Taluka in Feb, 2011 Although in law i.e. under T.P. act & MOFA it is liability of the owners/builder & developers. The Respondent did not comment anything about 1) why Rs. 225,000/- was paid when Govt. Notice demanded Rs. 11,86,000/-. What was the rate applied, for how much area in square meters and for how many years this tax amount is for. Why society is made to pay tax when conveyance of land itself is not done in favour of society till date. Even occupancy certificate given by Municipality is partial up to 4th Floor out of total 7 floors, Why the Respondent passed this amount without studying Maharashtra revenue code 1966 read with transfer of Property Tax Act 1882, u/s 55(1)(g).
- iii) The Respondent failed to report that Society has not contributed yearly towards education fund of the state federal society as per the provision of Maharashtra Co-Op. Societies Act 1960.
- iv) The Respondent failed to ensure that society has not transferred a sum equivalent to 25% of its 'surplus of income over expenditure' to Reserve Fund every year, Section 68 read with section 70 of M.C.S. Act 1960. No comments about it in auditor's report.

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BRIEF OF THE DISCIPLINARY PROCEEDINGS:-

2. On the date of hearing i.e. 09.05.2019, the Committee noted that the Complainant was not present. The Respondent along with his Counsel was present. As the Composition of the Committee had changed the Respondent was asked whether he would opt for a de-novo hearing or the same be continued from the previous hearing. The Counsel of the Respondent relied upon the submissions made in earlier hearings and opted to make brief submissions. Thereafter, the hearing commenced from the stage as it was left in last hearing. The Counsel for the Respondent made submissions on the charges. The Committee posed some question to the Respondent. After hearing the submissions, the Committee decided to conclude the hearing in the above matter.

2.1 In respect of earlier hearings held in the matter, the Committee noted as under:-

i) On 19th December, 2018, the Complainant was not present. The Respondent was present along with his Counsel. The Complainant vide his e-mail dated 13th December, 2018 informed that due to his prior commitments on 19th December, 2018, he will not be able to present himself before the Committee. He also requested the Committee to proceed with the enquiry in his absence and take decision as per the provisions of the Chartered Accountants Act, 1949. In view of above, the Committee decided to proceed ahead with the matter ex-parte the Complainant. The Committee enquired from the Respondent as to whether he would like to have de-novo hearing or the hearing from the stage as it was left in last hearing. In this regard, the Counsel for the Respondent stated that since they had already made their oral submissions in last hearing, they had nothing to add in their defence. Thereafter, the Committee posed some clarificatory questions to the Respondent.

ii) On 9th December, 2016, the Complainant was not present. The Respondent along with his Counsel was present. Since the Complainant was absent without any prior intimation and there was no request for adjournment of hearing from his side, the Committee decided to precede ahead with the matter ex-parte the Complainant. On being enquired by the Committee from the Respondent as to whether he understood the allegations, the Respondent replied in affirmative and opted to defend his case. The

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Respondent made submissions on the allegations. The Committee examined the Respondent. Thereafter, the Respondent made his final submissions on the allegations.

FINDINGS OF THE DISCIPLINARY COMMITTEE:-

3. As regard facts of the case, the Committee noted that the present complaint was filed by the erstwhile Secretary of the Society who was also a member of the Society. There were disputes among the members. During the course of audit, the Respondent found several irregularities and pointed out the same. The Respondent led positive evidence before the Committee refuting the allegations leveled by the Complainant. He has produced a letter dated 05th December, 2011 written by him addressed to Secretary, Sumer Nagar Co-operative Housing Society Limited. In the said letter the Respondent has highlighted numerous irregularities and mistakes in the accounts for the year 2010-11. It is evident from the said letter that the Respondent has brought on record short comings in the accounts before the date of signing the Financial Statements.

4. In respect of first charge relating to undated audit report and accounts, the Respondent stated that as per practice, seven sets of the audited Balance Sheets were prepared but due to omission by his employee, one set of the audited Balance Sheet could not get dated. His employee did not realize the importance of such dating and released the report and balance sheet without date. The Respondent further stated that this omission was technical / venial in nature and there was no malafide intention on his part. In support of his submission; the Respondent submitted a copy of Balance Sheet as on 31.03.2011 which was dated 24.05.2012.

4.1 The Committee noted that aforesaid mistake on the part of the Respondent appears to be an inadvertent omissions as the copy of the audit report and the Balance Sheet as on 31.03.2011 brought on record by the Respondent was duly dated as 24.05.2012. Further, the accounts were approved by the Managing Committee of the Society without any objection on the same and the said fact indicates that except one set, all sets of the audited balance sheet were dated. Accordingly, the Committee decided to hold the Respondent not guilty with respect to this charge.

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5. As regard the second charge relating to payment of Non Agricultural Tax (N.A. Tax) by the Society which was liability of the owner / developer and not of the Society, the Respondent submitted that the Society was not the land owner since the title of the said property has not been conveyed to the Society by builders/ developers. He was informed by the Committee's member that the relevant amount was paid on basis of area of land occupied by the Society. The Managing Committee satisfied itself about the rate and period for which such tax was to be paid. The issue raised by the Complainant was technical in nature. Since the Society has occupied the relevant portion of land and members of the Society were residing in the building constructed on the land, there was no option except paying the liability of the N.A. Tax even though it was not owner of the land. The Complainant himself was party to the decision of making payment to Tehsildar. The Managing Committee adopted the accounts and each and every member signed it and nobody has raised any query on the same. Further, in para 5 of the General remarks referred to in Auditors' Report, the relevant facts were brought to the notice of members. In respect of this charge, the Complainant stated that the aforesaid payment should not be shown as expenses.

5.1 The Respondent further stated that if the Society do not pay N.A. Tax, water and electricity connects get disconnected and this amount was paid under threat at that point of time. On a question as to why amount paid by the Society for N.A. Tax has not been shown recoverable from the developer of the Society, the Respondent stated that in view of the fact that the developer would not pay the same to the Society, the same was not shown as recoverable from the developers.

5.2 The Committee noted that there was dispute among the Society and developer of the Society regarding payment of N.A. Tax due to non conveyance of land in favour of the Society. Since the Society was using land and its non-payment would affect the Society, it had paid N.A. Tax under protest and also filed a suit which is pending in the Bombay High Court. A reference of this payment was duly made in general remarks referred to in Auditor's report under point no.5 as under:-

"5. During the year Society has received notice in respect of N.A. Taxes amounting to Rs.11,86,295/- which has been contested by the Society on the ground that land was

not conveyed in favour of the Society and as a consequence, the said liability is of either land owners or developers. The payment of Rs.2,25,000/- made under protest is charged to income & expenditure account for the year."

5.3 The Committee also noted that the audited accounts for the year ending 31.03.2011, was approved by the Managing Committee of the Society. Since the Respondent duly pointed out the payment made by the Society towards N.A. Tax in his audit report and accounts were approved by the Society, the Committee decided to hold the Respondent not guilty with respect to charge relating to payment of N.A. Tax.

6. As regard the charge related to failure of the Society regarding not contributing in the education fund, the Respondent stated that the Society was required to contribute Rs.3/- per year per member of the Society. Based on the member's strength of 182, a sum of Rs. 546/- was annually required to be paid. The amount was not material and as such on principal of materiality either its transfer or non payment was not reported. The Respondent further stated that it was the decision of the management which was relied upon by him.

6.1 The Committee noted that the accounts of the Society were approved by its Managing Committee. Moreover, the amount to be contributed towards education fund not being material, being 0.02% of the revenue of the Society, the Committee decided to hold the Respondent not guilty with respect to this charge.

7. As regard the charge regarding not transferring of 25% of surplus of income over expenditure to Reserve Fund as required by Section 66 and 70 of the MCS Act, 1960 and its investment in fixed deposits, the Respondent stated that the obligation to maintain Reserve Fund arises only if profit from transactions is derived and not otherwise. Since the Society was a mutual association, the above provisions would have applied only if the Society had made a profit from such transactions. The same policy was adopted in the past as well. The Respondent also added that in case of Society, the excess of income over the expenditure was like a reserve and it was shown separately. In this regard, the Complainant only reiterated his contentions as made in the complaint and did not submit anything contrary to the submissions of the Respondent. ✓

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7.1 On being enquired from the Respondent as to whether it is statutory requirement to transfer 25% of surplus to Reserve fund, the Respondent replied that it is requirement of bye-laws of the Society. To a further question as to when provisions of bye-laws of the Society require transfer of surplus then why surplus had not been transferred to the Reserve fund, the Respondent stated that the Society was in surplus due to collections from the members only and there was no profit from other activities and transactions.

7.2 In respect of above charge, the Committee noted the following Provisions contained in section 66 of the Maharashtra Co-operative Societies Act, 1960:

“66. Reserve Fund -

(1) *Every society which does, or can, derive a profit from its transaction shall maintain a reserve fund.*

(2) *Every society shall carry at least one-fourth of the net profits each year to the reserve fund; and such reserve fund may, subject to the rules made in this behalf, if any, be used in the business of the society or may, subject to the provisions of section 70, be invested, as the State Government may by general or special order direct, or may, with the previous sanction of the State Government, be used in part for some public purpose likely to promote the objects of this Act, or for some such purpose of the State, or local interest:*

Provided that, the Registrar may, having regard to the financial position of any society or class of societies, fix the contribution to be made to the reserve fund under this sub-section at a lower rate, but not lower than one-tenth of the net profits of the society or societies concerned.”

Since it is a statutory requirement to transfer at least 25% of the surplus to the Reserve Fund and the bye-laws of the Society also requires the same, 25% of the surplus was required to be transferred to the Reserve Fund in compliance of above requirements but the Society failed to do so. Further, amount lying in the Reserve Fund is required to be invested in specified securities as per requirement of law and cannot be used freely as general reserve. Considering the above facts, the Committee is of the view that the Respondent as statutory auditor of the Society failed to point out in his audit report that the statutory requirement of transfer of 25% of profit to Reserve Fund had not been complied





with by the Society. Accordingly, the Committee decided to hold the Respondent guilty with respect to above charge.

CONCLUSIONS:

8. In view of the findings as above, the Committee is of the view that in respect of the charge relating to transfer of profit to Reserve fund as per Section 66 of Maharashtra Co-operative Societies Act, 1960, the Respondent is **Guilty** of professional misconduct falling within the meaning of Clauses (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949. In respect of remaining charges, the Committee does not find any merit and thus holds the Respondent **Not Guilty** of Professional Misconduct falling within the meaning of Clauses (7) & (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

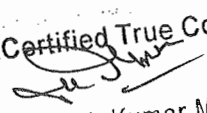


Sd/-
(CA. ATUL KUMAR GUPTA)
PRESIDING OFFICER

Sd/-
(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

Sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

DATE : 10th February, 2020
PLACE : NEW DELHI


Certified True Copy
Mukesh Kumar Mittal
Assistant Secretary
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