



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

[PR/232/16-DD/276/16-DC/914/18]

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.

PR/232/16-DD/276/16-DC/914/18

In the matter of:

CA. Sharad S. Shah,
101, Sushant, 10th Road Khar,
Mumbai – 400 052

.....Complainant

-Vs-

CA. Devang Dalal (M. No. 109049)
M/s. M H Dalal & Associates,
301, Balaji Darshan,
Tilak Road, Santacruz – West,
Mumbai – 400 054

.....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 16.12.2019, the Disciplinary Committee was inter-alia of the opinion that **CA. Devang Dalal (M. No.109049)** (hereinafter referred to as the **Respondent**) was **GUILTY** of "Other Misconduct" falling within the meaning of Clause (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949.

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Shri Sharad S. Shah, Mumbai -Vs.- CA. Devang Dalal (M.No.109049), Mumbai



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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 21st February, 2020 was sent to him thereby granting an opportunity of being heard in person and/or to make oral/ written representation before the Committee on 2nd March, 2020 at Delhi/Mumbai.

3. The Respondent was present before the Committee in Mumbai office of ICAI through video conferencing mode. He submitted that he never had the ill-intentions in the alleged matter and hence, requested the Committee for taking a lenient view in his case.

4. The Committee while looking into the matter and the conduct of the Respondent is of the opinion that lapse is more technical in nature and it is also coming out that the Respondent on becoming aware of the same had immediately resigned. Accordingly, the Committee was of the view that ends of justice shall be met if the Respondent is reprimanded.

5. Thus, the Committee ordered that the Respondent i.e. CA. Devang Dalal (M.No.109049) be Reprimanded.

3

Sd/-

(CA. ATUL KUMAR GUPTA)
PRESIDING OFFICER

Sd/-

(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

Sd/-

(CA. RAJENDRA KUMAR P)
MEMBER

Sd/-

(CA. PRAMOD KUMAR BOOB)
MEMBER

DATE : 02/03/2020

PLACE : Delhi

Certified Copy

Ajay Kumar Jain
Deputy Secretary
Disciplinary Directorate

The Institute of Chartered Accountants of India
ICAI Bhawan, I.P. Marg, New Delhi-110 002

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 (Procedures of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007

Ref. No.PR-232/16-DD/276/16/DC/914/18

In the matter of:

**CA. Sharad S. Shah,
101, Sushant, 10th Road Khar,
Mumbai – 400 052**

.....Complainant

-Vs-

**CA. Devang Dalal,
M/s. M H Dalal & Associates,
301, Balaji Darshan,
Tilak Road, Santacruz – West,
Mumbai – 400 054**

.....Respondent

MEMBERS PRESENT:

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

DATE OF FINAL HEARING : 24.06.2019

PLACE OF FINAL HEARING : ICAI Tower, Bandra Kurla Complex, Mumbai

PARTIES PRESENT:

**Complainant : Shri Sharad Shah along with
his Assistant
Respondent : CA. Devang Dalal
Counsel for the Respondent : Shri Kamal Bulchadani, Advocate ✓**

CHARGE IN BRIEF:-

1. The Committee noted that the Respondent was appointed as a Statutory Auditor of Laxmi Co-operative Housing Society (hereinafter referred to as the “**Society**”) for the Financial Years 2013-2014 and 2014-2015. In respect of following charges, the Respondent was held prima facie guilty:-

i) The Respondent accepted himself as a Statutory Auditor to Society even though he was not on the panel of Auditors of the Department of Co-Operatives for F.Y. 2013-14 and 2014-15.

ii) The Respondent arranged another auditor on panel of the Department to conduct the audit for the year 2015-16 despite of being not appointed at AGM or General Body Meeting of the Society to submit accounts audited by him.

iii) The Respondent failed to upload the Annual Returns for the F.Y. 2013-14 and 2014-15 on the website of the Department of Co-Operatives.

iv) The Respondent failed in guiding the Society in the matter of amending the bylaws and to non-guiding the Society with regard to complying Section 73CB and maintenance of Statutory Registers “I”, “J” and Nomination Register.

v) The Respondent did not check the compliance with MCS Act 1960, rules and the by-laws of the society and reporting violations. Specifically-

a) Committee has more than 9 members

b) No woman on Managing Committee

BRIEF OF THE DISCIPLINARY PROCEEDINGS:-

2. For hearing of the case, the Complainant was present. The Respondent was also present along with his Counsel. The Complainant and the Respondent were put on oath. Since the Complainant was an old aged person and in order to support him, the Committee informed the Complainant that the office would read out the charges on his behalf. The Office read out the charges against the Respondent. The Respondent pleaded not guilty to the same. The Counsel for the Respondent made submissions on behalf of the Respondent. The Complainant also made his submissions. The Committee posed questions to the Complainant and the Respondent. After hearing the submissions, the Committee concluded the hearing in the above matter.

FINDINGS OF THE DISCIPLINARY COMMITTEE

3. In respect of first charge related to conducting audit inspite of not being on panel maintained by the Registrar of Society, the Respondent stated that he accepted the appointment as Statutory Auditor of the Society for the years 2013-14 and 2014-15 though his firm was not empanelled with the Registrar of Co-operative Societies. The Respondent further stated that prior to 13.08.2013 there was no provision under the Maharashtra Co-operative Societies Act, 1960 to get registered on the panel maintained by the Registrar before being appointed as auditor. Section 81(1)(a) of the MCS Act, 1960 was introduced by Maharashtra Act No. XVI of 2013 dated 13.08.2013. The amended provision came into effect with retrospective effect from 14.02.2013, while for the year 2013-14, he was already appointed as Statutory Auditor of the Society in its meeting held on 04.08.2013.

3.1 He also stated that at the time of appointment for the financial year 2013-14, Section 81 applied only to societies which have been given financial assistance including guarantee by the State Government or Government undertakings. The amendment to Section 81(1)(a) introduced on 13.08.2013 with retrospective effect from 14.02.2013, could not have ever come to his knowledge as he was appointed on 04.08.2013, when the retrospective effect could not have been noted by him. The Respondent also stated that the requirement of being empanelled is not mandatory and is discretionary in nature.

3.2 He also stated that upon realising the counter views in respect of above, he stopped his assignment as an Auditor for the financial year 2015-16 in the year 2016. Thus, accepting the assignment for the firm without being on the panel was bonafide and without any ill-motive.

4. In respect of above charge, the Committee noted that as per the provisions of Section 75 (2A) and 81, the accounts of the Society should be audited by an auditor or auditing firm from a panel approved by the State Government, appointed in the annual general body meeting of the Society. In this regard, on perusal of appointment letters for financial years 2013-14 and 2014-15, it is noted that the same were undated and it was not clear as to when the Respondent was appointed as

auditor. Further, it is noted that the Respondent vide letters dated 12th October, 2015 submitted his audit report for both the years. The Respondent claimed that Section 81(1)(a) was introduced on 13.08.2013 with retrospective effect from 14.02.2013. Even if it is assumed that the Respondent's appointment for the financial year 2013-14 was made before 13.08.2013, the requirement of Section 81(1)(a) was duly applicable to the Respondent's appointment as auditor the financial year 2014-15. Hence, the Committee is of the view that on the date of his appointment as Statutory Auditor of the Society for the Financial Year 2014-15, the Respondent was not on the panel approved by the Registrar of Co-operative Society. Though he was not on the panel, the Respondent accepted appointment as statutory auditor in violation of statutory provisions. The Respondent, being a qualified person is expected to be updated, having knowledge of mandatory statutory requirements and ought to have followed the law as laid down for appointment of statutory auditors of the Co-operative Society. Inaction on the part of Respondent in apprising the Society about his ineligibility for appointment as auditor and completing the audit is not appropriate and therefore by conducting himself in such manner he has brought disrepute to the profession. Accordingly, the Committee decided to hold the Respondent **Guilty** of the professional misconduct falling within the meaning of Clause (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949.

5. As regard the second charge relating to arranging another auditor on panel to conduct the audit for the financial year 2015-16, the Respondent stated that recommending the name of the person to be appointed as an Auditor cannot be construed as an act of misconduct. In respect of this charge, upon perusal of the documents on record and submissions, the Committee is of the view that mere recommending name of other auditor to the Society cannot be a charge of misconduct on the part of the Respondent. Accordingly, the Committee decided to hold the Respondent Not Guilty in respect of above charge.
6. As regard third charge related to not uploading the annual returns for the financial year 2013-14 and 2014-15 on the website of the Department of Co-operatives, the Respondent stated that in accordance with Section 81(5B), it is the responsibility of an Auditor to submit his audit report within a period of 1 month from its completion and in any case before the issuance of notice of the Annual General Meeting. The

Respondent stated that Form -1 and Form 28 were submitted physically to the Officer, Department of Co-operatives, Dadar (West), under two separate letters both dated 12th October, 2015. The Respondent also stated that though the submissions of Form-1 and 28 for the financial year 2013-14 were delayed, however, for the financial year 2014-15, there was only a marginal delay in submissions of the said forms.

6.1 Taking into account all the documents on record and submissions made by the parties before it, the Committee noted that the Respondent admitted that there was delay of 12 months in filing of Form 1 & Form 28 for the financial year 2013-14. In view of the fact that Form 1 & Form 28 for both the aforesaid financial years were filed vide letters dated 12th October, 2015, the Committee decided to extend benefit to the Respondent. Accordingly, it decided to hold the Respondent Not Guilty of Professional Misconduct or Other Misconduct in respect of above charge.

7. As regard the fourth & fifth charges relating to maintenance of Statutory Registers and non-compliance of provisions of MCS Act, 1960 and bye-laws of the Society, the Respondent stated that in the complaint filed by the Complainant against the Society before the Deputy Registrar of Co-operative Societies, the Society filed two affidavits in reply to the complaints before the Hon'ble Registrar stating therein that they have complied with the provisions of clause 73CB of amended MCS Act, 1960 and maintained the statutory registers "I" & "J" and nomination register and that the Committee comprises of 9 Managing Committee members and it is having 2 Women as Managing Committee Members.

7.1 Upon perusal of the affidavits, it is noted that the Society denied the aforesaid charges. The Committee also noted that it is primary responsibility of the Managing Committee of the Society to maintain all the Statutory Registers and ensure the compliance of the different provisions of the MCS Act, 1960. In view of denial of the Society and in absence of any contrary evidence, the Committee decided to extend benefit to the Respondent and accordingly, hold the Respondent Not Guilty in respect of above charges.

CONCLUSION


8. Thus, taking an overall view of the facts and circumstances of the case and based on the submissions / documents placed on record before it, in the considered opinion of the Committee, the Respondent is **GUILTY** of Professional Misconduct falling within the meaning of Clause (2) of Part IV of First Schedule to the Chartered Accountant Act, 1949.

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

Sd/-
(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

Sd/-
(CA. CHANDRASEKHAR VASANT CHITALE)
MEMBER

DATE: 16-12-2019
PLACE: New Delhi

Certified True Copy

Mukesh Kumar Mittal
Assistant Secretary
Disciplinary Directorate
The Institute of Chartered Accountants of India
Bai Bhawan, I.P. Marg, New Delhi-110 002