



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

[PRP-194/15-DD/189/15-DC/906/18]

**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.**

[PRP-194/15-DD/189/15-DC/906/18]

Sh. Ramdas Warriar
Flat No. 201, Wing AA6,
Siddharth Nagar Bldg. No. 1 CGHS,
Magathane, Borivalli (East),
MUMBAI – 400 006

Sh. Krishan Kumar Nair
Flat No. 302, Wing AA6,
Siddharth Nagar Bldg. No. 1 CGHS,
Magathane, Borivalli (East)
MUMBAI – 400 006

.....Complainants

Versus

CA. Mahaveer Kumar Jain (M. No. 108978)
A6/601, Siddharth Nagar,
Opp. Bhor Industries,
Western Express Highway, Borivalli (East)
MUMBAI – 400 066

.....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

DATE OF MEETING : 21.08.2020 (Through Video Conferencing)



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

[PRP-194/15-DD/189/15-DC/906/18]

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. Mahaveer Kumar Jain (M.No.108978)** (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 Accountant Act, 1949.
2. The Committee noted that the Respondent was present before the Committee through video conferencing mode. On being asked about his submissions, he submitted that he has already submitted his written statement in response to the findings of the Committee. In addition to that the Respondent admitted that the alleged lapse was an error of presentation on his part and it was a judgmental error. The Respondent also admitted error on his part when specifically asked about charge that 25% of the net profit amount which was supposed to be transferred in the reserve fund. Additionally, he submitted that preparing Balance Sheet was not his duty as he a treasurer only. Moreover, he stated that such alleged error was supposed to be detected in the audit. The Respondent further submitted that he had a medical history and prays before the Committee to take a lenient view in his case.
3. The Committee while looking into the matter and the conduct of the Respondent was of the opinion that the Respondent was acting bonafidely with the post of Treasurer and the errors could have been detected by the auditor. Therefore, considering the allegations against the Respondent, the stand offered by him in his defense and evaluating the gravity of the possible implications of the lapses alleged, the Committee opined that end of justice will be met if the Respondent is given minimal punishment.



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

[PRP-194/15-DD/189/15-DC/906/18]

4. Therefore, keeping in view the facts and circumstances of the case, material on record, and submissions of the Respondent before it, the Committee ordered the Respondent i.e. CA. Mahaveer Kumar Jain (M.No.108978) to be Reprimanded.

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

(approved & confirmed through email)
(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

(approved & confirmed through email)
(CA. PRAMOD KUMAR BOOB)
MEMBER

Certified to be true copy
Jyotika Grover
Jyotika Grover
Assistant Secretary,
Disciplinary Directorate
The Institute of Chartered Accountants of India,
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

10

Faint, illegible text at the top of the page, possibly a header or introductory paragraph.

Faint, illegible text block on the left side of the page.

Faint, illegible text block on the right side of the page.

Faint, illegible text block on the left side of the page.

Faint, illegible text block on the right side of the page.

Centered to be this copy

The Institute of Chartered Accountants of India
ICAI Bawana, Gurgaon Road, New Delhi - 110028
Discretionary Provision
Assistant Secretary
Gurgaon Branch

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-194/15-DD/189/15-DC/906/2018]

In the matter of:

**Sh. Ramdas Warriar
Flat No. 201, Wing AA6,
Siddharth Nagar Bldg. No. 1 CGHS,
Magathane, Borivalli (East),
MUMBAI – 400 006**

**Sh. Krishan Kumar Nair
Flat No. 302, Wing AA6,
Siddharth Nagar Bldg. No. 1 CGHS,
Magathane, Borivalli (East)
MUMBAI – 400 006**

.....Complainants

Versus

**CA. Mahaveer Kumar Jain (M. No. 108978)
A6/601, Siddharth Nagar,
Opp. Bhor Industries,
Western Express Highway, Borivalli (East)
MUMBAI – 400 066**

.....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, Bandra Kurla Complex, MUMBAI

PARTY PRESENT:

Complainant : Shri Ramdas Warriar

Respondent : CA. Mahaveer Kumar Jain

BRIEF OF THE CHARGES:-

1. The Committee noted that the instant complaint relates to the allegations raised by the Complainants regarding the mistakes / anomalies in the Financial Statement of the Siddharth Nagar Building No. 1, Co-operative Housing Society Limited, Mumbai (hereinafter referred to as the '**Society**') for the financial years 2009-10 to 2013-14 against the Respondent, who was the treasurer of the Society. It is noted that the Respondent was held prima facie guilty in respect of following charges:-
 - i) In first charge, the Complainant pointed out mistakes in accounting entries which relates to Repair and Painting Contribution. It was alleged that closing balance as on 2011-12 does not tally with the opening balance for F.Y. 2012-13.
 - ii) In second charge, it is alleged that 25% of the amount of the net profit should be transferred to Reserve Fund of the Society which is not reflected in the Statement of Income & Expenditure for the years ended 31st March, 2012, 31st March, 2013, and 31st March, 2014.
 - iii) In third charge, it is alleged that there were anomalies in 'Reserves & Surplus' in annexure of Balance Sheet as at 31st March, 2012. The Complainant observed that the interest on Sinking Fund for the Financial Year 2011-12(C-38) is lower than that of the previous Financial Year 2010-11(C-26), in spite of the fact that the additions are made to the Sinking Fund during the year under consideration.
 - iv) The next charge is regarding legal expenses shown as 'current liabilities' and legal charges shown as 'Advances' in the Balance Sheet for financial years 2009-10 to 2013-14.
 - v) In next charge, it was alleged that the Complainants had sought an explanation regarding the fixed deposits of the Society which were shown in odd amounts, no movement of fixed deposits noticed in the balance Sheet for the financial year 2010-11, 2012-13, and 2013-14, no disclosure of fixed deposits in the annexure and inconsistency regarding the interest income accounted on FD's were mentioned.





vi) In next charge, the Complainants raised queries related to standards and processes of maintaining books of accounts regarding the documents / letters related to 'Emergency Pipeline Repair' of Wing AA6 (C-90 to C-105) that the name and address of vendor is missing, documents being spurious, Bill / invoice no. missing, wrong supporting documents, TAN no., TIN no. and PAN no. of the vendor are missing, TDS has not been deducted, and that only treasurer or secretary has signed the voucher while it is mandatory to have two signatures on every Society voucher.

vii) The next charge relates to the receipt for refund of security deposit paid by the residents at the time of flat's internal repairs where it has been alleged that the receipt does not bear any serial number, the receipt issued to one of the Complainant was signed by the Secretary while receipts are normally signed by the treasurer and the description given in it does not match the verbal explanation.

BRIEF OF THE DISCIPLINARY PROCEEDINGS:-

2. On the day of first hearing held on 18th April, 2019, the Committee noted that the Complainants were present. The Respondent 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 affirmatively and opted to defend his case. The Complainants explained their case and the Respondent made his brief submissions on his role in the case. The Committee also posed questions to the Complainants and the Respondent. After hearing the submissions of the Complainants and the Respondent, the Committee decided to adjourn the hearing in the matter. The Committee informed the Complainant that it is giving time to them to get the enquiry done in respect of re-audit and in case of failure, the report of re-audit would be taken as final document. The Committee also directed the Complainant to submit the copy of re-audit report conducted in the alleged matter. The Respondent stated that since he is suffering with eye problem and he requires more time to prepare his defence in the matter. On the same, the Committee decided to fix the hearing in the above matter in the June, 2019.

8

- 2.1 On the day of final hearing i.e. on 24.06.2019, the Committee noted that both the Complainant and the Respondent were present. When the Committee continued the hearing from the stage as it was left in last hearing, neither the Complainant nor the Respondent objected to the same. The Complainant and the Respondent made their respective submissions. The Committee also posed questions to the Complainant and the Respondent. After hearing the submissions of the Complainant and the Respondent, the Committee concluded the hearing.

FINDINGS OF THE DISCIPLINARY COMMITTEE:-

3. In respect of first charge related to opening balance of Repair & Painting Contribution not matching with the closing balance of previous year, the Respondent stated that the error in respect of disclosure of amount of opening balance was noticed during the re-audit of the Society's accounts. The Respondent stated that the value of previous year was intended to be taken for better presentation to show cumulative values. None of member even pointed out this error. This error is un-intentional remained unattended during verification process as well is regretted.
- 3.1 The Committee noted that it is the defence of the Respondent that mistake was only grouping and presentational error. During the course of hearing, to specific questions as to how closing balance of Repair & Painting Fund became zero at the end of financial year 2011-12 and how different figures was carried forward to next year, the Respondent invited attention to the bifurcation of Repair & Painting Fund as shown in the Balance Sheets.
- 3.2 Upon perusal of the documents and submissions on record, the Committee noted total expenses of Rs.24,01,380/- incurred on repair & painting was not shown in the Income & Expenditure Account for the year ended 31st March, 2012. When the Respondent was asked to clarify the same, he stated that Rs.12,98,991/- was incurred on repair & panting and the same was shown in the Balance Sheet. The Committee was not satisfied with the submissions of the Respondent and it is of the view that expenses incurred on repair & painting was required to show in the Income & Expenditure Account. Further, there was not satisfactory clarification from the Respondent as to how zero balance became Rs.24,01,380/- in next year. It is noted that the Respondent

was signatory to the Balance Sheets of the Society. Being a Treasurer and signatory to the Balance Sheet, he was required to check the accuracy of the figures and presentations of the financial statement. Since the Respondent failed to exercise due diligence before signing the financial statements, he is guilty of professional misconduct falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

4. As regard next charge related to transfer of 25% of the net profit to the Reserve Fund, the Respondent stated that when he was treasurer of the Society, he was not aware of the requirement of transferring 25% of net profit to the Reserve Fund. In this regard, the Committee noted that as per para 149(a) of Maharashtra Co-operative Housing Society Bye Laws, ***"After providing for the interest upon any loans and deposits and after making such other deductions as required under Section 65(1) and 66 of the MCS Act, 1960 and Rule 49A of MCS Rules, 1961, Twenty five percent of the net profit of all the business carried on by or on account of the society shall be placed at the credit of the Reserve Fund of the society"***. On perusal of papers on record, it is seen that such appropriation of net profits to the reserve fund has not been made in the financial statements of the respective years. Further, it is to be noted that the Respondent, as a treasurer was required to ensure that the accounts of the Society should have been prepared in compliance of the requirement of Maharashtra Co-operative Bye Laws. Thus, the Respondent is **GUILTY** of misconduct falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.
5. As regard the next charge related to interest on sinking fund, legal expenses and fixed deposit, the Committee noted that the Complainant could not provide relevant details and bifurcation of above items. In absence of such details and bifurcation, it was not possible for the Committee to ascertain the difference as pointed out by the Complainant. Further, the Respondent brought on record that legal expenses have been shown in the financial statements as per decision of the General Body. He also stated that the same presentation was followed in earlier years when he was not treasurer of the Society. Keeping in view of above, the Committee decided to hold the Respondent not guilty with respect to above charges.

6. In respect of next charges related to Voucher and Invoices not being maintained properly, non-deduction of TDS and refund of security, the Respondent stated that invoices and vouchers were being maintained by the Accountant and stated that since he was in service, it was not possible for him to check the vouchers, invoices and statutory compliances. He also stated that he has not signed the voucher. On the contrary, the Complainant stated that the Society was caught and penalized Rs.1,90,000/- by the Income Tax Authorities for evading Income Tax during 2010-11 when the Respondent was Joint Treasures. Further, the Income Tax Department also issued recovery notice for 2011-12. The Complainant also pointed out that the Society was caught and penalized Rs.1,21,000/- by CGST Authorities for evading Services Tax during the 2014-15 and 2015-16 when the Respondent was Treasurer. He emphasized that due to negligence of the Respondent, the Society had to pay the penalties.
- 6.1 Keeping in view all the submissions and documents on record, the Committee noted the admission of the Respondent that since he was in service, he could not verify the records of the Society. As regard the role of the Treasurer, it is noted that though nothing has been mentioned in the Bye-laws of the Society, yet as per general parlance, treasurer is responsible for ensuring financial and legal compliance and for payments and receipts. The Committee is of the view that though maintenance of the voucher was not part of the duties of the Respondent, yet there were instances of default of payment of tax and tax evasion due to which Income Tax and Service Tax Department levied penalties on the Society which were not rebutted by the Respondent during the course of hearing. Hence, the Respondent as Treasurer failed to ensure the compliance of tax provisions and failed to exercise due-diligence in conduct of his duties as Treasurer. Accordingly, he is guilty of professional misconduct falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.



CONCLUSION:-

7. Thus in the considered opinion of the Committee, the Respondent is **GUILTY** of Professional Misconduct falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949 in respect of charges related to opening balance of Repair & Painting contribution, transfer of 25% of the net profit to the Reserve Fund and failure to exercise due diligence in conduct of his duties as Treasurer as mentioned in paras (including sub paras) no.3,4 & 6.

&

Sd/-

(CA. ATUL KUMAR GUPTA)
PRESIDING OFFICER

Sd/-

(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

Sd/-

(CA. CHANDRASHEKHAR VASANT CHITALE)
MEMBER

Certified True Copy



Mukesh Kumar Mittal
Assistant Secretary
Disciplinary Directorate

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

DATE : 10-02-2020

PLACE : New Delhi

