



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

[PR-224/16/DD/281/16/DC/913/18]

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-224/16/DD/281/16/DC/913/18]

**Shri Haresh Hingorani,
4B/1, Versova View CHS Ltd.,
4, Bungalows, Andheri (West)
MUMBAI 400 053.**

.....Complainant

Versus

**CA. Vijay Anant Mungale (M.No.048339)
M/s. Vijay Mungale & Associates,
16, A/36, Takshila,
Mahakali Caves Road,
Andheri (East)
MUMBAI 400 093.**

.....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 : 07.08.2020 (Through Video Conferencing)

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 07.01.2020 the Disciplinary Committee was inter-alia of the opinion that **CA. Vijay Anant Mungale (M.No.048339)** (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 Respondent was present before the Committee in Mumbai office of ICAI through video conferencing mode. On being asked about his submissions, if any, in his defense or any comments on the report of the Committee finding him guilty, he mentioned that he has already

CA. Vijay Anant Mungale (M.No.048339), Mumbai:



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submitted his written statement dated 3rd July, 2020 in response to the findings of the committee. In addition to the said written statement already submitted by him, he narrated the instances of a series of medical and economic events happened in his family and office virtually breaking him and created serious challenges for him. Thereafter, he requested the Committee to consider his case on a most merciful and humanitarian ground while deciding the quantum of punishment.

3. The Committee while looking into the matter, considering written and oral submissions of the Respondent before it and the conduct of the Respondent, is of the opinion that although the Respondent has failed to verify the details of maintenance charges, however considering the nature of lapse on the part of the Respondent & its gravity and request of the Respondent for taking a lenient view in his case in the light of medical and economic emergency happened recently in his family, decided to reprimand the Respondent.

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 that the Respondent i.e. CA. Vijay Anant Mungale (M.No.048339) 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


Mukesh Kumar Mittal
Assistant Secretary,
Disciplinary Directorate
The Institute of Chartered Accountants of India,
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

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-224/16/DD/281/16/DC/913/18

In the matter of:

Shri Haresh Hingorani,
4B/1, Versova View CHS Ltd.,
4, Bungalows, Andheri (W),
Mumbai – 400 053

.....Complainants

-Vs.-

CA. Vijay Anant Mungale(M.No.048339)
M/s. Vijay Mungale & Associates,
16, A/36, Takshila,
Mahakali Caves Road,
Andheri (E),
MUMBAI – 400 093

.....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 : Not Present
Respondent : CA. Vijay Anand Mungale
Counsel for the Respondent : Shri S.G. Gokhale





1. In this case, it is noted that the Respondent was the auditor of M/s. Versova View Co-operative Housing Society Ltd. (hereinafter referred to as the "Society") for the Financial Year 2014-2015. The charge levelled against the Respondent is that he has not qualified his Audit Report in respect of charging of non-occupancy charges by the society in excess of 10% under false and discriminatory account heads, in contempt of the Hon'ble Supreme Court and High Court Orders of 2007, thereby defrauding and misappropriating the members' funds.

BRIEF OF THE DISCIPLINARY PROCEEDINGS:-

2. The Committee noted that the Complainant was not present. The Respondent was present along with his Counsel. The Respondent was administered oath. The Office read out the charges levelled against the Respondent, to which the Respondent pleaded not guilty and opted to defend his case. The Respondent made his submissions on the charges. The Committee posed questions to the Respondent. The Counsel for the Respondent stated that in para no.8.6 of the Prima Facie Opinion, as mentioned, the Respondent has not admitted that the Society was regularly charging and recovering the excess of non-occupancy charges. After hearing the submissions, the Committee decided to conclude the hearing in the above matter.

FINDINGS OF THE DISCIPLINARY COMMITTEE

3. In respect of charge, the Committee noted that the Respondent made the following submissions in his defence:-

3.1 Regarding collection of Non Occupancy Charges, first of all, the Respondent clarified that 42nd AGM was held on 5th August 2012 and not in 2015. He stated that the reason for clarifying this is that, wrong year pushes the events as minutes of his audit period being FY 2015-16 and hence falsely puts onus on him to qualify/verify the same.

3.2 The Respondent stated that the Society had cleverly opted to show the legitimate NOC of 10% service charges separately in income and expenditure account and with deliberately clubbed the excess NOC collected in the service charges head, the Respondent had no reason of any suspicion of the illegitimate act of the Society

While auditing. He also stated that such excess collected amount was substantial in nature. Since it was clubbed in the service charges in previous years' column of Income and Expenditure Accounts too, the said service charges figures were so much comparable with the previous years, he could never make out the anomaly and he had no apparent easy audit mechanism to detect the same on the face. As per the general auditing principles and practices practically most of the audit is conducted on random checking basis.

3.3 As far as major income part is concerned, every member has a direct control over his income data in society as he receives periodical maintenance bills for the same. And discrepancies are mostly pointed out and corrected/resolved by the respective members through society directly. Hence the audit of income side is generally given secondary preference in society audits based on the availability of time.

4. During the course of hearing when the Committee enquired from the Respondent as to whether he was aware of the fact that the Society was charging additional charges, the Respondent reiterated that as per decision taken by the Society in the year 2006, it was charging additional charges since 2006. The Society has been collecting it and clubbing it in services charges. He also stated that no previous auditor had pointed out the aforesaid anomaly in his report and during his period of audit, there was nothing on record which could raise any suspicion in his mind about charging of additional services charges in excess of prescribed statutory limit.

5. Upon perusal of all the facts on record and submissions, the Committee noted that there was no doubt that the Society was charging Non Occupancy charges and also additional maintenance charges from the members who have let out their Flat / Premises. The said fact was evident from the minutes of 43rd Adjourned Annual General Meeting of the Society held on 15th September, 2013. It is also noted that as per the requirement of the Section 79A of the Maharashtra State Co-operative Societies Act, 1960, the Society cannot collect any charges in the guise of "Shifting Charges", or "Tenancy Deposit" or higher non-occupancy charges, over and above the mandatory 10% Non-Occupancy Charges on the Society's service / Maintenance charges. The defence taken by the Respondent that he could not verify the additional charges because of the fact that excess charges were clubbed with the services



charges and nothing was pointed out by the previous auditors in this regard. It is not tenable and shows his casual approach towards the audit. The Committee would like to clarify that each year audit is an independent audit and every auditor is required to plan his audit programme as per nature and volume of transactions of the entity and apply different procedures to verify the transactions. But in the instant matter, as apparent, the Respondent failed to verify the details of maintenance charges. During the course of hearing, the Committee observed from the submissions of the Respondent, transactions related to Income from services charge were limited and can be verified by the Respondent. If he had verified the details of maintenance charges charged from the members and analysis of figures of service charges and Non-Occupancy charges, he would have detected the charging of excess Non-Occupancy charges under the guise of additional maintenance charges by the Society from the members, who let out their flat on rent, in violation of provisions of the Maharashtra State Co-operative Societies Act, 1960. Accordingly, the Committee is of the view that since the Respondent, as an auditor, failed to qualify his audit report in respect of charging Non-Occupancy charges in excess of statutory limit as prescribed in the Maharashtra State Co-operative Societies Act, 1960, he is guilty of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

CONCLUSION

6. 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 (7) of Part I of Second 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: 7-1-2020
PLACE: Mumbai

Certified True Copy


Mukesh Kumar Mittal
Assistant Secretary
Disciplinary Directorate