



# THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

[PR/285/2014-DD/302/14/DC/526/2017]

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.

File No. : [PR/285/2014-DD/302/14/DC/526/2017]

In the matter of:

**Mr. Rajiv Nahar,**

S/o. Shri Kantilal Nahar,

R/o. 4, Gulmard Colony,

Near Saket

Indore – 452001, M.P.

.....Complainant

Versus

**CA. Saji K. Thomas, (M.No.205954)**

M/s. Saji K. Thomas & Co., Chartered Accountants,

Office No.39/5581-A,

Thoundayil Building, Thoundayil Lane,

Panampilly Nagar,

Eranakulam - 682036,

Kerala

.....Respondent

Members present:

CA. Nihar N Jambusaria, Presiding Officer

Smt. Anita Kapur, Member (Govt. Nominee)

Shri Ajay Mittal, Member (Govt. Nominee)

CA. Chandrashekhhar Vasant Chitale, Member

CA. P.K. Boob, Member

**Date of Final Hearing : 11.05.2021 through Video Conferencing**

**Place of Hearing : Mumbai**

Party Present:

**CA. Saji K. Thomas, (M.No.205954) – Respondent (appeared from his residence)**

1. That vide report dated 22<sup>nd</sup> January 2021 (copy enclosed), the Disciplinary Committee was of the opinion that **CA. Saji K. Thomas, (M.No.205954)** was **GUILTY** of Professional and Other Misconduct falling within the meaning of Clause (9) of Part I and Clause (2) of Part IV of the First Schedule as well as Clause (7) of Part I of Second Schedule relating to the appointment of the Respondent being



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statutory auditor of M/s. Aeon Housing Private Limited (hereinafter referred to as “the Company”) for the Financial Years 2011-12 and 2012-13. It was alleged that the Respondent had accepted the appointment as Statutory Auditor of the Company for the said financial years without confirming compliance of the relevant provisions of the Companies Act, 1956 and that the balance sheets of the Company as on 31<sup>st</sup> March, 2012 and 31<sup>st</sup> March 2013 were certified without ensuring approval / authentication of minimum two Directors as required under Section 215 of the Companies Act, 1956. It was also alleged that the Respondent acted in connivance with Mr. Agy George, the Director of the Company, fraudulently certified Form No.23AC for filing the balance sheets for the F.Y. 31<sup>st</sup> March 2012 as well as Form No.20B for filing the annual returns for the F.Y. 31<sup>st</sup> March 2012 and 31<sup>st</sup> March 2013.

It was noted that Clause (9) of Part I and Clause (2) of Part IV of the First Schedule and Clause (7) of Part I of Second Schedule state as under: -

## *First Schedule*

### *Part I*

*“(9) the member is guilty of professional misconduct, if accepts an appointment as auditor of a company without first ascertaining from it whether the requirements of section 225 of the Companies Act, 1956 9 1 of 1956] in respect of such appointment have been duly complied with”;*

### *Part IV*

*“(2) in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work” and*

## *Second schedule*

### *Part I*

*“(7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties;”*

2. An action under Section 21B (3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and communication dated 23<sup>rd</sup> April 2021 was addressed to him thereby granting him an opportunity of being heard in person and/or to make a written representation before the Committee on 11<sup>th</sup> May 2021 through video conferencing.

3. The Respondent appeared before the Committee on 11<sup>th</sup> May 2021 through video conferencing from his personal location and made his oral representations on the findings of Disciplinary



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Committee. The Committee considered both the oral submissions as well written submissions made by the Respondent vide his letter dated 26<sup>th</sup> March 2021. The Respondent, at the outset, submitted that the "doctrine of indoor management" was not appreciated by the Committee which allowed him to trust on the documents issued by one of the directors of the Company. Instead, the Committee laid emphasis on trivial matters like style of letter head on which financials were printed etc to find fault with the Respondent. He further stated that charge of gross negligence was applicable wherein an attesting Chartered Accountant failed to perform his professional duties diligently. He contended that there was nothing on record that disputed the veracity of the financial statements of the Company or that challenged the audit quality. He further submitted that he was a victim for trusting up on documents and representations of one director, who was looking after the affairs of the Company at its location of operation, on their face value.

4. The Committee considered both the oral as well written submissions of the Respondent and noted that the only evidence available on record for appointment of Respondent as auditor was Form 23B which was filed by the Respondent himself on 04.08.2012, whereas intimation of appointment was made to him on 10.10.2011. On consideration of sequence of events, it was clear that the previous auditor was not reappointed and in his place the Respondent was appointed as auditor of the Company but neither the previous auditors had resigned nor attained any disqualification. In such circumstances, the Respondent should have ascertained compliance of Sec 225 of the Companies Act, 1956 to maintain its records lest any shareholder or previous auditor, thereafter, challenge his appointment. However, he failed to provide any evidence to support his appointment being bonafide.

4.1 As regard further charges of - certification of financials without ensuring their approval from Board and signature of directors statements as well as fraudulent certification of Form 23AC and 20B for filing balance sheets and annual returns pertaining to financial years March 2012 and 2013, the Committee noted that the set of financial certified carried discrepancies in terms of

- address mentioned on letter head being of Cochin rather than that of Registered Office and
- there were difference in the signature of Mr. Rajiv Nahar, the Director & Complainant of the Company which were not matching even to the naked eyes.
- Form 23AC which was filed by the Respondent for FY 2011-12 clearly reflected that only one Director, Agy George, had signed the balance sheet (as per point 3(c') of the Form) and the resolution



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authorizing him to file the financials with ROC was reported as NIL which, on reading with Form 20B (providing details shares held by the shareholders) indicated that majority of shareholders were not present in the Board meeting.

Thus, the said discrepancies raised question on certification done by the Respondent as well as his appointment for next financial year. Moreover both of these Forms being filed by the Respondent himself, signified that he was well aware of the circumstances prevailing at the Board meeting held in 2012. Accordingly, the Committee observed that both the appointment of the Respondent as well as certification works done by him were not in compliance with the requirements of the applicable laws and regulations.

5. The Committee thus viewed that the misconduct on the part of the Respondent has been held and established within the meaning of Clause (9) of Part I and Clause (2) of Part IV of the First Schedule and Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949 and keeping in view the facts and circumstances of the case as aforesaid, ordered that the name of the Respondent, **CA. Saji K. Thomas, (M.No.205954)** be removed from the Register of members for a period of 6 (six) months along with a fine of Rs. 15,000/- be levied upon him that shall be payable within a period of 3 months from the date of receipt of the Order. In case the Respondent, failed to pay the same as stipulated, the name of the Respondent, , **CA. Saji K. Thomas, (M.No.205954)** be removed for a further period of 1(one) month from the Register of members on the lines of Section 64 of the Indian

Penal Code.

Sd/-

[CA. Nihar N Jambusaria]  
Presiding Officer

Sd/-

[Smt. Anita Kapur]  
Member (Govt. Nominee)

Sd/-

[Shri Ajay Mittal]  
Member (Govt. Nominee)  
[approved and confirmed through e-mail]

Sd/-

[CA. Chandrashekhar Vasant Chitale]  
Member  
[approved and confirmed through e-mail]

Sd/-

[CA. P.K. Boob]  
Member  
[approved and confirmed through e-mail]

प्रमाणित सत्य प्रतिलिपि / Certified true copy  
*Mohit Khanna*  
CA. Mohit Khanna  
Assistant Secretary  
Disciplinary Directorate  
The Institute of Chartered Accountants of India  
ICAI Bhawan, Vishwa Nagar, Shikha, Delhi-110032

Date: 11<sup>th</sup> May, 2021

**CONFIDENTIAL**

**DISCIPLINARY COMMITTEE [BENCH – III (2020-21)]**  
**[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**

**File No. : [PR285/2014-DD/302/14/DC/526/2017]**

**In the matter of:**

**Mr. Rajiv Nahar,**  
S/o. Shri Kantilal Nahar,  
R/o. 4, Gulmard Colony,  
Near Saket  
Indore – 452001, M.P.

**.....Complainant**

**Versus**

**CA. Saji K. Thomas, (M.No.205954)**  
M/s. Saji K. Thomas & Co.,  
Chartered Accountants,  
Office No.39/5581-A,  
Thoundayil Building, Thoundayil Lane,  
Panampilly Nagar,  
Ernakulam - 682036, Kerala

**.....Respondent**

**MEMBERS PRESENT:**

**CA. Atul Kumar Gupta, Presiding Officer**  
**Smt. Anita Kapur, Member (Govt. Nominee)**  
**Shri Ajay Mittal, Member (Govt. Nominee)**  
**CA. Chandrashekhar Vasant Chitale, Member**

**Date of Final Hearing: 8<sup>th</sup> October, 2020 through Video Conferencing**  
**Place of Hearing: New Delhi**

**PARTIES PRESENT:**

- (i) Adv. Jatin Sehgal – Counsel for the Complainant**
- (ii) CA. Saji K. Thomas – the Respondent**
- (iii) CA. C V Sajan – Counsel for the Respondent**

Mr. Rajiv Nahar, Indore –vs- CA. Saji K Thomas (M.No.205954)

**Charges in Brief**

1. The Committee noted that in the Prima-Facie Opinion formed by Director (Discipline) in terms of Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Respondent is held prima-facie guilty under Clause (9) of Part I of First Schedule, Clause (2) of Part IV of First Schedule and Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949. The said Clauses to the Schedules state as under:-

*First Schedule*

*Part I*

*"(9) the member is guilty of professional misconduct, if accepts an appointment as auditor of a company without first ascertaining from it whether the requirements of section 225 of the Companies Act, 1956 9 1 of 1956] in respect of such appointment have been duly complied with";*

*Part IV*

*"(2) in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work" and*

*Second schedule*

*Part I*

*"(7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties;"*

**Background of the case:**

2. The Respondent was the Statutory Auditor of M/s. Aeon Housing Private Limited (hereinafter referred to as "**the Company**") for the Financial Years 2011-12 and 2012-13 and the Complainant, who was director of the Company along with Mr.Harish Pardasani and Mr.Agy George, has raised allegations against the Respondent in respect of the following:

2.1 That the Respondent was appointed as auditor of the Company by a single director Mr.Agy George without informing other directors or convening any meeting of either Board of Directors or that of members of the Company. Thus, it was alleged that the Respondent had accepted the appointment as Statutory Auditor of the Company for the Financial Years 2011-12 and 2012-13, without confirming compliance of the prescribed procedure under the Companies Act, 1956 particularly the provisions of

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section 224, 225, 190, 166, and 171 and other applicable provisions of the Companies Act, 1956.

2.2 That the balance sheets of the Company as on 31<sup>st</sup> March, 2012 and 31<sup>st</sup> March 2013 were certified without ensuring approval thereof by the Board and authentication / signature of minimum two Directors as required under Section 215 of the Companies Act, 1956.

2.3 That the Balance Sheets of the Company as on 31<sup>st</sup> March, 2012 and 31<sup>st</sup> March, 2013 were neither circulated to the Director's nor signed by minimum two Directors and were never circulated to the members also alongwith the report of the Auditors.

2.4 That the Respondent acted in connivance with Mr. Agy George, the Director of the Company, and fraudulently certified Form No.23AC for filing the balance sheets as on 31<sup>st</sup> March, 2012 (C-40 to C-50 as Annexure 4) and 31<sup>st</sup> March, 2013 (C-51 to C-61 as Annexure 5) as well as Form No.20B for filing the annual returns for the financial year ending 31<sup>st</sup> March 2012 (C-62 to C-79 as Annexure 6) and 31<sup>st</sup> March, 2013 (C-80 to C-97 as Annexure 7)

#### Proceedings:

3. On 8<sup>th</sup> October, 2020, during hearing, the Committee noted that the Counsel for the Complainant and the Respondent alongwith his Counsel were present through video conferencing from their respective place (s). As this case was part heard on earlier date (s), the Committee enquired from the parties to have de-novo hearing or they wish to continue from earlier stage it was left. The parties agreed that the matter be taken up from the stage it was left during the last hearing.

3.1 The Committee asked the Counsel for the Respondent and Respondent to give their submissions. Thereafter, after recording the submissions, the Committee examined the Counsels of the Complainant and the Respondent.

3.2 Thereafter, the Counsel for the Respondent made his final submissions and after perusal of documents and information available on record and after considering the

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oral and written submissions made by the parties, the Committee concluded hearing in the matter

**Findings of the Committee:**

4. At the outset, the Committee noted that the Complainant had raised four allegations against the Respondent and that third allegation (as mentioned in sub-paragraph 2.3 of Paragraph (2) above) was dropped in the prima facie opinion. Accordingly, the Committee considered remaining allegations against the Respondent for further inquiry wherein it was alleged that:
  - 4.1 the Respondent was appointed as auditor of M/s. Aeon Housing Private Limited (hereinafter referred as the Company) by one director Mr. Agy George without informing other directors or convening any meeting of Board or members of the Company and that the Respondent accepted the appointment of being Statutory Auditor of the Company for the Financial Years 2011-12 and 2012-13, without confirming compliance of the prescribed procedure under the Companies Act, 1956 particularly the provisions of section 224, 225, 190, 166, and 171 and other applicable provisions of the Companies Act, 1956.
  - 4.2 The other charge relates to
    - 4.2.1 Certification of balance sheets of the Company as on 31st March, 2012 and 31st March 2013 which was alleged to be certified without ensuring approval thereof by the Board and authentication/ signature of minimum two Directors as required under Section 215 of the Companies Act, 1956, and
    - 4.2.2 Fraudulent certification of Form No.23AC and Form 20B for filing the balance sheets and annual returns of financial years ending on 31st March 2012 and 31st March, 2013.
5. The Committee gave its findings in respect of charges as discussed in paragraph (4) above as under:-
  - 5.1.1 In respect of first charge, the Committee noted that whereas the immediate previous auditor had audited the financial statement of FY 2010-11 on 18.08.2011(D-10), the Respondent was appointed as Statutory auditor for Financial Year 2011-2012 vide letter dated 30.09.2011 stating that he was appointed by the shareholders in Annual General Meeting (D-7). However, the

Mr. Rajiv Nahar, Indore -vs- CA. Saji K Thomas (M.No.205954)



Committee noted the Notice of AGM dated 18/08/2011, as available on record, that it was scheduled on 30<sup>th</sup> September, 2011 wherein under business to be transacted at AGM included the appointment of auditors reporting that M/s. Adeshwar C. Jain & Co. i.e. previous auditors had offered themselves as being eligible for re-appointment as statutory auditor of the Company (Pg 16 of WS dated 23/11/2019). Accordingly, it was viewed that firstly in the notice of AGM information about previous auditors being eligible for appointment as auditors was only circulated among the shareholders whereas the Respondent had submitted a letter of appointment in his name stating that he was appointed in the said meeting.

5.1.2 The Committee also looked for the AGM Minutes for the resolution to retrieve any information therefrom to confirm if the Respondent's appointment was bonafide but the Respondent stated that there was no document available with him other than his appointment letter. The Committee also asked the Respondent to produce 'No Objection Certificate' obtained by him from the previous auditor before accepting the audit, but same was also not available with him.

5.1.3 The Committee observed that with respect to appointment of the Respondent as auditor of the Company for the Financial Year 2011-12, the only evidence available on record was Form 23B which was filed by the Respondent himself on 04.08.2012, whereas intimation of appointment was made on 10.10.2011. On consideration of sequence of events as evident from documents available on record, it was viewed that the previous auditor was not reappointed and in their place the Respondent was appointed as auditor of the Company. It was noted that in extant case neither the previous auditors had resigned nor attained any disqualification. In such circumstances, it was viewed that onus was on the Respondent to ascertain compliance of Sec 225 of the Companies Act, 1956 and also to maintain its records lest any shareholder or previous auditor, thereafter,

Mr. Rajiv Nahar, Indore -vs- CA. Saji K Thomas (M.No.205954)

challenge his appointment. Since the Respondent failed to produce any evidence except Form 23B that he had undertaken verification for compliance of Section 225 of the Companies Act, 1956 the Respondent was held guilty in this charge under Clause (9) of Part I of First Schedule to the Chartered Accountants Act, 1949.

5.2 In respect of second charge, the Committee perused the balance sheet in respect of which it was alleged that there was only one signature on the financial statements which was stated to be in violation of Section 215 of the Companies Act, 1956. The Committee noted that although there were two signatures on the balance sheet being produced before it for financial year ended March, 2012, but the same was evaluated on two aspects - one with respect to address mentioned on letter head on which the financial statements were published. It was noted that the said letter head had the address of Cochin imprinted on it whereas the address of the registered office was that of Indore. It was viewed that the financial statements being signed by the Respondent was not as per the requirement of law when the same bear the address of registered office on its official publications as Sec 147 (c') of the Companies Act, 1956 states as follows:

*"shall have its name and the address of its registered office mentioned in legible characters in all its business letters, in all its bill heads and letter paper, and in all its notices and other official publications ; and also have its name so mentioned in all bills of exchange, hundies, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts and letters of credits of the company"*

5.2.1 Further, the Committee noted difference in the signature of Mr. Rajiv Nahar, the Director of the Company and the Complainant of the matter, when his signature on Form I & that on financials of 2009-10 (C-11 to C-17) were compared with the financials of 2011-12 and 2012-13, certified by the Respondent, the signatures were not matching even with a naked eye. Further, on review of Form 23AC, as

filed by the Respondent for filing financials of FY 2011-12, it was noted that the said Form reported that only one Director, Agy George, to have signed the balance sheet (as per point 3(c') of the Form) and with respect to resolution authorising the director to file the financials with ROC it was reported as NIL when verified by the Director in the end of the Form. The said Form read with Form 20B providing details shares held by the shareholders, it was evident that majority of shareholders were not present in the Board meeting which raises question on the certification done as well as the appointment of the Respondent for next financial year. Moreover both of these Forms were filed by the Respondent himself, thus, signifying that he was well aware of the circumstances prevailing at the Board meeting held in 2012. The Committee was thus of the opinion that the facts available on record were sufficient to reflect as to how the Respondent was appointed. It was also noted that the Respondent had failed to bring on record any documentary evidence viz. minutes of the AGM to substantiate that his appointment as well as certification works done by him were bonafide and in compliance with the requirements of the applicable laws and regulations.

5.2.2 In view of the above noted findings, the Committee was of the considered opinion that there were clear lapses in due diligence exercised by the Respondent, not only in terms of the getting appointed as auditor of the Company but also of his casual behaviour while carrying his professional duties which was unbecoming of a chartered accountant. Accordingly, the Respondent was held guilty under Clause (2) of Part IV of First Schedule and Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

**Conclusion :**

6. Thus, in the considered opinion of the Committee, the Respondent is **GUILTY** of professional and/or other misconduct falling within the meaning of Clause (9) of Part I and Clause (2) of Part IV of the First Schedule and Clause (7) of Part I of Second

Schedule to the Chartered Accountants Act, 1949 [as amended by the Chartered Accountants (Amendment) Act, 2006].

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Sd/-

**CA. Atul Kumar Gupta**  
**Presiding Officer**

Sd/-

**Smt. Anita Kapur**  
**Government Nominee**

Sd/-

**Shri Ajay Mittal**  
**Government Nominee**

Sd/-

**CA. Chandrashekhar Vasant Chitale,**  
**Member**

**DATE: 22<sup>nd</sup> January, 2021**

**PLACE: New Delhi**

Certified to be True Copy  
*Mohita Khanna*  
(Mohita Khanna)  
Assistant Secretary  
Disciplinary Directorate  
The Institute of Chartered Accountants of India