



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

[PR-15/2018-DD/35/2018/DC/1528/2021]

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-15/2018-DD/35/2018/DC/1528/2021]

In the matter of:

Shri Shailesh P. Gonawala,
3/1884, Chandi Bhavan,
Khangarh Sheri,
Salabatpura
SURAT - 395 003

.... **Complainant**

-Vs-

CA. Tinish Rajendra Mody (M.No.103570)

M/s. T.R. Mody & Associates, Chartered Accountants,
No. 572-B-1, First Floor,
Adarsh Society, Buthnath Mahadev Mandir lane,
Opposite Electric substation,
Near Gokuldharm Dairy Athwaliness,
SURAT – 395007

.... **Respondent**

MEMBERS PRESENT (Physically):

1. **CA. (Dr.) Debashis Mitra, Presiding Officer**
2. **Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee**
3. **Shri Arun Kumar, I.A.S. (Retd.), Government Nominee**
4. **CA. Rajendra Kumar P, Member**
5. **CA. Cotha S Srinivas, Member**

DATE OF MEETING : 08.04.2022 (Through Physical/ Video Conferencing Mode)

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 11.02.2022, the Disciplinary Committee was inter-alia of the opinion that **CA. Tinish Rajendra Mody (M.No.103570)** (hereinafter referred to as the **Respondent**) was **GUILTY** of professional misconduct falling within the meaning of Item (6), (7) and (8) of Part I of the Second Schedule to the Chartered Accountant Act, 1949.



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[PR-15/2018-DD/35/2018/DC/1528/2021]

2. The Committee noted that the Respondent was present through video conferencing mode. The Respondent represented that for verification of opening Balances for financial year 2012-13, he relied on statutory audit report of previous year signed by another Chartered Accountant. He further stated that subsequently all accounts were accepted in the Annual General Meeting. The Respondent submitted that such inadvertent mistake was done for the first time and he prayed for lenient view in his case.

3. The Committee noted that the Complainant himself had signed the financial statements for the F.Y. 2011-12 and subsequently the financials of Financial Year 2011-12 were accepted in full in the Annual General Meeting held on 5th August 2017.

4. The Committee while looking into the matter and the conduct of the Respondent, is of the opinion that it is clearly coming out from findings that, lapse on the part of the Respondent was not mentioning in his audit report the fact that accounts are pending for approval in Annual General Meeting by Shareholders. The Committee is convinced that this is a technical lapse and the Respondent in question deserves a lenient view as mercy bears richer fruits than strict justice.

5. 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 CA. Tinish Rajendra Mody (M.No.103570), be reprimanded.

Sd/-

(CA. (DR.) DEBASHIS MITRA)
PRESIDING OFFICER

Sd/-

(MRS. RANI NAIR, I.R.S. RETD.)
GOVERNMENT NOMINEE

Sd/-

(SHRI ARUN KUMAR, I.A.S. RETD.)
GOVERNMENT NOMINEE

Sd/-

(CA. RAJENDRA KUMAR P)
MEMBER

Sd/-

(CA. COTHA S SRINIVAS)
MEMBER

Date: 01.06.2022

Place: New Delhi

प्रमाणित सत्य प्रतिलिपि / Certified true copy

सीए. ज्योतिका ग्रोवर / CA. Jyotika Grover
सहायक सचिव / Assistant Secretary

Shri Shailesh P. Gonawala, Surat -Vs- CA. Tinish Rajendra Mody (M.No.103570) of M/s. T.R. Mody & Associates,
Chartered Accountants, Surat

The Institute of Chartered Accountants of India
अनुशासक परिषद् / Council
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

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CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2021-2022)]

[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. : [PR/15/18-DD/35/18-DC/1528/21]

In the matter of:

Shri Shailesh P Gonawala
3/1884, Chandi Bhavan,
Khangad Sheri,
Salabatpura,
SURAT – 395 003

.....Complainant

Versus

CA. Tinish Rajendra Mody (M. No. 103570)
M/s. T R Mody & Associates,
Chartered Accountants,
No. 572-B-1, First Floor,
Adarsh Society, Bhutnath Mahadev Mandir Lane,
Opp. Electric Sub Station,
Near Gokulam Diary Athwalines,
SURAT – 395 007

..... Respondent

MEMBERS PRESENT:

CA. (Dr.) Debashis Mitra, Presiding Officer (Through VC)
Shri Rajeev Kher, Government Nominee (Through VC)
CA. Babu Abraham Kallivayalil, Member (Through VC)
CA. Rajendra Kumar P, Member (Present in person)

DATE OF FINAL HEARING : 31.01.2022 (Through Video Conferencing)

PARTIES PRESENT :

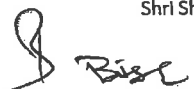
Counsel for Complainant : Shri S Suryanarayanan, Advocate
Respondent : CA. Tinish Rajendra Mody
Counsel for Respondent : Mr. Dhiren R. Dave, Company Secretary

CHARGES IN BRIEF:-

1. The Committee noted that the Respondent was auditor of the M/s. Shree Saisang Associates Private Limited (hereinafter referred to as the “**Company**”), The Committee noted that the Respondent was held prima-facie Guilty by the Director (Discipline) of Professional Misconduct falling Items (5), (6), (7), (8) and (9) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 on the following charges:
 - a. That the Respondent failed to disclose in audit reports for the financial year ended 31.03.2014 that sale of 12 plots for Rs.96,51,800/- were omitted to be recorded in the books of accounts though the Respondent as auditor had knowledge of the same.
 - b. That the Respondent audited the accounts for the financial year 2012-13, 2013-14, 2014-15 and 2015-16 before laying accounts for the financial year 2011-12 at the AGM.

BRIEF FACTS OF THE PROCEEDINGS:

2. On the day of the final hearing on 31st January, 2022, the Committee noted that the Complainant Counsel Shri S Suryanarayanan, Advocate was present from his place through Video Conferencing mode. The Committee also noted that the Respondent alongwith his counsel Mr. Dhiren R. Dave, Company Secretary were present from their respective places through Video Conferencing mode.
 - 2.1 The Respondent was administered on Oath. Thereafter, the Committee enquired from the Respondent as to whether he is aware of the charges to which the

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Respondent replied in affirmative and pleaded Not Guilty to the charges leveled against him.

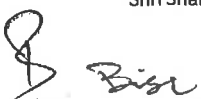
- 2.2 The Committee noted that the Complainant in the complaint levied 10 charges against the Respondent. The Director (Discipline) in his prima-facie opinion after consideration of all charges held the Respondent guilty of only 2 charges (mentioned in para 1 above). The prima-facie opinion PR/15/18/DD/35/18 dated 16th November, 2021 of the Director (Discipline) was accepted by the Committee in full in its meeting held on 27th December 2021. The Committee accordingly asked the Counsel for the Complainant and the Respondent to present their submissions only on the charges wherein the Respondent was found guilty at prima-facie stage by the Director (Discipline).
- 2.3 After hearing the parties, the Committee decided to conclude the hearing in the instant matter.

FINDINGS OF THE COMMITTEE

3. The Committee noted that the Company was carrying on business of construction of commercial and residential projects. The Complainant was Chairman of the Company and was normally executing conveyance deed on behalf of the Company. The Committee further noted that certain disputes arose between the Complainant and other directors of the Company. The Company later on vide Board resolution passed on 02.05.2013 (**page C-75 to C-78 of prima-facie opinion**), withdrew the authority granted to the Complainant till then for the execution of the conveyance deeds in respect of the project Sai Unity row-houses at Bhestan. The Committee further noted that Complainant had mentioned that he being unaware of the passing of the said resolution, he went on executing the conveyance deeds and on acquiring knowledge of the same, he refrained from executing such conveyance deeds.
4. As regards the first charge the Committee noted that Counsel for the Respondent had submitted that no sale deeds of alleged 12 plots were produced before him

and the hence the same was not incorporated in the books of accounts for the financial year 2013-14. He further submitted that since no sale was recorded and hence question of showing amount receivable from the Complainant and thereby reducing the inventory does not arise.

- 4.1 The Committee also noted that the Company had filed 12 Civil suits in respect of these plots and in civil suits the Company had requested to cancel the sale deed and never demanded money.
- 4.2 The Committee noted the submission of the Respondent that FIR filed before the Police Authority by the directors of the Company against the Complainant Shri Shailesh P. Gonawala is not a fact finding report and cannot be relied upon. The Committee also noted that the Respondent in his main audit report had also highlighted contents of the said FIR with a specific note on the top "*Court Matter (Decision Pending)*" to form a true & correct view.
- 4.3 The Committee noted that date of registration of conveyance deed of these alleged 12 plots is 26th June 2013 and thereafter. The Committee further noted that no cogent evidence/ submissions were brought on record by the Complainant to establish that sale of 12 plots were recorded in books of accounts.
- 4.4 The Committee accordingly was convinced with the submissions of the Respondent that there was no change in accounting policy therefore quantification impact was not required. The Committee was convinced with the submissions of the Respondent that as there was no change in accounting policy of the Company and hence there was no need for disclosure requirements mentioned in SA-705. The Committee accordingly decided to hold the Respondent not guilty on this charge.
5. With regard to second charge the Committee noted that Counsel for the Respondent had submitted that the Financial statements of F.Y. were audited by previous auditor (M/s. S.B. Vaidya & Co.) on 31.08.2012 and the same were also signed by the Complainant. He further submitted that he relied upon closing

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balance of F.Y. 2011-12 signed by previous auditor for opening balances of F.Y. 2012-13. He also submitted that he also verified data from balance sheet uploaded with Income Tax department.

5.1 The Committee noted that the details of approval of accounts in AGM are as under:

Financial year	Date of approval of financial statements by the BOD (as per complainant)	Date of signing Auditor Report (as per complainant)	Date of signing Boards Report (as per complainant)	Date of AGM (as per complainant)	Date of filing Form with ROC (as per complainant)
2011-12	31.08.2012	31.08.2012	01.07.2017	05.08.2017	29.08.2017
2012-13	29.03.2016 (as per respondent's doc, date is 15.07.2016 (D-37))	15.07.2016	17.04.2017 (as per director report, date is 01.07.2017 (C-206))	05.08.2017	29.08.2017
2013-14	29.03.2016 (as per respondent's doc, date is 20.07.2016 (D-40))	20.07.2016	17.04.2017 (as per director report, date is 01.07.2017 (C-236))	05.08.2017	29.08.2017
2014-15	29.03.2016 (as per respondent's doc, date is 15.07.2016 (D-43))	25.07.2016	17.04.2017 (as per director report, date is 01.07.2017 (C-282))	05.08.2017	29.08.2017
2015-16	19.09.2016 (as per respondent's doc, date is 19.09.2016 (D-46))	20.09.2016	19.09.2016 (as per director report, date is 20.09.2016 (D-642))	30.09.2016	29.08.2017

5.2 The Committee from the above noted that the Financial statements of F.Y. 2011-12 were not approved by the shareholders and despite this, the Respondent conducted audit of subsequent years i.e. 2012-13, 2013-14, 2014-15 and 2015-16. The Committee viewed that AGM may either adopt the financial statements

or may reject the same and hence unless and until the previous year financial statements are placed before the AGM, the auditor cannot certify the accounts for the subsequent financial years.

- 5.3 The Committee further noted that the Respondent has failed to mention in his Audit Report for financial year 2012-13 that annual accounts for financial year 2011-12 have not been accepted and approved in AGM. However, the Respondent failed to submit as to how he satisfied himself that adverse report was not required to be issued in those circumstances where last year audit report was not approved in AGM and complete books and record were not available with the Company. Accordingly, the Committee in considered view decided to hold the Respondent GUILTY on this charge.

CONCLUSION

6. In view of the above findings stated in above paras vis a vis material on record, the Committee in its considered opinion holds the Respondent is **GUILTY** of professional misconduct falling within the meaning of Item (6),(7) & (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 in respect of second charge only mentioned in para 1(b) above.

sd/-
(CA. (DR.) DEBASHIS MITRA)
PRESIDING OFFICER

sd/-
(SH. RAJEEV KHER, I.A.S. (Retd.))
GOVERNMENT NOMINEE

sd/-
(CA. BABU ABRAHAM KALLIVAYALIL)
MEMBER

sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

DATE: 11TH FEBRUARY, 2022
PLACE: NEW DELHI

प्रमाणित होने के लिए प्रमाणित/
Certified to be true copy

विवा नाथ तिवारी / Bishwa Nath Tiwari
कार्यकारी अधिकारी / Executive Officer
अनुशासन-नात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
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