

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2023-2024)]

[Constituted under Section 21B of the Chartered Accountants Act, 1949]

Findings under Rule 18(17) and Order under Rule 19(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

File No.: PR/265/19/DD/293/19/DC/1482/2021

In the matter of:

Shri Ravi Ranganathan Iyer

Row House & Accolade CHS Ltd,
Behind LIC Jeevan Chitamai Building,
Hajuri Darga Road, Hajuri,
THANE (WEST) – 400 604

.....Complainant

Versus

CA. Ganpathi Venkatesh Prabhu (M. No.044483)

Proprietor, M/s G V Prabhu & Co.,
Room No.1, Shree Pradeep CHS
Sudarshan Colony Road,
Near TMT Bus Stop,
Thane East,
THANE – 400 603

.....Respondent

MEMBERS PRESENT:

Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee & Presiding Officer (Present in person)

Shri Arun Kumar, I.A.S.(Retd.), Government Nominee (Present in person)

CA. Sanjay Kumar Agarwal, Member (Present in person)

CA. Sridhar Muppala, Member (Through VC)

DATE OF FINAL HEARING : 17.11.2023

DATE OF DECISION TAKEN : 14.12.2023

PARTIES PRESENT:

Complainant : Shri Ravi Ranganathan Iyer (Through VC)

Respondent : CA. Ganpathi Venkatesh Prabhu (Through VC)

Counsel for Respondent : Mr. S.G. Gokhale, Advocate (Through VC)

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BACKGROUND OF THE CASE: -

1. As regard the background of the matter, it is noted that the Complainant was a member of M/s. Accolade Cooperative Housing Society Limited (hereinafter referred to as the “**Society**”). The Respondent had conducted the Statutory Audit of the Society for the financial year 2017-18. As per the Complainant, the Respondent had casually and unprofessionally reported on the various issues of the Society in his audit report for the financial year 2017-18.

CHARGES IN BRIEF: -

2. The Committee noted that the various instances of professional misconduct were highlighted by the Complainant against the Respondent in his complaint which were as under:-

S. No.	Charge	View of Director (Discipline)
1 (a)	Manipulation, tampering of opening balances in the Member's ledger towards project cost account.	Held Not Guilty
1 (b)	Non-payment of Government dues towards stamp duty and capital gain tax for sale of flats.	Held Not Guilty
1 (c)	Non collection of member's dues of around Rs. 2.31 Crore.	Held Not Guilty
1 (d)	Non-Recovery of DG Set cost and Installation charges of Rs.36 lakhs approx. as pointed out by the three-member committee, and which was also placed in the AGM for the year 2016-17 and approved for recovery by the General Body.	Held Guilty
1 (e)	Incurring heavy capital expenditure of approximately Rs. 80 lakhs without the approval of the General Body for CCTV and Lift upgradation.	Held Not Guilty
1 (f)	Recurred deficit of maintenance expense amounting Rs. 25 lakhs.	Held Not Guilty

2.	Incorrect Reporting in the Form 28 Part II of the Respondent's report that mentioned the total membership as "301".	Held Not Guilty
3.	Failure in annual compliances by the Society as the AGM of the Society which was held on 23 rd September' 2018 and extended to 14 th October 2018 was found to be defective. Further, none of the business agenda as per the notice of the said AGM was completed and the meeting too was abruptly closed. The appointment of statutory auditor of F.Y. 2018-19 too did not have any approval nor was tabled.	Held Not Guilty
4.	Huge financial loss to the members approximately Rs.5 crores along with the evasion of Government dues and tax had gone unnoticed.	Held Not Guilty

3. The Committee noted that regarding the non-recovery of DG set cost and installation charges, at the stage of PFO, the Respondent had inter-alia mentioned as under:-

- a. That in the capacity as Statutory Auditor of the Society, he had been thoroughly professional and committed to the job. There was no question of him and the Respondent Firm supporting or covering any fraud as there was already an internal auditor appointed by the Society for the financial year 2017-18. Also, nowhere the internal auditor had found any objectionable point for the period under audit in the transactions of the society.
- b. That the Managing Committee of the Society had told him that they would not be recovering the cost of DG set and installation charges as the three-member report lacked legal enforcement. This issue was referred by the Internal Auditor and he had not gone beyond that. The Internal Auditor himself was part of the three-member committee. Therefore, it was clear cut case of a clashing interest.

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4. The Director (Discipline) had, in his Prima Facie Opinion dated 17th March 2021 noted as under:-

4.1 As regard the allegation of non-recovery of DG set cost and installation charges of Rs. 36 lakhs approx. as pointed out by the three members committee which was also placed in the AGM for the year 2016-17 and approved for recovery by General Body, it was noted that the Internal Auditor in his audit report had mentioned that a detailed report was given by the three-member committee which was placed before the Members in the last AGM held in September 2017 and as per the said report, the recovery of the shortfall of the cost incurred for DG sets and installation was recommended as approved by the members.

4.2 However, no action was taken for recovery of the said amount. Further, proper explanation was required from the Managing Committee to be placed before the members for not recovering the shortfall of around Rs. 35.74 Lakhs. In this regard, the Respondent submitted that Managing Committee of the Society told him that they will not be recovering the same as the report lacked legal enforcement. However, the Respondent failed to place on record any documents/ Management representation letter in this regard to support his claim. Further, it was also not clear that if AGM had recommended for recovery of such amount, then how and on what ground, Management Committee which was bound by the decision of AGM took such a different stand for non-recovery of cost incurred for DG sets and installation and regarding the legal enforceability of the said decision of AGM.

4.3 Even if the said decision was not legally enforceable, it was not clear that whether the same fact was placed before AGM by the Management Committee before taking a stand to not to act upon this decision of AGM as the Managing Committee in the instant case should have placed the said matter before the higher authority in AGM for its approval before considering its own decision for non-recovery of cost incurred for DG sets and installation.

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Thus, the said *suo-moto* decision taken by the Managing Committee appears *ultra-vires*. Further, it was also not clear as to how the Respondent satisfied himself that this decision of AGM was not legally enforceable while carrying out the attestation function. Therefore, the Respondent was required to report this fact in his Audit Report.

- 4.4 In view of the above, it was felt that benefit of doubt in the instant case cannot be extended to the Respondent. Accordingly, the Respondent was held prima facie **GUILTY** of Professional Misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949. The said item in the Schedule to the Act states as under –

Item (7) of Part I of the Second Schedule:

“A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he–

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

SUBMISSIONS OF THE RESPONDENT ON THE PRIMA FACIE OPINION:-

5. The Committee noted that the Respondent in his submissions dated 24th August 2021 in response to Prima Facie Opinion had, inter-alia, mentioned as under:
- 5.1 That the Society had incurred a sum of Rs.36 lakhs on the cost of DG Set and its installation in the earlier years. The question was as to whether this cost should be recovered from the members or not.
- 5.2 That as per allegation, there had been a resolution in the AGM dt.10.09.2017 of society to recover the amount from the members. The internal auditor had also given a remark to that effect.

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5.3 The managing committee, however, was of the strong opinion that the amount should not be so recovered. The reasoning of the Managing Committee was as follows: -

- a. The AGM's decision was based on a report of the three-member committee appointed by the general body. The said Committee had recommended that the amount should be recovered.
- b. As against this, the managing committee maintained that all the issue of recovery of cost of DG set was never referred to the said Committee. The terms of reference for the said committee were totally different. Moreover, the committee was only an advisory committee, and its recommendations were not binding on the Managing Committee.
- c. Hence, according to the managing committee, the recommendation of the three-member committee was *ultra-vires* i.e., exceeding their authority.

5.4 That he was held prima facie guilty on the ground that the managing committee had not honored the decision of the AGM. Therefore, according to the Prime Facie Opinion, he should not have accepted the managing committee's decision. The Respondent also verified the relevant documents viz. the minutes of the AGM of 2016-17 indicating the terms of reference of the three-member committee. The Respondent was also informed by the Managing Committee that they would be taking up this point again in the AGM in due course of time. The Respondent stated that after examining all these documents, he satisfied himself that no remark, adverse or otherwise was warranted in the audit report. Hence, his audit report was silent about it.

5.5 That the Respondent brought on record copy of the minutes of AGM held on 10.09.2017, Minutes of AGM held 08.09.2019 and a clarification dated 17.07.2021 from the managing committee to support his contention.

5.6 The Respondent mentioned that as an auditor and after due application of mind, he had adopted a certain view which was based on the documents shown to him and explanation given by the managing committee. He also contended that even assuming without conceding that there was an error in

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the professional judgment, his conduct cannot be classified as gross negligence.

BRIEF FACTS OF THE PROCEEDINGS: -

6. The Committee noted that the instant case was fixed for hearing on the following dates:-

S. No.	Date	Status of Hearing
1.	12.05.2023	Part Heard & Adjourned
2.	04.10.2023	Part Heard & Adjourned
3.	17.11.2023	Concluded & Judgment Reserved
4.	14.12.2023	Final Decision taken in the matter.

7. On the day of the first hearing held 12th May 2023, the Committee noted that the Complainant was present through video conferencing from ICAI BKC Mumbai office. The Respondent vide e-mail dated 4th May 2023 had sought an adjournment in the matter on account of his pre-scheduled travels. However, the Complainant was administered on Oath. Thereafter, looking into the fact that the Respondent was not present and this was the first hearing, the Committee decided to adjourn the hearing to a future date. With this, the hearing in the matter was partly heard and adjourned.

8. On the day of second hearing held on 4th October 2023, the Committee noted that the Complainant was present through video conferencing from ICAI BKC Mumbai office, and that the Respondent was present (through VC) before it for the first time. Accordingly, the Respondent was administered on Oath. Thereafter, the Committee enquired from the Respondent as to whether he was aware of the charges and plead guilty to the charges alleged. On the same, the Respondent replied in the affirmative and pleaded *Not Guilty* to the charges levelled against him. The Committee, looking into the fact that this was the first effective hearing, decided to adjourn the hearing to a future date. With this, the hearing in the matter was partly heard and adjourned.

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9. On the day of final hearing held on 17th November 2023, the Committee noted that the Respondent along with his Counsel, Mr. S.G. Gokhale, was present through video conferencing from ICAI BKC Mumbai office. The Committee further noted that the Complainant was also present (through VC). Thereafter, the Committee asked the Respondent to make his submissions. The Respondent during his response relied on the documents submitted by him on 16th November 2023 relating to notice and minutes of AGM held on 10th September 2017. The Respondent's Counsel in his submissions had, inter-alia, mentioned as under: -

- a. There was no enforceability to recover. There was no direction from general body. The Respondent stated that he had produced the minutes of the meeting of the general body. There were a lot of deliberations but there was no decision. There was no proposer and seconder. Only the Chairman of the meeting had said that this was accepted. There was no direction from the AGM but there were lot of discussions. Ultimately, there was no resolution.
- b. With regard to the question posed to the Respondent about why there was a need for a proposer and seconder if the Chairman of the meeting was accepting, the Respondent stated that this was not supported by any resolution. There was no general body resolution.
- c. The Respondent was also auditor for the financial year 2016-17. He was continuing auditor from 2016-17 to 2018-19.

Thereafter the Committee asked the Complainant to make his submissions. The Complainant, in his submissions had stated that 31 members had voted in favor of the report to be accepted and only 6-7 members voted against the same and this fact was not rightly put forth by the Respondent.

9.1 The Committee posed certain questions to the Respondent's Counsel to understand the issue involved and role of the Respondent in the present case.

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Thereafter, the Committee gave directions to the Respondent to submit the following documents within 15 days: -

- a. Certified true copies of minutes of General Body Meeting/ AGM for financial year 2017-18 filed with the Registrar of the Societies.
- b. Copy of financial statements filed after financial year ended on 31.03.2018.
- c. Certified copies of details of the voting relating to the item related to the recovery of cost of DG set.

9.2 The Committee also gave directions to the Complainant to submit the following documents within 15 days: -

- a. Certified true copies of minutes of General Body Meeting/ AGM for financial year 2017-18 filed with the Registrar of the Societies.
- b. Certified copies of details of the voting to support of his claim that 31 members had voted in favour of recovery of cost of DG set.

9.3 Thereafter, after considering the documents available on record and the submissions made by the Respondent/ his Counsel and the Complainant, the Committee decided to conclude the hearing and reserved its judgment.

10 Thereafter, this matter was placed in the meeting held on 14th December 2023 for consideration of the facts and arriving at a decision by the Committee. The Committee noted that pursuant to its directions given in the hearing held on 17th November 2023, both the parties had submitted the desired documents. Accordingly, keeping in view the facts and circumstances of the case, the material on record and submissions of the parties, the Committee passed its judgment.

FINDINGS OF THE COMMITTEE: -

11 The Committee noted that the charge against the Respondent was that the Respondent had failed to report about the non-recovery of DG Set cost and installation charges of approximately Rs. 36 lakhs, in his audit report.

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- 12 As regard the issue involved in the above charge, the Committee noted that the Internal Auditor of the Society in his audit report had mentioned that a detailed report (recommendation) was given by the three member committee which was placed before the members in the AGM held in September, 2017, and as per the said report, the recovery of the shortfall of the cost incurred for DG sets and installation was recommended to the AGM. The AGM had approved the said recommendation but no action was taken for recovery of the said amount.
- 13 The Committee noted that the Respondent had mentioned in his submissions the reasons for not addressing the issue of non-recovery of cost. The Respondent submitted that as per the management committee, the three-member committee could not recommend the matter of recovering the cost related to the DG set and its installation, to the AGM as it was beyond its powers and the terms of reference for the said committee were totally different. Further, as per the management committee, the three members Committee was only an advisory committee and its recommendations were not binding on the managing committee. In addition to above, the Respondent stated that in the AGM, a lot of deliberation was held but no decision was taken in respect of the said recommendation of three member committee as there was no proposer and seconder.
- 13.1 In support of the above submissions, the Respondent had provided the minutes of AGM of the Society held on 10.09.2017 and a letter dated 17.07.2021, which the Respondent received from the Managing Committee of the Society. The Respondent also stated that the task entrusted to the three-member committee was to report on whether the society should initiate legal action under Section 101 of the Maharashtra Co-operative Societies Act, 1960 against Mr. Ravi Iyer (the Complainant) for recovery of dues from him. The Respondent stated that the minutes of AGM held on 08.09.2019 contains details about many other flaws in the said committee's report.
- 13.2 The Respondent also stated that at a subsequent AGM, in the year 2019, the General Body had endorsed the view adopted by the managing committee.

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The General Body withdrew its insistence on recovering the cost of DG set and left the decision to the managing committee. As per the Respondent, this justified his stand taken by him at the time of audit.

- 14 The Committee while perusing the minutes of the AGM held on 10.09.2017 noted that the Chairman had declared that the amount towards the cost incurred for DG sets and installation will be recovered. However, in respect of the same, none of the member of the Society has seconded the view and no resolution was passed. The relevant extract of the minutes of AGM of the Society was as under:-

“...There were discussion and deliberation on the subject. At the end, the Chairman concluded the discussion declaring that he has accepted the report of the three member committee. He further said that the amount will be recovered and he said that let us move forward to next agenda point.

No scripted resolution passed. There is no proposer and no seconder.”

- 15 Therefore, the Committee agreed with the submission of the Respondent to the extent that no resolution was passed and there was no proposer and no seconder to the said decision. Further, the Committee was of the view that if the managing committee had any issue with the decision of the AGM, then the managing committee should have taken clarification from the concerned person or place the issue in the next AGM for clarification. However, keeping in view the fact that if the managing committee which was responsible to prepare the accounts of the Society and to execute the decision of the AGM, was itself disputing the recommendation of the three members committee and accordingly, not executing the decision of the AGM. The Respondent cannot be held responsible for the same, as his role was limited to the certification of accounts and audit report based on records produced before him, and report the discrepancies/ irregularities, if any, found by him.

- 16 The Committee observed that in this matter, the issue was that the managing committee has not given the effect to the decision of the AGM due to some legal issue pertaining to three members committee. In such scenario, the Respondent should have given a reference of the same in his audit report. But

keeping in view the fact that the Society in its subsequent AGM held in 2019 withdrew its earlier decision of recovery of the cost related to DG cost & its installation on clarification sought by the management, the decision of management committee of not giving effect to earlier decision due to the absence of clarification appears to be correct and support the submissions of the Respondent for non-reporting about the non-compliance of AGM's decision relating to recovery of DG cost. The relevant extract of the AGM held in 2019 read as under:-

"...This being the situation no action was initiated by the Managing Committee for want of clarity. Hence, the status quo was maintained until another resolution was passed on the same subject in the AGM held on 8th September 2019 where it is mentioned in the minutes against agenda item No. 8 that the acceptance of the report of 'Three Member Committee', referred above stands withdrawn and cancelled, the report stands rejected.

The Managing Committee has not made any recoveries from the members as per the minutes of the AGM dated 10th September 2017."

The content of relevant resolution no.8 passed by the AGM was as under:-

"RESOLVED THAT the acceptance of Report of three-member Committee by Agenda no. 10 & 11 dated 24/9/2017 is reviewed in the present Annual General Meeting and after discussion, the acceptance is revisited and the said Report not being in consonance with the aims and objectives for which the said Committee was constituted, the acceptance of it is withdrawn and cancelled, hence the Report stands rejected."

17. From the above, it is clear that even the AGM had noted that the report of the three members committee was not in consonance with the aims and objective for which the said committee was formed, and the recommendation had not been given effect to by the managing committee for want of clarity. Hence, due to non-reporting of non-compliance of AGM decision regarding recovery of DG cost, there does not appear to be any loss to the Society as the decision of recovery was subsequently withdrawn by the AGM due to the absence of authority on the part of the three member committee. Accordingly,



considering the circumstances of the case and the material on record, the Committee is of the view that the issue under the allegation arose due to a lack of clarity about the validity of the decision taken in the AGM. Hence, it cannot be stated that the Respondent had failed to verify the relevant documents at the time of audit or neglected to exercise professional skepticism as required in above mentioned circumstances. Thus, no adverse remark or otherwise was warranted in his audit report.

18. Accordingly, the Committee holds the Respondent **NOT GUILTY** of Professional Misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

CONCLUSION

19. In view of the above observations, considering the submissions of the Respondent and documents on record, the Committee held the Respondent **NOT GUILTY** of Professional Misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

ORDER

20. Accordingly, in terms of Rule 19 (2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee passes Order for closure of this case against the Respondent.

SDI/-
(MRS. RANI NAIR, I.R.S. RETD.)
GOVERNMENT NOMINEE &
PRESIDING OFFICER

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

SDI/-
(CA. SANJAY KUMAR AGARWAL)
MEMBER

SDI/-
(CA. SRIDHAR MUPPALA)
MEMBER

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

बिष्वा नाथ तिवारी / Bishwa Nath Tiwari
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
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DATE: 07TH FEBRUARY, 2024

PLACE: NEW DELHI