

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – IV (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/82/2018/DD/127/2018/DC/1597/2022

In the matter of:

Shri C. B. Rawat (Member)
Nav Jagriti CGHS Limited,
Flat no 11, (Nav Jagriti Apartment)
Plot No C-11
Vasundhra Enclave,
Delhi – 110 096

.....Complainant

Versus

CA. Sachin Jain (M. No. 502054),
M/s S S A R & Associates (FRN 004739N),
Chartered Accountants,
4855-56, 209, 1st Floor,
Harbans Singh Street,
24, Ansari Road, Daryaganj,
New Delhi – 110 002

.....Respondent

MEMBERS PRESENT:

CA. Ranjeet Kumar Agarwal, Presiding Officer (In person)
Ms. Dakshita Das, I.R.A.S (Retd.), Govt. Nominee (In person)
CA. Mangesh P Kinare, Member (In person)
CA. Cotha S Srinivas, Member (In person)

DATE OF FINAL HEARING : 25th August 2023

PARTIES PRESENT:

Respondent :CA. Sachin Jain: (Through VC)

Counsel for the Respondent :CA. C.V. Sajan: (Through VC)

1. **Background of the Case:**

The Complainant was one of the members of the Society and the Respondent had conducted the statutory audit of the Society for the financial year 2016-17. The Complainant has raised allegations against the Respondent in respect of the statutory audit of the Society conducted by him for the financial year 2016-17 stating that the audit of accounts and Audit Report thereupon given by the Respondent was not in line with the Delhi Co-operative Societies Act and Delhi Co-operative Societies Rules and large scale violations were observed in the accounts of the Society whereby the funds of the Society has been misappropriated by the Managing Committee of the Society.

2. **Charges In Brief:**

The Respondent who had conducted the statutory audit of M/s. Nav Jagriti CGHS Limited (hereinafter referred as “**the Society**”) for year ending on 31st March 2017 was not aware under which rule he had to conduct the audit of the Society. The Respondent in his audit report had stated that “*These financial statements and books of accounts are the responsibility of the Management of the society that gives true and fair view of the financial position, financial performance of the Society in accordance with Rule 43 of Delhi Co-operative Societies (DCS) Rule 1973.*” The Respondent had given audit report under Rule 43 of Delhi Co-operative Societies (DCS) Rule 1973 instead of the relevant provisions of the new rules that were replaced by Delhi Co-operative Societies – 2007.

3. **The relevant issues discussed in the prima facie opinion dated 17th March 2021 by Director (Discipline) in the above charge, in brief, are given below: -**

3.1 In respect of the above charge, the Director (Discipline) noted that there were changes in provisions of ‘maintenance of the accounts of the Society’ and ‘audit of the society’. Although there was no such change in annexure Part-A, B, C of Audit Report of Society for Financial Year 2016-17, but as per instructions issued by the Registrar of Societies to the Chartered Accountant for audit of the Society, the Respondent was required to prepare the audit report as per new provisions of Delhi

Cooperative Societies Act 2003 and its Rules 2007, which he failed to do so and he had issued the Audit report of the Society for FY 2016-17 as per old provisions of Delhi Cooperative Societies Act 1972 and Rules 1973 which stood repealed as on date of signing of Audit Report of the Society and was no longer in force and thus, the Respondent failed to exercise due diligence as warranted under the circumstances, accordingly held *prima facie* **GUILTY** for the said allegation of Professional Misconduct falling within the meaning of clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

3.2 The Prima Facie Opinion formed by the Director (Discipline) in dated 17th March 2021 in terms of Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional and other Misconduct and conduct of cases) Rules, 2007, after considering the complaint, written statement of the Respondent, Rejoinder and additional documents on record, had held the Respondent *prima facie* **GUILTY** of Professional Misconduct falling within the meaning Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

The said Clause to the Schedule to the Act, states as under: -

Clause (7) of Part I of 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.”

3.3 The Prima Facia opinion formed by Director (Discipline) was considered by the Committee at its meeting held on 10th August 2022. The Committee on consideration of the same, concurred with the reasons given against the charges and thus, agreed

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with the prima facie opinion of the Director (Discipline) that the Respondent is GUILTY of Professional Misconduct falling within the meaning of item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 for the reasoning as contained in para no 7.4 of prima facie opinion only and accordingly, decided to proceed further under Chapter V of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of cases) Rules, 2007. The Committee, also directed the Directorate that in terms of the provisions of sub-rule (2) of Rule 18, the prima facie opinion formed by the Director (Discipline) be sent to the Complainant and the Respondent including particulars or documents relied upon by the Director (Discipline), if any, during the course of formation of prima facie opinion and the Respondent be asked to submit his Written Statement in terms of the provisions, of the aforesaid Rules, 2007.

4. Date(s) of written Submissions/Pleadings by parties:

The relevant details of filing of documents in the instant case by the parties are given below:

S.No.	Particulars	Dated
1.	Date of Complaint Form	12 th May 2018
2.	Written Statement filed by the Respondent	11 th July 2018
3.	Rejoinder by the Complainant	6 th August 2018
4.	Prima facie Opinion by Director (Discipline)	17 th March 2021
5.	Written Submissions by the Respondent after PFO	27 th July 2023

5. Written submissions filed by the Respondent:

The Respondent vide letter dated 27th July, 2023 made submissions, which are summarized as under:

5.1 Written Submissions of the Respondent made vide letter dated 27th July 2023:

i The Respondent through written submissions dated 27th July 2023 has submitted before the Committee that the Complainant had not made any charge of specific omissions or errors in the financial statement of the Society for the financial year 2016-17 audited by the Respondent. The only deficiency pointed out by the

Complainant was that the Audit report of the Respondent had made reference to Delhi Co-operative Societies, Rules 1973 instead of Rules 2007, which were applicable on the date of submissions of audit report.

ii The Respondent further submitted that audit report format downloaded from the website of the Registrar of Co-operative Societies contained this error which remained unnoticed in the audit report issued by him. However, all the contents of the Audit Report were as per the requirements of amended law i.e., Section 60 of Delhi Co-operative Societies, Act 2003 read with Rule 80 of DCS Rules 2007.

iii There was no observation of any material misstatement in the financial statements reported by the Complainant in subject complaint. The only error was the reference made to old DCS Rules 1973 instead of new Rules 2007, which was due to oversight and had no consequences on the contents of the financial statements and Audit Report.

iv The Respondent further stated that he was auditor of the Society Financial Year 2016-17, but no charges of any specific omissions or errors in the financials statement have been substantiated by the Complainant. Prima facie opinion of the Director (Discipline) was based on the reference made in the Audit Report format to the old laws of the Delhi Co-operative Societies Act 1972 instead of the law currently in force i.e. Delhi Co-operative Societies Rules Act 2003. All the contents in the audit report were according to the requirements as per the amended law i.e. Section 60 DCS Act 2003 r/w Rule 80 of DCS Rules 2007. There is no adverse observations in the prima facie opinion about any specific error in the Audit Report. There is no observation of any material misstatement in the financial statements by the Complainant.

6. **Brief Facts of the Proceedings:**

The details of the hearing fixed and held/adjourned in said mater is given as under:

Particulars	Date of Meeting	Status
1 st time	22 nd May 2023	Adjourned at the request of the Respondent and in the absence of the Complainant.
2 nd time	17 th July 2023	Part heard and adjourned in absence of the Complainant.
3 rd time	25 th August 2023	Hearing concluded and decision taken.

6.1 On the day of first hearing of the case on 22nd May 2023, the office apprised the Committee that the Respondent vide e-mail dated 15/05/2023 has sought adjournment due to personal unavoidable circumstances. The Complainant was also not present. The office apprised the Committee that notice of listing of the case has been served upon the Complainant. The Committee adjourned the hearing to later date so as to provide one more opportunity to both the parties to present/defend the charges.

6.2 On the day of second hearing of the case on 17th July 2023, the Committee noted that the Respondent along with Counsel were present through Video conferencing mode. The office apprised the Committee that the Complainant was not present and notice of listing of the case has been served upon him. Being first hearing of the case, the Respondent was put on oath. Thereafter, the Committee enquired from the Respondent as to whether he was aware of the charges and charges against the Respondent were read out. On the same the Respondent replied in the affirmative and pleaded 'Not Guilty' to the charges levelled against him. The Committee acceded to the request of Counsel for Respondent for submission of additional submissions/documents; and directed him to submit the same within 10 days. The case was part heard and adjourned.

6.3 On the day of final hearing of the matter on 25th August 2023, the Committee noted that the Respondent along with Counsel were present through Video conferencing mode. Thereafter, they gave a declaration that there was nobody present except them from where they were appearing and that they would neither record nor store the proceedings of the Committee in any form. The office apprised

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the Committee that the Complainant was not present and notice of listing of the case has been served upon him. The Committee noted that at last two meetings, the Complainant was not present and subject case was adjourned in his absence.

6.4 In view of the repeated absence of the Complainant and having decided to proceed ex-parte, the Committee noted that the case was part-heard and asked the Counsel for the Respondent to make his submissions in the matter. The Counsel for the Respondent submitted that only charge against the Respondent is that he failed to prepare/submit his audit report as per new provisions of amended Act i.e. Delhi Co-operative Societies Act, 2003 and Delhi Co-operative Societies Rules 2007; whereas Respondent has prepared/submitted audit report of the Society for Financial Year 2016-17 as per old provisions of Delhi Co-operative Societies Act, 1972 and Delhi Co-operative Societies Rules 1973, which stood repealed as on that date and no longer in force. The omission was only in regard to mentioning of the name of the amended Act and Rules.

6.5 He submitted that the Complainant had not pointed out any discrepancy in the audited financial statements of the Society which was audited by the Respondent and having no impact on the reporting made in the financial statements of the Society. There was no change in the format of audit report in old as well as in new Rules.

6.6 After detailed deliberations, and on consideration of the facts of the case, various documents on record as well as oral and written submissions made by the Counsel for the Respondent before it, the Committee concluded the hearing in the instant case.

7. Findings of the Committee:

The Committee noted the background of the case as well as oral and written submissions made by the Respondent, documents/ material on record and gives its findings as under: -

7.1 The Committee noted that there is only one charge against the Respondent in which he had been held prima facie guilty i.e. while conducting the statutory audit of

the Society for the year ending 31st March 2017, the Respondent had given audit report under Rule 43 of Delhi Co-operative Societies (DCS) Rule 1973 instead of the relevant provisions of the Rules 39 that were replaced by Delhi Co-operative Societies -2007.

7.2 The Committee expressed displeasure on the non-appearance of the Complainant even after extending ample opportunities to the Complainant to substantiate the charge against the Respondent, he failed to appear before it without any intimation despite notices of meetings were duly served upon him.

7.3 In view of above facts, the Committee noted that it is an admitted fact that the Respondent had conducted the audit of the Society for financial year 2016-17 and had made reference to the erstwhile Act and Rules of the Delhi Co-operative Societies Act, 1972 and Delhi Co-operative Societies (DCS) Rule 1973 which were replaced with the newly enacted Delhi Co-operative Societies, Act 2003 w.e.f. 01st April 2005.

7.4 The Complainant had provided a copy of the audit report certified by the Respondent for the financial year ending on 31st March 2017 to substantiate the allegation, wherein the repealed Delhi Co-operative Societies Act and Rules were referred to in the Audit Report by the Respondent. The Committee observed that except this observation pointed out by the Complainant, there was no other irregularities/omissions reported by the Complainant regarding financial statements of the Society audited by the Respondent.

7.5 The Committee noted that the Respondent during the hearing before it and through written submissions had admitted that due to error and oversight, reference was made to Delhi Co-operative Societies, Rules 1973, however, there is no difference in reporting requirement in DCS Rules 1973 and 2007. Further, there is no change in format of the report as well.

7.6 On a combined reading of the provision of Rule 43 of Delhi Co-operative Societies Rules 1973 and Rule 39 of Delhi Co-operative Societies Rules, 2007, the following provisions have been noted to be newly inserted in Delhi Co-operative Societies Act, 2003 read with Delhi Co-operative Societies, Rules 2007 that:

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Rule 39 of Delhi Co-operative Societies Rules, 2007:-

“39. Accounts and other books to be maintained by co-operative societies: -

Every co-operative society shall keep and maintain the following books of accounts for the purpose of recording the business transacted by it, namely: -

- (a) Minutes book for recording the proceedings of the general body, Committee/any sub committee;*
- (b) Register of applications for membership containing the name and address of the applicant, number of shares applied for, and in case of refusal, the date of communication of the decision refusing application of the applicant;*
- (c) Membership Register, containing the date of membership, name of member, name of father/husband, address of member, no. of shares purchased, name of the nominee with relationship, date of cessation of membership, signature of the member and remarks. In case of housing co-operative societies, the Bank account of the member and address of the bank, the PAN, Electoral photo identity card (EPIC), certificate of gazetted officer attesting signature and photograph of member and an affidavit as prescribed shall be maintained by cooperative housing society;*
- (d) Share allotment register along with details of amount paid therefore;*
- (e) Cash book, showing daily receipts and expenditure, and the balance at the end of each day;*
- (f) Receipt book, containing forms in duplicate, one of each set to be issued for money received by the society and the other to serve as counterfoil;*
- (g) Voucher file, containing all vouchers for contingent expenditure incurred by the society, numbered serially and filed chronologically;*
- (h) Ledger of borrowings, showing deposits and other borrowings of all kinds; (i) In the case of societies issuing loans,*

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- (i) Loan ledger, showing the number and date of disbursement of each loan issued to member, the amount of loan, the purpose for which the loan is granted and the date or dates of repayment, distinguishing principal and interest;
- (ii) Liability/surety register showing the indebtedness of each member to the society whether on account of loan taken directly by the member or on account of loan for which the member stands as surety;
- (j) In the case of a co-operative society, if the working capital exceeds twenty thousand rupees, a general ledger showing receipts and disbursements and the outstanding under various heads from day to day;
- (k) In the case of a co-operative bank, a register of fluid resources showing the immediate liabilities of the co-operative bank and the extent of fluid resources available to which the Banking Regulation Act, 1949 (10 of 1949) applies according to the instructions of the Reserve Bank of India;
- (l) Monthly register of receipts and disbursements; and
- (m) Register of dividend”.

Rule 43 of Delhi Co-operative Societies Rules 1973:-

“43 Every co-operative society shall keep and maintain the following accounts and books for the purpose of recording the business transacted by it: -

- a) Minutes books for recording the proceedings of the general body,
- b) Register of applications for membership containing the name and address of the applicant, the date of receipt of application, the number of shares applied for and in case of refusal, the date of communication of the decision refusing admission of the applicant.
- c) Admission book, showing the name and address of each member, the date of admission, the shares taken by him and the amount of share capital, if any refunded to him together with the date of each such payment and refund.
- d) Nomination register.

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- e) Cash book, showing daily receipts and expenditure, and the balance at the end of each day.
- f) Receipt book, containing forms in duplicate, one of each set to be issued for money received by the society and the other to serve as counterfoil.
- g) Voucher file, containing all vouchers for contingent expenditure incurred by the society, numbered serially and filed chronologically.
- h) Ledger of borrowings, showing deposits and other borrowings of all kinds
- i) In the case of societies issuing loans: -
- i. Loan ledger, showing the number and date of disbursement of each loan issued to members, the amount of loan, the purpose for which it is granted and the date or dates of repayment, distinguishing principal and interest.
- ii. Liability register showing the indebtedness of each member to the society whether on account of loan taken directly by him or on account of loan which he stands as surety.
- j) In the case of a society with unlimited liability, property statement of members showing the assets and liabilities of each individual member on the date of his admission with full details of the property including the survey number of the lands, the statement being revised as often as may be necessary and, in any case, at least once in three years such statements being entered in a register in a stitched volume.
- k) In the case of a society, the working capital of which exceeds twenty thousand rupees, general ledger showing receipts and disbursements and the outstanding under various heads from day to day.
- l) In the case of a co-operative bank, register of fluid resources showing the immediate liabilities of the society and the extent of fluid resources available to which the Banking Regulation Act, 1949 applies according to the instructions of the Reserve Bank.
- m) Monthly register of receipts and disbursements.
- n) Register of dividend".

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7.7 In view of above Rules, the Committee noted that there is no substantial change in reporting requirement as per DCS Rules 2007 and 1973. Moreover, the Complainant except this, has not pointed any financial irregularity which Respondent failed to report in audit Report. Further, the Committee noted that there is no change in reporting format and this error have no impact on the affairs of financial statements of the Society. Thus, the Committee absolved the Respondent under this charge.

7.8 The Committee observed that the Complainant has not brought on record any new fact/evidence and this is a clerical/typing error in regard to mentioning the name of the amended Act and Rules. There is no discrepancy in the audited financial statements of the Society which were audited by the Respondent and have no impact on the reporting made in the financial statements of the Society. On an overall consideration, the Committee was of the opinion that the mistake of reference to Delhi Co-operative Societies Act 1972 is inconsequential clerical error which had not affected the quality of the audit report issued by the Respondent.

7.9 On the basis of above, the Committee was of the opinion that charge pointed out at para no. 02 above, is not maintainable against the Respondent. Accordingly, the Committee held that the Respondent is **NOT GUILTY** of Professional Misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

8. Conclusion

In view of the above findings stated in the above paras, vis-à-vis material on record, the Committee gives its charge-wise findings as under:

Charges (as per PFO)	Findings (Para ref.)	Decision of the Committee
Para 2 as above	Para 7.1 to 7.9 as above	NOT GUILTY - Clause (7) of Part I of Second Schedule

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9. 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 Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

10. **ORDER**

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 an Order for closure of this case against the Respondent.

Sd/-
(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

Sd/-
(MS. DAKSHITA DAS, I.R.A.S {RETD.})
GOVERNMENT NOMINEE

Sd/-
(CA. MANGESH P KINARE)
MEMBER

Sd/-
(CA. COTHA S SRINIVAS)
MEMBER

DATE: 05.02.2024
PLACE: NEW DELHI

यही प्रतिलिपि होने के लिए प्रमाणित /
Certified to be true copy
Nisha
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वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
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