

**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/283/2021-DD/304/2021/DC/1575/2022**

**In the matter of:**

**Mr. Alkesh M Shah,  
25/A, Trustnagar Society,  
Near Ayojanagar, Paldi  
Ahmedabad – 380 007**

**.... Complainant**

**Versus**

**CA. Alpesh Chinulal Shah (M. No.105463),  
M/s Alpesh Shah & Co.  
Chartered Accountants  
202, Parth Avenue, Nr Naranpura Cross Road,  
Naranpura,  
Ahmedabad – 380 013**

**.....Respondent**

**MEMBERS PRESENT:**

**CA. Ranjeet Kumar Agarwal, Presiding Officer (Present in person)  
Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee (Present in person)  
Mr. Arun Kumar, I.A.S. (Retd.), Government Nominee (Present in person)  
CA. Sanjay Kumar Agarwal, Member (Present in person)  
CA. Sridhar Muppala, Member (Present in person)**

**DATE OF FINAL HEARING : 10.07.2023  
DATE OF JUDGEMENT : 28.07.2023**

**PARTIES PRESENT**

**Complainant : Mr. Alkesh M. Shah (Through VC)  
Respondent : CA. Alpesh Chinulal Shah (Through VC)  
Counsel for Respondent : Advocate Deepak Shah (Through VC)**

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**BACKGROUND OF THE CASE:**

1. The brief background of the case is as under:

- a. That Mr. Alkesh M Shah (hereinafter referred to as the "**Complainant**") has filed complaint in Form 'I' dated 18<sup>th</sup> September 2021 against M/s Alpesh Shah & Co., Ahmedabad (FRN 128461W) (hereinafter referred to as the "**Respondent Firm**").
- b. That the Complainant had been the Secretary of Trust Nagar Co-operative Housing Society Ltd (hereinafter referred to as the "**Society**") during the period 2009 to 2011.
- c. The Complainant along with the then Chairman and President of the Society has allegedly tried to sale a plot of the Society for Rs.1.85 Crores secretly without following proper procedure and a notice was published in Newspaper for title clearance of the said plot and then members/Managing Committee members of the Society raised their objections.
- d. Subsequently, in the General Meeting of the Society held on 10<sup>th</sup> July 2011, all the proceedings undertaken by the Complainant and other two ex-Office Bearers regarding the sale of the plot were cancelled through a resolution.
- e. In respect of such sale proceedings, a stay application was also filed by the Society with the Nominee of Registrar, Board of Nominee, Ahmedabad and a stay was granted vide order no. 264/11 dated 23<sup>rd</sup> November 2011 to maintain the status quo.
- f. In such an attempt to sale the said plot of the Society by the Complainant and other two ex-Office Bearers, an expense of Rs.1,29,500/- was incurred towards the incidental/legal expenses etc. which was paid in cash from the Society's account.
- g. This amount was later on objected by the members of the Society, and the Society through a resolution in its AGM dated 23<sup>rd</sup> June 2013 decided to recover this amount equally from all 3 concerned Office Bearers including Complainant.
- h. In the accounts of the Society for the F.Y.2017-18, the amount was debited in the name of the then three Office Bearers by crediting the Profit and Loss account.

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- i. The current Chairman of the Society had also lodged a FIR against the Complainant and others alleging misappropriation of funds of Rs.30 lacs obtained towards the part sale proceedings of the Society's plot and it was also mentioned in such FIR that the act of the Complainant had made the plot of the Society as disputed and got raised litigation in the same and the matter was pending in the civil court.
- j. That the Respondent was appointed as an Internal Auditor of the Society for the financial years 2013-14 to 2017-18.
- k. The Complainant has raised allegations on the audit report issued by the Respondent during those period(s).

**CHARGES IN BRIEF:**

2. The Committee noted that the Complainant had leveled the following allegations against the Respondent:

S. No.	Charges	View of Director (Discipline)
1.	The Respondent failed to Report Order no. 264/11 passed by Board of Nominee Court in his Internal Audit Report	Held Not Guilty
2.	The Respondent failed to Report regarding stay given vide Order no. 333/13 passed by Board of Nominee Court in his Internal Audit Report and further, the amount was debited in Complainant's personal account in the books of the Society despite of the stay granted in the aforesaid Order.	<b>Held Guilty</b>
3.	The Respondent did not mention in his Audit Report that the Society had not conducted election nor had declared the voting rights for the period 01 <sup>st</sup> April 2013 to 31 <sup>st</sup> March 2015	Held Not Guilty

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3. The Complainant in the complaint made three allegations. However, the Director (Discipline) on consideration of the same found the Respondent prima facie Guilty only on one allegation which was also accepted by the Committee while considering the case at Rule (9) stage. Accordingly, in respect of one charge where the Respondent was found prima facie guilty, the enquiry was conducted by the Disciplinary Committee.
  
4. The Committee noted that the Respondent, at the stage of PFO regarding the allegation of failing to Report Order no. 333/13 passed by Board of Nominee Court in his Internal Audit Report and further, debiting the amount in Complainant's personal account in the books of the Society despite of the stay granted in the aforesaid Order had, inter-alia, mentioned as under:
  - a. That he has given opinion based on information and explanations provided to him by the management.
  - b. He was not required to report the disputes/ court matters raised by the members unless it is detrimental to the interest of the Society.
  - c. That no records regarding Order no. 333/13 were available with the Society and hence, it was not provided to him for his verification.
  - d. That in AGM held on 23<sup>rd</sup> June 2013, members disagreed to the expenses relating to transfer of plot of amount of Rs.1,29,500/- incurred by Complainant and other two ex- office bearers and resolved to debit equally on three members involved in it.
  - e. Since the said debit was of extraordinary in nature, he has reported about the same in his audit report in point 4(i) of his audit report for the financial year 2017-18 and since the Order (333/13) was not available as evidence to be verified nothing was required to be commented on said issues.
  - f. That the General body has been stated to be the final authority for approving the decision of the Society, hence, nothing contrary was observed by the Respondent to report.
  - g. That the Registrar of Co-operative Societies, the statutory body to carry the statutory audit and to monitor the activity of the society, has neither

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raised any issue against the audit conducted by him nor reported any issues raised by the Complainant in their Report.

- h. That in the year 2011-12, out of Rs. 1,29,500/-, Rs. 95,000/- were withdrawn by the Complainant himself and other members which was not shown as withdrawal in the books but directly booked as expenses, without any supporting. Since members noticed the transactions afterwards, they enquired with the Bank and Bank has provided the certified copies of cheques of withdrawal.
- i. That one of the members of the Society, Dr. Bharatbhai Prabhudasbhai Amin, has filed police complaint (FIR) on 3<sup>rd</sup> August 2019 against the Complainant and others for exploiting monetary benefits from transaction of the common plot.

5. The Director (Discipline) had, in his Prima Facie Opinion, held the Respondent prima facie Guilty on the charge relating to failure of the Respondent to Report Order no. 333/13 passed by Board of Nominee Court in his Internal Audit Report and further, the amount was debited in Complainant's personal account in the books of the Society despite of the stay granted in the aforesaid Order. While holding the Respondent prima facie guilty on the aforesaid charge, the Director (Discipline) observed the following:-

- i. That the Complainant has neither stated any detail of the allegation like the nature/quantum of the amount nor the content of the stay Order no. 333/13. It is understood that during the attempt to sale of plot of the Society by the then Office bearers in 2011 including Complainant, an expense of Rs.1,29,500/- was incurred by them out of the Society's fund. Since such sale agreement was undertaken without permission of the members and without following the proper procedure, the sale was objected and the sale agreement was cancelled.
- ii. It was resolved in the AGM held on 23<sup>rd</sup> June 2013 that the said amount of Rs.1,29,500/- would be debited equally to the name of the then three Office Bearers including the Complainant.

  
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- iii. After perusing the documents brought on record by the Complainant viz. the application of the stay Order no. 333/13 and copy of the extension of such order, it is coming out that though the copy of the order of such stay is not on record but since the extension had been given by the Hon'ble Court in the matter of 333/13 on 25<sup>th</sup> June 2018, it is for sure that some stay was granted in the matter of expenses incurred by the Complainant and the other ex-office bearers.
- iv. That it is the Respondent's contention that no satisfactory answer was received by him despite of continuous follow up with the Society. Finally, in the accounts of the Society (F.Y.2017-18), the amount was debited in the name of the then three Office Bearers by crediting the Profit and Loss account.
- v. However, the Society in its Financials for the period ended 31-03-2018 without considering Order no. 333/13 has debited the amount of such expenses in the names of Mr. Indravadanbhai P Shah, Mr. Mahendrabhai Trivedi and the Complainant. The Respondent in his audit report for the same period ended 31<sup>st</sup> March 2018 has failed to mention any detail of the said order which in turn had an impact on the accounts of the Society.
- vi. That the total amount (Rs.1,29,500/-) which has been written back by the Society in its Financials as on 31<sup>st</sup> March 2018 is a material amount seeing the size of the Income and Expenditure account of the Society being 121% of the total expense of the Society and 64% of the total Income of the year 2017-18.
- vii. While the Respondent has stated that he was neither aware of any such stay order no. 333/13 of Board of Nominee Court nor the Society had any knowledge of the same. In this regard, a document was brought forth by the Complainant in vernacular language on which an annotation mentioned as 'No.333/13' was noted and got translated in English language by this Directorate from its concerned Ahmedabad DCO of ICAI.

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- viii. From perusal of the translated copy of such order, it is noted that the same document is not an order of any Court rather an application dated 22<sup>nd</sup> August 2013 made before the Hon'ble Court appears to be made by Mr. Indravadan P Shah, Mr. Mahendra Bhai Trivedi and the Complainant wherein the stay has been sought on following resolution of the Society:

*"In future, all the liabilities such as legal, financial arising out of the matter will remain only with the above three office bearers personally"*

*"In case of any cost loss or legal entanglement on the part of the society, all the above three office bearers namely President Mahendrabhai Trivedi, Chairman Indravadanbhai Shah and Secretary Alkeshbhai Shah will have to reimburse personally. If they fail to repay the amount to the Society, it will be treated as a debt to the personal account of the trio."*

- ix. While concluding his opinion, the Director (Discipline) has also stated that the following points raises doubt on the claim of the Respondent that he was not aware about the said fact:-

- a. If the resolution was passed by Society in year 2013, why the effect of the same was given in accounts of the society only in year 2017-18 i.e., after approx. more than 4 years and what was the reason for not giving effect of this decision in the earlier years if there was no stay in the matter.
- b. The Respondent was auditor of the Society continuously from year 2013-14 to 2017-18 then it is really incomprehensive as to how he was not aware about the dispute going on between society and its three members (including the Complainant) and regarding *status quo* Order being issued by the Board of Nominee Court in case no 333/13.

- x. Hence, the Respondent being an auditor of the Society, should have been more cautious before certifying this material amount which was being written back by the Society during the year 2017-18. On the contrary, it

appears that, the Respondent without ensuring and collecting sufficient evidence gave his opinion on the Financials of the Society for the year ended 31<sup>st</sup> March 2018 without reporting such fact that there was a stay (*status quo*) Order on the recoverability of the said amount.

6. Accordingly, the Director (Discipline) held the Respondent Prima-facie **Guilty** of Professional Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949. The said item in the Second 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**

7. The Respondent had made, inter-alia, the following further submissions dated NIL (received on 19<sup>th</sup> July 2022) in response to Prima Facie Opinion:-
- a. The Society is a co-operative housing society, its main objective is to maintain the Society and not having any commercial motive. Hence, there is a very limited time engagement as compared to any commercial unit.
  - b. He did not come across any material evidence relating to the Order in case no. 333/13 during his audit process. Hence, he was not aware of the same.
  - c. Regarding verification of the documents / records, the Respondent stated that he was provided with the concerned vouchers, details of withdrawal, management representation and copy of resolution passed in Annual General Meeting dated 23<sup>rd</sup> June 2013 where all the three Ex-office Bearer remained present. After verifying the same and based on information and explanation provided to him, he had issued his qualified audit report.

- d. The audit report did not make any reference to the *status-quo* Order as it was not provided to him either by the Society or the Complainant. Hence, he was not aware of the same at the time of audit.
- e. That the copy of the stay Order was not even provided to the Director (Discipline) and based on the copy of the extension of stay order given in case no. 333/13 on 25<sup>th</sup> June 2018, the Director (Discipline) has made a presumption in prima facie opinion that some stay order must have been there. Without going through the actual order, the Director (Discipline) should not have estimated the content of stay Order.
- f. That the balance sheet of 31<sup>st</sup> March 2018 was also adopted by members in AGM dated 05<sup>th</sup> August 2018 without any remarks on the alleged debit. Also, the Complainant and Ex-Chairman remained present in the said AGM.

#### **BRIEF FACTS OF THE PROCEEDINGS:**

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

S. No.	Date	Status of Hearing
1.	07.11.2022	Part Heard and Adjourned.
2.	29.12.2022	Adjourned at request of the Respondent
3.	30.05.2023	Part Heard and Adjourned.
4.	23.06.2023	Adjourned at request of the Respondent
5.	10.07.2023	Heard and concluded. Judgement Reserved.
6.	28.07.2023	Final Decision taken on the case

9. On the day of first hearing held on 7<sup>th</sup> November 2022, the Committee noted that both the parties were present through Video Conferencing. The Respondent was administered on Oath. Thereafter, the Committee inquired from the Respondent whether he was aware of the charges. The Respondent replied in the affirmative and pleaded Not Guilty to the charge levelled against him. Thereafter, considering that this was the first hearing and also keeping in view provisions of Rule 18(9) of Chartered Accountant Rules, 2007, the

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Committee decided to adjourn the hearing. With this, the hearing in the matter was partly heard & adjourned to a later date.

10. On the day of second hearing held on 29<sup>th</sup> December 2022, the Counsel for the Respondent requested for adjournment of hearing on the ground that he was not prepared to present his case. The Committee, looking into the request of the Respondent's counsel, decided to grant adjournment in order to provide him reasonable opportunity to defend his case. Accordingly, the said hearing was adjourned at the request of the Respondent.
11. On the day of third hearing held on 30<sup>th</sup> May 2023, the Complainant was present through Video Conferencing mode. The Respondent along with his Counsel, CA. Deepak Shah was also present through Video Conferencing Mode. Since the matter was part heard in earlier hearing and the composition of the Committee was changed, the Committee enquired from both the Complainant and the Respondent as to whether they would like to have de-novo hearing or the hearing in continuation to the last hearing, to which, they opted for the hearing in continuation to the last hearing. Thereafter, the hearing commenced from the stage where it was left in last hearing.
  - 11.1 The Respondent's counsel, at the outset, submitted that copy of stay Order passed by the Board of Nominee Court, Ahmedabad in case no. 333/13 has not been submitted by the Complainant.
  - 11.2 The Committee, after consideration of the submissions of both the parties, directed the Complainant to submit a copy of Order passed by the Board of Nominee Court in case no. 333/13.
  - 11.3 The Respondent was also directed to submit his reply on the same after receipt of the Order from the Complainant.
  - 11.4 With these directions, the hearing in the above matter was partly heard and adjourned to a later date.
12. On the day of fourth hearing held on 23<sup>rd</sup> June 2023, the Respondent requested for adjournment of hearing which was granted in order to provide

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him reasonable opportunity of hearing. Accordingly, the said hearing was adjourned at the request of the Respondent.

13. On the day of final hearing held on 10<sup>th</sup> July 2023, the Committee noted that the Complainant was present through Video Conferencing. The Respondent along with his Counsel was also present through Video Conferencing.
- 13.1 The Committee posed certain questions to the Respondent to understand the issue involved and his role of the Respondent in the case. The Respondent referred some paragraphs of the Order passed by the Board of Nominee Court, Ahmedabad which was in regional language (Gujarati). Considering the same and after hearing the submissions of the parties, the Committee directed the Respondent to submit an English translated copy of Order of the Board of Nominee Court, Ahmedabad within 7 days from the hearing.
- 13.2 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.
14. Thereafter, this matter was placed before the Committee in its hearing held on 28<sup>th</sup> July, 2023 wherein the same members, who heard the case earlier, were present 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 10<sup>th</sup> July, 2023, the Respondent has submitted the desired translated copy of the said Order vide letter dated 14<sup>th</sup> July 2023.
- 14.1 Accordingly, keeping in view the facts and circumstances of the case, the material on record and submissions of the parties, the Committee gave its findings as under:-

**FINDINGS OF THE COMMITTEE:**

15. It is observed by the Committee that the crux of the charge levelled against the Respondent was that he as an internal auditor failed to point out in his audit report for the financial year 2017-18 that the amount debited to the personal account of the Complainant by the Society is in violation of the Stay Order passed by the Board of Nominee Court, Ahmedabad in case no.333/13

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which directed the Society to maintain status quo in the matter relating to the sale of plot by the Complainant and other two ex-office bearers.

16. The Committee noted that apart from reiterating charges and facts on record, the Complainant in his various submissions had, inter-alia, stated
- a. That he had already informed the Respondent through e-mails on 15<sup>th</sup> May 2014, 16<sup>th</sup> June 2015 and 12<sup>th</sup> August 2016. However, the Respondent neither sent any response nor he has taken any action on the same.
  - b. That he has not done anything wrong. Further, if there is anything wrong, all the members of the Managing Committee of the Society should have been responsible but the personal accounts of only three members have been debited by the Society. The Respondent as an Internal Auditor of the Society has not taken any note of the same.
  - c. That he was present in the 23<sup>rd</sup> AGM of the Society held on 23<sup>rd</sup> June, 2013 and he had dissented from the resolution passed in the aforesaid AGM for recovery of Rs.1,29,500/- from him and other two ex-office bearers.
17. In respect of above charge, it is observed that the Respondent was internal auditor of the Society for the financial year 2013-14 to 2017-18. The amount of Rs. 1,29,500/- was debited to the personal accounts of the Complainant and other two ex-office bearers in the books of accounts by the Society in the financial year 2017-2018 after a resolution in this regard was approved by the members of the Society in AGM held on 23<sup>rd</sup> June 2013.
18. On perusal of the minutes of the 23<sup>rd</sup> AGM held on 23<sup>rd</sup> June 2013, it is observed that the following resolution was passed by the Society:-

*"All the decisions taken in Managing Committee meetings mentioned above have been approved by 24 members against 1 (Alkesh Shah). Further members have decided that the amount of expenditure of Rs.129500/- (Rs. 70000+ 25000+34500) incurred by Ex- Chairman Mr. Indravadan I Shah, President Mr. Mahendra Trivedi and Ex Secretary Mr. Alkeshbhai Shah were not as per law and not getting approved properly, inspite of repetitive representation no proper explanations has been provided by them, it has been decided to debit said sum equally among three ex-*

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*office bearers against dues of their plot/ bungalow and in future if any one demand no due certificate, same will be provided only after recovering entire dues either individually or collectively alongwith interest and also after getting clearance from all legal issues of land at Survey No 226. Same has been approved by 24 members against 1 vote of Alkeshbhai Shah”*

19. Hence, the recovery of the amount from the Complainant and other two ex-office bearers was approved by the members in AGM. Further, it is noted that the Respondent has pointed out in his audit report in respect of writing back of expenses pertaining to earlier year in the financial year 2017-18 which read as under:-

*“4) i) The Society has written back the expenses booked in earlier year of Rs.129500/- because of providing no explanation / supporting to same by the concerned members since long. Said reversal is credited to P&L account by debiting the respective members account.”*

20. The Committee also observed that except showing the amount as recoverable from the Complainant and other two ex-office bearers in the balance sheet as on 31.03.2018, no further disclosure was given by the management of the Society in the financial statements for the financial year 2017-18.
21. The Committee noted that the Respondent was appointed as Internal Auditor of the Society in the financial year 2013-14, and the attempt to sell the plot was made in 2011-12 i.e, prior to the appointment of the Respondent as internal auditor. The Respondent had conducted internal audit of the Society for the financial years 2013-14 to 2017-18. From the submissions of the Respondent, it was noted that the Society had consistently sought the explanation from the Complainant but no satisfactory answer was provided to the Society. Lastly, in the financial year 2017-18, the Society had decided to debit the sum of Rs.1,29,500/- in equal amount to the account of the Complainant and the other two ex-office bearers. Hence, as per the Respondent, there was no disclosure in his internal audit report regarding the aforesaid amount in earlier years, i.e., 2013-14 to 2017-18 as the Society had

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not debited the amount in those years. Apart from above, it is noted that the Registrar of Co-operative Society in his report for the FY. 2012-13 to 2016-17 had not made any adverse comment on the decision taken in AGM held on 23<sup>rd</sup> June, 2013 regarding the recovery of Rs.1,29,500/- from the Complainant and other two ex-office bearers. The comment made by the Registrar of Co-operative Societies in his report was as under:-

*"29. It was decided in society's Extraordinary General meeting held on 01/05/2007 to sell the 1088 Sq Mt of plot of land of Survey No 226 covered under Greenbelt Reservation through majority. However on asking about the same to Society's office bearer, it was informed that "Some of the members have raised the issue of sale of said plot in the Court of law because of which the activity of selling has been postponed." But it is instructed that the activity of such sale should be carried out only after obtaining all necessary permission under the law. Otherwise it should be noted that any liability arise through such activity, will be of those office bearer's personal liabilities. Case No 264/11 dated 7/5 / 2011 has been running in Court No 4 of Board of Nominees Court whose last date of hearing was 14-12-2012 and order is pending. Once said order is delivered, Committee is instructed to take necessary actions as per the directions given in the order."*

22. The Committee further noted that as per the Complainant, the Board of Nominee Court vide its Order dated 26.08.2013 had granted stay on recovery of expenses related to the sale of plot from any member and passing any resolution in this regard.

23. The Committee, on perusal of the copy of English translation of stay order dated 22<sup>nd</sup> August 2013 noted that the Board of Nominees in the order written in pen had mentioned that *"It is ordered to maintain status quo in the matter in the petitioner's application's Para 16(a), (b) and (c) filed u/s 6 till 18/09/2013."*

22.1 The Committee noted from English translation of said order that vide para 16(a), (b) and (c), the relief was sought in respect of the following:-

- i) Para no. 3 of Resolution no.1 (Agenda no. 9) passed by the General Meeting of the Society on 10<sup>th</sup> July 2011 for not giving effect to transfer of plot of the Society as the dispute is pending in the Court of law.

- ii) Sub-para 3 of Resolution No. 6 passed by the General Meeting of the Society on 19<sup>th</sup> August 2012 for reimbursement of any expenses to be incurred by the Society in future in defending the case pending relating to transfer of plot of the Society.
- iii) Recovery of the amount from the Complainant and two others in relation to the expenditure related to sale of plot of the Society and passing any resolution till the matter is heard.
24. The Respondent stated that there was no stay in relation to the resolution of the general meeting of the Society dated 23<sup>rd</sup> June 2013 which was passed in relation to expenditure already incurred by the Complainant and two others while they were in management, and the amount withdrawn from the bank accounts of the Society which was not properly explained. The amount debited to the accounts of the Complainant and two others (i.e. Rs.1,29,500/-) in the financial year 2017-18 was actually withdrawal of money for which no explanation was offered. The stay granted by the Court in case no. 333/13 does not speak about the recovery of these amounts / expenses.
25. The Committee on perusal of the stay Order in case no.333/13, observed that the said stay Order does not appear to cover the resolution passed in general meeting held on 23<sup>rd</sup> June 2013 regarding debiting of Rs.1,29,500/- equally to the personal accounts of the Complainant. The Committee also noted that the expenses debited to the personal accounts appears to be those expenses for which no proper supporting documents / vouchers and explanation were provided by the Complainant and other two ex- office bearers, particularly, pertaining to the cash withdrawal of Rs.95000/- made by the Complainant and other two ex-officer bearers during the financial year 2010-11.
26. Therefore, it is viewed that these expenses pertain to earlier years and were debited to the personal accounts of the Complainant and other two ex- office bearers only after approval in AGM and the Respondent had duly pointed out the said transaction in his internal audit report. Hence, no negligence has been found on the part of the Respondent as far as approval of transaction by the members of the Society and disclosures of the transactions in audit report

are concerned. Accordingly, it cannot be stated that the Respondent has failed to give proper qualification or disclosures as required at the time of signing of audit report.

27. In respect of second leg of charge relating to non-mentioning of stay Order in case no. 333/13 by the Respondent in his audit report, the Respondent stated that neither the Complainant nor the Society has provided copy of the stay Order and at the time of audit, there was nothing on record which would make aware the Respondent about the same. Hence, in absence of any information / documents about the stay Order, it was not possible for him to mention the same in his audit report.
- 26.1 On the other hand, the Complainant stated that he has already provided the copy of stay Order passed by the Nominee of Board, Ahmedabad to the Respondent. Further, the copy of the said order was duly given by the Court to the Society. The Complainant also stated that he has sent an e-mail to the Respondent regarding the illegal development fees but no reply has been received from the Respondent.
- 26.2 Considering the above facts, it is observed that the Complainant could not bring on record any documentary evidence to show that the Respondent was aware of the stay Order passed by the Board of Nominee Court, Ahmedabad in case no.333/13. Further, there was nothing on record to show that copy of aforesaid order was shared with the Respondent by the Society or by the Complainant. Hence, in absence of information about stay order, it does not appear to be possible for the Respondent to include the reference of the same in his audit report.
- 26.3 Hence, considering that there was nothing on record to show that the passing of stay Order was in the knowledge of the Respondent and the stay Order does not appears to cover the resolution passed in AGM on 23<sup>rd</sup> June 2013 for the recovery of Rs.1,29,500/- from the Complainant and other two ex-office bearers, the Committee decided to hold 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.

28. The Committee also noted that during the course of hearing, the Complainant raised a new allegation related to the illegal development fees not reported in audit report. On the same, the Committee was of the considered view that since the said allegation was not a part of the original complaint filed by the Complainant and it was also not part of the inquiry before the Disciplinary Committee, the consideration of the same would amount to extension of allegation. Accordingly, the said allegation has not been considered by the Committee.

**CONCLUSION:**

29. In view of the findings stated in the above paragraphs vis-a-vis material on record, the Committee, in its considered opinion, holds the Respondent **NOT GUILTY** of Professional Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

**ORDER:**

30. 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

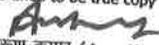
SD/-  
(MRS. RANI NAIR, I.R.S. RETD.)  
GOVERNMENT NOMINEE

SD/-  
(MR. ARUN KUMAR, I.A.S., RETD.)  
GOVERNMENT NOMINEE

SD/-  
(CA. SANJAY KUMAR AGARWAL)  
MEMBER

SD/-  
(CA. SRIDHAR MUPPALA)  
MEMBER

DATE : 07<sup>TH</sup> FEBRUARY, 2024  
PLACE: NEW DELHI

सही प्रतिलिपि होने के लिए प्रमाणित  
Certified to be true copy  
  
अरुण कुमार / Arun Kumar  
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer  
अनुशासनात्मक निदेशालय / Disciplinary Directorate  
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया  
The Institute of Chartered Accountants of India  
आईसीएआई भवन, विश्वस नगर, शाहदरा, दिल्ली-110032  
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