

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-61/18-DD/59/2018/DC/1472/2021]

In the matter of:

Shri Sanjay Mukim

D-109, III Floor

Vivek Vihar, Phase – 1,

Delhi – 110095

.....Complainant

Versus

CA. Bharat Khanna (M.No.514306)

M/s Bharat Khanna & Associates

Chartered Accountants

103/2, Railway Road,

Rishikesh (Uttarakhand) – 249201

.....Respondent

MEMBERS PRESENT:

CA. Ranjeet Kumar Agarwal, Presiding Officer (Present in person)

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

Shri Arun Kumar, I.A.S. (Retd.), Government Nominee (Present through Video Conferencing)

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

CA. Sridhar Muppala, Member (Present in person)

DATE OF FINAL HEARING: 30.05.2023 (through physical/video conferencing mode)

PARTIES PRESENT :

Complainant: Not Present

Respondent: CA. Bharat Khanna (Through Video Conferencing Mode)

BACKGROUND OF THE CASE:-

1. The brief background of the case is as under:
 - a. The Complainant is a member of Decon Residence Welfare Society having its registered office at Tapovan, Rishikesh (hereinafter referred to as the "**Society**").
 - b. The Respondent was appointed as auditor of the said society for the F.Y. 2016-17 and was re-appointed for F.Y. 2017-18.
 - c. The Complainant stated that he came across numerous alleged criminal acts and irregularities committed by the Respondent firm in their capacity as Chartered Accountants of the said Society in collusion and with the consent of the Managing Committee members of the said Society.
 - d. The present complaint relates to the appointment of the auditor, non-reporting of unauthorized borrowings and financial mismanagement by the Respondent.

CHARGES IN BRIEF:-

2. The Committee noted that in the Complainant in the complaint filed in Form I dated 28th February 2018 had levelled three allegations against the Respondent which were as under:
 - a. That the Respondent took up the assignment of Statutory Auditor of the Society in gross violation of Rules and Regulations as he was not appointed/ re-appointed as Statutory Auditor for 2016-17 by the General Body in the AGM held on 19th June 2016 and the resolution for appointment of the Respondent as auditor was not even in agenda.
 - b. Unauthorized borrowings made by the said society were approved by the Respondent.
 - c. Financial mismanagement for the Financial Year 2016-17 was not reported by the Respondent.

3. The Committee noted that allegation no. 2 (b) and 2(c) were dropped by the Director (Discipline) at the prima-facie stage on the grounds that the Complainant has neither provided information regarding exact details of events nor provided any corroborative evidence to substantiate these allegations. Thus, in light of the incomplete information provided by the Complainant, these allegations were not upheld against the Respondent.
4. As regards the allegation mentioned in para 2(a) above, the Respondent in his reply at the stage of PFO had, inter-alia, mentioned as under:
 - a. The Respondent has stated that his appointment as statutory auditor of society was taken in the General Body meeting held in 2016.
 - b. He further submitted extracts of minutes of the General Body meeting held on 17th July 2016 wherein the audited balance sheet for the year ending 31st March 2016 was adopted and his re-appointment as statutory auditor for FY 2016-17 was made.
5. The Director (Discipline) had, in his Prima-facie opinion dated 7th January 2021, noticed that
 - 5.1 The Respondent had placed on record the extract of minutes of the General Body Meeting held on 17th June 2016 (as per Prima Facie Opinion) adopting audited balance sheet for the year ending 31st March 2016 and minutes making his re-appointment as statutory auditor for FY 2016-17.
 - 5.2 The Complainant, however, in his Rejoinder stated that there was no meeting held on 17th June 2016, as the same was held on 19th June 2016 he was present in the said GBM and there were only 24 members who were present and the Respondent has filed forged document claiming that 66 members attended relying upon forged signatures of 66 members. He also annexed copy of minutes of AGM/GBM held on 19th June 2016 (as per Prima Facie Opinion) and a copy of the attendance sheet of that day (as per Prima Facie Opinion).
 - 5.3 It was noted by the Director (Discipline) that the appointment letter issued for the FY 2016-17 (as per Prima Facie Opinion) clearly mentions that the

Respondent firm was appointed/ reappointed as auditor of Society vide the resolution passed at AGM of the General Body of the Society which was held on 19th June 2016.

- 5.4 Thus, the Director (Discipline) viewed that the Respondent had created a forged document as no meeting was held on 17th June 2016. Accordingly, based on the above reasoning, it is concluded that no meeting was held on 17th June 2016 as claimed by the Respondent and thus the appointment of the Respondent was not a valid one as being alleged.
- 5.5 The Director (Discipline), apart from holding the Respondent guilty of allegation 2(a) also hold him prima-facie guilty with respect to the creation and production of false documents before the Disciplinary Directorate.
6. Accordingly, the Director (Discipline) in terms of Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, held the Respondent Prima-facie Guilty of Professional Misconduct falling within the meaning of Item (9) of Part I of First Schedule, Item (2) of Part IV of First Schedule and Item (3) of Part II to Second Schedule to the Chartered Accountants Acts, 1949. The said items in the Schedule to the Act states as under:

Item (9) of Part I of the First Schedule:

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

(9): accepts an appointment as auditor of a company without first ascertaining from it whether the requirements of Section 225 of the Companies Act, 1956 (1 of 1956), in respect of such appointment have been duly complied with”

Item (2) of Part IV of the First Schedule

“A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he-

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

Clause (3) of Part II of the Second Schedule

“A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he:

(3): includes in any information, statement, return or form to be submitted to the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority any particulars knowing them to be false.”

7. The Committee noted that the Respondent in his submissions dated 26th July 2021 after Prima Facie Opinion had, inter-alia, mentioned as under:
- a. That “Extract from Minutes 17th June 2016 is a valid document and has not been created by Respondent.
 - b. The General Body Meeting was held on 19th June 2016 but due to clerical mistake “Extract from Minutes” bears wrong date 17th June 2016.
 - c. To substantiate the fact he wishes to draw attention to the facts that the Complainant had also filed similar and other complaints with Registrar of Firms, Societies and Chits, Dehradun and in reference to these complaints, Registrar of Firms has passed an order no. 2074B dated 29th February 2020 rejecting all the complaints of the Complainant as being baseless allegations.
 - d. In the point no. 2 of the said order of Registrar of Firms, it has been clearly mentioned that the General Body Meeting was actually held on 19th June 2016 but due to clerical error “Extracts from Minutes” bears 17th June 2016. Further, it confirms that a total of 66 members were present in the meeting. The duly attested true copy of the order by a notary was also enclosed by him.
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- e. That he also submitted a duly attested true copy by the Notary of Written Submission dated 7th January 2020 made by Society before Hon' ble Registrar of Firms, Societies and Chits, Dehradun with regards to various allegation leveled by the Complainant.
- f. Further, rejection of plea of the Complainant by the Registrar substantiates the fact that the Respondent had not created/fabricated any document rather he submitted all the documents it had on file with the Disciplinary Directorate office for completion of this case.
- g. He apologized that he did not notice that there was clerical mistake in date mentioned on "Extract from Minutes" as he was in possession of appointment letter duly issued by Society appointing him as auditor of the society and, due to this same reason, he did not contradict the fact that the General Body Meeting was held on 19th June 2016 when asked for additional documents by Disciplinary Directorate office vide letter ref No. PR-61/18-DD/59/2018/AD dated 31st May, 2018.
- h. He further proposed the name of Mr. K.M. Jaiswal, President of Decon Residence Welfare Society as a witness and also shares his contact details for making direct enquiry/confirmation and submitted that he could also come in person to answer any question if required.

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.	12.05.2023	Part- Heard and Adjourned.
2.	30.05.2023	Concluded. Judgement Reserved
3.	09.06.2023	Consideration of Judgement.

9. On the day of the first hearing held on 12th May, 2023, the Committee noted that the Respondent was present through Video Conferencing Mode. The Committee noted that neither the Complainant was present nor any intimation was received from his end. The Respondent was administered on Oath. Thereafter, the Committee enquired from the Respondent as to whether he was aware of the charges. On the same, the Respondent replied in the affirmative and pleaded Not Guilty to the charges levelled against him. The Committee, looking into the absence of the Complainant and the fact that this was the first hearing, decided to adjourn the hearing to a future date. With this, the hearing in the matter was partly heard and adjourned.
10. On the day of the final hearing held on 30th May 2023, the Committee noted that the Respondent was present through Video Conferencing mode. The office informed the Committee that the Complainant had submitted over the phone that he has nothing further to add and does not wish to appear since the root cause of the case has been resolved. The Respondent was asked to make his submissions.
- 10.1 The Respondent in his submissions had, inter-alia, submitted as under:
- a. That General Body meeting of the Society was held on 19th June 2016. but due to a clerical mistake, "Extracts of Minutes" bears the wrong date 17th June 2016.
 - b. That he, in his written statement to the prime-facie opinion, has already submitted that Registrar of Firms, Dehradun has itself conducted all the inquiries as a similar case was pending there also.
 - c. That the enquiry was concluded, and it is clarified in their Order itself that the AGM was held on 19th of June and 66 members were present.
 - d. Further, the same may also be directly confirmed by the Registrar of Firms, Dehradun.
 - e. He further referred the submissions submitted by the Society to the Registrar of Firms to prove his claim.

- 10.2 The Committee posed certain questions to the Respondent to understand the issue involved and the role of the Respondent in the case. Thereafter, the Committee, looking into the Respondent's submissions against the charges leveled, recorded his plea and accordingly concluded the hearing by reserving its judgment.
11. Thereafter this matter was placed in hearing held on 9th June 2023 for consideration of the facts and arriving at a decision by the Committee. The Committee noted that the instant case was concluded on 30th May 2023 and the decision of the bench was kept reserved on account of going through all the paper and documents submitted by both the parties in detail.
- 11.1 Keeping in view the facts and circumstances of the case, material on record and looking into the Respondent's submissions against the charges leveled, the Committee passed its judgment.

FINDINGS OF THE COMMITTEE:

12. As regards the charge without respect to taking up an audit assignment without being appointed as statutory auditor, the Committee noted that the Respondent at prima-facie stage had placed on record the extract of minutes of the General Board Meeting held on 17th June 2016 wherein the agenda of appointment of his firm as statutory auditor was at point 3 and his firm was duly appointed as statutory auditor in that meeting. The Committee further noted from the said extract of minutes that the meeting was attended by 66 members.
13. The Committee noted that the Respondent mentioned that the General Body Meeting was actually held on 19th June 2016 but due to clerical error, "Extracts from Minutes" bears 17th June 2016 and he apologized for the clerical mistake.

14. The Committee noted that the Respondent had submitted that the Complainant had also filed complaint before Registrar of Firms, Societies and Chits, Dehradun on 15th December 2017. The Committee noted that the Respondent had also brought on record a notarized copy of written submissions filed by the Society made before the Registrar in respect of the complaint filed by the Complainant, wherein with respect to the meeting held on 19th June 2016, the Society submitted as under :

महोदय इस सम्बन्ध में सोसायटी यह भी स्पष्ट करना चाहती है कि उक्त ए0जी0एम0 दिनांक 19.06.2016 को दिन रविवार को ही सम्पन्न हुयी थी तथा उक्त मीटिंग में सोसायटी के 66 सदस्य उपस्थित थे जिसमें शिकायतकर्ता स्वयं भी उपस्थित था। वास्तव में उक्त दिनांक को जब मीटिंग हुयी तब प्रारम्भ में उसका ब्यौरा हाथ से लिखा जा रहा था तथा 24 सदस्यों के नाम व हस्ताक्षर अंकित हो गये थे तभी किसी सदस्य द्वारा उक्त को हाथ से न लिखाकर टाईप कराने की सलाह दी गयी तथा जिस पर उक्त मीटिंग का ब्यौरा टाईप कराया गया और उस पर तत्समय उपस्थित सभी 66 सदस्यों के हस्ताक्षर कराये गये। संजय मुकीम अर्थात शिकायतकर्ता को उस समय यह ज्ञात था कि उसके द्वारा सोसायटी के फ्लैट को अवैध लाभ के लिये होटल की तरह किराये पर देने के अवैध कार्य के विरुद्ध सदस्यों द्वारा धीरे-धीरे विरोध प्रारम्भ हो गया है जिस कारण उसने पेशबन्दी में उक्त हस्तलिखित दस्तावेज (शिकायत के साथ संलग्न "डी") की मोबाईल से फोटो खींच ली जिसे उसी दौरान टाईप कराकर सभी 66 सदस्यों के हस्ताक्षर कराये गये थे तथा संजय मुकीम/शिकायतकर्ता फोटो खींचने के बाद बीच में ही बैठक से चला गया था, जिस कारण हस्तलिखित कागज पर उसके हस्ताक्षर हैं परन्तु तत्पश्चात टाईप किये हुये मैटर पर उसके हस्ताक्षर नहीं हैं। सोसायटी यह स्वीकार करती है कि उक्त टाईपशुदा दस्तावेज में टंकण त्रुटि के कारण दिनांक 19.06.2016 के स्थान पर 17.06.2016 टाईप हो गयी जो कि एक सदस्यो भूल है तथा जांचबूझकर नहीं



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The Committee from the above noted that the management of the Society had clearly mentioned that the meeting was held on 19th June 2016 and the Complainant himself was present in the meeting held on 19th June 2016.

However, he left in the middle of the meeting hence the said minutes do not contain the signatures of the Complainant. It is further submitted by the Society that in the typed documents due to clerical mistake the date was mentioned as 17th June 2016 instead of 19th June 2016.

15. The Committee further noted that Registrar of Firms, Societies and Chits, Dehradun after conducted all enquiries and clarified in their order dated 29th February 2020 that wrong mention of date of meeting in the minutes was a clerical mistake. He further accepted the fact that the General Body meeting was held on 19th June 2016, Sunday wherein due to clerical mistake date was mentioned as 17th June 2016 and the meeting has been attended by 66 members. It is further accepted in the said order that appointment of the Respondent was made in accordance with rules.
16. Keeping in view of above arguments and on perusal of records the Committee viewed that the appointment of the Respondent as Statutory Auditor of the Society is valid. Accordingly, the Committee held the Respondent **Not Guilty** of Professional misconduct falling within the meaning of Item (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949.
17. As regards the **second charge** levelled by the Director (Discipline) relating to creating and producing the false document in his defense before the Disciplinary Directorate, the Committee noted that it is already been established in preceding paras that the Respondent has not produced any false document as the same was evident from the order dated 29th February 2020 of the Registrar of Firms, Societies and Chits, Dehradun. Accordingly, the Committee hold the Respondent **NOT GUILTY** of "Other misconduct" falling within the meaning of Item (2) of Part IV of the First Schedule & Item (3) of Part II of the Second Schedule to the Chartered Accountants Act, 1949 with respect to charged levelled by the Director (Discipline).



CONCLUSION

18. In view of the above findings stated in above para's vis a vis material on record, the Committee, in its considered opinion, holds the Respondent is **NOT GUILTY** of Professional Misconduct falling within the meaning of Item (9) of Part I of First Schedule, Item (2) of Part IV of the First Schedule and Item (3) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

ORDER

19. 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.

SD/-

**CA. RANJEET KUMAR AGARWAL
(PRESIDING OFFICER)**

SD/-

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

SD/-

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

SD/-

**(CA. SANJAY KUMAR AGARWAL)
MEMBER**

SD/-

**(CA. SRIDHAR MUPPALA)
MEMBER**

DATE : 07TH FEBRUARY, 2024

PLACE: NEW DELHI

सही प्रतिलिपि होने के लिए प्रमाणित /
Certified to be true copy


नीलम पुंडीर / Neelam Pundir
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
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