

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/G/249/17-DD/324/17-DC/1392/2020

In the matter of:

Dr. Vijay Zade

Commissioner for Co-operative &
Registrar of Co-operative Societies Maharashtra State,
New Central Building,
Pune – 411001

.....Complainant

Versus

CA. Vinod Kumar Girdharilal Chandwani (M. No. 132459) &

CA. Kapil Kishor Jugal Kishor Paniya (M. No. 131674)

M/s Paniya Chandwani & Co., Chartered Accountants,
Paniya Sadan, Near Sai Mandir,
Hariram Nagar, Distt. Wardha,
Tehsil Deoli,
Pulgaon (Maharashtra) – 442302

.....Respondent

MEMBERS PRESENT:

CA. Ranjeet Kumar Agarwal, Presiding Officer (In person)

Smt. Rani Nair, I.R.S. (Retd.), Government Nominee (In person)

Shri Arun Kumar, I.R.S. (Retd.), Government Nominee (In person)

CA. Sanjay Kumar Agarwal, Member (In person)

CA. Sridhar Muppala, Member (In person)

DATE OF FINAL HEARING : 13.12.2023 (through physical/Video Conferencing Mode)

PARTIES PRESENT –

Complainant : Not Present

Respondent (s) : CA. Vinod Kumar Girdharilal Chandwani (in person)

: CA. Kapil Kishor Jugal Kishor Paniya (in person)

Bill

BACKGROUND OF THE CASE:

1. The brief background of the case is as under:
 - a. Dr. Vijay Zade, Commissioner for Co-operative & Registrar of Co-operative Societies Maharashtra State, Pune (hereinafter referred to as the “**Complainant**” and “**Complainant Office**” respectively) has filed a complaint in Form ‘I’ dated 06th November 2017 against M/s Paniya Chandwani & Co., Chartered Accountants (FRN No. 131149W), Pulgaon (hereinafter referred to as the “**Respondent firm**”).
 - b. The Respondent firm was appointed as the Statutory Auditor of Navodaya Urban Co-operative Bank’ (hereinafter referred to as the ‘**Bank**’) for the FY 2015-16.
 - c. As per the provision of Sec.81 (5) (b) of Co-operative Act, an auditor have to submit his audit report within the period of 1 month from its completion and in any case before issuance of notice of the Annual General Body Meeting. In the present case, the Bank had conducted its General Body Meeting on 30th September 2016, however, the Respondent firm failed to submit his report within the specified time period and even till the date of filing of extant complaint by the Complainant with the ICAI.
 - d. That there were financial irregularities and misappropriation in the Bank, due to which, Bank members’ and depositors’ financial interest had become endangered.
 - e. Since the Respondent firm had not worked as per the duties and responsibilities of the auditor, the Complainant office de-panelised the Respondent firm from state level auditors’ panel vide its order dated 09th June 2017.
 - f. CA. Vinod Girdharilal Chandwani and CA. Kapil Kishor Jugal Kishor Paniya (hereinafter jointly referred to as ‘**Respondents**’) declared themselves as the members answerable to the complaint filed against the Respondent Firm.

CHARGES IN BRIEF:

2. The Committee noted that the allegation is that the Respondent firm failed to adhere the provisions of Section 81(5) (b) of Maharashtra Co-operative Societies Act, 1960, according to which it was required to submit its audit report within the period of one month from its completion and in any case before issuance of notice of the Annual General Body Meeting where the Bank had conducted its Annual General Body Meeting on 30th September 2016.
3. The Committee noted that the Respondents, at the stage of PFO had, inter-alia, mentioned as under:
 - a. The Bank approached the Respondent firm and informed that since they were empanelled on the list of registered auditor of Co-operative departments, it had passed the resolution in its meeting of board of directors on 8th August 2016 and appointed the Respondent firm as Auditor for conducting the audit for the FY 2015-2016 since the earlier auditor namely 'M/s K P R K & Associates' had left the audit for the same period incomplete vide its letter dated 6th August 2016.
 - b. The Bank also informed the Respondent firm that it had already informed the fact to the Registrar's office vide its letter dated 12th August 2016 that the earlier auditor had left the job incomplete and the Bank was required to complete the audit on 30th September 2016 and therefore because of the urgency and emergency situation, it had appointed the Respondent firm as its Auditor to complete the audit for the period 2015-2016 and the Bank may be allowed to continue with the Respondent firm and the said appointment of Respondent firm may kindly be confirmed.
 - c. Thus, based on the said representation and under the impression that the Registrar had allowed the Bank to complete the audit through Respondent firm, it accepted the proposal and presented its willingness to complete the audit.
 - d. Thereafter, the Bank insisted the Respondent firm to give a letter of completing the audit report for the purpose of placing the same before the

Bill

Annual General Meeting scheduled on 30th September 2016 and pressurized them to issue the said letter. Accordingly, the Respondent firm issued the letter to the Bank that they were completing the audit and would submit the detail report as early as possible.

- e. The Respondents further stated that the Bank later on informed the Respondent firm that the Co-operative department vide order dated 20th September 2016 had appointed Mr. S. S. Supe, the District Special Auditor as auditor of the Bank for the purpose of completing the audit and therefore it could not proceed with the audit work of the Bank and the entire audit work was held up since Mr. S. S. Supe had taken the charge of audit and the work was started at his instance.
- f. Therefore, the Respondent firm was not doing any kind of job of audit of the Bank and therefore could not handover its audit report to the Bank.
- g. In the meantime, the Additional Registrar of Co-operative department on 17th November 2016 issued one letter to them, calling thereby the explanation for accepting the job of Bank audit for 2015-16. However, since the Respondent firm was already removed because of the appointment order of Mr. S. S. Supe dated 20th September 2016, it was under the impression that the said letter had been issued by oversight of the department and did not reply the same.
- h. Thereafter, again on 14th December 2016, the Bank informed the Respondent firm that Hon'ble Minister for Co-operation & Marketing had passed the order and had cancelled the order dated 20th September 2016 of appointing Mr. S. S. Supe as auditor of the Bank and the Respondent firm would continue as auditor for the said period of 2015-2016.
- i. In the meantime, on 06th April 2017, the Respondent firm informed the Registrar of Co-operative Societies that it had not completed the audit because of the said situation arose in between and sought further time.
- j. Thereafter, suddenly on 09th June 2017, the Respondent firm received an Order from the Commissioner for Co-operation & Registrar of Co-operative Societies passing thereby the Order of removing the Respondent firm from empanelled list of the auditors maintained for the purpose of audit of Co-operative Banks and Societies.

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- k. The Respondents stated that the said impugned order was completely illegal and causing the very injustice to them and therefore, being aggrieved and dissatisfied by the said order dated 9th June 2017, they filed the revision application before the Hon'ble Minister for Co-operation & Marketing Maharashtra State Mantralaya, Mumbai dated 7th July 2017.
4. The Director (Discipline) had, in his Prima Facie Opinion dated 18th September 2020, noted as under: -
- a. The Respondent firm through its letter dated 30th September 2016 informed the Complainant Office that the audit of the accounts of the Bank for the FY 2015-16 was completed by them and the audit report would be issued by them at the earliest however, it was viewed that the Respondent firm had not communicated any reason for delay in submission of audit report to the proper authorities.
- b. Further, the Respondent firm vide its letter dated 30th September 2016 addressed to the Chairman of the Bank had submitted that they had successfully completed the audit of the Bank in all respects, and they were in the process of drafting of audit report in respect of the same. However, at another instance, vide its email dated 6th April 2017, the Respondent firm submitted that though they started the audit in due time but due to some inevitable reasons, the audit had not been completed. Thus, it was viewed that the contradictory submissions were made by the Respondents in the aforesaid two letters and email.
- c. The Respondents failed to submit any documentary evidence in support of his contention that the letter dated 30th September 2016 was issued under pressure of the Bank.
- d. That the Respondents failed to submit the additional documents. Instead, they submitted a copy of an Order of the Hon'ble Minister, Co-operation, Relief and Rehabilitation dated 3rd July 2019 wherein the Order of Complainant office dated 09th June 2017 for de-panelising the name of Respondent firm from the list of empanelment of State level Auditors was quashed and set-aside.

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- e. Thus, in the absence of sufficient documentary evidence submitted by the Respondents on record and non-submission of the audit report and audited annual accounts of the Bank for the F.Y 2015-16 by them within prescribed due time, it was viewed that the Respondents were grossly negligent in the conduct of their professional duties.
5. Accordingly, the Director (Discipline) held the Respondents 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 PRIMA FACIE OPINION

6. The Respondent in his written submissions dated 19th April 2021 had, inter-alia, mentioned as under: –
- a. Initially when they received this assignment, they were very much confident that they will do it in 15 days based on experience of doing statutory audits of Co-Operative Societies and Co-operative Bank, however, many unavoidable circumstances happened.
- b. The Bank branch was not willing to provide proper documents despite sending various letters.
- c. The Respondent complained about this issue with RBI on their Valid E Mail IDs, District Deputy registrar and District Special Auditor but did not receive cooperation from the Bank.

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- d. That they took guidance from their Seniors to complete the audit in such circumstances but due to huge Fraud cases they compulsorily required time and required proper documentation to conclude it.
- e. That in one instance as per the Provision of Maharashtra Cooperative Societies Act, FIR must be filed with the Police. However, without sufficient documents in support of observation, it was unable to conclude the audit.
- f. That they were the persons who received audit when Bank had already suffered all huge losses, but they did not take backward step and continued the audit to unearth the mistakes or frauds which had already happened.
- g. They were not negligent in part of performing their duties. They would have been negligent if they did not work at all and had not gathered information to the extent possible to complete the audit as per applicable provision.
- h. Their firm was de-empanelled by order of Hon'ble Co-Operative Commissioner. However, after production of documents and considering the sensitivity and seriousness involve in matter, based on representation submitted by them, Hon'ble Minister of Co-Operation, set aside the order of Co-Operative commissioner and allowed them to be empanelled again for doing Statutory audit of Co-operative Societies.

 **BRIEF FACTS OF THE PROCEEDINGS:**

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

S. No.	Date	Status of Hearing
1.	19.09.2022	Part Heard and Adjourned
2.	20.06.2023	Part Heard and Adjourned
3.	25.08.2023	Fixed and Adjourned due to unavoidable circumstances
4.	13.12.2023	Heard and concluded.

8. On the day of first hearing held on 19th September 2022, the Committee noted that the Complainant was not present. The Committee further noted that both

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the Respondents were physically present at the ITO office, ICAI Bhawan, New Delhi. The Respondents were administered on Oath. Thereafter, the Committee enquired from the Respondents as to whether they pleaded guilty to the charges alleged. On the same, the Respondents replied in affirmative and pleaded Not Guilty to the charges levelled against them. The Committee, looking into 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.

9. On the day of second hearing held on 20th June 2023, the Committee noted that both the Respondents were physically present at the ITO office, ICAI Bhawan, New Delhi. The Committee further noted that neither the Complainant was present, nor any intimation was received from him despite the notice duly served upon him.

9.1 Thereafter, both the Respondents presented their line of defence in detail, stating that they could not complete the audit due to lack of details from the Complainant side. Further, regarding the reporting of fraud to Police, they submitted that they were unaware against whom they should file FIR. The Respondents also submitted that –

- a. They received an audit assignment after receiving the appointment letter. After starting the audit they presumed that the audit will be conducted smoothly.
- b. However, they found various irregularities as under:
- (i) Trial balance figures were not matching with the ledger account.
 - (ii) There were hundreds of NPA accounts on which interest were being charged and the interest so charged, was being mis-utilised in the form of Dividend which is in violation of prudential norms.
 - (iii) Since last 15 years this practice was adopted by the bank with respect to these NPA accounts.
 - (iv) When they started checking of the loan accounts, it was realised that original property documents were not provided to them.

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- (v) Same property had been mortgaged 3 - 4 times and court cases were going on these properties.
- (vi) The properties were sold out on basis of fraudulent NOC, but in the account, loan amount was still outstanding.
- (vii) Maximum accounts are settled in OTS scheme of RBI, but with blatant violation of the RBI Rules and Regulations.
- (viii) Property is released but the documents are not returned.
- (ix) Amount was paid in cash, but there was no voucher.
- (x) Property is released without even receipt of the amount.

c. Further, the reason of non-completion of audit is non-availability of records.

9.2 The Committee noted that the Respondents also relied on their written submission dated 20th June 2023, wherein they, inter-alia, stated as under:

- a. The Navodaya Urban Co-operative Bank Ltd., Nagpur appointed the Respondent as an auditor for financial year 2015-16 by passing a resolution on 08.08.2016 since earlier auditor left the audit incomplete.
- b. He informed the management committee and CEO of Bank that since earlier auditor vacated the office thus their appointment can only be done by Hon'ble Commissioner of Co-operative Maharashtra State, and they informed that approval for the same is already received and therefore the Respondents accepted the proposal.
- c. Thereafter, Bank insisted and pressurized them to give letter of completing the audit report for the purpose of placing the same before AGM. Accordingly, they issued the letter that they are completing the audit and will submit the detail report as early as possible.
- d. However, they subsequently came to know that Hon'ble Commissioner of Co-operative Maharashtra State had appointed Mr. S S Supe as the Statutory Auditor of Bank dated 20th September 2016 which means that Respondent's appointment was void ab initio.
- e. On 14th December 2016, the Bank informed that Hon'ble Commissioner of Co-operative Maharashtra State has cancelled the order dated 20th

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September 2016 and Respondent's firm was appointed as auditor for the said period 2015-16.

- f. After valid appointment they wilfully started the audit.
- g. During the audit they found major discrepancies for which they verbally asked Bank officials to provide the respective files and documents. Respondents also issued letters to Bank officials to issue the same.
- h. They also intimated the same to RBI, Commissioner of Cooperative Society, District Deputy Registrar and District Special Auditor but received no co-operation from the Bank.
- i. In the meantime, the Commissioner for co-operation issued the letter of de-empanelment to the Respondents.
- j. After de-empanelment they appealed to Minister of Co-operation, Marketing and Textile and after personal hearing also submitted the requisite documents. After understanding the matter, the Minister gave decision in their favour and passed an Order to re-empanel the Respondent's firm on panel of Maharashtra Co-operative Commissioner empanel list in Category 1.

9.3 Thereafter, the Committee posed certain questions to the Respondents to understand the issue involved and role of the Respondents in the case. With this, the hearing in the matter was partly heard and adjourned. The Committee directed the office to send copy of Order of Minister of Co-operation, Marketing and Textile to the Complainant and have comments/response on the same.

With this, the matter was partly heard and adjourned.

10. On the day of final hearing held on 13th December 2023, the Committee noted that both the Respondents were physically present at the ITO office, ICAI Bhawan, New Delhi. The Committee further noted that neither the Complainant was present, nor any intimation was received from him despite the notice duly served upon him.

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- 10.1 Thereafter, the committee posed certain questions to the Respondents to understand the current situation and asked them to present their final submissions.
- 10.2 The Respondent(s) presented their line of defense by mentioning that they were de-paneled by the Co-operative society and in furtherance to this they had filed an Appeal with the Minister of Co-operative Society. Decision of the said Appeal was made in their favour, and they were re-paneled by the Co-operative Society.
- 10.3 The Committee, after considering all papers available on record and after detailed deliberations and recording the submissions, decided to conclude the matter.

FINDINGS OF THE COMMITTEE:

11. The Committee noted the charge against the Respondent was of non-submission of audit report of Navodaya Urban Co-operative Bank' (hereinafter referred to as the 'Bank') for the FY 2015-16. Hence, there was non-compliance of Section 81(5)(b) of Maharashtra Co-operative Societies Act, 1960.
12. The Committee noted that the details of instances in the case are as under:

Date	Details of Instances
08.08.2016	The Bank passed the resolution in the meeting of its Board of Directors held on 08-08-2016 and appointed the Respondent as its Statutory Auditor for conducting the audit for the FY 2015-16.
20.09.2016	The Complainant Department appointed Mr. S S Supe as the Auditor of the Bank for conducting the audit for the FY 2015-16.
30.09.2016	i. The bank held its Annual General meeting on 30-09-2016. ii. The Respondent firm vide its letter dated 30-09-2016 submitted that the audit for the FY 2015-16 was completed and the audit report would be submitted at the earliest.
14.12.2016	Hon'ble Minister, Co-operation & Textiles vide his order dated 14-12-2016 quashed the order dated 20-09-2016 of the Complainant Office (relating to appointment of Mr. S S Supe) and thus, the appointment of the Respondent as the Statutory Auditor was upheld.

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07.01.2017	The Complainant Department vide letter dated 07-01-2017 informed Mr. S S Supe regarding the above order of Hon'ble Minister dated 14-12-2016 and the cancellation of his appointment as the Statutory Auditor of the Bank for the FY 2015-16.
06.03.2017	The Complainant Department vide its letter dated 06-03-2017 informed the Respondent firm that their audit report on the accounts of the Bank for the FY 2015-16 was not received till the date of extant letter and called for their explanation in respect of the same.
06.04.2017	The Respondent firm informed the Complainant office that they could not complete the audit due to inevitable reasons and required 15 days more to complete the audit.
09.06.2017	The Complainant Department vide its order dated 09-06-2017 de-panel the name of Respondent firm from State Level Auditors empanelment list.
03.07.2019	The Hon'ble Minister, Co-operation, Relief and Rehabilitation vide his order dated 03-07-2019 quashed and set aside the above order of Complainant Department dated 09-06-2017.

13. The Committee noted that the instant case is of not completing the audit in time. The Respondent justified his stand citing various grounds/ reasons which lead to hindrance in completing audit. In the meantime, the audit was allotted to Mr. S S Supe, the District Special Auditor because the Respondent was de-penal by the Complainant Department vide order dated 9th June 2017.
14. The Committee noted that the Respondent had appealed against the said order of de-empanelment and had brought on record an order dated 3rd July 2019 of the Hon'ble Minister, Co-operation, Relief and Rehabilitation wherein the Hon'ble Minister had quashed and set aside the Order (passed by the Complainant office) of de-panelling the Respondent firm and the Respondent firm was again re-empaneled by the Co-operative Society.
15. The Committee noted that the office had sent the order of Hon'ble Minister to the Complainant office. It is noted that the Complainant vide letter dated 23rd November 2023 submitted that the said Order was binding on them, hence,

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the Order of Hon'ble Minister, Co-operation, Relief and Rehabilitation stands undisputed by the Complainant.

16. In light of the facts and circumstances, the committee noted that if the Hon'ble Minister, Co-operation, Relief and Rehabilitation had already passed an Order in favour of the Respondents then nothing more remains in the present matter as there is no merit in the issue raised. Moreover, the Complainant has failed to establish their case, and in lack of proper evidence it would be unjust to hold the Respondents guilty.

CONCLUSION

17. In view of the findings stated in the above paragraphs vis-a-vis material on record, the Committee, in its considered opinion, holds the Respondents **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

18. 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 Respondents.

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: 07.02.2024

PLACE: New Delhi

