

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2026-2027)]

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

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

File No:- PR/378/2019/DD/08/2020/DC/1689/2022

In the matter of:

**Lt. Gen Rana SK Kapur, PVSM, AVSM, SM, VSM (Retd.),
D-25, Nyati Highlands - II,
Mohammadwadi,
Pune – 411 060**

.....Complainant

Versus

**CA. Akshay Subhash Gandhi (M. No. 164101)
Partner of M/s Gandhi Kale & Associates.,
Chartered Accountants
C/o Bhagwandas Tulsidas,
649, Shri Chhatrapati Shivaji Market Yard,
Gultekdi,
Pune – 411 037**

.....Respondent

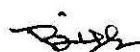
MEMBERS PRESENT:

**CA. Prasanna Kumar D, Presiding Officer (In person)
CMA Chandra Wadhwa, Government Nominee (In person)
CA. Mahesh Shah, Government Nominee (In person)
CA. Satish Kumar Gupta, Member (In person)**

**DATE OF FINAL HEARING : 14th May 2026
DATE OF DECISION TAKEN : 25th July 2026
DATE OF PRONOUNCEMENT OF DECISION : 29th August 2026**

PARTIES PRESENT:

**Complainant : Lt. Gen Rana SK Kapur (Through VC)
Respondent : CA. Akshay Subhash Gandhi (Through VC)
Counsel for the Respondent : CA. Shashikant Vasudeo Barve (Through VC)**



1. **Background of the Case:**

- 1.1. The Complainant is a member of Section 8 Company, namely, **M/s Nyati Highlands Eastern Foundation** (hereinafter referred to as the "**Company**" / "**NHEF**") for managing the Common Area Maintenance of a Housing Project of 56 Freehold Bungalow Plots which were sold on absolute ownership basis. In the year 2016-17, two new members joined the NHEF resident's family, Mr. Avinash Shinde and Mr. Pankaj Desai. Since these two members refused to obey the financial rules and regulations of NHEF, they did not allow smooth conduct of the Meetings and were primarily responsible for the split in their NHEF.
- 1.2. As per AOA of the NHEF, the Executive Committee decided to issue notices to all these members informing them that they would be declared as members in default if they did not pay their dues by a specific date and consequently, their name would be deleted from the list of members and they will be denied all privileges of a member including barred from attending Meetings and voting therein. This concerted drive, by the then EC, helped NHEF to build a corpus of nearly Rs. 30 lakhs to construct a road in the campus.
- 1.3. The Complainant stated that due to their embarrassing / disgusting conduct and behavior, unlike a gentleman, during each of the meetings thereafter, which none of them (complainant group) could take any more, the then EC decided to resign en masse, on a high moral ground. NHEF is being managed by an EC who have been its major defaulters, elected illegally in contravention of its AOA and who have also violated all possible rules of NHEF and the Companies Act, 2013 during their tenure. The Respondent was Statutory Auditor of the Company for the financial year 2018-2019. The Complainant has raised allegations regarding audit done by the Respondent.

2. **Charges in brief:**

- 2.1. The Complainant stated that the present Executive Committee (EC) is illegally Constituted in the last AGM in violation of Article VI (28) (b) of the AOA wherein only those members who for the consecutive period of preceding three years, have paid

their annual subscription before the date stipulated in Article 6(b) are eligible to contest elections to the Executive Committee of the Company as well as to the posts of the office bearers of the Company. The Complainant further alleged that most of the members of Executive Committee are not eligible as per this Article since they were major defaulters on the date of the last AGM. Accordingly, the present Executive Committee is illegally constituted and hence invalid. Consequently, all their actions, communications, meetings and resolutions are illegal, null and void.

- 2.2. The Complainant alleged that a paver block road has been constructed by the EC violating all Financial Rules and Regulations and causing considerable financial loss to NHEF which has been highlighted by him in e-mails to all members. The Complainant stated that a major financial scam has been committed by the Executive Committee in the awarding of the contract and its execution for the construction of the road. The Complainant alleged that another major illegal financial aspect of the Contract is that as per the EGM on 17th February, 2019, it was awarded to M/s Cementile Ind. However, all the payments for the contract have been paid to three companies namely, Kiran Floorings, Hasina Enterprises and Swaraj Engineering and no payments at all have been made to M/s. Cementile ind. This action of the Executive Committee is highly illegal as per all financial norms and prudence since it could also have been done to favour the Contractor to evade various taxes. Further, it was a doctored contract and was evident from the fact that the Contractor was provided free electricity, water and even the services of Company's staff and above all, no penalty was imposed on the Contractor in spite of him completing the project in more than four months as against the required one month and the quality of the road being far from satisfactory.

3. **The relevant issues discussed in the Prima Facie Opinion dated 22nd November 2022 formulated by the Director (Discipline) in the matter in brief, are given below:**

- 3.1. In respect of allegation in para 2.1 above, it was observed that the Complainant pointed out Article VI (28) (b) and Article 6(b) of the AOA of the NHEF. On perusal of the aforementioned Article, it is noted that the same stipulates as under:-

Article 28 – Election to the Executive Committee (Eligibility)

a) Only those members who have paid in full their annual subscription before the date stipulated in Article 6(b) are eligible to nominate and second candidates at any election and to vote in the elections.

b) Only those members, who for the consecutive period of preceding three years have paid their annual subscription before the date stipulated in Article 6(b) are eligible for voting and shall be eligible to contest elections to the Executive Committee of the Company as well as to the posts of office bearers of the Company. The said clause shall not apply for first three years.

Article 6 (b) – Annual subscription shall be payable before 30th April of each year. In case of applicants admitted in the second half of the year, the subscription shall be payable within one months of their admissions.”

The Respondent was auditor of the NHEF for the financial year 2018-19. It is observed from Notes to Account that the contribution from 15 members out of the total membership held are not received since incorporation of the Company.

3.2. The Respondent stated that the Annual General Meeting was properly held in September 2018 and the Executive Committee members were duly elected therein. The said AGM was chaired by the Complainant himself, and the Complainant did not raise any objection to the appointment of the newly elected Executive Committee Members. Over and above, the Complainant himself had under the Digital Signature uploaded the appointment of the new Executive Committee members on the MCA portal under DIR-12.

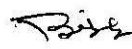
3.3. In this regard, the Respondent referred to the provisions of Section 176 of the Companies Act, 2013 to show that defects, if any, in the appointment of directors did not invalidate the actions taken by them. The Complainant also did not provide details of dues, if any, that had not been paid by the Executive Committee members. Hence, keeping in view the provisions of Section 176 of the Companies Act, 2013 and in the absence of complete details, any action or decision taken by the Executive Committee could not be considered illegal or invalid.

3.4. Moreover, the Respondent was not supposed to be a part of the election process of the Executive Committee. Accordingly, the reliance placed by the Respondent on the



decisions/actions of the Executive Committee in view of the provisions of Section 176 of the Companies Act, 2013 could not be considered incorrect or wrong. However, it was also observed that although Section 176 of the Companies Act, 2013 granted immunity to the Company in cases where any defect was discovered at a later stage, the same immunity was not available to an auditor for reporting such discrepancy in his audit report. The Respondent, as auditor of the Company, was required to point out the exact nature of the discrepancy related to the appointment of Committee members in his audit report and to make reference to Section 176 of the Companies Act, 2013 to draw the attention of the users thereto, but he failed to do so. Accordingly, the Respondent was held 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.

- 3.5. In respect of allegation in para 2.2 above, payment was made to three parties in place of M/s. Cementile Ind. It was noted that the Respondent had referred to the minutes of the EoGM dated 23.06.2019 wherein the names of the parties, namely, Kiran Flooring and Hasina Enterprises, were mentioned as units of Cementile Industries for the supply of paver blocks and for providing labour contractors.
- 3.6. Further, Swaraj Engineering had provided consultancy services with regard to the road project. However, it was also noted from the Resolution passed in the Annual General Meeting held on 20th October 2019 that Cementile Ind. had been shortlisted, but to save GST, the work order was divided into two separate companies (though claimed to be units of Cementile Ind.). Hence, it was stated that the contract had been allotted to Cementile Ind., but in order to evade the application of GST on the contract work, the work/payment had been divided among separate units of Cementile Ind., and the payment had been made to three different parties.
- 3.7. Thus, the Respondent, as auditor, should have raised questions regarding such malpractice allegedly adopted by the Company to evade the payment of GST and, accordingly, should have pointed out the said issue in his audit report, but he failed to do so. Accordingly, the Respondent was held prima facie guilty of Professional Misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.



- 3.8. The Director (Discipline) in his Prima Facie Opinion dated 22nd November 2022 opined that the Respondent was Prima Facie **GUILTY** of Professional Misconduct falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949. The said Clause of the Schedule to the Act, states as under:

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

"A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct if he:

x x x x x x x

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

- 3.9. The Prima Facie Opinion formed by the Director (Discipline) was considered by the Disciplinary Committee in its meeting held on 07th December 2022. The Committee on consideration of the same, concurred with the reasons given against the charges and thus, agreed with the Prima Facie Opinion of the Director (Discipline) that the Respondent is **GUILTY** of Professional Misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 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.

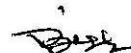
4. **Date(s) of Written Submissions/Pleadings by parties:**

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

S. No.	Particulars	Dated
1.	Date of Complaint in Form 'I' filed by the Complainant	06 th January 2020
2.	Date of Written Statement filed by the Respondent	16 th March 2020
3.	Date of Rejoinder filed by the Complainant	15 th June 2020
4.	Date of Prima Facie Opinion formed by Director (Discipline)	22 nd November 2022
5.	Written Submissions filed by the Respondent after PFO	31 st March 2023
6.	Rejoinder filed by the Complainant after PFO	08 th March 2023 & 03 rd April 2023

5. **Written Submissions filed by the Respondent:**

- 5.1 The Respondent vide letter dated 31st March 2023, inter-alia, made the submissions which are given as under:
- i The Respondent stated that the Prima Facie Opinion (PFO) dated 22nd November 2022 is unacceptable as it was formed contrary to the Chartered Accountants Act, 1949 and the relevant Rules of 2007. He contends that he has been held guilty under a clause that was neither mentioned in the complaint nor communicated earlier.
 - ii The complaint is stated to be defective because it does not specify the relevant clause or part of the Schedule under which the alleged misconduct falls, thereby denying the Respondent a proper opportunity to defend himself.
 - iii Out of sixteen allegations raised by the complainant, the Respondent has been held prima facie guilty only on two issues, which he claims relate to internal management matters, incorrect appreciation of facts, and responsibilities that do not fall within the duties of a statutory auditor.
 - iv The Respondent contended that the disciplinary mechanism has been misused by the complainant to involve the auditor in disputes that are actually between the complainant and the Executive Committee regarding annual subscription charges.
 - v The Articles of Association vest the management and administration of the Foundation in the Executive Committee, which has authority to manage the affairs, business, and funds of the Company. The Respondent submits that he exercised normal professional diligence while performing his audit duties and that no evidence has been produced to establish otherwise.
 - vi The Respondent argued that both findings in the PFO relate to matters that were not originally included as allegations in the complaint. The Respondent states that the Annual General Meeting held in September 2018 was validly conducted, was chaired by the complainant himself, and the complainant did not object to the election of Executive Committee members at that time.
 - vii The Respondent submitted that the complainant himself uploaded the appointments of the Executive Committee members on the MCA portal and only challenged the validity of the AGM after the audit report had been issued and a subsequent AGM had been held.



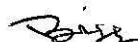
- viii Referring to the observations in the PFO, the Respondent stated that the PFO itself acknowledges that an auditor is not part of the election process of the Executive Committee. The Respondent argues that ICAI guidelines regarding acceptance of audit appointments do not require an auditor to verify whether the Board or Executive Committee members who appoint him were validly elected.
- ix The Respondent stated that the appointment of directors and Executive Committee members is an internal management and secretarial compliance matter rather than a statutory audit function. The Respondent stated that he properly verified the validity of his own appointment as auditor and reviewed relevant documents available through MCA records and professional certifications.
- x The Respondent contended that historical practices of the Company show that eligibility norms for Executive Committee elections had been interpreted flexibly with the approval of members, including under the chairmanship of the complainant. The Respondent states that he relied on explanations from the Executive Committee, certifications from the Company Secretary, and filings made with MCA while conducting the audit.
- xi With respect to the road construction project, the Respondent disputes the conclusion that there was any GST evasion or malpractice and argues that the facts have been misunderstood. The Respondent explains the distinction between tax planning, tax avoidance, and tax evasion, emphasizing that tax planning and tax avoidance are legal while tax evasion involves illegal conduct.
- xii The Respondent asserted that the road project work was genuinely divided among independent parties performing separate functions and was not a case of artificially splitting invoices to evade GST. The Respondent states that the proposal for road construction, including the use of paver blocks, was discussed and approved by the members through Extraordinary General Meetings.
- xiii The Respondent explains that Kiran Flooring, associated with Cemetile Industries, initially provided quotations for the project and that the members approved the project after considering alternatives and financial constraints. The Respondent states that an independent engineering consultant was appointed to supervise the road construction work as requested by members.
- xiv The Respondent explains that after further site inspection and budget considerations, Cemetile suggested direct engagement of an independent labour contractor, Hasina Enterprises, while material supply remained with Kiran Flooring.

The Respondent submits that the revised arrangement was accepted by the Executive Committee for the benefit of the Company and was subsequently ratified by the members.

- xv The Respondent stated that all concerned parties were independent entities, that applicable taxes were charged or deducted as required, and that the project was completed within budget while maintaining quality standards. The Respondent states that the complainant had access to relevant project documents during execution and was aware of the procurement and contracting arrangements.
- xvi The Respondent argued that there was no malpractice, no GST evasion, and no reason for the auditor to make adverse comments in the audit report regarding the road project. The Respondent states that professional misconduct requires a failure to act honestly and reasonably and cannot be established merely by alleging non-performance of a duty. The Respondent submits that he acted honestly, reasonably, and in accordance with professional standards and had no intention of violating the Code of Ethics or obtaining any improper benefit.

6. **Rejoinder filed by the Complainant:**

- 6.1 The Complainant vide letter dated 08th March 2023, inter-alia, made the submissions which are given as under:
 - i The Complainant stated that the seriousness of the Respondent's conduct is aggravated because the issues raised in the complaint had been specifically brought to the Respondent's attention before the audit report was issued.
 - ii That the audit report was completely silent on a road construction project costing approximately Rs. 36 lakhs, despite its significant financial importance and alleged irregularities in its execution.
 - iii The Complainant submitted that the project was effectively awarded as a single-vendor contract because only one quotation was obtained for a paver block road, while the other quotation related to a different type of road. The Complainant argues that a project of such magnitude should have involved competitive tendering and multiple quotations, and that the absence of such a process resulted in favouritism and possible financial loss to the Company.
 - iv He further stated that the failure to seek competitive bids may have deprived the Company of substantial financial savings and raises concerns regarding the

propriety of the contract award process. The Complainant alleges that the Respondent ignored these concerns despite the issues having been specifically brought to his attention before completion of the audit.

- v That no formal contract with the selected contractor was produced, despite contractual documentation being necessary to protect the Company's interests and regulate project execution.
- vi That the Respondent acted as an adviser to the Executive Committee rather than as an independent auditor serving the interests of the Company and all its members.

6.2 The Complainant vide letter dated 03rd April 2023, inter-alia, made the submissions which are given as under:

- i Firstly, the Respondent is alleged to have illegally given a clean chit to the Executive Committee in his Audit Report to modify the number of plots in NHEF from 56 to 58, enabling it to claim 58 CAM Charges from plot owners.
- ii It is alleged that the Respondent thereby connived with the Executive Committee in amending the Sanctioned Layout of the Pune Municipal Corporation and the Handing Over Document of the Builder, despite having no authority to do so and contrary to the Builder's clarification that only 56 plots were handed over.
- iii Secondly, the Respondent is alleged to be seriously guilty of not commenting or writing a word in his Audit Report regarding a road constructed at a cost of ₹36 lakhs, despite the expenditure being several times the total annual revenue of NHEF.
- iv It is alleged that the Respondent failed to examine the work and expenditure, failed to comment on the absence of tenders and the use of a Single Vendor, and failed to identify the alleged potential cost escalation of 10–15%, resulting in a possible loss of Rs. 4 - 6 lakhs to NHEF.
- v It is further alleged that the work was awarded to Cementile Ind without execution of a valid contract to legally safeguard the interests of NHEF.
- vi The Complainant requested that exemplary action be taken against the Respondent so as to set an example and ensure that no other professional violates the laid-down code of conduct, and states that he should not be forced to take any unpleasant action in furtherance of the case.

7. **Brief facts of the Proceedings:**

7.1 The details of the hearing(s)/ meetings fixed and held/adjourned in said matter is given as under:-

S. No.	Date of meeting(s)	Status
1.	20 th April 2023	Oath taken by both parties and adjourned
2.	08 th April 2026	Part heard and adjourned
3.	14 th May 2026	Hearing concluded and Finding Reserved.
4.	25 th July 2026	Decision taken.

7.2 On the day of first hearing held on 20th April 2023, the Committee noted that the Respondent and his Counsel CA. Shashikant V. Barve were present through Video Conferencing Mode. The Committee noted that the Complainant was also present through Video Conferencing Mode. Both parties were administered on Oath. Thereafter, the Committee enquired from the Respondent as to whether he was aware of the charges against him and whether he pleads guilty. The charges as contained in prima facie opinion were also read out. On the same, the Respondent replied that he is aware of the charges and pleaded 'Not Guilty' to the charges levelled against him. The Committee also directed the Respondent to submit further submissions, if any, within the next 7 days, with a copy to the Complainant. Thereafter, looking into the fact that this was the first hearing, the Committee decided to adjourn the hearing to a future date.

7.3 On the day of hearing held on 08th April 2026, the Committee noted that Respondent along with his Counsel were present through VC and appeared before it. However, the Complainant sought an adjournment vide email dated 30th March 2026 due to demise of his mother-in-law. Thereafter, the Committee noted that the case was part heard and the Respondent and Complainant were already on oath. The Committee enquired from the Respondent that since the composition of the Committee had changed subsequent to the last hearing held on 20.04.2023 in this case, whether he wished to have a de-novo hearing by taking all submissions/representations already on record or may continue from the stage it was last heard. The Respondent



submitted that the proceedings in the instant matter(s) be continued from the stage these were last heard. Acceding to the request of the Complainant, the Committee, keeping in view the principles of natural justice and to afford an opportunity to the Complainant, adjourned the subject case to a future date.

- 7.4 On the day of hearing held on 14th May 2026, the Committee noted that the Respondent along with Counsel and the Complainant were present through VC and appeared before it. The Committee noted that the first allegation against the Respondent related to failure to report on the constitution of present Executive Committee who appointed him as auditor, and second allegation related to irregularities in a road construction contract, specifically the splitting of bills to avoid GST. The Committee further noted the arguments of Respondent's counsel that there was no statutory requirement for the auditor to verify the election or appointment process of the Board, and that all due diligence was observed, including obtaining necessary certificates and verifying compliance. Regarding the road contract, the defense maintained that separate work orders were issued to unrelated parties, with no intent or act of tax evasion, and that the auditor's responsibilities did not extend to reporting on such matters under the applicable laws and standards.

The Complainant asserted that the auditor failed in his duty to examine and report on significant issues affecting the company, such as the legality of the Board's appointment and the financial prudence of the road contract. The Complainant also submitted that the audit report failed to address concerns raised by members and did not comment on the absence of competitive tendering or the splitting of contracts.

The Committee noted the submissions of both the parties.

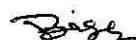
Based on the documents and material available on record and after considering the verbal and written submissions made by both the parties, the Committee concluded the hearing in the matter and findings was reserved

- 7.5 On the day of final hearing held on 25th July 2026, the Committee noted that the subject case was heard by it at length in the presence of the Complainant and the Respondent and the hearing was concluded at its meeting held on 14th May 2026 and the Findings was reserved. The Committee considered the material on record

including the submissions of the parties. The Committee deliberated in detail on the said case and took decision on the conduct of the Respondent.

8. **Findings of the Committee:-**

- 8.1 The Committee noted the **preliminary objection** raised by the Respondent regarding non-mentioning of clause. The Committee noted that although there is column in Form I for mentioning of particulars of allegations together with corresponding clause/part of the relevant schedule(s) under which the alleged acts of commissions or omissions or both would fall, but non-mentioning of such clauses or wrong mentioning them in the complaint does not make the complaint defective as being claimed by the Respondent. It is also pertinent here to mention that Respondent is required to submit his Written Statement on the allegations on merit and it is the allegation which is required to be substantiated/defended in a complaint case and not the clauses. A Complainant is required to state the allegations which forms factual foundation for the Authority to exercise jurisdiction over the matter. It is now a well settled principle of law that non-mentioning or wrong mentioning of provision(s) of law would not be of any relevance, if the authority/Court had the requisite jurisdiction to pass an order. Further, mere non-mentioning or wrong mentioning of clause(s) by the Complainant in the prescribed Form-I does not absolve the Respondent from charges levelled against him. Accordingly, the objection raised by the Respondent in this regard is not maintainable. The preliminary objection is, therefore, rejected and the matter is proceeded with for consideration on merits. The Committee noted that said preliminary objection raised by the Respondent has already been dealt with in the prima facie opinion.
- 8.2 In connection with the second objection raised by the Respondent that Form I is dated 29th October 2019, and the Respondent was informed about the Complaint on 8th January 2020 for calling his Written Statement i.e., after expiry of 60 days. In this regard, it is noted that the Complaint was scrutinized by the Directorate in terms of the provision of Rule 5 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 and was found to be defective due to non-payment of fees. The Directorate vide letter dated 5th December 2019 communicated to the Complainant. Accordingly, the Complainant

vide letter dated 17th December 2019 has paid Complaint fees and after that the Complaint was duly registered. Therefore, the instant objection raised by the Respondent is also not maintainable. The preliminary objection is, therefore, rejected and the matter is proceeded with for consideration on merits. The Committee noted that said preliminary objection raised by the Respondent has already been dealt with in the prima facie opinion.

- 8.3 The Committee noted that the first charge against Respondent (as given in para 2.1 above) is that the Respondent, while acting as the Statutory Auditor of M/s Nyati Highlands Eastern Foundation (NHEF), failed to report irregularities relating to the constitution of the Executive Committee, which according to the Complainant had been elected in violation of the Articles of Association of the Company.
- 8.4 The Committee noted that the Complainant contended that several members of the Executive Committee were not eligible to contest elections under Article VI 28(b) of the Articles of Association of NHEF as they had allegedly failed to pay their annual subscriptions within the prescribed period. The Complainant further alleged that the Executive Committee was therefore illegally constituted and that all actions and decisions taken by it were invalid. It was argued that the Respondent failed to report these matters in his audit report despite being aware of the same.
- 8.5 The Committee further noted the submissions of the Respondent that the Annual General Meeting held in September 2018 was duly convened and conducted and was chaired by the Complainant himself which can be seen from the extracts of the minutes of the 10th AGM held on 02.09.2018. The Respondent submitted that no objection regarding the eligibility or election of Executive Committee members was raised by the Complainant during the AGM. The DIR-12 forms (Appointment of Directors and changes therein) for such Elected Members which have been also duly filed under the Digital Signature of the Complainant himself (which also confirms his acceptance of the Elected Executive Committee Members).
- 8.6 The Committee also noted the Respondent's submission that he had duly complied with the guidelines issued by the ICAI Council regarding acceptance of the audit assignment. The applicable provisions under Sections 139 and 140 of the

Companies Act, 2013, and the prescribed procedures relating to appointment of auditors were duly verified and followed. The Respondent contends that neither the Act nor the ICAI guidelines require a statutory auditor to verify the validity of the appointment or election of the Board of Directors, as such matters pertained to internal management and a secretarial compliance matter. The Respondent submitted that a statutory auditor is not part of the election process and that professional standards do not require an auditor to independently verify the eligibility of persons elected to the Executive Committee.

- 8.7 The Complainant has contended that despite being informed of disputes regarding the election of the Executive Committee and the legality of the constitution of the Board, the Respondent failed to make any observation in his audit report. According to the Complainant, such omission amounted to a serious lapse in professional duty.
- 8.8 The Respondent, on the other hand, submitted that there exists no statutory requirement under the Companies Act, 2013, the Chartered Accountants Act, 1949, or the applicable auditing framework requiring an auditor to certify or opine upon the legality of the election or appointment of Directors who constitute the management of the entity. The Respondent further submitted that he had exercised due diligence by obtaining a certificate from the Company Secretary and by verifying the particulars of directors available on the MCA portal.
- 8.9 Upon consideration of the rival submissions, the Committee observed that the scope of a statutory audit is governed by the provisions of law and the applicable Standards on Auditing. An auditor is required to express an opinion on the financial statements and to perform such procedures as are necessary to obtain reasonable assurance regarding the financial information under audit. The Committee viewed that the auditor is not expected to adjudicate upon disputed questions relating to the validity of elections, internal management disputes, or governance controversies unless such matters have a direct and demonstrable impact on the financial statements or give rise to reporting obligations specifically mandated by law or auditing standards.
- 8.10 The Committee further observed that the Respondent had obtained and relied upon an explanatory letter from the Executive Committee, wherein it was stated that, up to 18.09.2019, no issue or objection had been raised before any authority by the

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Complainant or any other member regarding the conduct of the election or the appointment of the Executive Committee. The relevant portion extracted from the said letter dated 18.09.2019 is reproduced hereunder:

3. The Annual General Meeting September 2018 was held under the chairmanship of Lt.Gen. Rana Kapur (Retd.) himself and in the presence of Mrs. Surekha Wadaskar. There have not been any issues raised so far with any Authorities by both these Members as regards the Election held and the present Committee being appointed. Infact all the compliances in relation to the appointment of the Current Executive Committee have been filed under the Digital Signature of Lt. Gen Rana Kapur (Retd.). himself.

8.11 The Committee noted that Article 19 of the Articles of Association provides that the overall management of the affairs of the Company shall vest in the Executive Committee, comprising members elected in accordance with the Bye-laws of the Company. Further, Article 21 vests the management of the business and funds of the Company in the Executive Committee and empowers it to exercise all such powers and perform all such acts as may be exercised by the Company, except those specifically required by law or the Articles to be exercised by the members in a General Meeting. The Committee observed that the Executive Committee is the duly recognized management body entrusted with the conduct of the Company's affairs. Accordingly, a statutory auditor is entitled to place reliance on the records, resolutions, representations and decisions emanating from such management body in the ordinary course of audit, unless there are clear circumstances warranting further investigation.

8.12 The Committee is of the view that the primary responsibility of an auditor is to examine the financial records, transactions, and disclosures made in the financial statements. An auditor is not expected to determine or decide disputes relating to the validity of elections or appointments of office bearers, unless such issues have a direct and significant effect on the financial statements or require specific reporting under the applicable auditing standards. The Committee noted that no evidence has been placed on record to establish that the alleged defect in the election process resulted in any material misstatement in the financial statements audited by the Respondent.

- 8.13 The Committee noted that the Complainant has not placed on record any statutory provision or reporting requirement which obligated the Respondent to comment upon the legality of the election process merely because objections had been raised by certain members or office bearers. The Committee further noted that the Respondent had relied upon records maintained by the Company and certifications issued by the competent functionaries of the entity. The Committee also noted that there is no material on record to establish that the Respondent was aware of any judicial or regulatory determination declaring the appointment or election process to be invalid.
- 8.14 The Committee viewed that, in the absence of any specific reporting requirement or evidence demonstrating that the alleged irregularity had a material impact on the financial statements under audit, it is unable to conclude that the Respondent failed to exercise due diligence or acted negligently in not making observations on the said issue in the audit report. Accordingly, the Committee held that the Respondent is, **NOT GUILTY** of Professional Misconduct under Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.
- 8.15 The Committee noted that the second charge against the Respondent (as given in para 2.2 above) is that the Respondent failed to report irregularities in relation to a road construction project awarded by the Company, particularly the payment made to multiple entities instead of M/s Cemetile Industries and the alleged splitting of work to avoid GST.
- 8.16 The Committee noted that the Complainant alleged that although the contract was awarded to M/s Cemetile Industries, payments were made to Kiran Flooring, Hasina Enterprises and Swaraj Engineering and that such arrangement was adopted to evade GST and to favour the contractor. The Complainant further alleged that the Respondent failed to comment on these matters in his audit report.
- 8.17 The Committee noted the Respondent's submission that the issue relating to the road construction project had been deliberated upon and approved by the members of the Company in the Extraordinary General Meetings and Annual General Meeting, where separate entities were engaged for different components of the work. and the

proposal for construction of the paver block road and the expenditure thereon were approved by the requisite majority.

- 8.18 The Committee further noted that in the Extraordinary General Meeting held on 17.02.2019, the members considered the quotations and, by a majority of 9:1, approved the resolution authorising the Executive Committee to engage the services of Cemtile/Kiran Flooring for execution of the project. The Committee further noted that, following a site inspection and discussions regarding cost escalation, the Company, by letter dated 19.02.2019, sought cost reductions from Kiran Flooring, and Kiran Flooring, by its response dated 21.02.2019, suggested that the labour and installation work could be executed directly through Hasina Enterprises, an independent contractor, while material supply would continue through Kiran Flooring. The Committee also noted that Swaraj Engineering Consultancy was appointed as an independent expert agency to supervise the project. The Respondent contended that the work was physically executed by different parties and was not a case of mere splitting of invoices or payments.
- 8.19 The Committee noted that the quotations have been received in relation of the procurement of Paver Block Road works, namely: (i) quotation of M/s Kiran Flooring Pvt. Ltd. (Manufacturing Unit of Cementile Industries) amounting to Rs. 30,00,040/- and (ii) quotation of M/s Kala Builders dated 28.01.2019 amounting to Rs. 33,15,000/-. On examination, it is observed that the quotation submitted by M/s Kala Builders for Paver Block Road was higher by Rs. 3,14,960/- as compared to the quotation of M/s Kiran Flooring Pvt. Ltd. Accordingly, the quotation of M/s Kala Builders was not considered acceptable at the stage of evaluation of basic cost.
- 8.20 The Committee also noted that from the certified copy of the extracts of the Annual General Meeting held on 20.10.2019, which records the background, deliberations, and approval process relating to the road project. The AGM resolution indicates that M/s Cemtile Industries was shortlisted after considering factors such as its reputed market standing, provision of a 10-year guarantee, successful execution of similar projects in the vicinity, site visits undertaken by members, and positive feedback received regarding its work. The said resolution further record that an Executive Committee meeting was held on 17.02.2019 wherein various quotations and

available options were presented for consideration. After detailed deliberations on the alternatives, a resolution was passed by a substantial majority of members to construct a Paver Block Road and to engage the services of Cemtile Industries for the project.

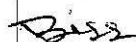
- 8.21 The Committee also noted that the records further reveal that the contract was structured in two parts under the supervision of Cemtile Industries, namely: (i) procurement of paver blocks from M/s Kiran Flooring Pvt. Ltd., on which GST at the applicable rate of 18% was charged, and (ii) execution of laying work through M/s Hasina Enterprises, on which no GST was applicable. The resolution also record the appointment of M/s Swaraj Engineering as an independent consultant for supervision and oversight of the road project. The documentary evidence thus demonstrates that the decision was preceded by consideration of competing options, approved through the Society's decision-making process.
- 8.22 The Committee noted from the purchase order bearing reference No. NHEF-2019/02/25/Road/01 was issued in favour of M/s Kiran Floorings Pvt. Ltd. The quotation provided for the supply paving blocks at a rate of Rs. 36.4266 per sq. ft. inclusive of GST @ 18%, for a total quantity of 51,230 sq. ft., aggregating to Rs. 18,66,134.72.
- 8.23 The Committee also noted from the work order placed on record that M/s Hasina Enterprises was engaged for execution of the labour component of the road construction project. The work order bearing reference No. NHEF-2019/02/25/Road/02, based on quotation no 23.02.2019. The Committee further noted that the work order specified separate rates and quantities for the various activities, resulting in an aggregate contract value of Rs. 14,18,570/-. The Committee observed that the documentary record evidence a distinct work order for execution of labour and installation activities, separate from the procurement of paving block materials.
- 8.24 The Committee noted the Respondent's submission that the arrangement adopted for execution of the road project could not be equated with tax evasion. The Respondent distinguished between tax planning, tax avoidance and tax evasion,

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contending that tax planning involves arranging affairs within the framework of law to avail permissible tax benefits, whereas tax evasion involves illegal methods such as concealment of income or suppression of transactions. According to the Respondent, the work was actually executed by different independent parties, and the transactions were duly recorded in the books of account with applicable taxes being charged or deducted as required.

- 8.25 The Committee observed that the material on record does not establish that the payments made to the three entities were fictitious, non-genuine or unsupported by underlying services. The Committee further noted that no proceedings, demand, assessment order, show-cause notice or adverse finding of any GST authority has been brought on record to establish that any tax liability had been evaded by the Company or by the concerned vendors.
- 8.26 The Committee also noted that the allegations regarding absence of competitive bidding, financial prudence, quality of work, delay in execution and contractual terms primarily relate to decisions taken by the management and members of the Company. Such administrative decisions ordinarily fall within the domain of governance and management rather than the statutory audit function.
- 8.27 The Committee observed that the role of the statutory auditor is to examine whether transactions are properly recorded in the books of account and whether the financial statements present a true and fair view. Mere existence of differing views regarding procurement procedures or commercial wisdom of management decisions does not by itself establish professional misconduct on the part of the auditor.
- 8.28 The Committee noted that a finding of professional misconduct cannot be sustained merely on the basis of conjectures or assumptions that an auditor ought to have inferred the existence of impropriety in the absence of supporting evidence. The responsibility of an auditor is to evaluate audit evidence available during the course of audit and to report matters which are required to be reported under the applicable auditing and reporting framework. The Committee observed that the material on record does not demonstrate that the Respondent ignored any established instance of statutory non-compliance requiring mandatory reporting. In these circumstances,



the Committee is of the view that the allegation of failure to report contract splitting and alleged GST avoidance has not been proved.

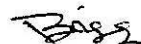
- 8.29 Having regard to the entirety of the facts and circumstances of the case, the material available on record, and the submissions advanced by the parties, the Committee is of the view that the evidence brought on record is insufficient to establish that the Respondent failed to exercise due diligence or was grossly negligent in the conduct of his professional duties. The Committee was therefore of the opinion that the Respondent was **NOT GUILTY** of Professional Misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

9. **Conclusion:**

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

Charges (as per PFO)	Findings	Decision of the Committee
Para 2.1 as above	Para 8.1 to 8.14 as above	NOT GUILTY- Clause (7) of Part I of the Second Schedule
Para 2.2 as above	Para 8.15 to 8.29 as above	NOT GUILTY- Clause (7) of Part I of the Second Schedule

10. In view of the above observations, considering the material on record including the verbal and written submissions of the parties, 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.

11. **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. PRASANNA KUMAR D)
PRESIDING OFFICER

Sd/-
(CMA CHANDRA WADHWA)
GOVERNMENT NOMINEE

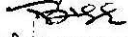
Sd/-
(CA. MAHESH SHAH)
GOVERNMENT NOMINEE

Sd/-
(CA. SATISH KUMAR GUPTA)
MEMBER

DATE: 29.08.2026

PLACE: Noida

सत्यापित होने के लिए प्रमाणित / Certified to be True Copy


बिश्वा नाथ तिवारी / Bishwa Nath Tiwari
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अनुशासनात्मक निदेशालय / Disciplinary Directorate
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