

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2022-2023)]

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

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

File No. : [PR-94/15-DD/97/2015-DC/1147/2019]

In the matter of:

Shri Vishwas Y. Navalkar,
Malik Building, Flat no. 4,
D. V. Deshpande Marg,
Shivaji Park
Mumbai – 400028

....Complainant

Versus

CA. Rohit Tryambak Moghe, (M.No.045115)
301, Harishchandra Apts,
Mogul Lane,
Mahim,
Mumbai – 400016

.....Respondent

MEMBERS PRESENT:

CA. (Dr.) Debashis Mitra, 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 in person)
CA. Cotha S Srinivas, Member (Present through Video Conferencing Mode)

DATE OF FINAL HEARING : 05.08.2022

PARTIES PRESENT :

Complainant : Shri Vishwas Y. Navalkar
Counsel for Complainant : CA. Prakash Karkhanis

Respondent : CA. Rohit Tryambak Moghe

CHARGES IN BRIEF:-

1. The Committee noted that in the present case, the Respondent was held Prima-facie Guilty by the Director (Discipline) of Professional Misconduct falling within the meaning of Items (6) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949, with respect to audit for financial years 2012-13 and 2013-14 of Shri Samartha Vyayam Mandir, Dadar, Mumbai (hereinafter referred to as the “**Trust**”), broadly on the following charges:
 - a. That amount of Rs. 93.20 lakhs spent on the repairs of the building was directly capitalized to building, thereby contravening the method of disclosure as prescribed under Schedule IX of Bombay Public Trust Act.
 - b. The Respondent failed to report that interest on fixed deposits and interest on Kisan Vikas Patra of earmarked funds have been shown as revenue receipts.
 - c. The Respondent failed to report that Trust has not followed accounting standards issued by ICAI.
 - d. The Respondent failed to comply filing of audited financial statements and the Auditors' report within 15 days of signing as required under section 34(2) of the Bombay Public Trust Act, 1950.
 - e. The Respondent failed to report regarding non-compliance of section 22 of Bombay Public Trust Act relating to filing of changed report specifying changes in movable and immovable properties.
 - f. Failure of the Respondent in reporting with respect to non-filing of Annual budget in accordance with Schedule VII A as per Rule 16 of Bombay Public Trust Rules.
 - g. The Respondent failed to report regarding non-disclosure of excess expenditure on account of recurring and non-recurring expenditure of repairs to building in routine course.
 - h. The Respondent failed to report non-disclosure and non-submission of Annual return required as per Foreign Regulation Rules in respect of foreign receipts along with separate disclosure in income and expenditure account.
 - i. The Respondent failed to report properly that whether register of movable and immoveable properties is maintained or not. 

- j. The Respondent failed to report properly in his audit report that tender has not been invited for repairs or construction involving expenditure exceeding Rs. 5000/-.
- k. That in clause (i) of the audit report, the Respondent failed to report all cases of improper expenditure and also failed to report whether any expenditure was caused in consequence of breach of trust or misapplication or any other misconduct on the part of the trustees or any other persons while in management of trust.
- l. That the General Body of trust had appointed Respondent as the auditor for audit fee of Rs 25000/- whereas the Respondent disclosed the same as Rs. 35000/- in financial statements.

BRIEF FACTS OF THE PROCEEDINGS:

- 2. The Committee noted that in the hearing held on 1st June, 2022, the parties were administered an Oath and the Respondent had also pleaded not guilty to the charges alleged.
- 2.1 On the day of the final hearing on 5th August 2022, the Committee noted that the Complainant and his Counsel CA. Prakash Karkhanis were present from BKC Office of ICAI at Mumbai. The Respondent was present through Video Conferencing mode. Thereafter, the Complainant's Counsel opened the charges against the Respondent and the Respondent presented his line of defence by presenting arguments/submissions in his defence. After considering all papers available on record and after detailed deliberations and recording the submissions, the Committee decided to conclude the matter.

FINDINGS OF THE COMMITTEE

- 3 The Committee noted that during the hearing, the Respondent stated in his defence that because there was no business activity in the Institution (his client), accounting standards were not applicable to the Institution. The Respondent further submitted that the Charity Commissioner has not asked for any

explanation on financial statements submitted to him. The Committee noted that apart, from the above, nothing was specifically submitted by the Respondent on the merits of the case.

- 4 The Committee noted that the first charge mentioned in para 1(a) above is that the Respondent failed to report that the amount spent on the repairs of the building was directly capitalized to the building, thereby contravening the method of disclosure of such repair expenses as prescribed under Schedule IX of the Bombay Public Trust Act. The Committee in this regard noted that the Trust had incurred an expenditure of Rs. 93.20 lakhs on building during the Financial Year 2013-14. As regards the nature of the transaction, it was observed by the Committee that the Respondent claimed the same to be a capital expenditure, which, according to him, is also evident from his reporting page C-19 of prima-facie opinion wherein he mentioned as under:

".....As building repairs during the year amounting to Rs. 93.20 lakhs are capitalized and incurred after maturing fixed deposits in the bank, Building repairing during the year has not affected building repair fund indicating that funds for meeting repairs expenses were met out of fixed deposits matured".

The Committee, on perusal of the Balance Sheet for F.Y. 2013-14, noted that an amount of Rs. 93.20 lakhs was added to the building. The Committee noted that the contention of the Complainant is that such additions to the building must be routed through the Income and Expenditure Account.

- 4.1 The Committee noted that the Respondent had failed to submit any submissions on this charge at the time of the hearing. The Committee also noted that the Respondent, in his written statement at Prima-facie stage, had not submitted anything on merits and merely harped on the source of such expenditure by mentioning that said amount was met out of specific donations received during the year amounting to Rs. 13.41 lakhs, matured FD's Rs. 58.26 lakhs, overdraft facility of Rs. 19.42 lakhs and payable amounts Rs. 2.12 lakhs. On perusal of the balance sheet, the committee noted that the payable amount of Rs. 2.12 crore

(as claimed by the Respondent) was not reflected in the balance sheet as of March 31, 2014.

- 4.2 The Committee also noted that repairs to buildings were directly capitalised to buildings, which was in violation of Schedule IX of the Bombay Trust Act, which states that expenditure in respect of repairs to buildings should be disclosed in the Income and Expenditure account under the heading "*expenditure in respect of properties*" and then a deduction made, clearly stating "*transferred to building*." The Committee noted that the non-reporting of the same was a clear lapse on part of the Respondent and hence held him guilty of Professional Misconduct falling within the purview of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.
5. The Committee noted that the second charge mentioned in para 1(b) is that interest on earmarked funds was shown as a revenue receipt. The Committee noted that the interest on such investments is added to the respective funds and not treated as revenue income as it forms a part of the corpus and is re-invested in that fund itself.
- 5.1 The Committee noted that the Respondent, in his defence, had submitted that it was the practice of the Trust to route these incomes through the Income and Expenditure account. He further mentioned that he discussed the same with the trustees and accordingly accepted their view that a change in accounting method would create confusion among the members of the Trust. He further stated that investments in Fixed Deposits are not earmarked against specific funds.
- 5.2 The Committee from the submission of the Respondent observed that the Respondent himself was aware that the practice adopted by the Trust was not in line with accounting principles. The Committee viewed that the role of the Respondent was to report such inconsistencies in his report, which the Respondent fails to do. 

- 5.3 The Committee further noted that in the method of accounting relating to 'Interest on fixed deposits' it is not specifically mentioned as to whether the same is on 'Accrual basis' or 'Realised basis' (Page W-48 of Prima-facie Opinion). It was also noted by the Committee that in the Balance Sheet under the heading 'Income outstanding' an item of interest of Rs. 25,40,561/- is disclosed, and it appears that such an interest might have been accounted for on an 'Accrual basis'.
- 5.4 The Committee noted that the trust's auditor for the financial year 2012-13 was the same Respondent. In respect of accounting relating to Kisan Vikas Patra, the Committee noted that, on maturity of investments in Kisan Vikas Patra in 2012-13 (Page C-11 of the Prima-facie Opinion), the entire interest on maturity of Rs. 3,00,000/- has been shown as the income for the year (Page C-10 of the Prima-facie Opinion), meaning thereby, that the income was accounted for on a cash basis in F.Y. 2012-13.
- 5.5 The Committee noted that the Trust, in the same financial year, is maintaining accounts on a cash basis for certain transactions while changing the basis from cash to accrual for other transactions. The Committee also observed similar inconsistencies in the other entries, such as audit fees. The Committee noted that the Respondent failed to report such inconsistencies in his audit report. The Committee was of the view that there was dual treatment for the same nature of income, which the Respondent failed to comment upon.
- 5.6 In the absence of any disclosure, by the Respondent in the audit report relating to a deviation in accounting method, the Committee concluded that the Respondent was not only grossly negligent in his professional duties, but also failed to report a material misstatement known to him in the financial statements. Accordingly, the Committee held the Respondent guilty of professional misconduct falling within the purview of Items (6) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949. 

6. Regarding the charge mentioned in paragraph 1(c) above, relating to the Respondent's failure to report that the trust had not followed ICAI accounting standards, the Committee noted that the Respondent had stated in his submission that accounting standards were not applicable to the trust.
- 6.1 The Committee, on perusal of the financials, noted that the activities of the trust include, charging tuition fees from beneficiaries of Rs. 12,49,154; rent on account of letting out premises for Rs. 4,94,511/- etc. (page W-51 of the Prima-Facie Opinion), which are commercial in nature. The Committee noted that as per the preface to the statements of Accounting Standards issued by ICAI, "even if a small portion of charitable institutions is considered to be commercial, industrial or business in nature, then it cannot claim exemption from the application of accounting standards, and in that case Accounting Standards shall apply to the entity as a whole."
- 6.2 The Committee accordingly rejected the plea of the Respondent that Accounting Standards were not applicable on Trust and therefore held the Respondent Guilty of professional misconduct falling within the purview of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.
7. The Committee with respect to the charge mentioned at para 1(d) above, relating to failure of the Respondent in filing of audited financial statements and the Auditors' report as required under Section 34 of the Bombay Public Trust Act, 1950, noted the provisions of Section 34 of the Bombay Public Trust Act, 1950 (R-19 and R-20 of the Prima-Facie Opinion), which state as follows:

*"(i) It shall be the **duty of the auditor** auditing the accounts of a public trust under Section 33 to prepare a balance sheet and income and expenditure account and to forward a copy of the same along with a copy of his report to the trustee, **and** to the Deputy or Assistant Charity Commissioner of the region or to the Charity Commissioner, if the Charity Commissioner required him to do so;*



- (ii) *It shall be the duty of the trustee of a public trust to file a copy of the balance sheet and income and expenditure account forwarded by the auditor before the Deputy or Assistant Charity Commissioner of the region or sub-region or to the Charity Commissioner, if the Charity Commissioner requires him to do so."*

7.1 The Committee noted that, according to Section 34 of the Bombay Public Trust Act, 1950, the auditor must also send a copy of Balance Sheet and Income and Expenditure account to the Deputy or Assistant Charity commissioner. The Committee noted that the Respondent stated in his submissions that audited financial statements of the trust are submitted on a regular basis in accordance with the provisions of the Bombay Public Trust Act, and that acknowledgement is on file (D-23 and D-26 of the prima facie opinion). On perusal of the same, it is noted by the Committee that the same were submitted by the Trust on 7th February 2014 and not by the Respondent. As regards the submission of the statements to the Deputy or Assistant Charity Commissioner, the Committee noted that the Respondent failed to submit any documentary evidence to establish compliance with the same.

7.2 The Committee, accordingly, held the Respondent Guilty of professional misconduct falling within the purview of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

7.3 With respect to the second leg of this charge, the Committee noted that Section 34(2) of the Bombay Public Trust Act, 1950, specifies that the auditor shall in his report specify all cases of irregular, illegal, or improper expenditure, or failure or omission to recover moneys or other property belonging to the Public Trust, or loss or waste of money or other property therefrom, and state whether such expenditure failure, omission, loss, or waste was caused in consequence of a break of trust or misapplication, or any other misconduct on the part of the trustees or by any other person. The Committee, while observing the misconduct of the Respondent in other charges in the instant matter noted that there were various instances of such default on the part of the trustees, that were evident, 

and that these were not highlighted by the Respondent in his report. The Committee, accordingly, was of the considered opinion that the Respondent is Guilty of professional misconduct falling within the purview of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949) on this aspect as well.

8. Regarding the charge mentioned in paragraph 1(e) above, relating to the Respondent's failure to report non-compliance with Section 22 of the Bombay Public Trust Act relating to the non-filing of a changed report specifying changes in movable and immovable properties, the Committee referred to Section 34 of the Bombay Public Trust Act, 1950 (R-13 of the Prima Facie Opinion), which states:

"(1) Where any change occurs in any of the entries recorded in the register kept under section 17, the trustee shall, within 90 days from the date of occurrence of such change, or where any change is desired in such entries in the interest of administration of such public trust, report such change or posed change to the Deputy or Assistant Charity Commissioner....."

- 8.1 The Committee noted that Clause (e) of the Auditor's report requires the auditor to report whether the register of moveable and immoveable properties is properly maintained. The Committee noted that the Respondent had mentioned "IN PROGRESS" at this point in his report (page W-47 of the Prima-Facie Opinion). The Committee noted that the Respondent during the course of the hearing accepted that the register was incomplete, and hence he reported "IN PROGRESS." The Committee noted that the Respondent should have clearly answered the question in affirmative or negative in response to this paragraph in his audit report. The Committee further noted that the Respondent in his submission before it, had never rebutted the findings of the Director (Discipline) that such reporting has been "IN PROGRESS" for the past five years.

- 8.2 In absence of any specific disclosure, the Committee was of the considered opinion that the Respondent has failed to exercise due diligence while conducting

his professional duties. Accordingly, the Committee hold the Respondent Guilty of Professional misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949, on this charge as well.

9. The Committee noted that the next charge mentioned in para 1(f) above relates to the Respondent's failure to report regarding the non-filing of the annual budget in accordance with Schedule VII A as per Rule 16 of the Bombay Public Trust Rules. The Committee noted that the Respondent in this regard submitted that the budget of SSVM-D regularly gets sanctioned (Page D-87 of the prima-facie opinion) at the annual general meeting and is submitted to the Charity Commissioner's Office (Page D-23 and D-26 of the prima-facie opinion).
- 9.1 The Committee, on perusal of the same, noted that the copy submitted to the Charity Commissioner's Office on 7th February 2014 was duly signed and stamped by the office of the Charity Commissioner.
- 9.2 The Committee also noted that Clause (m) in the Auditor's report requires the auditor to report whether the budget has been filed in the form provided by Rule 16A. The Respondent, with respect to the reporting, mentioned "YES" (page W-47 of the Prima-Facie Opinion).
- 9.3 The Committee, upon perusal of reporting requirements, viewed that the duty of the Respondent as auditor was to ensure that budgets had been duly submitted in the form provided by Rule 16A. The Committee noted that Rule 16A requires that the budget submitted should be in the form of Schedule VII A. The Committee noted that the Respondent, in his defence, had brought attention to page D-87 of the prima-facie opinion. The Committee, upon perusal of the same, noted that the budget was given in the desired format.
- 9.4 The Committee noted that the Complainant failed to present contradictory evidence to the Respondent's submissions. The Committee was thus persuaded by the Respondent's submissions and noted that the remark made in the audit report (page W-47 of the prima facie opinion) by the Respondent was correct.

Accordingly, the Committee hold 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 on this charge.

10. The Committee noted that the next charge mentioned in paragraph 1(g) above relates to the Respondent's failure to report regarding the non-disclosure of excess expenditure on recurring and non-recurring building repairs in their routine course of business. The Committee noted that the Respondent in respect of the same submitted that, as per the constitution of the Trust, additional expenses are ratified at the next AGM. He further submitted that in routine course the sub-committee, duly authorized in the previous annual general meeting, supervises such expense, and accordingly gave consent.

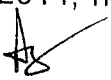
- 10.1 The Committee noted that the Complainant failed to present any contrary evidence to the record to refute the Respondent's defence. The Committee also noted that the Complainant also failed to bring any such instances on record. The Committee, in absences of corroborative documents, decided to extend benefit in favour of the Respondent and accordingly, hold him 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 on this charge.

11. The Committee noted that the next charge mentioned at para 1(h) above, relates to the failure of the Respondent in reporting regarding non-disclosure and non-submission of the annual return required as per Foreign Regulation Rules in respect of foreign receipts, along with separate disclosure in income and expenditure account. The Respondent in this regard submitted that formalities regarding the FCRA account were undertaken by other independent professionals. The Committee, hence, noted that the Respondent accepted the applicability of FCRA to the trust.

- 11.1 The Committee noted that, as per the Foreign Contributions Regulations Act, 2010, a trust can only accept foreign contributions if it gets registered under this Act, and further, the trust is required to file an annual return under the FCRA

showing the nature and amounts of foreign contributions received and the relating expenditures as well in the prescribed format. The Committee noted that the comments in general remarks for financial year 2012-13 clearly reflect an amount of Rs. 1.41 crores in earmarked funds (page W-44 of the Prima-Facie Opinion). However, the same were not shown in the income and expenditure account (page W-48 of the Prima-Facie Opinion).

- 11.2 The Committee also noted that it is the duty of an auditor to ensure that all the laws and regulations are complied with by its client and that there is no non-compliance that needs to be disclosed/reported by an auditor. The Committee noted that despite the applicability of the FCRA Act on Trust, the Respondent has failed to report its non-compliances. Accordingly, the Committee hold him Guilty of Professional Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949, on this charge.
12. The Committee noted that the next charge mentioned in paragraph 1(i) above relates to the Respondent's failure to report regarding the liability of public trust in the preparation and maintenance of a register of movable and immovable properties, as well as the requirement to send communication of changes to the regional office on a regular basis. The Committee noted that findings relating to a similar charge are already covered in para 8 to 8.2 above, hence, the Committee did not give separate findings on this charge and decided to hold the Respondent Guilty of Professional Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.
13. The Committee noted that the next charge mentioned in para 1(j) above relates to the Respondent's failure to report that a tender for repairs or construction involving expenditures exceeding Rs. 5,000/- had not been invited. The Respondent stated in his submissions that tenders were properly invited and were duly scrutinised by the subcommittee. He further submitted that in the case of major repairs, an architect was appointed for supervision of major repairs to buildings. 

- 13.1 The Committee noted that the Respondent did not present any documentary evidence to back up his claim. In absence of any defence, the Committee finds no merit in his submission and holds him Guilty of Professional Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949, on this charge.
14. The Committee noted that the next charge mentioned in para 1(k) above relates to the Respondent's failure to report the amount of expenditure on building repairs and construction in excess of the amount sanctioned in the general body of the budget, as well as the treatment of interest on fixed deposits from earmarked funds as revenue receipts, in violation of Section 34(2) of the Bombay Public Trust Act, 1950. The Committee noted that findings relating to similar charges are already covered in paras 4, 5, and 7 above; hence, the Committee did not give separate findings on this charge and decided to hold the Respondent Guilty of Professional Misconduct falling within the meaning of Item (6) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.
15. The Committee noted that the last charge mentioned at para 1(l) above, is that the General Body of Trust had appointed Respondent as the auditor for an audit fee of Rs 25,000/-, whereas the Respondent disclosed the same as Rs 35,000/- in the financial statements for the year 2013–14. The Respondent in this regard submitted that his appointment was made for Rs. 25,000/- and the amount of Rs. 35,000/- appearing in financial statements includes the internal audit fee of another Chartered Accountant.
- 15.1 The Committee noted that, as per the minutes of the AGM held on 22nd August 2010, for the financial year 2010-11 remuneration of Rs. 15,000/- was approved (page D–13 of the prima-facie opinion). Following that, according to the minutes of the AGM and the appointment letter dated December 4, 2012 (pages D-32 and D-33), the remuneration was increased to Rs. 20,000/- for the financial year 2012-13. The Committee noted that, as per the appointment letter of the Respondent dated 21st January 2014, he was appointed at a remuneration of Rs. 25,000 for the F.Y. 2013–14. 

15.2 The Committee noted from perusal of the financial statement for the year 2013-14 noted that remuneration of Rs. 35,000/- was reflected for the year 2013-14 (page D-13 of prima-facie opinion). The Committee further noted that in the same financial statements, in the previous year's figures 2012-13 no such remuneration was reflected. The Committee noted inconsistency in reporting by the Respondent.

15.3 In this regard, the Respondent claimed that there was a separate internal auditor and that fees of Rs. 10,000/- was reflected for such an internal audit. The Committee further noted that no documents were made available on record by the Respondent which may prove the genuineness of his submissions. In the absence of any defence, the Committee finds no merit in his submission and holds him Guilty of Professional Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 on this charge.

CONCLUSION

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

Charges (para ref.)	Findings (para ref.)	Decision of the Committee
1 (a)	4 to 4.2	Guilty - Item (7) of Part I of the Second Schedule
1 (b)	5 to 5.6	Guilty - Item (6) and (7) of Part I of the Second Schedule
1 (c)	6 to 6.2	Guilty - Item (7) of Part I of the Second Schedule
1 (d)	7 to 7.3	Guilty - Item (7) of Part I of the Second Schedule
1 (e)	8 to 8.2	Guilty - Item (7) of Part I of the Second Schedule
1 (f)	9 to 9.4	Not Guilty
1 (g)	10 to 10.1	Not Guilty
1 (h)	11 to 11.2	Guilty - Item (7) of Part I of the Second Schedule
1 (i)	12	Guilty - Item (7) of Part I of the Second Schedule
1 (j)	13 to 13.1	Guilty - Item (7) of Part I of the Second Schedule
1 (k)	14	Guilty - Item (6) and (7) of Part I of the Second Schedule
1 (l)	15 to 15.3	Guilty - Item (7) of Part I of the Second Schedule

17. The Committee, accordingly, in its considered opinion hold the Respondent **GUILTY** of Professional Misconduct falling within the meaning of Items (6) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949. 

Sd/-

(CA. (Dr.) DEBASHIS MITRA)
PRESIDING OFFICER

Sd/-

(SMT RANI NAIR,IRS (RETD.)
GOVERNMENT NOMINEE

Sd/-

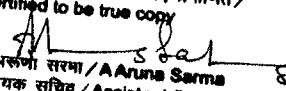
(SHRI ARUN KUMAR,IAS(RETD.)
GOVERNMENT NOMINEE

Sd/-

(CA. COTHA S. SRINIVAS)
MEMBER

DATE: 11.02.2023

PLACE: New Delhi

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

ए अरुणा सरमा / A Aruna Sarna
सहायक सचिव / Assistant Secretary
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)

[PR-94/15-DD/97/2015-DC/1147/2019]

ORDER UNDER SECTION 21B(3) OF THE CHARTERED ACCOUNTANTS ACT, 1949 READ WITH RULE 19(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATION OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007.

[PR-94/15-DD/97/2015-DC/1147/2019]

In the matter of:

Shri Vishwas Y. Navalkar,
Malik Building, Flat no. 4,
D. V. Deshpande Marg,
Shivaji Park
Mumbai – 400028

....Complainant

Versus

CA. Rohit Tryambak Moghe, (M.No.045115)
301, Harishchandra Apts,
Mogul Lane,
Mahim,
Mumbai – 400016

.....Respondent

MEMBERS PRESENT:

1. CA. Ranjeet Kumar Agarwal, Presiding Officer (Present in person)
2. Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee (Present in person)
3. Shri Arun Kumar, I.A.S. (Retd.), Government Nominee (Present in person)
4. CA. Sanjay Kumar Agarwal, Member (Present in person)
5. CA. Sridhar Muppala, Member (Present in person)

DATE OF MEETING : 16.03.2023 (Through Physical/ Video Conferencing Mode)

1. That vide findings under Rule 18 (17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 dated 11th February 2023, the Disciplinary Committee was inter-alia of the opinion that **CA. Rohit Tryambak Moghe, (M.No.045115)**, (hereinafter referred to as the **Respondent**) was **GUILTY** of professional misconduct falling within the meaning of Items (6) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

2. The Committee noted that the matter relates to audit of Shri Samartha Vyayam Mandir, Dadar, Mumbai (hereinafter referred to as the **"Trust"**) conducted by the Respondent for financial



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(Set up by an Act of Parliament)

[PR-94/15-DD/97/2015-DC/1147/2019]

years 2012-13 and 2013-14. The Committee noted that, as per the above findings, the Respondent was found guilty on the following charges:

- 2.1 That amount of Rs. 93.20 lakhs spent on the repairs of the building was directly capitalized to building, thereby contravening the method of disclosure as prescribed under Schedule IX of Bombay Public Trust Act.
- 2.2 The Respondent failed to report that interest on fixed deposits and interest on Kisan Vikas Patra of earmarked funds have been shown as revenue receipts.
- 2.3 The Respondent failed to report that Trust has not followed accounting standards issued by ICAI.
- 2.4 The Respondent failed to comply filing of audited financial statements and the Auditors' report within 15 days of signing as required under section 34(2) of the Bombay Public Trust Act, 1950.
- 2.5 The Respondent failed to report regarding non-compliance of section 22 of Bombay Public Trust Act relating to filing of changed report specifying changes in movable and immovable properties.
- 2.6 The Respondent failed to report non-disclosure and non-submission of Annual return required as per Foreign Regulation Rules in respect of foreign receipts along with separate disclosure in income and expenditure account.
- 2.7 The Respondent failed to report properly that whether register of movable and immovable properties is maintained or not.
- 2.8 The Respondent failed to report properly in his audit report that tender has not been invited for repairs or construction involving expenditure exceeding Rs. 5000/-.
- 2.9 That in clause (i) of the audit report, the Respondent failed to report all cases of improper expenditure and also failed to report whether any expenditure was caused in consequence of breach of trust or misapplication or any other misconduct on the part of the trustees or any other persons while in management of trust.
- 2.10 That the General Body of trust had appointed Respondent as the auditor for audit fee of Rs 25000/- whereas the Respondent disclosed the same as Rs. 35000/- in financial statements.

3. The Committee noted that the Respondent was present through Video Conferencing Mode. The Respondent relied on his written submissions dated 10th March 2023. The Committee noted that the Respondent, in his submissions before it, mentioned that the auditee is charitable trust and that there is no commercial or business activity undertaken by the auditee. There is no deviation in accounting method except for Kisan Vikas Patra, wherein interest is accounted on an



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(Set up by an Act of Parliament)

[PR-94/15-DD/97/2015-DC/1147/2019]

accrual basis as per receipt of interest from the bank. He further mentioned that no monetary loss was caused to anyone and the charges against him are entirely technical in nature and there was no mala-fide intention. He, accordingly, requested the Committee to take a lenient view in his matter considering his age (59 years).

4. The Committee while considering his oral and written submissions on record, noted that charges against the Respondent emanated due to dispute between the members of the Society. The Committee further noted that the lapses are technical in nature and more relates to compliances. The Committee noted that the nature of the lapses was oversight and unintentional. Further, there is no evidence to establish that the Respondent had any mala fide intention.

5. Accordingly, the Committee, looking into the gravity of the charge *vis-a-vis* submissions of the Respondent decided to give a reasonable punishment to the Respondent in the instant matter.

6. Therefore, keeping in view the facts and circumstances of the case, the material on record, and the submissions of the Respondent before it, the Committee ordered that the Respondent CA. Rohit Tryambak Moghe (M.No.045115), be reprimanded along with a fine of Rs.20,000/- (Rupees Twenty Thousand Only).

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: 13th MAY, 2023
PLACE: NEW DELHI

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

[Signature]
अरुण कुमार / Arun Kumar
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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