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**GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI
OFFICE OF THE REGISTRAR CO-OPERATIVE SOCIETIES
OLD COURT'S BUILDING, PARLIAMENT STREET,
NEW DELHI -110001.**

F.No.47/683/AR/GH/Sec-III/RCS/2019/697-702

Dated: -3/12/2020

By this order, I shall dispose of the application dated 11.03.2020 filed u/s 115 of the DCS Act,2003 by the President of Ghalib Memorial Cooperative Group Housing Society Ltd.(Regd. No. 163/GH), seeking review of the order dated 17.02.2020 passed under Rule 80 (1) of (a),(b) DCS Rules,2007 pursuant to the show cause notice No.F.47/163/GH/Sec-III/RCS/2019/341-343 dated 27.08.2019, directing conduct of special audits of the accounts of the said society.

Brief facts of the case are that a notice dated 21st June, 2019 issued u/s 91 of the Criminal procedure Code, 1973 was received from the office of Investigation Officer, Section-V, EOW (Crime Branch), New Delhi requesting to pass order for conduct of Special Audits of Ghalib Memorial Cooperative Group Housing Society Ltd. qua the issues related to outstanding loan amount against each defaulter member, siphoning and diversion of funds, amount outstanding against each flat etc. Investigation Officer had also inter-alia observed that due to improper functioning and mismanagement of the Managing Committee, loan amount (including interest) in respect of loan taken by the society from DCHFC was still outstanding against the society and further the management is not in position to figure out the outstanding amount against each defaulter member. A copy of the report of the Audit conducted by the Chartered Accountant M/s S.C. Garg & Associates was also enclosed with the said notice dated 21.06.2019. It was further informed that a case has been registered vide FIR No. 111/2010 with EOW(Crime Branch) for investigation into the affairs of the Society as numerous irregularities were reported and detected in the financial affairs and functioning of the said Society and the case was being presently monitored by Hon'ble Court of CMM.

In view of the above, a notice dated 27.08.2019 under Rule 80 of DCS Rule 2007 was issued to the President/Secretary of the society calling upon the society to explain the reasons as to why special audit of the accounts of the said society should not be directed. After considering the reply and submission made by the society during the proceedings, the special audit of the society was directed vide order dated 17.02.2020.

It was noted in the order dated 17.02.2020 that the CA report dated 28.04.2012 forwarded by the Investigating Officer with Annexure "A" specifically points out irregularities in the financial affairs of the society as the money recovered on account of DCHFC for the year ending 31.03.2011 and 31.03.2010 (Rs.757601 and Rs.977313) was being used for routine payment by the Society. Also no Audit reports or accounting records clearly states the member wise list of loan and interest outstanding and reconciliation of the members balance from the members ledgers. Further the Auditors also observed that as the amounts shown as outstanding balances were not supported by ledgers made available, the accuracy of the same cannot be commented upon. \

It was further observed in the said order dated 17.02.2020 as follows:-

"It is thus evident that the financial affairs of the society have been in disorder particularly on account of diversion of loan amount payable to DCHFC revealing thereby that the affairs of the society have not been managed in accordance with the cooperative principles. The C.A of the E.O.W vide final report dated 05.07.2012 has also noted that though it reflects that adjustments have been made in most of the cases

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but no details of such adjustments made to the loan account of the respective members were retrievable.

Further, the Society alongwith its reply has also submitted a copy of its audit report for the financial year 2018-2019 which includes the objections of the auditor in respect of the financial affairs of the Society and particularly in the matter of the recovery and outstanding loan taken from the DCHFC. The objections of part A of paragraph 5 by the auditor records that as per balance sheet of 31st March, 2018, Principle amount, interest and penal interest payable to DCHFC is Rs.20,73,55,112/- whereas the amount recoverable from the loan defaulters as per the list is Rs.15,36,13,621.74/- and no explanation has been furnished to explain this discrepancy. Further, as per the balance sheet of the Society as on 31st March, 2019, balance recoverable shown from members for DCHFC demand is Rs.17,57,15,715.18/- whereas the amount demand payable to the DCHFC is Rs.23,59,49,414.11/-. The society in its reply has avoided explaining these aspects. Further, the Society in its comments has submitted that the ex-parte award obtained by DCHFC from the period June, 1990 to June,1997 is already satisfied but DCHFC is still continuing with the recovery proceeding on the award till date. Despite all these discrepancies, the society has sought to rely on the list of loan members as reflected in the said audit report and has not put forth any worthwhile argument to support their contention that present show cause notice needs to be withdrawn as there are no sufficient grounds for ordering the special audit and furthermore it will put the society to additional financial liability without any productive outcome.”

It was thus concluded vide order dated 17.02.2020 as follows:-

“A bare perusal of the allegations leveled by the Investigation Officer, EOW (Crime Branch) in conjunction with the reply submitted by the society does reveal that the affairs of the society are not being managed in accordance with the prudent commercial practices or sound business principle and as such there is distinct requirement of conduct of Special Audit of the Society in respect of the issues raised by the Investigation Officer, EOW(Crime Branch) in the notice dated 21.06.2019 u/s 91 of CrPC, 1973 and particularly in respect of all the loan cases where loan was granted by the DCHFC.

In view of above, I hereby direct conduct of Special Audit of the accounts of Ghalib Memorial CGHS LTD by an auditor from the panel of auditors prepared by this office in respect of the issues raised by the Investigating Officer, EOW (Crime Branch) and particularly in respect of all the loan cases where loan was granted by the DCHFC.”

The society thereafter filed the present review application which having been filed on 11.03.2020, could not be taken up for sometime due to intervening lock down and various restrictions in force. Thereafter, a reference was received from the society to decide its review application and a notice dated 11.06.2020 was issued to the society to present its case. A copy of said notice was also endorsed to the office of Assistant Commissioner of Police, Sec-V, EOW (Crime Branch), Mandir Marg, New Delhi-110001 as the order dated 17.02.2020 was passed on a reference received from the Investigating Officer, Section-V, EOW, (Crime Branch, New Delhi).

The society vide the said application dated 11.03.2020 submitted that in compliance to the order dated 17.02.2020 passed by this office they have submitted the audited financial accounts for the period from 2005 to 31.03.2019 to the Special auditor with the copy of loan members ledgers, copies of previous bank statements from 30.07.1998 to 12.07.2010 and further from 01.01.2008 to 16.03.2012. The society further submitted that the special auditor however asked for record from the commencement of the loan of the society from DCHFC till date which is not available

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with the society as the original loan ledger have already been seized by Investigating Officer of the EOW (Crime Branch) and are in their custody since then. It was further stated that the substantial part of the records as desired by the Auditor in their letter dated 26.02.2020, have been missing as not received and most of these records are prior to year 2005 when the society was looked after by administrators appointed by RCS office. The society also contended that pursuant to the direction dated 17.04.2007 of Delhi Cooperative Tribunal, the society engaged a CA Firm to reconcile the loan account of all the 194 loan members by entering the receipts of payment of loan together with interest right from the year 1986. Further, the hardcopies of these loan accounts were duly provided to all loan members of the society for clarification and for further reconciliation by producing copy of repayments of loan if they are either missing or not adjusted during the quarter of repayments. It was also stated that the society since 2005-2006 has been filing its annual return with outstanding loan recoverable from defaulters as prepared by its CA while submitting list of loan defaulters, which duly reflects loan taken by them and annual outstanding of loan from them at the end of the financial year upto 31.03.2019.

The society also submitted that despite the fact that Delhi Cooperative Tribunal has vide order dated 19.03.2008 already directed DCHFC to levy interest on loan at reduced rates and revise its demand and Hon'ble High Court of Delhi in W.P.(C)1364/2008 has also ordered that penal interest cannot be compounded/capitalized, DCHFC however has not adhered to the orders of the courts leading to further litigation. Further, the society while stating that since the Fee for audit of the period 1986-2020 i.e. 34 years would be around 8.5 lakhs and is an unwanted financial burden on each member of the society, requested to review/modify the order dated 17.02.2020 either by withdrawing the show cause notice dated 27.08.2019 or to allow the present application with a modification to the extent that the special Audit may be conducted for the period for which records are available with society i.e. 2005 onwards.

The society also filed further submissions/objections with regard to conduct of special audit vide letters dated 01.07.2020, 17.08.2020 and 17.09.2020.

It was stated that the annual accounts of the previous years up to 2018-2019 have been filed with RCS office after audit by the panel auditor and in the opinion of the auditor, the balance sheet and the profit and loss accounts referred to in the report are drawn up in conformity with the Act, rules and bye laws of the society and there has not been any material impropriety or irregularity in the expenditure or in the realization of money due to the society. It was further stated that presently the society is not collecting any money towards loan and interest from the borrowers members and they are depositing the amount of principal amount of loan and interest, penal interest directly with the DCHFC, therefore, there is no question of misappropriation of funds of loan account by the present management of the society.

The society further submitted that one Sh. Umesh Verma who was working as Vice President of the society from 2005 to 2006, issued NOC to many loanee members/borrowers by accepting cash and issuing forged receipts on behalf of the society for which an FIR has been registered and the matter is before the court. Also that the matter of forgery, misappropriation, cheating, issuance of false NOCs, purchase of flats, unauthorized sale and purchase of flats in the society by the accused Sh. Umesh Verma and Sh. Mohd. Mufti Musharaff is to be investigated and there is no necessity to conduct special audit as the detailed accounts as stated have already been prepared. It was also contended that the complete books of accounts, documents, etc. were not handed over to the new managing committee by Sh. Umesh Verma. It was further pleaded that the complainant society had submitted true facts and submitted relevant documents to the investigation which are stated in the seizure memo dated 25.04.2011


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