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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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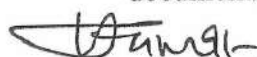
with the society as the original loan ledger have already been seized by Investigating Officer of the EOW (Crime Branch) and are in their custody since then. It was further stated that the substantial part of the records as desired by the Auditor in their letter dated 26.02.2020, have been missing as 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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and are sufficient to prove the criminal conspiracy by Sh. Umesh Verma and Sh. Mohd. Musharaff, the then Accountant of the Society.

The society while denying the observation that the affairs of a co-operative society are not being managed in accordance with the co-operative principles or prudent commercial practices or sound business principles; stated that the complaint by EOW cannot be a ground for direction for special audit and further submitted that the court on 19.03.2019 had directed the EOW to investigate whereby the charge sheet against Sh. Umesh Verma and Sh. Mohd. Mufti Musharaff, the accused has to be filed and the present managing committee and the members of society cannot be held liable for the criminal offences of forgery, etc., committed by the accused. The society also submitted that some of the members could not be allowed to occupy the flats as the same were not permissible under the bye-laws of DDA and the flats had to be dismantled/ destroyed. The members who borrowed funds for those flats not only failed to pay the dues of the DCHFC but are claiming refund of portion of cost of flat paid by them. These loan are, however, liable to be paid by the society, being a guarantor/joint borrower of funds and may be recovered at later date from these members by the society.

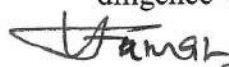
It was further pointed out that the audit fees has not been fixed and the auditor has stated the fee to be Rs.8,50,000 [Rs.25000 for each year of last 34 years], which is neither reasonable nor can be paid by the society as the society is only collecting maintenance charges from its members and has no funds to pay. The society further submitted that it will provide all the information required and further that the information being provided now will satisfy the requirements of information sought through special audit. It further submitted information related to Outstanding loan amount as on 31.03.2020 for each defaulter member and also amount outstanding as on 31.03.2020, other than loan against each flat (for maintenance charges) and also that the Other financial outstanding was NIL. It also submitted details of financial mismanagement and siphoning and diversion of funds by the erstwhile management of Sh. Umesh Verma.

The society also stated that requests to DCHFC have already been made to confirm the information utilized for calculations of the amount due/ receivable in respect of the loan sanctioned to the society by DCHFC. Though it has placed copies of letters written in this regard on record, the society has not placed anything on record to show that DCHFC has agreed to the same. It was further contended that the request for special audits has been made by the EOW on the wrong perception that there is a siphoning of funds as the DCHFC has claimed a huge amount towards repayment of housing loan granted to some members of the society and interest thereon. It further stated that after analyzing the data of last 35 years it has been realized that the society has paid excess amount of Rs,71,53,307/- and in addition Rs.100,000/- towards share money is receivable by the society.

Further, Sh. Parmjeet Singh, Inspector, EOW in response to the objections filed by the society qua the conduct of special audit, has vide letter dated 01.10.2020 stated that the special audit of the Ghalib CGHS Ltd. is necessary for concluding the investigation and besides raising some additional points, reiterated the issues/irregularities pointed out vide notice u/s 91 CRPC dated 21.06.2019. The investigating officer further requested for early conclusion of the case.

A detailed hearing was given to the Society, represented through its President Sh. Suresh A.S. with advocate Sh. Rakesh Dhingra before passing the present order.

Pertinently, the present application is filed under section 115 of the Delhi Coop. societies Act, 2003 which stipulates that if Registrar is satisfied that there has been the discovery of new important matter of evidence, which after the exercise of due diligence was not within the knowledge of the applicant or could not be produced by


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him at the time when order was made or that there has been some mistake or error apparent on the face of record or for any other sufficient reasons, may review the order within 30 days period. It is apparent from the above provision of law that the power of review is limited to the extent of the conditions laid down under the aforesaid provision.

At the outset, it is noted that the Society in its review application dated 11.03.2020 has not stated anything qua the observations made in order dated 17.02.2020 particularly on the point of diversion of loan amount recovered for making loan repayment to DCHFC etc. as noted in its audit reports for the financial year ending on 31-03-2010 & 31-03-2011. It also failed to even specifically clarify or deny the discrepancies noted in its audit reports for the financial year 2018-2019 which clearly reflected that the affairs of the society were not being managed in accordance with prudent commercial practices and the acts of the society in this regard were apparently prejudicial to the interests of the members.

One of the contention raised by the society is that it had already reconciled the loan accounts of all 194 members pursuant to the direction dated 17.04.2007 of Delhi Cooperative Tribunal and the society since 2005-2006 has also been filling its Annual Return giving details of outstanding loan recoverable from defaulter as prepared by its CA. It was further stressed that in the opinion of the auditor, the balance sheet etc were drawn up inconformity with the provisions of the acts and rules and no material impropriety or irregularity in the realisation of money due to the society was found. The Society while submitting details pertaining to the outstanding loan amounts for each member and also the other outstanding amounts of maintenance etc for each flat/Member submitted that the request made by EOW for special audit is based on wrong perception that there was siphoning of funds or mismanagement and further submitted that after analysing the data of last 35 years the society, it has realised that it had paid excess amount of Rs. 71,53,307/- in addition to Rupees one lakh towards the share money recoverable by the society.

It is thus obvious that while the society despite the discrepancies in its audit reports as noted vide order dated 17-02-2020 and without even responding to the observations made in the said order, has again sought to rely on the list of defaulters members as being reflected in its audit reports, the society has also underscored the need for conduct of Special Audit of the society by stating that it has already made excess payment of a very large sum to the DCHFC. The excess payment of Rs. 71,53,307/- to DCHFC by the society itself indicates that the affairs of the society were not being managed in accordance with prudent commercial practices to the DCHFC.

The society vide its review application and also further submission also stated that it had provided the records pertaining to Financial Accounts from 2005 to 31.03.2019 alongwith the copy of loan member register and the copies of bank statements from 30.07.1998 to 12.07.2010 and from 01.01.2008 to 16.03.2012 to the Auditors. It further contended the record sought by the auditor from the commencement of the loan of the society from DCHFC till date were not presently available with the society since having been seized by the IO, EOW(Crime Branch). This contention of the society is obviously without any weight as the Auditor appointed under Section 60 of DCS Act, 2003 is duly empowered to call for the records in term of the provisions contained in section 60 (7) of the Act. The society has also referred to various irregularities committed by Sh. Umesh Verma and Ors for which FIR already stands filed and submitted that detailed information with regard to the same has already been furnished to the investigation and that complaint filed by EOW cannot be taken as ground for issuing direction for conduct of Special Audit as the request for conduct of Special Audit has been made by EOW on the wrong perception that there is siphoning of funds in the society etc. It is obvious that this plea of the society contradicts its own


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stand whereby it has alleged committing of financial irregularities by Sh. Umesh Verma and Sh. Mohd. Mufti Musharaff.

The society has also raised the issue of financial burden on the society in terms of the Audit fee required to be paid for conduct of Special Audit of the Society. Apparently the benefits of the conduct of special audit of the accounts of the society outweigh the cost of the special audit and the society should not show any hesitation in going ahead with the conduct of special audit done as expeditiously as possible.

It would be clear from the above the society has not been able to state any ground whereby the review of the said order dated 17.02.2020 would be required and in fact the submission made by society vide review application and thereafter further underscore the need for the special audit in the society. It would thus be rather in the interest of the society to get the special audit done to get rid of its age old financial problems and also to ensure that the culprits which are alleged by the society itself to be the main reasons for this mess are brought to book by investigation effectively.

In view of the above, I am of the considered view that no ground has been made out by the applicant Society either for withdrawing the show cause notice dated 27.08.2019 issued under rule 80 of the DCS Rules, 2007 or to review the order dated 17.02.2020 passed for conducting the Special Audits of the Society and the present application being devoid of any merit, is hereby dismissed. It is further clarified that the audit fee shall be charged strictly in accordance with the rules of the payments for conducting special audits of the Society as prescribed by this office without any extra cost.


(Virendra Kumar) 02/12/28
Registrar Coop. Societies

To:

1. The President/Secretary, 259, Plot No. 27, Ghalib Apartment, Parwana Road, Pitampura, Delhi-110034.
2. Asst. Commissioner of Police, Sec-V, EOW (crime branch), Mandir Marg, New Delhi-110001
3. M/s Jain Khandelwal & Co. (C-116), House No. 27, Barakhamba Road, New Delhi-10001.

Copy to:-

1. Additional Registrar Cooperative Societies.
2. Asst. Registrar (Sec-III) O/o RCS.
3. Guard File.