

OFFICE OF THE ADMINISTRATOR
ASHA DEEP COOP GH SOCIETY, PLOT NO.- 3B,
SECTOR-02, DWARKA, NEW DELHI-110075.

F.No.- DOE/ASHADEEP/RCS/2023/

Dated: 23.05.2024

NO.-67

To,

1. Shri K. K. Chopra, Ex-President,
 2. Shri Gobind Khattar, Ex-Vice-President,
 3. Shri R. K. Prabhakar, Ex-Secretary,
 4. Shri Sayaji Alapati, Ex-Treasurer
 5. Shri Bijender Singh, Ex-Member and Incharge, Construction Committee,
- Asha Deep CGHS Ltd., Sector 2,
Plot 3B, Dwarka, New Delhi 110075

Sub:- **IRREGULAR PAYMENT TO THE CONTRACTOR - RECOVERY THEREOF AS PER THE DECISION OF THE SPECIAL GENERAL BODY MEETING HELD ON THE 21st APRIL, 2024-REG.**

Please refer to my letter dated 02.05.2024 and 10.05.2024 and your reply dated 16.05.2024 on the above-mentioned subject.

A. You all have admitted that the escalated payment was made to the contractor based on the recommendation of the Cost Escalation Committee. The moot point is whether the then MC was empowered and competent to make payments merely on the recommendation of the Cost Escalation Committee without the approval of the GBM as mentioned in Section 92(4) of DCS Act, 2003. Moreover, the Escalation Committee had recommended certain preconditions also applicable to escalated payment to the contractor. The recommendation of the Escalation Committee is reproduced as under:

"The cost escalation committee's meeting was held on 16/07/2023 at 6.30 pm in the M C Room, in the meeting all three members of escalation committee were present and Honourable officiating President Shri. Gobind Khattar and Honourable Secretary Shri. R K Prabhakar were also present as per minutes of the SGBM held on 25.06.2023 at 3.00 pm. In the conference hall in which interaction with contractor Mr. Israaf Khan (M/S Hadiso Construction Pvt Ltd.) was also present along with his team, he explain the reason for undue delay due to Covid, Construction ban due to pollution by NGT and others reasons as per his statement he informed that the work worth Rs. 41,00,000/- + GST and others levis as applicable is only left to be completed for which he is asking 10% escalation on phase 3rd with he was assured in the SGBM that he will complete construction work by 30.09.2023. He assured that about 16 to 20 labourers per day will deploy to speed up the work to be completed by 30.09.2023.

As per discussion in the meeting vide his letter dated 11.07.2023. He had requested for 45% escalation cost as per details and summary submitted by him to the MC.

As per inflation and increase in building materiel, labour cost, and mason job, as per agreement with him on dated 29.06.2019. the committee agreed to increase escalation cost as discussed in the SGBM dated. 25.06.2023 by the members.

The committee recommended to be increase 6% to 8% as deem fit escalation cost with the following condition.

1. *The entire construction work left as committed by the contractor will complete on or before 30.09.2023.*
2. *If the contractor fails to complete the work by 30.09.2023. the committee recommended to impose the penalty of Rs. 5000/- per day on the contractor.*


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3. *The defect liabilities will be applicable on the contractor (M/s Hadiso Construction Pvt Ltd) as per provisions in DCS Act and Rules as on date.*
4. *The details which was circulated in the AGM held on 19.03.2023 at 11.00 am given by the contractor vide his office letter dated 01.12.2022 (Copy enclosed).*
5. *The penalties clause as per the agreement may be applicable for the delay if any.*"
(The above quotation has been placed without any grammatical corrections which may please read with appropriated corrections)

The cost escalation committee had not only recommended the escalated payment to the contractor, but it had laid down the mandatory conditions also mentioned against point numbers 1 to 5 of its recommendations. If your argument for escalated payment to the contractor is based on the recommendation of the cost escalation committee, then the recommendations running from point number 1 to point number 5 should have also been taken into account. But you, the members of the erstwhile MC, preferred to ignore these important preconditions and released payments to the contractor illegally and irregularly for the reasons best known to you.

B. It is not denied that the Cost Escalation Committee was constituted based on the decision of the Special GBM held on the 25th June, 2023 but your statement about the approval of the SGBM pertaining to the recommendations of the CEC to be final and to be accepted by all members of the society, is patently incorrect. The payments were made merely on the recommendations of the CEC irregularly which needs recovery from the members of the erstwhile Managing Committee, who were party to such a decision for making the escalated payment of Rs 13,91,672/-

C. I do not find your statement in the minutes of the Special GBM held on the 25th June, 2023 about the acceptance of the recommendation of the CEC by the members. The relevant minutes of the SGBM is reproduced as under:

"(a) Issue related to construction work and how to initiate the action for early completion of construction:

The following members have expressed their concerns pertaining to completion of construction work.

Escalation asked by the Contractor

(i) Shri Rajiv Sharma (MS No 189) has pointed out that the delay in completion of construction work is due to incompetency of the contractor and charge taken over by the administrator. He also suggested that the contractor should pay compensation to each members @ 10% on account of undue delay in completion of construction work but the house was in favor of early completion of construction work even some extra amount may be paid.

(ii) Shri DPS Rajesh (MS No. 205) suggested that 5% increase may be given on adhoc basis. However members were of the opinion that any increase will be decided by the formulating a committee which will give in report within 15 days.

(iii) Shri. Ajay Mamoriya (MS No. 196) has suggested that any escalation in cost may be met from the fixed deposit of the society. However, other members present at the meeting have pointed out that the amount against fixed deposits can be utilized only in the event of natural calamities.

(iv) Shri. Anil Kaul (MS No. 151) and Smt. Madhu (MS No. 229) have requested to accord top priority for water proofing the terraces of top floors President intimated that immediate action will be taken.

Interaction with contractor.

The contractor, Mr. Israaf Khan (M/s Hadiso Construction Pvt Ltd has been summoned and present at the meeting. He was requested to explain the reasons for undue delay and



slow pace of work. Mr. Khan has brought the following reasons for delay in construction work:-

- (a) Delay on account of lock down due to Covid.*
- (b) Construction banned when pollution is at high peak.*
- (c) Timely access not provided by some members to complete the internal work.*
- (d) Delayed decision by the society for phase III.*

Mr. Khan further pointed out that the number of days lost since the commencement of work to till date is 270 days out of 670 days.

Mr Khan has also informed that the work worth approx. Rs. 41,00,000/- plus GST and other levies as applicable is only left to be completed for which he is asking 10% escalation on phase 3.

Some members have pointed out that the quality of marble laid in small room was inferior and vary from flat to flat for which Mr. Khan replied that he will procure marble of better quality in a single lot if money is paid in advance only. However, some members suggested that the money can be released only after delivery and physical checking of material quality in society premises.

Mr. Khan has assured the house that the work will be completed by 30 Sep 2023 and plastering of external walls by Aug 2023 end. He has also committed that the about 16 to 20 labourers will be deployed in the within 2 or 3 days to speed up the work."

(The above quotation has been placed without any grammatical corrections which may please read with appropriated corrections)

No where in the above quoted minutes of the meeting, it is mentioned that the Special GBM had authorized the then Managing committee to make escalated payment to the contractor.

D. It was expected from you to know the rules position and as per provision contained in Section 92(4) of DCS Act, 2003. You should have taken the approval of the GBM on the recommendation of the cost escalation committee and then only the escalated payments should have been made. It is also surprising that you being the members of the erstwhile MC chose to make the payments based on the selective recommendation of the cost escalation committee and ignored the other important preconditions which evidently show your doubtful intention. In order to make the point in the matter clear, the provision under section 92 (4) of DCS Act, 2003 is reproduced as under:

"No escalation in cost of the project, and the time fixed for the execution thereof shall be extended by the committee without the prior approval of the general body."

E. Your attention is also invited to the provision made under clause 26 of the bye-laws which stipulate as under:

"In the conduct of the affairs of Society, the Committee shall exercise the prudence & diligence of ordinary man of business and shall be responsible for any loss sustained through act contrary to the Act, Rules made thereunder and Byelaws."

F. It is reiterated based on the discussion held in the SGBM dated 25.06.2023 that the then MC was never authorised to make the escalated payments to the contractor. Moreover, the minutes of the meeting of the Special General Body held on the 25th June 2023 do not include the fact that the recommendations of the cost escalation committee were final and would be implemented by the MC in order to complete the work at earliest as claimed by you. You are aware of the fact that the agreement between the society and the contractor does not stipulate any cost escalation and any violation thereof without the approval of the GBM is also a breach of trust which is criminal in nature. Therefore, your argument in para 2 of your letter dated the 16th of May, 2024 is nothing more than a misnomer.

G. As regards your argument in para 3 of your letter that the then Administrator, Shri S N Pandey circulated the total cost to be borne by the members tentatively as 6.13 lakhs based on the estimate submitted by the contractor, which included an increase of 10% escalation amounting to ₹16,13,94/-, it cannot be a ground for escalated payment to the contractor without its proper

circulation with the cross verification by the Architect. Any finalisation of the project cost without a thorough verification by the architect is non-tenable and an irregular demand from the members.

H. As mentioned in the previous paragraphs, the DCS Act is very clear about the authorised body which can take a decision in this regard and that is the GBM and no one else. No Administrators or his sub-committee or the MC is having power of the GBM. Therefore, such an argument does not carry weight other than to fill up the pages and to make the letter lengthy and verbose.


I. As regards your objection to the holding of the SGBM on 21.04.2024, due process was followed in convening and conducting the Special General Body Meeting. All decisions taken in the said SGBM was unanimous applicable to all members of the society. Whatever action I have initiated and am performing is in accordance with the decision of the SGBM in the light of the provisions under the DCS Act and Rules.

J. Your allegation against me that I am biased, is totally baseless and an attempt by you to cover your misdeeds and grave violation of rules including commitment of financial irregularities for which you all are solely responsible. Your malafide intention of making payment to the contractor is evident from the minutes of the MC meeting held on 05.08.2023 in which you all took decision to make an escalated payment to the contractor but conspicuously you drew cheque of Rs. 7,35,000/- in the name of Hadiso Construction Pvt. Ltd. dated 03.08.2023 and the cheque was cleared on 04.08.2023. It means the cheque was encashed by the contractor prior to the decision of the MC. The entire exercise involved in making payment of Rs. 7,35,000/- to the contractor gives ample inkling of the financial impropriety and breach of trust which is a criminal act attracting provisions under Section 405 of the Indian Penal Code which is reproduced as under:

"Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits criminal breach of trust."

As you have made irregular escalated payment of ₹13,91,672/- (Rupees Thirteen lakh, ninety-one Thousand, Six hundred and Seventy-two only) to the contractor without following the due process and against the provisions of DCS Act, Rules and the bye-laws of the society, you are jointly and severally responsible which makes each of you liable to compensate the society and its members.

The undersigned, Administrator of Asha Deep CGHS Ltd. do hereby direct you all to make payment of Rs 2,78,334/- (Rupees Two lakh Seventy-eight thousand, Three hundred & Thirty-four only) each within 5 days from the date of issue of this letter failing which an appropriate further necessary action as per law would be taken against you in discharge of my responsibility as assigned to me by the Special GBM held on 21.04.2024.


(V.S.MALIK)
Administrator

Copy for information to:-

1. Asstt. Registrar (Sec.-VII/GH) Co-operative Societies, Old Court Building, Parliament Street, New Delhi
2. Manager of the Society:- with the directions to past a copy of this notice on the notice board of the society, sent on whatsapp group & email. Also sent one copy through speed post to the concerned also.