



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)

**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.**

File no. : PR-G-163/2010-DD/163/2010-DC/222/2012

In the matter of :

Shri J.K. Teotia,
Additional Director (FA),
Government of India,
Serious Fraud Investigation Office,
Ministry of Corporate Affairs,
2nd Floor, Paryavaran Bhawan,
CGO Complex,
Lodhi Road,
New Delhi - 110003

.....Complainant

Versus

CA. Devendra Kumar Kapur (M.No.070062)
121, Maker Chambers V
221, Nariman Point,
Mumbai - 400021

.....Respondent

Members Present:

Smt. Anita Kapur, Member (Govt. Nominee), Presiding Officer,
Shri Ajay Mittal, Member (Govt. Nominee),
CA. (Dr.) Debashis Mitra, Member
CA. Manu Agrawal, Member

Date of Final Hearing: 15th January 2020

Place of Final Hearing: New Delhi

Parties Present:

CA. Devendra Kumar Kapur - Respondent

1. Vide report dated 10th February, 2018 (**copy enclosed**), the Disciplinary Committee was of the opinion that **CA. Devendra Kumar Kapur (M.No.070062)** was **GUILTY** of Professional Misconduct falling within the meaning of Clause (11) of Part I of the First Schedule, Clause (2) of Part IV of the First Schedule and Clauses (4), (5) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 with respect to holding the position of the Executive



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Director (Finance) besides being involved as the statutory auditor of the Company and he himself was involved in duping the general public by the manner in which the promoters' contribution was created by him. It was noted by then Committee that apart from being statutory auditor of JVGFL the Respondent was acting as an E.D. (Finance), he was controlling the finance, banking and accounting functions of the Group of Companies. Further, JVGFL had come out with its Public Issue in March, 1997. JVGFL came out with its Public Issue in March, 1997 wherein promoters' associate Companies had contributed Rs.2.97 crore for allotment of 3,30,000 shares in JVGFL. It was observed from the evidences brought on record that these Companies had made bogus contribution in JVGFL Public Issue by way of exchange of cheques on the same day among JVG Group of Companies inter-se by JVGFL, M/s. JVG Foods Ltd., etc. on the same date on 20/3/1997 in the same bank (Punjab & Sind Bank) and branch (Fort Branch, Mumbai). Such exchange of cheques indicated inflow and outflow of money and all the cheques were signed by the Respondent as authorized signatory of all Companies who exchanged cheques among themselves.

2. An action under Section 21B (3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and communication dated 3rd January, 2020 was addressed to him thereby granting him an opportunity of being heard in person and/or to make a written representation before the Committee on 15th January, 2020 at New Delhi.

3. The Respondent appeared before the Committee on 15th January, 2020 at New Delhi and made oral submissions wherein he, *inter-alia*, stated that the complaint was completely barred by limitation, since it had been filed after at least **15 years** from the period of allegation i.e., 1993-1997. Moreover, the Respondent submitted that he was a whistle blower of the whole scam of the affairs of JVG Group and wrote a confidential letter to Reserve Bank of India (RBI) in June 1997 and thereafter RBI came into action and issued prohibitory orders against JVG Group of Companies and it was a settled principle in law that the whistle blower had to be protected in all the manners. Furthermore, the



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Respondent was working in dual capacity, since he was beside the auditor, authorized signatory for few bank accounts to release the pre-approved payments during 1997. In view of the Respondent's role as whistle blower, confidential letter to RBI and qualification in Auditors Report, his independence as auditor was not hampered and he had duly discharged all his professional responsibilities.

4. The Committee noted that Respondent had, vide his e-mail dated 15th January 2020, requested that in the interest of natural justice, the Disciplinary Committee should not proceed in the instant matter and keep the same in abeyance till the disposal of other 3 connected matters pending before the Hon'ble Disciplinary Committee which were remanded back to the Committee.

5. At the outset, the Committee noted that in extant matter as on date Appellate Authority has not restrained it to proceed in the matter. Therefore, it could safely proceed to award punishment in the matter considering the submissions of the Respondent and the evidences, documents and information available on record in relation to the matter.

6. Further, as regard objection of the Respondent - the complaint being barred by limitation, it was noted that the Respondent was the statutory auditor of the Company till 1998. However, the following facts were also considered:

- FIRs in the matter against the Respondent were filed by EOW, Crime Branch, Delhi Police in 1998,
- RBI Inspection took place during the period 18.12.1997 to 15.01.1998 wherein the Respondent himself contended to be whistleblower
- The Complainant had initiated investigation in 2007

It was thus noted that the Respondent was immediately after the period of professional conduct facing charges of criminal offence and some of which were continuing till date. In the extant case, the matter is limited to assess if his professional conduct was within the framework of CA Act, 1949. Hence, such plea of the Respondent cannot be accepted.



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The Respondent also cited Supreme Court judgments to claim that the time limit prescribed for taking action in a statute is sacrosanct and created a vested right of the Respondent. The Committee perused the judgments and noted that these judgments decide the issue of limitation with regard to language of particular applicable statute. However, in the instant case, the applicable Rule 12 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 reads as under:

“12. Time limit on entertaining complaint or information:

Where the director is satisfied that there would be difficulty in securing proper evidence of the alleged misconduct, or that the member or firm against whom the information has been received or the complaint has been filed, would find it difficult to lead evidence to defend himself or itself, as the case may be, on account of the time lag, or that changes have taken place rendering the inquiry procedurally inconvenient or difficult, he may refuse to entertain a complaint or information in respect of any misconduct made more than seven years after the same to the Board of Discipline for taking decision on it under sub-section (4) of Section 21A of the Act”

It was noted that the Rule of limitation as envisaged above does not give an absolute right to the Respondent but it casts a responsibility on the Director (Discipline) to examine in view of the facts of the case as to whether the Respondent would find it difficult to defend himself or lead evidence on account of time lag or such changes have occurred in the meantime which may render the enquiry procedure difficult.

7. Further, the Committee asked the Respondent the documents that he intended to produce before it in his defense. As per him, had the papers submitted to the Complainant Department were available with him he would have proved that the amount of cheques that signed by him were not material. It was noted that information that he contended to have submitted before the Complainant Department was in relation to his working papers in relation to audit undertaken by him whereas the matters before the Committee was in relation to him holding dual position of Executive Director and that of auditor as well as duping public by issuing bogus cheques in relation to public issue of JVGL. Hence, the Committee viewed that his plea to have given away the relevant documents to the Complainant Department was not acceptable. It was viewed that the Respondent has failed to convincingly



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establish the detail of evidences which he was prevented to place before the Committee due to the fact that there was a time lag in filing the complaint. Hence, the Committee decided to proceed in the matter.

8. As regard the Respondent's plea of being a whistle blower of the whole scam of the affairs of JVG Group and writing a confidential letter to Reserve Bank of India (RBI) in June 1997, the Committee perused the said letter and viewed that said letter was written only after receipt of RBI letter No. DOS(FCW) No. 6149/05.1.4.0053/96-97 dated June 6, 1997. Accordingly, the Committee asked the Respondent to produce the copy of said letter on which he remained silent.

9. The Committee noted various evidences available on record as enumerated below:

- Documents signed by him as Executive Director (Finance) and addressed to him as Executive Director (Finance) are annexed at **(C-15 to C-24)**,
- A list showing details of cellular phones of JVG Group of Companies **(C-25 to C-26)** showing the mobile number of the Respondent as that of Executive Director (Finance),
- A brochure containing a photograph of the Respondent stating his designation as Executive Director (Finance) of JVG Group of Companies **(C-28)** ,
- Copy of Bank Account Opening Forms alongwith related communication for Syndicate Bank, Hauz Khas, New Delhi wherein the Respondent is referred as E.D/E.D. (Finance), JVG Group **(C-107, 108, 111, 114-121)**
- Statements given on oath, wherein Smt. Neeru Sawhney who was the Company Secretary of M/s. JVG Department Stores Ltd., while giving reply to Question No. 3 dated 11.12.2008 (C-134 to C-139) also referred the Respondent as E.D. (Finance). She was asked through Question No. 5 dated 11.12.2008 to state who had taken interview for her recruitment to the post of Company Secretary. She in her reply to above question stated that "Interview was taken only by D.K. Kapur".
- Statement on oath of Shri V.K. Sharma, ex-CMD of JVGFL, wherein he mentioned that the Respondent was also working as Executive Director (Finance) of JVG Group of Companies (C-140 to C-173) and used to



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supervise/control all the financial activities/transaction of JVGFL. Shri Sharma further disclosed that the Respondent was drawing monthly salary and other benefits from the Company. The Company had given him independent powers in the matters of Finance. This disclosure of Shri V.K. Sharma is also proved from the letter of the Respondent dated 07.12.1996 (C-174 to C-175) addressed to M/s. Wimberley Allison tong & Goo Inc., London (England).

10. On consideration of all the said evidences it was noted that the Respondent being Executive Director of the Company was controlling and managing day to day affairs of the Company beside undertaking the assignment of expressing his opinion on the Financial Statements of the Company by being the statutory auditor of the Company thereby violating the provision as laid down in Clause (4) of Part 1 of Second Schedule to the Chartered Accountant Act 1949.

11. As regard the plea of the Respondent that no wrong was committed by him and he had qualified his Auditor's Report wherein he reported all the financial irregularities and thus completely discharged his duties with total independence and integrity which were expected from him as a statutory auditor of the company, the Committee noted that the same could not be accepted since he was defacto acting as an E.D. (Finance) and was controlling the finance, banking and accounting functions of the Group of Companies.

12. It was further noted that the Respondent had certified the audited statements of JVGFL for the years ended 1993-1994 to 1996-1997. In the Balance Sheet for the year 1996-1997, the disclosure was made in Notes to Accounts and Share Capital Schedule that the Company had received promoter's contribution of Share Application Money of Rs. 36 Crores for allotment of 40,00,000 Equity Shares of Rs.10/- each at a cash premium of Rs. 80/- each fully paid up. In view of the findings of the Investigation Report of the Complainant Department, the said statement was not true as there was no actual inflow of money by these eight promoters' Associate Companies, who applied for shares in JVGFL Public Issue of March, 1997. The Respondent was fully aware of this fact as he was the one who had signed all the cheques which resulted in creation of promoter's contribution (**Para 4.10.37 of the**



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Investigation Report). It was noted that such findings were duly supported by documents obtained from Delhi Stock Exchange, Pune Stock Exchange; relevant records from Punjab and Sind Bank, Mumbai Branch, RBI, New Delhi to examine the promoters' contribution, a tabular presentation relating to transaction alongwith copy of cheques signed by the Respondent himself.

13. Thus, it was noted that it was an established fact that the Respondent had not only failed to discharge his duties diligently but had even failed to disclose in the financial statement a material fact known to him, disclosure of which was necessary for preventing the financial statements to be misleading.

14. It was noted that the erstwhile Disciplinary Committee has held the Respondent guilty of professional misconduct within the meaning of Clause (11) of Part I of the First Schedule, Clause (2) of Part IV of the First Schedule and Clauses (4), (5) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 which was amended in 2006 whereas the alleged misconduct took place during 1993-97 when the pre-amended Act and its related provisions were applicable. It was noted that all clauses have remained same except Clause (4), Clause (7) of Second Schedule and Clause (2) Part IV of First Schedule to CA Act, 1949.

15. It was noted that Clause 7 of then prevailing framework held a member responsible for gross negligence whereas Amended Act held member responsible for due diligence. It was noted that in any case, the member was required to act honestly and reasonably in discharge of his duties. In extant case, such diligence was completely absent on the part of the Respondent. Hence, the Respondent is held guilty under Clause (7) of Second Schedule to pre-amended CA Act, 1949.

16. Further, it is noted that the Clause (4) of Second Schedule to pre-amended CA Act was explained as follows in 'Code of Conduct':

"Clause (4) : "Expresses his opinion on financial statements of any business or any enterprise in which he, his firm or a partner in his firm has a substantial interest, unless he discloses the interest also in his report." (Code of Conduct, 1988)



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*If the opinion of auditors are to command respect and the confidence of the public, it is essential that **they must disclose every factor which is likely to affect their independence**. Since **financial interest** in the business can be one of the important factors which may disturb independence, the clause provides that **the existence of such an interest direct or indirect should be disclosed**. This is intended to assure the public as regards the faith and confidences that could be reposed on the independence opinion expressed by the auditors.”*

*“...Public conscience is expected to be ahead of the law. **Members, therefore, are expected to interpret the requirement as regards independence much more strictly than what the law requires and should not place themselves in positions which would either compromise or jeopardise their independence**.*

*Member must take care to see that they do not land themselves in situations where there could be conflict of interest and duty. For example, **where a Chartered Accountant is appointed the Liquidator of a company, he should not qua a Chartered Accountant himself, audit the Statement of Accounts to be filed under Section 551(1) of the Companies Act, 1956. The audit in such circumstances should be done by a Chartered Accountant other than the one who is the Liquidator of a company.**”*

17. In fact as per the pre-amended CA Act , if the member was in way connected with the management of affairs of an entity either in advisory capacity or in factual control (i.e he had interest direct or indirect), he should not accept the audit assignment because members were then expected to interpret the requirement regarding independence much more strictly than what the law required and he should not place himself in a compromising situation or in that which jeopardised his independence. In order to give a relief to such situation, the then Act required that firstly a member should not take such assignment and if taken then such interest should be disclosed in the audit report. Thus, it is viewed that there was clear denial to hold such dual positions and even if it was done it should have been then ensured that independence of auditor was not being compromised and that disclosure of such interest in the audit report was essential. It was noted that no such disclosure of interest held by the Respondent was made by him in any of the Audit Reports.



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Hence, the Respondent is held guilty of professional misconduct within the meaning of clause (4) of Second Schedule to pre-amended CA Act, 1949.

18. Further, it was noted that the Respondent has also been held guilty of 'Other Misconduct' where he has brought disrepute to the profession falling under Clause (2) Part IV of the First Schedule which although did not exist in Pre-amended Act, however, the substantial provision had remained in the Statue under Sec 22 of pre-amended CA Act, 1949.

19. The Committee was thus of the opinion that the misconduct on the part of the Respondent had been established within the meaning of Clause (11) of Part I of the First Schedule, Clauses (4), (5) and (7) of Part I of the Second Schedule to the pre-amended Chartered Accountants Act, 1949, and 'Other Misconduct' read with Sec 22 of the said Act and keeping in view the facts and circumstances of the case as aforesaid, ordered the removal of name of Respondent i.e. CA. Devendra Kumar Kapur (M. No. 070062) from Register of Members for a period of 3 (Three) Years and also imposed a fine of Rs. 5 Lakhs to be paid within 30 days of receipt of this order by him.

Sd/-
[Smt. Anita Kapur]
Presiding Officer

Sd/-
[Shri Ajay Mittal]
Member, Govt. Nominee

Sd/-
[CA. (Dr.) Debashis Mitra]
Member

Sd/-
[CA. Manu Agrawal]
Member

Date: 3rd February, 2020
Place: New Delhi



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ORDER SHEET
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
INDRAPRASTHA MARG, NEW DELHI – 110 002
DISCIPLINARY COMMITTEE [BENCH-I (2017-18)]

Findings under Rule 18(8) & 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007

File No. : PR-206/10-DD/201/10/DC/222/2012

In the matter of:

Shri J.K. Teotia,

Additional Director (FA), Government of India,
Serious Fraud Investigation Office,
Ministry of Corporate Affairs,
2nd Floor, Paryavaran Bhawan,
CGO Complex, Lodhi Road,
New Delhi - 110003

.....Complainant

Versus

CA. Devendra Kumar Kapur (M.No.070062)

121, Maker Chambers V

221, Nariman Point,

Mumbai - 400021

.....Respondent

CORAM:

**CA. Nilesh Shivji Vikamsey, Presiding Officer,
Ms. Bindu Agnihotri, member (Govt. Nominee),
Shri Amit Chatterjee, Member(Govt. Nominee),
CA. Nihar Niranjan Jambusaria, Member,
CA. G. Sekar, Member**

DATE OF HEARING: 12.07.2017

PLACE OF HEARING : NEW DELHI

PARTIES PRESENT:

- (i) Shri Atul Mishra – Counsel for Complainant**
- (ii) CA. A. P. Singh – Counsel for Respondent**

Finding of the Committee



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1) An investigation into the affairs of M/s. JVG Finance Limited (hereinafter referred to as the “**JVGFL**”) was ordered under Section 235 (i) of the Companies Act, 1956. The investigation was completed and Investigation Report has been submitted to the Central Government. After examination of the report, Central Government directed SFIO to file a complaint with the Institute of Chartered Accountants of India in respect of irregularities committed by the Respondent. The Complainant in his complaint has brought out various observations in the working of the Company and its associated Group of Companies when it came out with its Public Issue in 1997. In the said process, the Respondent has been found to have played a crucial role in the overall functioning of the Company during the said period. The charges alleged against the Respondent in the extant case are:

Allegation No 1: The investigation has revealed that the Respondent was holding the position of the Executive Director (Finance) besides being involved as the statutory auditor of the Company. While acting as an E.D. (Finance), he was controlling the finance, banking and accounting functions of the Group of Companies.

Allegation No 2: JVGFL came out with its Public Issue in March, 1997. As per JVGFL letter dated 21.03.1997, addressed to M/s. Prudential Capital Market Ltd., each of the eight promoters’ associate Companies had contributed Rs.2.97 crore for allotment of 3,30,000 shares in JVGFL. During the course of examination of Bank Statements of these eight Companies, it has been observed that these Companies had made bogus contribution in JVGFL Public Issue by way of exchange of cheques on the same day among JVG Group of Companies and these eight Companies had their accounts in the same Bank. As per the Investigation Report, the exchange of cheques inter-se by JVGFL, M/s. JVG Foods Ltd., etc. on the same date on 20/3/1997 had their bank accounts in the same bank, Punjab & Sind Bank, Fort Branch, Mumbai. A statement which has been prepared of all these cheques shows rotational entries of debit and credit in their bank account statement. These debits and credits relating to cheques exchanged among them on 20/3/1997 indicate that these were method inflow and outflow of money. All the cheques were signed by the Respondent as authorized signatory of all Companies who exchanged cheques among themselves.

2. The Committee considered the written submissions of both the Complainant and the Respondent along with various documents made available on record by



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both the Complainant and the Respondent. It also noted that the authorised representative of both the Complainant and the Respondent were present on the date when the case was concluded and thus noted their oral submission as well.

3. The Committee noted that the Respondent who was the Executive Director of the Company was controlling and managing day to day affairs of the Company to the extent of being the authorised signatory to the bank account of the Company as numerous cheques have been placed on record by the Complainant which have been signed by the Respondent as signatory to the bank account of the Company beside undertaking the assignment of expressing his opinion on the Financial Statements of the Company by being the statutory auditor of the Company thereby violating the provision as laid down in Clause (4) of Part 1 of Second Schedule to the Chartered Accountant Act 1949. In this context, the Committee is of the view that when a person is entrusted with the responsibility to act as the statutory auditor of the Company, he is expected to act independently to form an opinion as regard to the true and fair view of the financial position and operating results of a company and if such other duties are also undertaken by him which by nature fall within the day to day operations of the Company, then he cannot be deemed to have acted independently as statutory auditor.

4. The pronouncement of the ICAI on the Independence of the Auditors very clearly provides that the Independence of mind is a fundamental concept and /or expression of opinion on the Financial Statements in any form, and, therefore, must always be maintained. Nothing can substitute for the essential and fundamental requirement of independence. The said Pronouncement further provides that the Independence of the auditors has not only to exist infact, but also appear to so exist to all reasonable persons. The relationship between the auditor and the clients needs to be such that firstly, he is himself satisfied about his independence and secondly, no unbiased person would be forced to conclude on an objective assessment of circumstances that there is likely to be an abridgement of the auditor's independence. Thus, independence of auditor is a pre-requisite whose existence needs to be assured.

5. In the instant case, the Committee noted that the Respondent while acting as the statutory auditor of the Company has infact signed the cheques for the



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Company, thereby, involving himself in the day –to –day functioning of the Company which is not expected of an auditor who is expected to maintain highest degree of independence. The Committee, in this context, is further of the view that by undertaking the responsibility of signing of the cheques on behalf of the Company, the Respondent has also undertaken the responsibility to ensure the compliance of all legal technicalities for the payments placed before him which in fact was in conflict with his role as the statutory auditor whereby he was expected to act independently. Thus, the Committee is of the considered opinion that the Respondent has acted in dual capacity whereby on one hand he has performed the managerial responsibilities of signing as authorised signatory and assuming the custodianship of the finances of the Company and on the other hand holding the position of the Statutory auditor as well. Thus, in conclusion, in the considered opinion of the Committee, the Respondent is guilty of Professional Misconduct falling within the meaning of Clause (4) of Part I of the Second Schedule to the Chartered Accountant Act 1949 as amended by the Chartered Accountants (Amendment) Act, 2006.

6. As regard the charge that the Respondent has engaged himself in an occupation other than the profession of chartered accountancy by being an Executive Director of the Company while holding full time COP, perused various documents made available on record wherein the Respondent has signed as an Executive Director (Finance) of the JVG Group of Companies during the period 1996-1997 which include various letters, a brochure by JVG Group of Companies in 1997 containing a photograph of the Respondent besides designating him as the Executive Director (Finance), a list showing details of cellular phones of JVG Group of Company obtained from OL, Delhi which has shown the Respondent as Executive Director (Finance) and details of accounts of several Associate Companies of JVGFL by Syndicate Bank, Haus Khas along with its letter dated 26.12.2008 wherein the Respondent is referred to as the E.D/E.D. (Finance), JVG Group and the Authorised Signatory of various Bank Accounts. The Committee further thus formed a view that the Respondent during the said period, besides holding full time C.O.P., had also engaged himself in an occupation other than the profession of chartered accountancy by being an Executive Director of the Company thereby



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violating the provision laid under Clause (11) of Part I of First Schedule to the Chartered Accountant Act 1949.

7. The Committee also observed that the Respondent has certified the audited statements of JVGFL for the years ended 1993-1994 to 1996-1997 except for the Financial year 1995-96 wherein although the Respondent firm had acted as the statutory auditor, yet, a person other than the Respondent has certified the statements of the Company. In the Balance Sheet for the year 1996-1997, the disclosure made in Notes to Accounts and Share Capital Schedule shows that the Company has received promoter's contribution of Share Application Money of Rs.36 Crores for allotment of 40,00,000 Equity Shares of Rs.10/- each at a cash premium of Rs.80/- each fully paid up. The said statement is infact not true as the Complainant has brought out in its investigation report that there was no actual inflow of money by these eight promoters' Associate Companies, who applied for shares in JVGFL Public Issue of March, 1997. The Respondent was fully aware of this fact as he was the one who had signed all the cheques, which resulted in creation of promoter's contribution. Thus, the Respondent has not only failed to discharge his duties diligently but has even failed to disclose in the financial statement a material fact known to him disclosure of which was necessary to make the financial statements not misleading. The Committee is also of the view that the Respondent has infact played a crucial role in an attempt to dupe the general public by concealing the manner in which the promoters' contribution was created which is highly unbecoming of a Chartered Accountant and tarnishes the image of the member in the eyes of the general public.

Conclusion

8. Thus in the considered opinion of the Committee, the Respondent is **Guilty** of professional misconduct falling within the meaning of Clause (11) of Part I of the First Schedule, Clause (2) of Part IV of the First Schedule and Clauses (4), (5) and (7) of Part I of the Second Schedule and to the Chartered Accountants Act, 1949.

Sd/-
CA. Nilesh Shivji Vikamsey
Chatterjee
Presiding Officer
Nominee)

Sd/-
Shri Amit
Member(Govt.



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Sd/-
CA. Nihar Niranjana Jambusaria
Agnihotri
Member
Nominee)

Sd/-
Ms. Bindu
Member(Govt.

Sd/-
CA. G. Sekar
Member

Date : 10th February, 2018

Place : New Delhi