



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

[PR/329/2013/DD/18/2014/DC/499/2016]

**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.**

In the matter of:

Shri Venkataramani Swaminathan, Chennai

-vs-

CA. R Balaji (M.No. 026922), Chennai

[PR/329/2013/DD/18/2014/DC/499/2016]

MEMBERS PRESENT:

- 1. CA. Atul Kumar Gupta, Presiding Officer**
- 2. CA. Amarjit Chopra, Government Nominee**
- 3. CA. Rajendra Kumar P, Member**
- 4. CA. Chandrashekhar V. Chitale, Member**

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 09.07.2018, the Disciplinary Committee was of the opinion inter-alia that **CA. R. Balaji (M. No. 026922)** (hereinafter referred to as the “**Respondent**”) was **GUILTY** of professional Misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 as amended from time to time.

2. That an action under Section 21B (3) of the Chartered Accountants (Amendment) Act, 2006 was contemplated against the Respondent and communication dated 29th April, 2019 was addressed to him thereby granting an opportunity of being heard in person and/or to make a written representation before the Committee on 18th May, 2019 at Chennai.

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3. The Respondent appeared before the Committee on 18th May, 2019 and made his oral representations on the findings of report of Disciplinary Committee.

4. The Committee noted that there are three charges against the Respondent, in which he has been held guilty of professional misconduct. These are as under:-

4.1 Two certificates dated 5th December, 2009 issued by the Respondent showing different amounts as promoter's margin.

4.2 FDI norms not complied with by the Company and have not been reported by the Respondent.

4.3 The Respondent has issued a special audit report in December 2010 contrary to earlier statutory audit reports certified by him for financial years 2005-06 to 2009-2010.

5. Noting the above findings given by the earlier Committee, the Committee observed that the Respondent is held guilty for not exercising due diligence while performing professional assignment as a statutory auditor of the Company. Further, the Committee noted that the Respondent is also guilty for issuing a special audit report contrary to his earlier statutory audit reports. Hence, in view of casual approach of the Respondent, and keeping in mind all facts/findings, the Committee hereby was of the view that ends of justice would be met, if a punishment is awarded to the Respondent in commensurate with his professional negligence as narrated supra.

6. **Thus, keeping in view the facts and circumstances of the case as aforesaid, the material on record, submissions of the Respondent before it, this Committee orders that the name of the Respondent i.e. CA. R Balaji (M. No. 026922) be removed from the register of members for**

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a period of 01 (One) month and a fine of Rs. 10,000/- (Rupees Ten Thousand only) plus applicable taxes (i.e. total sum of Rs. 11,800/- including GST as applicable) be also imposed upon him to be paid within 30 days of receipt of this order.

Sd/-
(CA. ATUL KUMAR GUPTA)
PRESIDING OFFICER

Sd/-
(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

Sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

Sd/-
(CA. CHANDRASHEKHAR V. CHITALE)
MEMBER

DATE : 18/05/2019

PLACE : CHENNAI



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CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2018-2019)]

[Constituted under Section 21B of the Chartered Accountants (Amendment) 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-329/13-DD/18/2014/DC/499/16]

In the matter of:

Shri Venkataramani Swaminathan

Flat No. 14, Gyan Apartments

38, Venkataramn Street

T Nagar

Chennai - 600 017

.....Complainant

Versus

CA. R. Balaji (M.No. 26922)

Flat A-1, Thriuvalluvar Kudil Apartments

New No.2, Brindavan Street

West Mambalam

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Chennai - 600033

....Respondent

MEMBERS PRESENT:

CA. Prafulla P. Chhajed, Presiding Officer
CA. Amarjit Chopra, Government Nominee
CA. Mangesh P. Kinare, Member

CA. Sushil Kumar Goyal, Member

DATE OF FINAL HEARING : 23.04.2018

PLACE OF FINAL HEARING : ICAI Bhawan, CHENNAI

PARTIES PRESENT:

**Authorised representative
of the Complainant : S. Ganpathy
Counsel for Complainant : Advocate Navneeth Krishnan
Respondent : CA. R. Balaji
Counsel for Respondent : CA. A. P. Singh**

Charges in Brief:-

- 1.1 Balance sheet of M/s. Kamakshi Memorial Hospital Pvt. Ltd. (hereinafter referred to as the "**Company**") as at 31st March, 2009 submitted to the Complainant / Bank does not match with the one submitted to ROC.
- 1.2 Paid up share capital of the Company went up from Rs. 9.50 crores to Rs. 20 crores during 2008-09 without any inflow of money into the system.
- 1.3 Share application money (pending allotment) as on 31st March, 2009 differs in Form 23AC 2009 and 23AC 2010.

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- 1.4 Two certificates dated 5th December, 2009 issued by the Respondent showing different amounts as promoter's margin.
- 1.5 The increase in equity during 2009-10 as per Balance Sheet does not tally with the above certificates.
- 1.6 Some letters showing inflow of money amounting to Rs. 25 crores were issued by the Respondent firm, which are in the possession of the Bankers. These were issued without any physical inflow of money. These were used to avail loans from Banks.
- 1.7 FDI norms not complied with by the Company and have not been reported by the Respondent.
- 1.8 The Respondent in CARO has certified that no frauds in the accounts from 2006 to 2010 was noticed on the respective dates. Later, at the instance of the Company, the Respondent has issued a fabricated report in December 2010 contrary to his earlier reports to suit the complaint, and hide all misdeeds that came to light on the Complainant's review, which is under investigation by the Police.

Brief facts of the Proceedings:

2. The Committee noted that the authorized representative of the Complainant alongwith Counsel for the Complainant and the Respondent with Counsel were present and appeared before the Committee.

2.1 The Complainant and the Respondent were put on oath. Counsel for the Complainant explained the charges. On being asked whether the Respondent pleads guilty, he replied in negative.

2.2 The Counsel for the Complainant substantiated the charges and made detailed submissions. After that the Respondent gave his submissions on the charges. In between the hearing, the Counsel for the Complainant requested the Committee that he may be permitted to leave as he
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has to attend another matter fixed for hearing on the same day in Chennai High Court. The Committee permitted him to leave on his own accord and with the consent that proceedings may be continued in his absence.

2.4 The Committee, thereafter, examined the Respondent and after recording his submissions, the Committee directed the Respondent to submit the following documents within 21 days with a copy marked to the Complainant:-

- (i) Copy of Financial Statements of the Company for period 2007-2008 to 2008-2009 with Form 23AC & 23ACA.
- (ii) Date/agreement of registration of property (ies) in Company's name.
- (iii) Date/resolution of increase of authorized share capital of the Company.
- (iv) Copies of project report and working papers for providing certificate and letter from Management seeking certificate from auditor/Respondent.
- (v) Detailed reasons for difference between C-4 & C-5 i.e. two Balance Sheets of the Company signed for year ended 31.03.2010.
- (vi) Copy of agreement (s) entered into by the Company for allotment of shares other than cash i.e. for Rs. 600 lakhs.

With these directions, the Committee concluded the hearing in captioned matter.

3. In view of above directions, the Respondent vide letter dated 19/05/2018 had inter-alia made the following submissions, which are as under:-



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3.1 In first board Meeting held on 29.11.2004, M/s. Kamakshi Memorial Hospital Private Limited, founded by Dr.T.G.Govindarajan (Dr.TGG) and Dr T.G.Sivaranjani (Dr. TGS) had appointed the Respondent's Firm as the Statutory Auditors of the Company.

3.2 Mr.Ganapathy (brother of the Complainant) was in charge of the total Finance and Accounts related activities of the Company and he would also be helping to bring in the funds required to put up the project.

3.3 Mr. Ganapathy was coordinating with a few persons (both residents and Non residents) to secure the necessary funds for the completion of the project, besides obtaining borrowings from Financial Institutions and Banks.

3.4 In the Financial years 2006-07 and 2007-08, the Institution had received funds to the tune of Rs.2.50 Crores. While the funds were promptly utilized towards the project, both Mr.Ganapathy and the Management was not clear as to whether the said amounts would form part of the Share Capital and/ or as loan capital.

3.5 Mr. Ganapathy told the Respondent that he was waiting for a confirmation from the persons who had provided the funds, on the nature of funds. The Respondent had very fairly apprised him of the provisions of the Companies Act with respect to accepting Loans and Share Application Money.

3.6 The Respondent was advised by Mr.Ganapathy that the Management had decided to treat the funds as Share capital; they were awaiting final confirmation from the Investor. In the meanwhile Mr. Ganapathy wanted the Respondent to provide a Report with reference to unaudited Financial Statements to enable them to submit the same to the banks through whom the Company was proposing to raise term loans for putting up the project.

3.7 The Respondent had told them that while the status of the remittance from the investor was yet to be clarified, the Respondent would not give any wrong impression to the bank by suggesting that the said amount was part of capital, unless the Company expressly acts upon the process of issuing and allotting the shares to the investors. The Respondent had told them that accordingly, he would be bound to take a conservative view that the funds would form part of

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Unsecured loans, with a proviso that the audit has not been completed. Mr.Ganapathy accepted the Respondent's views and also conveyed to him that the Management was comfortable with the position indicated by him. The Respondent had accordingly provided the necessary Report on unaudited Financial statements to the Company to be submitted along with the other documents to their banks, if it served their purpose. Further, the Respondent was advised that the funds were brought in the form of Foreign Direct Investments (FDI) and that the Company is seeking approval of the Reserve Bank of India (RBI) for treating these funds as part of Share Capital under the automatic approval route of FDI investments.

3.8 The Respondent had advised the Company that in view of the relevant application before the RBI, the funds could be treated as part of Share Capital but under Share Application money pending allotment, until such time the approval was obtained from the RBI.

3.9 Accordingly, these amounts which were received in FY 2006-07 and FY 2007-08, were shown as part of the Share Capital — under Share Application money Pending Allotment in the Audited Financial Statements for the FY 2006-07 and FY 2007-08 respectively.

3.10 In addition to above the Respondent has also submitted the required documents/clarifications as sought of him in para 2.4 above by the Disciplinary Committee at its Meeting held on the 23rd April 2018.

4. Moreover, the Complainant vide letter dated 30th April, 2017 has also made inter-alia following submissions:-

4.1 Balance Sheets duly authenticated by the Respondent, shows share capital amount differently for year 2009.

4.2 There was no inflow of money ever since incorporation of the Company. All entries relating to share capital are mere journal entries without any cash/bank correlation.



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4.3 Counsel for the Respondent had submitted that they had sought for rectification of errors with ROC vide letters dated 21.01.2011 & 14.08.2013, but wording of both letters are similar, hence what were rectifications sought need to be justified with documents.

4.4 The Complainant acknowledged the observations of Disciplinary Committee regarding failure of the Respondent in fulfilling FDI norms and acceptance of the same by the Respondent.

Findings of the Committee:

5. The Committee noted that charge no. 1 is in respect of mismatch of the figures in the Balance sheet as at 31st March, 2009 and 2010 submitted to the Complainant / Bank and uploaded with ROC in Form 23 AC by the Company.

5.1 On perusal of the Balance Sheet as at 31st March, 2009 and 2010, it is noted that the same have been signed & certified by the Respondent. Also, it is noted that Forms 23AC for the years ended as on 31st March, 2009 and 31st March, 2010 have also been certified by the Respondent. Thus, the Respondent was fully responsible for the figures of Balance Sheets uploaded on ROC website.

5.2 After considering the submission made by the Respondent before Committee, it noted that Forms 23AC were uploaded on 06/01/2011 and after realizing mistake that certain figures reported in previous years column wrongly, the Respondent in very short period addressed one letter dated 21/01/2011 to ROC requesting for rectification of said errors. Further, said letter was followed by one more letter dated 14/08/2013.

5.3 On perusal of said letters, the Committee noted that same were acknowledged by the ROC on same date with office seal and signature of official receiving these letters.

In view of above facts, the Committee observed that the Respondent has made a honest attempt to rectify his said mistakes as he has taken corrective steps much before filing this complaint i.e. dated 05/12/2013.

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5.4 Further, the Committee noted that mistake was in the column of previous years figures as contained in Form 23AC and Form showing correct figures was also available on ROC website, hence it would not be appropriate to infer that the Respondent has uploaded said Form to defraud any stakeholder of the Company. Furthermore, as the Respondent has taken genuine step to rectify said mistake well in time and before filing this complaint, the Committee decided to absolve him on this charge.

6 The next charge against the Respondent is relating to substantial increase in the paid up share capital of the Company during 2008-09 without any inflow of money into the system, during the period 1st April, 2008 to 31st March, 2009.

6.1 During the hearing, the Counsel for the Respondent drew attention of the Committee to written submissions of the Respondent giving break up of increase in paid up share capital of Company from Rs.1.00 lacs to 20.00 crores. The Respondent also brought on record certain resolutions adopted at the Board meetings of Directors of the Company for said increase.

6.2 On perusal of Board Minutes dated 13/02/2009, it is evident that the Board of Directors has passed resolution to increase Authorized Share capital of the Company from Rs. 1.00 lacs to 20.00 crores and also proposed certain amendments in Memorandum of Association and Article of Association of the Company. Further, Form 5 for increase of Authorized share capital has also been filed with the RoC.

6.3 As far as increase in paid up share capital is concerned, the Committee noted that at the Board of Directors meeting held on 27/03/2009, a resolution has been passed for allotment of 1,99,90,000 equity shares of Rs. 10.00 each. Further, it is also observed from extract of minutes of said meeting that 1,39,85,000 shares were allotted to Dr. TGG for

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cash and 60,00,000 shares for other than cash and balance 5000 to one Mr. T.G. Sivaranjani for cash. Moreover, it is also evident that return of said allotment has also been filed in Form 2 with ROC on 06/01/2011 for cash allotment and in Form 3 for other than cash allotment.

6.4 Moreover, on the directions of the Committee, the Respondent has brought on record an agreement dated 28/02/2005 entered into between M/s. Dr. Kamakshi Memorial Hospital (sole proprietorship concern of Dr. TGG) and Dr. Kamakshi Memorial Hospital Pvt. Ltd. to take over assets and liabilities of said proprietary concern. Furthermore, there is one certificate/opinion from M/s. Guru & Co., Chartered Accountant dated 28/04/2010 in which it is stated that in turn of assets and liabilities taken over, the Company also allotted necessary shares from its share capital to Dr. TGG in consideration of transfer of property land at Paliikaranai.

6.5 On the basis of above facts, the Committee is of the view that there were necessary documents on record for increase in authorized as well as paid up share capital of the Company and in view of these documents, the Committee decided to absolve the Respondent from this charge also.

7 In respect of charge no. 3 regarding differences in the share application money (pending allotment) amounts reflecting in Form 23AC for 2009 and Form 23AC for 2010, detail reasoning have been given in para 5 and its sub-paras. Accordingly, no separate findings are required in this context.

8. The Committee noted that charges nos. 4 & 5 is relating to different amounts of the promoter's margin in two certificates dated 5th December, 2009 issued by the Respondent



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and increase in equity during 2009-2010 as per Balance Sheet which does not tally with these certificates.

8.1 The Committee noted the submissions of the Counsel for the Respondent in this respect in which he has submitted that the purpose for issuing these two certificates was different, which is clearly indicated from wordings of these certificate. The first certificate was for the requirement of Promoter's margin and other one was actual promoter's margin.

8.2 On the directions of the Committee, the Respondent brought on record a letter dated 05.11.2009 of Managing Director of the Company wherein para 5 of said letter reads as under:-

"More specifically on the financial details concerning the project the bankers have advised us, through our financial controller, to obtain a certificate from the Statutory Auditor of our institution on the following matters:

** A certificate to indicate total value of the projects, item-wise for the various equipment and infrastructure indicating therein the amount that would be part of the promoter/Institutions margin and the amount that could be reasonably be expected to be obtained from the Bank.*

** Amount brought in by the Promoters towards the implementation of this specific project till date."*

8.3 In view of above letter, the Committee is of the view that although there was requirement of issuing two certificates from the Management for two different purposes i.e. one for estimation/requirement of promoter's margin and other for actual amount brought in by the Promoters toward project, however, on perusal of contents of these certificates, it is seen that the Respondent has not disclosed the above purposes clearly while issuing these two different certificates which have been issued on same date.

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8.4 Moreover, the Committee was of the view that Management representation letter (as brought on record by the Respondent) is an internal document and is not available in public domain. Therefore, non-mentioning of such purposes for which the certificates were issued may lead to misuse of such certificates thereby making the user vulnerable to financial loss/ fraud. Hence, the non-disclosure of the intent and purpose of two different certificates which have been issued by the Respondent on the same day appears to have been issued without proper application of mind and also perhaps merely to help the Company for securing funds from the bank.

8.5 The Committee also noted that as per Guidance Note on Audit Report and certificate for special purposes (1984 edition as applicable from year 1984 till 2016 when this guideline was revised), "A certificate is a written confirmation of the accuracy of the facts stated therein and **does not involve any estimate or opinion (emphasis provided)**. A report, on other hand, is a formal statement usually made after an enquiry, examination or review of specified matters under report and includes the reporting auditor's opinion thereon. **Thus, when a reporting auditor issues a certificate, he is responsible for the factual accuracy of what is sated therein (emphasis provided)**.

8.6 Furthermore, the Respondent has failed to bring on record working papers in respect of these certificate/projects as called by it at its meeting held on 23/04/2018 at Chennai.

8.7 On the basis of above, the Committee hold that in respect of charge relating to issuance of two certificates regarding promoter's capital in the context of reasoning as aforesaid, the Respondent is guilty of professional misconduct falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.



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8.8 Further, in respect of latter part of said charge that margin i.e. Rs. 7.50 crores certified by the Respondent does not tally with the equity of the Company, the Committee observed submissions of the Respondent and noted that the period of the certificate is 01.04.2009 to 30.11.2009 and Balance Sheet period is 01.04.2009 to 31.03.2010. Moreover, the Respondent also brought on record a copy of ledger account of the Company. On perusal of the same, it is apparent that Dr. TGG has introduced Rs. 7.50 crores till 23.11.2009 and after that Rs. 1.50 crores has been refunded till 31.03.2010.

8.9 In view of above and there being no contradictory evidence to this effect, the Committee was in agreement with the submissions and documents placed before it by the Respondent and hold that he is not guilty on this charge.

9 The next charge no. 6 is relating to the letters issued by the Respondent without any inflow of money, amounting to Rs. 25 crores approx. for helping the Company in availing loans from Banks.

9.1 On perusal of Prima Facie Opinion, the Committee observed that there is no specific reasoning or documents holding the Respondent prima facie guilty in respect of this charge. The reasoning given in PFO is just circumstantial which reproduced here as under:

“in the larger context of other charges levelled against the Respondent and wherein there does seem to exist a prima facie case, there is a need to investigate the matter further as mere denial of such letters cannot absolve the Respondent”

9.2 In view above, the Committee noted that as there is no fresh evidence to support said charge, hence, same is not maintainable against the Respondent.

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10 The next charge no. 7 is relating to non-compliance of the FDI norms.

10.1 On perusal of documents on record, the Committee noted that during financial years 2006-2007 and 2007-2008 the Company has received a foreign direct contribution of Rs. 2.50 crores from the Complainant towards equity of the Company as evident from certificate of foreign inward remittance of Indian Overseas Bank dated 13/04/2006, 28/02/2007 and 06/06/2007.

10.2 In view of documents brought on record by the Respondent, the Committee noted that the Respondent was fully aware that there was a notification dated 14/12/2007 from the Reserve Bank of India in respect of FDI and refund of advance remittances. On perusal of said notification it is evident that *"In case, the equity instruments are not issued within 180 days from the date of receipt of the inward remittance or date of debit to the NRE/FCNR (B) account, the amount of consideration so received should be refunded immediately to the non-resident investor by outward remittance through normal banking channels or by credit to NRE/FCNR (B) account, as the case may be"*.

10.3 Further, the Committee also noted that there is an interim stay by Hon'ble High Court of Madras dated 22/11/2011, however, the Respondent failed to qualify his audit reports/failed to report on this aspect upto financial year 2009-2010 for non refund of consideration amount received against equity as per RBI notification dated 14/12/2007, which was fully in his knowledge while signing the financial statements of the Company for period 2006-2007 to 2009-2010 when there was no such stay.

10.4 In view of above, the Committee is of the opinion that the Respondent has not disclosed the above facts in Audit Report nor he reported the violation of FDI norms. Thus, **Shri Venkataramani Swaminathan, Chennai -vs- CA. R Balaji (M.No. 026922), Chennai**



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the Committee holds the Respondent guilty of professional misconduct falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949 on this count.

11. The next charge is relating to issuing a fabricated report in December 2010 (special audit report) contrary to earlier statutory audit reports certified by the Respondent for financial years 2005-2006 to 2009-2010

11.1 The Committee noted the submissions of the Respondent and observed that in audit reports for financial years 2005-2006 to 2009-2010 in CARO 2003, the Respondent stated that *“According to the information and explanation given to us no fraud on or by the Company has been noticed or reported during the years.”*

11.2 However, in special audit conducted by the Respondent on the request of the Management of the Company, he has reported various unauthorized transferred and misappropriation of funds, shortage of stock, booking of expenses without any supporting vouchers etc.

11.3 The Committee was of the view that although the scope of special audit and statutory audit are different, but when both the audits have been conducted by the same auditor and with same sets of documents then irregularities pointed out by the Respondent in Special Audit Report might have been detected at the time of statutory audit also if he would have exercised due diligence in conduct of the statutory audit. Therefore, in the considered opinion of the Committee, the Respondent is guilty of professional misconduct falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

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Conclusion

12. Thus, in the considered opinion of the Committee, the Respondent is **GUILTY** of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 in respect of reasoning given at paras 8 to 8.7, 10 and 11 including its sub-paras as above.

Sd/-
(CA. PRAFULLA P. CHHAJED)
PRESIDING OFFICER

Sd/-
(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

Sd/-
(CA. MANGESH P. KINARE)
MEMBER

Sd/-
(CA. SUSHIL KUMAR GOYAL)
MEMBER

DATE :09th July, 2018.

PLACE : New Delhi

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