



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

[PR-293/2013-DD/283/2013/DC/478/2016]

**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 Khoremand Rohinton Irani,
Shri Minocher Aspandiar Irani (since deceased)
F/54, Cusrow Raug,
2nd Floor,
SBS Road,
Electric House,
MUMBAI – 400 005**

.....Complainant

-Vs.-

**CA. Sarosh Rustom Irani (M.No.014908)
M/s. S. R. Irani & Co.,
Chartered Accountants,
304, Vardhaman Chambers,
17-G, Cawasji Patel St. Fort,
Mumbai – 400 001**

[PR-293/2013-DD/283/2013/DC/478/2016]

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 29.05.2019, the Disciplinary Committee was inter-alia of the opinion that **CA. Sarosh R. Irani (M. No. 014908)** (hereinafter referred to as the **Respondent**) was **GUILTY** of professional



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misconduct falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

2. That an action under Section 21B (3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and a communication dated 19th December, 2019 was sent to him thereby granting an opportunity of being heard in person and/or to make oral/written representation before the Committee on 07th January, 2020 at Mumbai.

3. Further, on 07th January, 2020, the Committee noted that the Respondent was present and made submissions on the findings of the Committee holding him Guilty of professional misconduct within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

4. The Committee noted that there is one charge against the Respondent in which he has been held guilty, which is as under:-

4.1 In brief the allegations against the Respondent was that the salary / remuneration that was payable to the partners as per Deed of Partnership dated 10.09.1996 was Rs 4,80,000/- p.a. whereas a sum Rs. 36 lakhs was debited to the accounts as salary / remuneration to the partners.

5. The Committee noted the findings contained in Report of the Disciplinary Committee dated 29/05/2019 holding the Respondent guilty of professional misconduct, which are as under:-

5.1 *"On perusal of the documents on record, the Committee noted that there was dispute among the partners of the firm over payment of salary and sharing of profit. The Respondent was the tax auditor of the firm. Neither the Complainant nor the Respondent had provided copy of Partnership Deed dated 10th September, 1996 and in absence of copy of the said partnership deed, the provisions related to payment of salary and remuneration to the partners and right of*



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the partners were not known. However, on perusal of the Supplementary Partnership Deed dated 1st January, 2006, it is observed that names of seven partners including both the Complainants were there in the said deed. It is further observed that four partners were working partners and they were entitled to receiving salary/remuneration. The amount of salary / remuneration to working partners, along with all other expenses are to be debited to the profit & loss account before arriving at the net profit which will be divided by all the partners in their profit sharing proportion. Vide the Supplementary Partnership Deed, salary / remuneration payable to the working partners was increased to Rs.50,000 per month for the period 01.10.2006 to 30.09.2006 and thereafter, it was increased to Rs. 1,00,000 per month. Further, it is observed that the Supplementary Partnership Deed was signed by five partners except both the Complainants.

*5.2 Further, neither the Complainant nor the Respondent provided copy of financial statement for the financial years 2005-06 to 2010-11. In absence of copy of financial statements, it was not possible to ascertain the impact of increased remuneration paid to working partners on the profit of the firm for the financial year 2006-07. However, on perusal of the financial statement available for the financial year 2011-12, it is noted that total revenue and the profit of the Company was 5.94 crore and Rs.1.78 crore respectively. Keeping in view the concept of materiality, it is observed that the increased remuneration was Rs. 43,20,000/- [(1,00,000*4*12)-(10,000*4*12)] and that stood at 7.26% and 24% of the total Revenue and the profit of the firm respectively. It is also observed that though financial statement for the financial year 2006-07 was not provided yet the Respondent mentioned the figure of turnover of the firm for the said year as 3,96,57,480/-. The impact on the increased remuneration was material for the said year also. Hence, the Respondent was required to assess the impact of increased remuneration of working partners of the firm on the profit of the firm and should not have relied upon the documents which have not been signed by all the partners.*

5.3 From the above, it appears that the Respondent adopted very casual approach and relied upon the disputed documents which were not signed by all the partners. In such circumstances, the Respondent was required to qualify his audit report keeping in view the material impact of increased remuneration. Therefore, the Respondent is guilty of professional misconduct falling



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within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949”.

6. The Committee perused the above facts and submissions of the Respondent and looking into all these aspects, the Committee noted that although there is dispute between the partners of the firm but the Respondent is not supposed to sign the financial statement based on oral statements / assurance of any partners. The Respondent must have enquired from the firm or the Complainants about the non-signing of the Supplementary Partnership Deed by the Complainants. Further, the Respondent could not bring on record any documentary evidence to establish that the Complainants' permission were not required to increase the remuneration / salary of working partners or he had sought explanation from the firm and/or the Complainants in this regard.

Based on the above findings the Respondent being held guilty of professional misconduct, the Committee is of the view that ends of justice will be met, if the punishment awarded to the Respondent is commensurate with the seriousness of the nature of misconduct.

7. Thus, keeping in view the facts and circumstances of the case, the material on record before it, the Committee ordered that the Respondent i.e. CA. Sarosh Rustam Irani (M. No. 014908) be reprimanded and a fine of Rs. 25,000/- (Rupees Twenty Five Thousand only) 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 : 07/01/2020

PLACE : MUMBAI



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CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2019-2020)]

[Constituted under Section 21B of the Chartered Accountants 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

Ref. No. [PR-293/2013-DD/283/2013/DC/478/2016]

In the matter of:

**Shri Khoremand Rohinton Irani,
Shri Minocher Aspandiar Irani (since deceased)
F/54, Cusrow Raug,
2nd Floor,
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.....Complainant

-Vs.-

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M/s. S. R. Irani & Co.,
Chartered Accountants,
304, Vardhaman Chambers,
17-G, Cawasji Patel St. Fort,
Mumbai – 400 001**

.....Respondent

MEMBERS PRESENT:

**CA. ATUL KUMAR GUPTA, PRESIDING OFFICER,
SHRI RAJEEV KHER, IAS (RETD.), GOVT. NOMINEE,
CA. RAJENDRA KUMAR P, MEMBER,
CA. CHANDRASHEKHAR VASANT CHITALE, MEMBER**

DATE OF FINAL HEARING : 18.04.2019

PLACE OF FINAL HEARING : ICAI Tower, Bandra Kurla Complex, Mumbai

PARTIES PRESENT:

Shri Khoremand Rohinton Irani, Mumabi –Vs.- CA. Sarosh R. Irani (M. No. 014908), Mumbai

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Complainant : Shri Khoremand R. Irani
Counsel for the Complainant : Shri P.J. Ramchandani, Advocate
Respondent : CA. Sarosh Rustam Irani
Counsel for the Respondent : Shri S.G. Gokhale, Advocate

Finding of the Committee

1. On the day of hearing held on 18th April, 2019, the Committee noted that the Complainant and the Respondent were present along with their respective Counsel. The Complainant and the Respondent were put on oath. The Counsel for the Complainant explained the charges and stated that he accepted all the submissions made by them in earlier hearing(s). On being enquired from the Respondent, the Counsel for the Respondent stated that though de-novo hearing is being conducted by the Committee yet he would like to rely on the documents / evidence submitted before the Committee and all the documents / evidences be taken as submitted today only. The Committee posed certain questions to the Counsel for the Respondent. The Respondent also made his submissions on the charges. The Respondent stated that he prepared Supplementary Partnership deed and also conducted tax audit. After hearing the submissions, the Committee decided to conclude the hearing in the aforesaid matter.

2. The Committee noted that the Complainant in his complaint made various allegations against the Respondent but the Respondent was held prima facie guilty with respect to two charges only. Hence, the Committee considered only those charges for which the Respondent was held prima facie guilty for further enquiry. It is noted that the Respondent was held prima facie guilty with respect to the following charges as under:-

- i) Deed of partnership provides for remuneration Rs 10,000/- per month for certain partners who are working partners. Remuneration to (i) Deenyar Sheriar Jehani (ii) Farzad Sheriar Jehani (iii) Gustad Framroz Dehmiri (iv) Rashid Framroz Dehmiri was arbitrarily increased from Rs. 10,000/- pm to Rs 75,000/- pm and then to Rs. 1,00,000/- pm without the Complainants' consent and knowledge. The Complainants alleged that they have not signed the supplementary deed to increase the remuneration of the aforesaid partners. From accounting year 2006-07, the certified Balance Sheet of the



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firm shows increase in remuneration of the aforesaid partners without any documentary evidence signed by all the partners to authorize the increase in remunerations. The audited statement of the Accounts of the partnership firm were discussed and finalized by the Respondent as auditor with only two partners (i) Deenyar Sheriar Jehani (ii) Farzad Sheriar Jehani to the exclusion of the other partners nor does the Respondent try to ascertain whether the other partners have approved the audited Accounts or not. In brief the allegations against the Respondent was that the salary / remuneration that was payable to the partners as per Deed of Partnership dated 10.09.1996 was Rs 4,80,000/- p.a. whereas a sum Rs. 36 lakhs was debited to the accounts as salary / remuneration to the aforesaid partners. The Complainant also alleged that neither the partners nor the Respondent have provided the copy of the financial statements.

- ii) Some of the discrepancies and defects in the accounts audited by the Respondent which were noticed in the course of inspection by the Complainants, brought into the knowledge of the Respondent vide letters dated 27.09.2008 and 12.12.2008, but even after receipt of these letters, the Respondent firm failed to reply to the same.

3. In respect of first charges related to non-signing of Supplementary Partnership Deed dated 19th January, 2006 and also for non-supply of Balance Sheet of the firm by the Respondent to the Complainant, it is the defence of the Respondent that the Supplementary Deed of Partnership was agreed to be signed by all partners including the Complainants though it remained unsigned. The Respondent was promised by the Complainants on number of occasions that Supplemental Partnership Deed would be signed. The overlooking of the insisting for the signed documents in place in the course of Tax Audit was mainly attributable to misplaced good faith. It is true, as the Respondent realized in retrospect that the Respondent ought to have insisted for signed Documents before signing the Tax Audit Report. But merely for this laps or laxity on the Respondent's part the inference of collusion and/or favouritism ought not to be drawn. The Respondent does not have any personal interest whatsoever in the matter.

3.1 The Respondent further stated that the Supplemental Partnership Deed was limited to increase in the remuneration of the working partners. The same was part of an understanding amongst the partners pursuant to which even the monthly drawings of all partners (working and



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non-working including complainants) were increased and all have drawn the amounts accordingly. There was no document or written agreement for increase in monthly drawings by all partners. The Respondent also referred page no.W-3 of his written statement filed at prima facie stage wherein it was mentioned by the Respondent that the Supplemental Partnership Deed dated 19th January, 2006 was prepared after the consent of all the partners and monthly drawing of all the non-working partners was also enhanced accordingly. Subsequently, complainants promised to sign and later refuse to sign the Supplemental Partnership Deed.

3.2 The Complainant in his submissions stated that the Respondent has unlawfully permitted the 4 working partners to withdraw remuneration of Rs.1,00,000/- pm each partner since 2006 (i.e., Rs.1,00,000/- * 4 = Total Rs.4,00,000/- P.M. i.e., Rs.48,00,000/- per annum) instead of their original remuneration of Rs.10,000/- p.m. per partner. The same amounts to collusion of the Respondent with the other partners to enrich the other partners and deprive the Complainants. Resultantly, the net profit of the firm was reduced to that extent and thus depriving the Complainants of its lawful share. The Complainant also stated that one of the partner, Shri Rashid Dehmiri is settled in Canada, despite the same he was paid remuneration of Rs.12,00,000/- per annum on the basis of fabricated Supplementary Deed.

3.3 The Complainant stated that the firm accounts for the year 2012-13 were scrutinised by the Income Tax Authorities and by order dated 28.03.2015, the Assistant Commissioner of Income Tax disallowed the remuneration of Rs.12,00,000/- given to one partner Rashid Dehmiri who was based in Canada. The Complainant stated that the Respondent permitted withdrawal of huge remuneration for all these years without insisting for signed document. The Complainant further stated that the stand taken by the Respondent that the purported Supplementary Deed dated 19.01.2006 was prepared with the consent and in consultation with all partners is false and bogus. There is no remark of the Respondent in any of the audit report about the internal disputes between partners.



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3.4 First of all, on perusal of the documents on record, the Committee noted that there was dispute among the partners of the firm over payment of salary and sharing of profit. The Respondent was the tax auditor of the firm. Neither the Complainant nor the Respondent had provided copy of Partnership Deed dated 10th September, 1996 and in absence of copy of the said partnership deed, the provisions related to payment of salary and remuneration to the partners and right of the partners were not known. However, on perusal of the Supplementary Partnership Deed dated 1st January, 2006, it is observed that names of seven partners including both the Complainants were there in the said deed. It is further observed that four partners were working partners and they were entitled to receiving salary/remuneration. The amount of salary / remuneration to working partners, along with all other expenses are to be debited to the profit & loss account before arriving at the net profit which will be divided by all the partners in their profit sharing proportion. Vide the Supplementary Partnership Deed, salary / remuneration payable to the working partners was increased to Rs.50,000 per month for the period 01.10.2006 to 30.09.2006 and thereafter, it was increased to Rs. 1,00,000 per month. Further, it is observed that the Supplementary Partnership Deed was signed by five partners except both the Complainants.

3.5 As per the Complainants, remuneration of working partners was increased from Rs.10,000/- without their consent and knowledge. It is noted that one of the Complainants (Minochar Aspandiar Irani) filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996. While concluding the petition, the Hon'ble High Court stated that the petitioner has not been able to demonstrate even prima facie any instances of siphoning of the income, funds etc. of the firm. It also states that the petitioner has been paid the remuneration from time to time. It also states that the petitioner was already being paid salary at enhanced rates and also the profits of the suit firm. The said facts as mentioned in the order of Hon'ble High Court indicates that though the Complainants have not signed the Supplementary Partnership Deed, yet there were getting remuneration at enhanced rates and the Complainants have not disputed the aforesaid facts.



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3.6 Further, neither the Complainant nor the Respondent provided copy of financial statement for the financial years 2005-06 to 2010-11. In absence of copy of financial statements, it was not possible to ascertain the impact of increased remuneration paid to working partners on the profit of the firm for the financial year 2006-07. However, on perusal of the financial statement available for the financial year 2011-12, it is noted that total revenue and the profit of the Company was 5.94 crore and Rs.1.78 crore respectively. Keeping in view the concept of materiality, it is observed that the increased remuneration was Rs. 43,20,000/- $[(1,00,000*4*12)-(10,000*4*12)]$ and that stood at 7.26% and 24% of the total Revenue and the profit of the firm respectively. It is also observed that though financial statement for the financial year 2006-07 was not provided yet the Respondent mentioned the figure of turnover of the firm for the said year as 3,96,57,480/-. The impact on the increased remuneration was material for the said year also. Hence, the Respondent was required to assess the impact of increased remuneration of working partners of the firm on the profit of the firm and should not have relied upon the documents which have not been signed by all the partners. Though the Respondent stated that the Complainant agreed to sign the Supplementary Partnership deed yet it is noted that that Respondent is not supposed to sign the financial statement based on oral statements / assurance of any partners. The Respondent must have enquired from the firm or the Complainants about the non-signing of the Supplementary Partnership Deed by the Complainants but the Respondent could not bring on record any documentary evidence to establish that the Complainants' permission were not required to increase the remuneration / salary of working partners or he had sought explanation from the firm and/or the Complainants in this regard. The Respondent in his submissions dated 7th May, 2018 only reiterated his submissions and failed to bring any evidence in his support.

3.7 From the above, it appears that the Respondent adopted very casual approach and relied upon the disputed documents which were not signed by all the partners. In such circumstances, the Respondent was required to qualify his audit report keeping in view



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the material impact of increased remuneration. Therefore, 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.

3.8 In respect of the allegation related to non-supply of the Balance Sheet of the firm by the Respondent, it is noted that the Respondent was appointed to carry out the tax audit and to submit its report to the firm. Since no dispute was there in respect of submissions of the audit report to the firm, the Respondent cannot be excepted to submit the financial statement or audit report to each and every partners of the firm. The Complainants as partners of the firm was required to obtain the financial statements or other information from the firm or its working partners and the Respondent as tax auditor cannot be held liable for it. Therefore, the Respondent is not guilty of professional misconduct falling within meaning of Clause (2) of Part IV of First Schedule and Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

4. In respect of next allegation related to some accounting discrepancies / irregularities in the accounts of the firm for the financial year 2006-07, the Respondent stated that the firm vide letter dated 18th October, 2006 of the Solicitors of the firm, has clarified / explained the discrepancies / irregularities in the accounts. It ought to have been considered if the said explanations per se are adequate / satisfactory irrespective off the fact as to who has clarified the same. The Respondent submitted that he has adequately dealt with the alleged discrepancies / irregularities in the accounts and his reply should have been considered on merits instead of cryptic observation to the effect that the replies are not concrete. The Respondent further elaborated his clarification / explanation to the alleged discrepancies/irregularities in the accounts in para 5 (xvii) clauses (a) to (i) of his written statement dated 5th April, 2016 to the PFO. He further stated that audit work was done on random / test check basis and the same was permissible. It is obvious that in test Check / random checking, some discrepancies / irregularities are bound to escape the attention.



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4.1 The Respondent stated that the turnover of the firm for the financial year 2006-07 for the purpose of applying the test of materiality which is amounting to Rs.3,96,57,480/-. The Complainant provided the extract of cash book, the aggregate amounts in the alleged discrepancies / irregularities as Rs.1,38,129/- for comparison. The Respondent also added that for proper appreciation of allegations and replies thereto in respect of the discrepancies / irregularities in accounts, it is absolutely necessary to have the evidence and documents before the Committee. The Respondent also relied upon the judgement passed by the Supreme Court in the case of the Institute of Chartered Accountants of India Vs. M.S. Rathi (AIR 2017 SC 4471) and also placed reliance upon the judgement of Kolkata High Court in the case of the Institute of Chartered Accountants of India Vs. Somnath Basu (AIR 2007 Calcutta 29).

4.2 In respect of above charge, the Complainant stated that the Inspection of accounts was taken by the Complainants team in the year 2008 of only 10 days of the cash book. The Respondent was always personally present when the inspection of the accounts was conducted. Serious issues / lapses and discrepancies in the accounts were noticed and were mentioned in Complainants Advocate's letter dated 27.09.2008 and 12.12.2008 addressed to other partners' solicitors, but the copy thereof was sent to the Respondent. However, the Respondent by his letter dated 16.12.2008 denied having received the same and demanded a copy. The Complainants advocate by his letter dated 24.12.2008 sent the copy to the Respondent. Even after receipt of the said letters, the Respondent failed to respond about the said discrepancies / lapses. The said letters were replied by the other partners solicitors vide letter dated 18.10.2008.

4.3 The Complainant further stated that the Respondent is deliberately making a false statement that the alleged discrepancies have been adequately dealt with as when it was noticed.

4.4 In respect of the allegation, it is observed that the Complainants made allegation of discrepancies in the books of accounts based on their observations made during the



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course of inspection. The discrepancies pointed out by the Complainant in their letter dated 27.09.2008 were as under:-

- i) In respect of certain expenses, vouchers were not available.
- ii) On certain vouchers, alteration was there.
- iii) In respect of certain expenses, no proper bills were there and no authorisation and stamps were affixed on the vouchers / bills.
- iv) Cash sales and Credit sales were entered in totality in the Cash book by assuming that the credit sales were also cash sales.
- v.) There was single cash book entry for bunch of bills.
- vi) Cash book pertained to the year 2006-07 was printed in July, 2008.
- vii) Names of some employees were mentioned in the salary sheet of August and September, 2006.

4.5. It is noted that though the Complainant and the Respondent did not provide the copy of the financial statement for the financial year ended 31st March, 2006-07, yet the Respondent mentioned the amount of turnover for the financial year 2006-07 in his written statement as Rs.3,96,57,480/- and the same was not disputed by the Complainant. On totalling the amount of discrepancies, it is observed that it comes to Rs.1,38,138/- and the same cannot be considered material when it is compared in terms of percentage with total turnover of the firm for the financial year 2006-07. Further, it constitutes only 0.23% and 0.77% of the total revenue and the profit of the firm respectively for the financial year 2011-12 (copy of the financial statements pertaining to the financial year 2006-07 to 2010-11 are not on record). Moreover, it is relevant to mention that though the Complainant alleged the charge of discrepancies in the accounts yet they did not provide any documentary evidence to substantiate the said charge and just relied on the correspondences made with the firm and the Respondent. Moreover, in spite of various opportunity granted to the Complainant to submit documentary evidence, he failed to submit relevant documentary evidence to support his contentions. Hence, in view of above, the Committee is of the opinion that the Respondent is not guilty of professional



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misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

Conclusion

5. Thus in the considered opinion of the Committee, the Respondent is **GUILTY** of professional misconduct falling within the meaning Clause (7) of Part I of Second Schedule and **Not Guilty** of Other Misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949.

Sd/-

(CA. ATUL KUMAR GUPTA)
PRESIDING OFFICER

Sd/-

(SHRI RAJEEV KHER, IAS (RETD.)
GOVERNMENT NOMINEE

Sd/-

(CA. RAJENDRA KUMAR P)
MEMBER

Sd/-

(CA. CHANDRASHEKHAR VASANT CHITALE)
MEMBER

DATE : 29.05.2019

PLACE : Mumbai