



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

[PR 106/12/DD/123/2012/DC/453/2016]

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.

File No. : [PR 106/12/DD/123/2012/DC/453/2016]

In the matter of:

Shri S.K. Saxena
Deputy Director (FA),
Serious Fraud Investigation Office (SFIO),
2nd Floor, Paryavaran Bhawan,
CGO Complex, Lodhi Road,
New Delhi-110 003

... Complainant

Versus

CA. M Sambasiva Rao (M. No.021858)
No.67, Surya, 1st H Cross
3rd Main Road, Sharada Colony
Basaveswara Nagar,
Bangalore 560 079

... Respondent

Members present:

Smt. Anita Kapur, Member (Govt. Nominee) & Presiding Officer
CA. Chandrashekhar Vasant Chitale, Member
CA. P.K.Boob, Member

Date of Final Hearing: 8th July, 2021

Place of Final Hearing: New Delhi

Party Present

CA. M Sambasiva Rao (M. No.021858) – Respondent (from personal location)

1. That vide report dated 3rd February 2021 (copy enclosed), the Disciplinary Committee was of the opinion that **CA. M Sambasiva Rao (M. No.021858)** was **GUILTY** of professional misconduct falling within the meaning of Clauses (5),(6),(7) and (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949 in respect of Statutory Audit of M/s. Megacity (Bangalore) Developers and Builders Limited (hereinafter referred to as the "**Company**") from F.Y 1994-95 to 2003-04. It was alleged that the Respondent being the statutory auditor failed to report in respect of the following

- that the Advances made to Directors, Director's relatives and family members and others to acquire the land were shown as 'Sundry Debtors' instead of 'Loans and Advances' which the Company continued to show as such

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- Non disclosure of the details of lands and status of the lands acquired by each of them in their names against the advances given to them for purchase of land especially when the Company's only activity was purchase / sale of land / site.

- In 1998, certain area of land forming part of the project initiated by the Company was earmarked by Karnataka Industrial Development Board (KIDB) for acquisition which had affected the project initiated by the Company as well as resulted into blockage of its fund. However, there was neither any disclosure nor its financial impact was disclosed in the financial statements for the year ending 31.03.1999 to 31.03.2004.

It was noted that Clauses (5), (6),(7) and (8) of Part I of Second Schedule state as under:

Part I

"(5) fails to disclose a material fact known to him which is not disclosed in Financial Statements but disclosure of which is necessary in such financial statements not misleading

(6) fails to report a material statement known to him to appear in a financial statement with which he is concerned in a professional capacity

(7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties

(8) fails to obtain sufficient information which is necessary for expression of an opinion or its exception are sufficiently material to negate the expression of an opinion"

2. An action under Section 21B (3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and communication dated 19th June 2021 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 8th July 2021 through video conferencing.

3. During hearing on 8th July, the Committee noted that the Respondent appeared before it through video conferencing from his personal location and made his oral representations on the findings of Disciplinary Committee. At the outset, the Respondent submitted that the issues raised by the Complainant were the same as those involved in the Complaint filed against him in the Disciplinary case no. 25CA (150)/06 wherein as per him the Disciplinary Committee had held him not guilty of all the charges alleged. Further, he submitted that the Company was required to comply with Schedule VI to the Companies Act 1956 but there was no obligation to comply with Guidance Note issued by ICAI. He argued that he himself was although required to take cognizance of the Guidance note but could not have made any comments on the issue in his audit report as long as it met the requirement of Schedule VI of the Companies Act 1956. As regard two other allegations, he submitted that

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disclosure of any information in that regard is not required by Schedule VI of the Companies Act 1956 and hence he had nothing to comments.

4. The Committee considered both the oral as well written submissions of the Respondent dated 5th April 2021 and noted with respect to Respondent's plea of being exonerated of the charges held against him in separate matter (under old mechanism) that the allegations raised in extant matter were not dealt in the referred matter against the Respondent so his plea is untenable.

4.1 Further, the Committee noted that Respondent who acted as the statutory auditor of the Company for substantial period of time since inception had failed to comment upon the interest free loans and advances given to directors, their relatives, family members and others to acquire the land but shown under the head "sundry debtors" which was not in line with the generally accepted accounting principles and though he was aware of the misclassification being adopted but he failed to report such a material misstatement which further led to certification of wrong information for use of the shareholders and the end users of the financial statements. The Committee further noted that when there existed an agreement between the Director, their relatives and family members to acquire land on behalf of the Company which on conversion were required to be registered in favour of the Company as evident from the note produced in paragraph 6 of the DC Findings, it was viewed that such agreements had implications not only on loans/ advances made but also on the inventory held by the Company at any point of time still the Respondent had failed to bring on record any working paper/procedure adopted by him to substantiate that he had conducted due verification regarding amount advanced and land purchased.

In respect of the charge regarding certain area of land forming part of the project initiated by the Company being earmarked by Karnataka Industrial Development Board (KIDB) in the Year 1998 for acquisition which had affected the project as well as resulted into blockage of its fund, the Committee noted that the said notification was available on record (C-260 to 261) whereas Respondent neither reported about non-disclosure of information nor brought on record any management representation letters to substantiate his submission that he was oblivious of such notification.

5. The Committee thus viewed that the misconduct on the part of the Respondent has been held and established within the meaning within the meaning of Clauses (5),(6),(7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 and keeping in view the facts and circumstances of the case as aforesaid, ordered that the Respondent, **CA. M Sambasiva Rao (M.**

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No.021858) be removed from the Register of members for a period of 1 (one) month along with a fine of Rs. 50,000/- (Rupees Fifty Thousand Only) be levied upon him that shall be payable within a period of 3 months from the date of receipt of the Order. In case the Respondent, failed to pay the same as stipulated, the name of the Respondent, **CA. M Sambasiva Rao (M. No.021858)** be removed for a further period of 1(one) month from the Register of members on the lines of Section 64 of the Indian Penal Code.

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Sd/-

[Smt. Anita Kapur]

Member (Govt. Nominee) & Presiding Officer

Sd/-

[CA. Chandrashekhar Vasant Chitale]

Member

[Approved and confirmed through e-mail]

Sd/-

[CA. P.K. Boob]

Member

[Approved and confirmed through e-mail]

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Certified to be true copy

Mohita Khanna

CA. Mohita Khanna

Assistant Secretary,

Disciplinary Directorate

The Institute of Chartered Accountants of India,
ICAI Bhawan, Vishwas Nagar, Shadra, Delhi-110002

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH - III (2020-21)]
[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

File No. : [PR 106/12/DD/123/2012/DC/453/2016]

In the matter of:

Shri S.K. Saxena
Deputy Director (FA),
Serious Fraud Investigation Office (SFIO),
2nd Floor, Paryavaran Bhawan,
CGO Complex, Lodhi Road,
New Delhi-110 003

..... Complainant

Versus

CA. M. Samba Siva Rao (M. No.021858)
M/s. M. Sambasivarao & Co.,
IIIrd Floor, Balaji Silk Complex,
35, Anndanappa Lane,
Avenue Road
Bangalore-560002

..... Respondent

MEMBERS PRESENT:

Smt. Anita Kapur, Presiding Officer & Member (Govt. Nominee)
Shri Ajay Mittal, Member (Govt. Nominee)
CA. Chandrashekhar Vasant Chitale, Member

Date of Final Hearing: 21st December, 2020

Place of Final Hearing: New Delhi (through Video Conferencing)

The following parties were also present:

- (i) Adv. V. Chandrasekaran – the Counsel for the Complainant**
- (ii) CA. M. Samba Siva Rao – the Respondent**
- (iii) Shri Suryanarayana Murthy – the Counsel for Respondent**



Charges in Brief:

1. The Committee noted that in the Prima Facie Opinion formed by Director (Discipline) in terms of Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Respondent was *prima facie* held guilty of Professional Misconduct falling within the meaning of Clauses (5), (6), (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949. The said Clauses to the Schedule state as under:-

“(5) fails to disclose a material fact known to him which is not disclosed in a financial statement, but disclosure of which is necessary in making such financial statement where he is concerned with that financial statement in a professional capacity;

(6) fails to report a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity;

(7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties; and

(8) fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion;”

Brief Background and Allegations against the Respondent:

2. In pursuance to the Order No. 1/166/2007-CL.II, dated 17.04.2009 under section 235 of the Companies Act, 1956 of Government of India, Ministry of Corporate Affairs, the Complainant Department conducted an investigation into the affairs of M/s. Megacity (Bangalore) Developers and Builders Limited (hereinafter referred to as the “**Company**”) which was stated to be incorporated as a Private Limited under the name and style of Megacity (Bangalore) Developers & Builders Private Limited on 11th August, 1994 in the office of Registrar of Companies at Bangalore. The Company became a public limited company on 13th

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August, 1998 and its name was changed as Megacity (Bangalore) Developers & Builders Limited. The Respondent acted as the Statutory Auditor from the F.Y 1994-95 to 2003-04 and failed to report in his Audit Report in respect of the following discrepancies:-

- a) That 'Sundry Debtors' shown in the schedule of Balance Sheets of the Company for the years in question indicated that they relate to advances given to the Directors, Director's relatives and family members and others to acquire the land and not attributed to sale of sites. It was stated that the said advances were not 'sundry debtors' and, therefore, should have been shown under the head 'Loans and Advances'. However, the company continued to show them as 'Sundry Debtors'.
- b) That the Schedule of 'Sundry Debtors' to the Balance Sheet and Notes forming part of the accounts for the alleged years indicated the fact that advances were given to the Directors, Director's relatives and family members to acquire the land for the company but did not disclose the names of the persons to whom Director, Director's relatives and family members had given the said advances.
- c) That the Company in its Notes forming part of accounts stated that no confirmations of balances of Sundry Debtors were obtained. The Director, Director's relatives and family members acquired / registered lots of land in their names purchased with the funds of the company. So, the reconciliation of Sundry Debtors was to be made not only with the advances given to acquire the land but also with whatever lands acquired by each of the Director, Director's relatives and family members in their names with the funds of the Company. The Company in its Notes forming part of the accounts had not disclosed the details of lands and status of the lands acquired by each of the Director, Director's relatives and family members in their names against the advances given to them for purchase of land. It was stated that the disclosure of above mentioned details was very important particularly when the

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Company's only activity was purchase / sale of land / site. Further, it was stated that some of nominees viz Shri. Venakatappa, Puttamade Gowda, Hari shetty, C.R. Krishnappa, Chikkanna had land in their names which was purchased with the funds of the Company. The Company in its notes forming part of the accounts made disclosure that Sundry Debtors includes an amount of advances given to Directors and their relatives but did not disclose the amount of advance given to the nominees who purchased land in their names with the funds of the Company. Nominees who acquired and registered land in its name purchased with the funds of the Company required disclosure.

(d) That certain area of land which form part of the project initiated by the Company was covered under the area earmarked by Karnataka Industrial Development Board (KIDB), through its notification in the year 1998 for acquisition of land. This had affected the project initiated by the Company as well as resulted into blockage of its fund. However, neither any disclosure regarding area of land affected was made nor its financial impact was disclosed in the financial statements for the year ending 31.03.1999 to 31.03.2004.

(e) That the Company had wrongly classified its advances given for purchase of land as Sundry Debtors and also did not make any disclosures on important issues stated above.

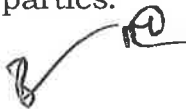
It was mentioned that the Respondent was requested, through SFIO letters dated 16.05.2011 and 30.05.2011 to give his comments as to why he did make any reservation on important issues mentioned at Sl. No. (i) to (v). He, in his two letters both dated 26.05.2011 (**C-265 to C-267**) has given replies which are vague and on some issues he deviated from the specific issues, hence not tangible. The same issues regarding non disclosures in the Balance Sheets was also taken up with the company through SFIO letter dated 20.05.2011. As per reply of the

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Company dated 25.05.2011, the Company has accepted omission on their part regarding non-disclosures on the issues mentioned at Sl. No. (i) to (v) and agreed to adhere to guidelines regarding disclosures pointed out by the Investigation through its letter dated 20.50.2011. The Complainant Department also reported that the documents received by it from Registrar of Companies (ROC), Bangalore, Karnataka indicated that office of the Registrar of Companies had also carried out inspection of M/s. Megacity (Bangalore) Developers & Builders Pvt. Ltd under Section 209A of the Companies Act, 1956. During the course of inspection of the company, ROC had pointed out about violation of various provisions of Companies Act, 1956 and also covered some of the issues mentioned at Sl. No. (i) to (v) and that the Company agreed to pay compounding fee for violation of various provisions of Companies Act, 1956.

Proceedings:

3. The Committee noted that the Counsel for the Complainant and the Respondent along with his Counsel appeared before the Committee from their personal location. Thereafter, they all gave declaration that there was nobody present except them in their respective rooms from where they were appearing and that they would neither record nor store the proceedings of the Committee in any form. Being first hearing, the Respondent was put on oath. Thereafter, the Committee asked the Respondent whether he was aware of the charges made against the Respondent and whether he pleaded guilty in the matter or not. The Respondent agreed to be aware of the charges alleged against him and pleaded not guilty before the Committee. The Committee, thereafter, asked the Counsel for the Respondent to make his submissions on the matter. The Committee examined the Respondent in the matter and ,thereafter, considered the submissions received from both the parties.



Based on the documents available on record and after considering the oral and written submissions made by both parties before it, the Committee concluded the hearing in the matter.

Findings of the Committee:

4. At the outset, the Committee noted that the Respondent had in his written as well as oral submissions had stated that the issues raised by the Complainant in the instant matter were the same as those involved in the Complaint filed against the Respondent by CA. Ravindra Beleyur in the Disciplinary case no. 25CA (150)/06 wherein the Disciplinary Committee in its report to the Central Council of the Institute of Chartered Accountants of India [ICAI] had held that the Respondent not guilty of professional misconduct of all charges under any Schedules of the Chartered Accountants Act, 1949. However, on perusal of the papers on record, the Committee noted that the matter being referred by the Respondent was considered under old mechanism and that the allegations raised in extant matter were not dealt therein when the report dated 1st July, 2013 under Para 24.1 stated as under:

"As regards the seventh issue is concerned, the Committee noted that observations/irregularities reports by the Registrar of Companies, Bangalore in to affairs of the Company under Section 235 of the Companies Act, 1956 and irregularities as mentioned in the Investigation Report of Ministry of Corporate Affairs, New Delhi into the affairs of the Company were never the part of the main complaint filed by the complainant. It was further brought to the notice of the Committee that the proceedings against the Respondent on the complaint filed by SFIO in the context of audit of Company are in progress separately under the new disciplinary mechanism and thus, the Committee in this view of the matter desisted from forming any opinion into this aspect."

Accordingly, the Committee decided to proceed in the matter on merits.

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5. Further, the Committee noted that the Respondent had submitted to be the statutory auditor of the Company from FY 1994-95 to 2003-04 which has also been accordingly been proceeded with. The Committee noted that allegations made against the Respondent as discussed in paragraph 2 above and viewed that the basic charge against the Respondent was that he being the statutory auditor of the Company had failed to report in respect of the following:

(i) Advances made to Directors, Director's relatives and family members and others to acquire the land were shown as 'Sundry Debtors' instead of 'Loans and Advances' and that the company continued to show them as such but the respondent failed to report in respect of the same.

(ii) That the Schedule of 'Sundry Debtors' did not disclose the names of the persons to whom Director, Director's relatives and family members had given the said advances.

(iii) Non-disclosure of the details of lands and status of the lands acquired by each of the Director, Director's relatives and family members in their names against the advances given to them for purchase of land especially when the Company's only activity was purchase / sale of land / site. It was stated that the reconciliation of Sundry Debtors was to be made not only with the advances given to acquire the land but also with whatever lands acquired by each of the Director, Director's relatives and family members in their names with the funds of the Company.

(iv) That in 1998, certain area of land forming part of the project initiated by the Company was earmarked by Karnataka Industrial Development Board (KIDB) for acquisition which had affected the project initiated by the Company as well as resulted into blockage of its fund. However, neither any disclosure regarding area of land affected was made nor its financial impact was disclosed in the financial statements for the year ending 31.03.1999 to 31.03.2004.



6. As regard the first charge, the Committee noted that the Respondent had acted as the statutory auditor of the Company since inception and in the certified financial statements of the Company for the FY. 1996-1997, the schedule to notes to accounts **(C-111)** contained the following note:

“10. Sundry debtors includes Rs. 4,48,59,629/- advance to Directors and their relatives (which is free of interest) for acquisition of land and its conversion thereon by the revenue authorities. Subsequently land will be registered in favour of the Company.

11. No confirmation of balance of Sundry Debtors, Current Liabilities’, Secured Loans, Share Applications were obtained.”

It was noted the Notes on same line were also given in the schedule to Notes to accounts for the F.Y. 1997-98 **(C-131)** and F.Y. 1998-99 **(C-160)** for which the Respondent being the statutory auditor had given an unqualified opinion w.r.t. each financial year. The Committee noted the Respondent in this regard had submitted that *in the opinion of the Company* any amount receivable by it from any persons was to be classified as the ‘Debtors’ which means a person who is indebted to the Company. Further Schedule VI of the Companies Act, 1956 did not envisage any specific disclosure in this regard.

7. It was noted that as per Guidance Note on Terms Used in Financial Statements, issued by the Institute, the term Debtor/ Sundry Debtor refers to “Persons from whom amounts are due for goods sold or services rendered or in respect of contractual obligations.” Thus, debtor represents amount due on account of goods sold or services rendered in the normal course of business, however, in extant case the funds were advanced to acquire land. Hence, it was viewed that in no way such funds could have been shown under the head ‘Sundry Debtors’. Further, the submission of the Respondent that it was so opined by the Company, it was viewed that the respondent being professional is expected to use his professional

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knowledge to assess if the state of affairs being shown is true and fair. It was noted that amount involved was material considering the size of the balance sheet. Hence, the Respondent had in extant case failed to report the material misstatement that the interest free loans and advances given to directors were shown under the head "sundry debtors" which was not in line with the generally accepted accounting principles. The Committee further viewed that the Respondent who acted as the statutory auditor of the Company for substantial period of time since inception had failed to comment upon this particular aspect though he was aware of the misclassification being adopted and lead to material misstatement. It was viewed that the Respondent had certified wrong information for use of the shareholders and the end users of the financial statements and thus failed to perform his professional duties diligently. The Committee was thus of the opinion that in light of the facts stated, the Respondent is held guilty of professional misconduct falling within the meaning of Clauses (5),(6),(7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 for this charge.

8. As regard the second charge about non-disclosure of the names of the persons to whom Director, Director's relatives and family members had given the said advances, it was noted that the Respondent had failed to give any submission in respect of the same. However, it was viewed that the alleged transactions, even if true, were between Director, Director's relatives and family members and the outsiders and the Company might not have privy to the transaction. Hence, the Respondent was not held guilty in this respect.

9. With respect to the next charge regarding non-disclosure of the details of lands and status of the lands acquired by each of the Director, Director's relatives and family members in their names against the advances given to them for purchase of land especially when the Company's only activity was purchase / sale of land /

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site. The Committee noted the submissions made by the Respondent wherein he had inter-alia stated that the Company was required to keep an account of the said details of land and that there was no requirement under Schedule VI to disclose the same. It was viewed that when there exists an agreement between the Director, their relatives and family members to acquire land on behalf of the Company which on conversion were required to be registered in favour of the Company as evident from the note produced in paragraph 6 above, it was viewed that such agreements were implicating not only on loans/ advances made but also the inventory held by the Company at any point of time. As such, the respondent was required to conduct due verification of the nature of such advances made, whether lands were purchased thereof or not and that being ultimately registered in the name of the Company. In other words, reconciliation exercise was important on the part of the Respondent. The Committee in this context noted that the Respondent had failed to bring on record any working paper to substantiate that he had conducted due verification to convince himself regarding amount advanced and land purchased. Thus, the Committee was of the considered opinion that the Respondent failed to submit any corroborative evidence to substantiate his defence which goes to establish that the Respondent while acting as the Statutory auditor of the Company for a long period had failed to exercise due diligence while discharging his professional duties and also failed to obtain sufficient information which was necessary for expression of an opinion and thus held the Respondent guilty of professional misconduct falling within the meaning of Clauses (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 for this charge.

10. In respect of the charge regarding during 1999-2000, the respondent failed to report about non-disclosure of information regarding certain area of land forming part of the project initiated by the Company being earmarked by Karnataka Industrial Development Board (KIDB) in the Year 1998 for acquisition which had affected the project as well as resulted into blockage of its fund. It was noted that

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the said notification was available on record (C-260 to 261) whereas Respondent in his submissions had raised various questions implying that he had no knowledge of the said notification. It was viewed that the Respondent had failed to bring on record any management representation letters received by him during audit that would have substantiated his submission in respect of the same. Thus, the Committee was of the considered opinion that the Respondent failed to submit any corroborative evidence to substantiate his defence which goes to establish that the Respondent while acting as the Statutory auditor of the Company for a long period had failed to exercise due diligence while discharging his professional duties and also failed to obtain sufficient information which was necessary for expression of an opinion and thus held the Respondent guilty of professional misconduct falling within the meaning of Clauses (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 for this charge.

Conclusion:

11. Thus in conclusion, in the considered opinion of the Committee, the Respondent is held guilty of professional misconduct falling within the meaning of Clauses (5),(6),(7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

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Sd/-

[Smt. Anita Kapur]

Presiding Officer & Member, (Govt. Nominee)

Sd/-

[Shri Ajay Mittal]

Member, (Govt. Nominee)

Sd/-

[CA. Chandrashekhar Vasant Chitale]

Member

(approved & confirmed through e-mail)

DATE: 3rd February, 2021

PLACE: New Delhi

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Certified to be True Copy
 Mohita Khanna
 (Mohita Khanna)
 Assistant Secretary
 Disciplinary Directorate
 The Institute of Chartered Accountants of India