



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.

In the matter of:

Niraj Sharma, Vice President, National Stock Exchange Ltd., Mumbai

-vs-

CA. Naresh Kumar (M.No.090860), Ludhiana

[PR 183/2014-DD/207/2014/DC/479/2016]

Date of Order : 27th September, 2021

MEMBERS PRESENT:

1. CA. Nihar N Jambusaria, Presiding Officer,
2. Shri Arun Kumar, IAS (Retd.), Government Nominee,
3. CA. G. Sekar, Member,

1. That vide report dated 03rd February, 2020, the Disciplinary Committee held CA. Naresh Kumar (M.No.090860), Ludhiana (hereinafter referred to as 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 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 thereby granting him an opportunity of being heard in person and/or to make a written representation before the Committee on 27th September, 2021.

3. At the outset, it was noted by the Committee that the Respondent appeared before it through video conferencing for hearing. Thereafter, he gave a declaration that there was nobody except him in room from where he was appearing and that he would neither record nor store the proceedings of the Committee in any form.

CA. Naresh Kumar (M.No.090860), Ludhiana



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3.1 On being asked by the Committee, whether he had received the Findings of the Disciplinary Committee, the Respondent confirmed to have received the same. Thereafter, the Committee drew attention of the Respondent that the purpose of extant hearing was to afford him an opportunity of hearing before passing any order for punishment. The Respondent, thereafter, made his written submissions dated 20/09/2021 and as well as oral submissions in the matter.

3.2 Accordingly, hearing in the matter was concluded and the Committee kept its decision reserved.

3.3 Thereafter this matter was placed in meeting held on 28th January 2022 for consideration of the facts and arriving at a decision by the Committee. Keeping in view the facts and circumstances of the case, material on record and submissions of the Respondent at the time of hearing, the Committee passed its judgement.

4. The Committee considered the facts of the case and various documents/submissions on record with the findings of the earlier Committee holding the Respondent guilty of professional misconduct.

4.1 The Respondent submitted that the net worth certificate issued by him to the Company is correct and was based upon trial balance, ledger account and bank statement of the Company and hence, the provisional balance sheet was not the sole documents on which he placed reliance while issuing said net worth certificate

4.2. The Committee observed that the Respondent had relied upon unaudited figures and further, the financial statements certified by CA. Mulraj D. Gala clearly indicates that these were provisional. But Respondent no-where in said certificate mention this vital fact. Moreover, he fails to bring on record audited financial statements of the Company.

92/



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

4.3 The Committee noted that as per Guidance Note for issuance of certificate for special purpose para 5(2)(j), where the statement on which CA is required to give his report or certificate, includes some information which has not been audited, CA should clearly indicate in his report or certificate the particulars of such information. Further, as per para 6.4 of the Guidance note, if where the reporting auditor prepares his report or certificate based on duly audited general purpose financial statements, he may take the following precautions:

- (i) He may clearly state in his report or certificate that the figures from the audited general purpose financial statements have been used and relied upon.
- (ii) He may include in his report or certificate a statement showing the reconciliation between the figures in the general-purpose financial statements and the figures appearing in his report or certificate.

4.4 In view of above, the Committee was of the view that in both the above conditions as to whether the financial statements were audited or unaudited, the Respondent was required to mention the fact in his certificate, but he appears to have failed to do so. Further, it is noted that net worth as certified by the Respondent as on 30th September, 2012 consist of paid up capital and reserve & surplus only. As per provisional balance sheet, amount of net profit was Rs.2.42 crore which was part of reserve & surplus as mentioned in the net worth certificate of Rs.2.43 crore and the same fact clearly represents that reserve & surplus was mainly made from net profit earned by the Company during the period 01.04.212 to 30.09.2012. Since except the provisional financial statements of the Company, no other financial statement was brought on record by the Company, it has been observed that for the figures of reserve & surplus or net profit, the Respondent relied upon the provisional financial statements. As per requirement of the guidance note, the Respondent was required to mention in his certificate that he relied upon unaudited financial statements so as to enable the users of the same to decide the degree of reliance to be placed on the same.

4.5 Apart from above, it is viewed that though Guidance Notes are generally recommendatory in nature, but a chartered accountant should ordinarily follow recommendations in a guidance note



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relating to an auditing matter except where he is satisfied that in the circumstances of the case, it may not be necessary to do so. But in this matter, the Respondent failed to satisfy as to why he did not disclose information that net worth certificate was substantially based on provisional financial statement.

5. Accordingly, ends of justice can be met if reasonable punishment is given to him in commensurate his above professional misconduct.

6. Thus, keeping in view the facts and circumstances of the case as aforesaid, the material on record, submissions of the Respondent before it, the Committee ordered that the name of the Respondent be removed from register of members for a period of 06 (Six) months and a fine of Rs. 1,00,000/- (Rupees One lakh Only) be levied on him that shall be payable within a period of 3 months from the date of receipt of the Order and in case he failed to pay the same as stipulated, the name of the Respondent, be removed for addition period of 06 (Six) months.

h/

Sd/-
(CA. NIHAR N JAMBUSARIA)
PRESIDING OFFICER

Sd/-
(SHRI ARUN KUMAR, IAS (RETD.))
GOVERNMENT NOMINEE

Sd/-
(CA. G. SEKAR)
MEMBER

DATE: 08/02/2022

g/

प्रमाणित सत्य प्रतिलिपि / Certified true copy
सीए. सुनील कुमार / CA. Suneel Kumar
सहायक सचिव / Assistant Secretary
अनुशासनालयक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आर्डीसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – I (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-183/14-DD/207/13/DC/479/2016]

In the matter of:

Vice President

National Spot Exchange Limited
FT Tower,
CTS No. 256/257
Suren Road, Chakala,
Andheri (East)
Mumbai – 400 093

.....Complainant

Versus

CA. Naresh Kumar

507, 5th Floor, K-10 Tower
Seco-22-23
Feroze Gandhi Market
Ludhiana – 141001

.....Respondent

MEMBERS PRESENT:

Shri Jugal Kishore Mohapatra, I.A.S.(Retd.), Government Nominee & Presiding Officer
Ms. Rashmi Verma, I.A.S. (Retd.), Government Nominee,
CA. Babu Abraham Kallivayalil, Member
CA. Dayaniwas Sharma, Member

DATE OF FINAL HEARING : 21.11.2019

PLACE OF FINAL HEARING : ICAI, NEW DELHI

PARTIES PRESENT:

Counsel for Complainant : Dr. M.R. Venkatesh, Advocate along with his Assistants
Respondent : CA. Naresh Kumar
Counsel for the Respondent : CA. C.V. Sajan

Brief of the Disciplinary Proceedings:-

1. First of all, the Committee noted that the hearing in the instant matter was heard on 22nd November, 2016. It is noted that on 22nd November, 2016, the Complainant was not present. The Respondent was present. The Respondent was put on oath. Since the Complainant was not present, the office read out the charges against the Respondent. On being enquired from the Respondent as to whether he pleads not guilty to the charges, the Respondent opted to defence his case and also decided to make his submissions. Thereafter, the Respondent made his submission and the Committee also examined the Respondent. During the hearing, the Committee directed the Respondent to submit copy of ledger accounts relating to billing and purchase made during the relevant year and copy of bank account for the relevant year.
2. The Committee noted that notice of next hearing fixed for 29th August, 2019 was duly served on the Complainant and the Respondent. However, the said hearing was adjourned in order to provide one more opportunity to the Complainant.
3. On the day of next hearing held in the matter on 17th October, 2019, the Committee noted that the Counsel for the Complainant was present. The Respondent along with his Counsel was present. Since the matter was heard on 22.11.2016, the Committee enquired from both the parties present as to whether the hearing can be commenced from the stage as it was left in hearing held on 22nd November, 2016. Both the parties agreed to the same. Thereafter, the Counsel for the Complainant made his contentions and the Counsel for the Respondent made his submissions. The Committee also raised questions to the Counsel for the Complainant and the Respondent. After hearing submissions, the Committee directed the Respondent to provide copy of ledger accounts within 10 days of hearing. With this, the hearing in the matter was adjourned.
4. On the day of final hearing held on 21st November, 2019, the Committee noted that the Counsel for the Complainant and the Respondent along with their respective counsel(s) were present. The Committee decided to continue the hearing from the stage as it was left in last hearing. As per directions of the Committee, the Respondent submitted copy of his written submissions and stated that he has submitted all the working papers that were available with him. The Counsel for the Complainant stated that in view of the fact that he has just received the submissions, he needs time to go through the same and make their submissions on the

same. Thereafter, the Counsel for the Respondent made his submissions. The Counsel for the Complainant also made his submissions on the charges. The Committee also raised questions to both the Counsel(s) for the Complainant and the Respondent. After hearing the submissions, the Committee directed the Counsel for the Complainant to submit evidence / submissions on the following within 7 days of the hearing:-


- i) Confirm the authenticity of transactions carried out by the Company (as brought on record by the Respondent),
- ii) What was the relevance of the Net Worth Certificate
- iii) By using the Net worth Certificate, what credit exposure was taken by the Company.

The Committee also directed the Respondent to submit their submissions within one week on receipt of the Complainant's submissions as per above directions. After hearing the final submissions, the Committee decided to conclude the hearing in the above matter.

4.1 The Committee noted that the Complainant vide his letter dated 5th December, 2019 submitted his written contentions along with copy of ledger account of Lotus Refineries Pvt. Ltd. for July, 2012 to July, 2013, copy of audit report by US Gandhi & Co and copy of the statement of Mr. Mulraj D. Gala given before SFIO. The Respondent in reply to the aforesaid submissions of the Complainant submitted his written submissions dated 1st January, 2020.

CHARGE IN BRIEF AND FINDINGS OF THE COMMITTEE:-

5. The Respondent had issued certificate dated 29.10.2012 to Lotus Refineries Private Limited (hereinafter referred to as the "LRPL / Company") certifying net worth of Rs. 2.68 crore as on 30.09.2012. The said Company was admitted as a member of the Complainant Company (NSEL) and the particular limit was earmarked based on the certificates of net worth issued by the Respondent. It was found that LRPL has defaulted for huge amount in dealing with the NSEL. The Complainant alleged that the certificate of net worth certified and issued by the Respondent certifying the net worth of the LRPL was not correct as the Company has defaulted for the huge amount in dealing with the Complainant.

5.1 On perusal of the said certificate of Net Worth of the LRPL, it is noticed that the computation of net worth was made as under:- 

Paid Up capital	0.25 Cr.
Add: Reserves and Surplus	2.43 Cr.
Less: Miscellaneous Expenditure	0.0046 Cr.
Total Net Worth	2.68 Cr.

5.2 In brief, it was alleged that above mentioned certificate issued by the Respondent was not correct.

6. The Complainant during the course of hearing and through his written submissions made the following contentions to substantiate the charges levelled against the Respondent:-

6.1 It is admitted fact that the Respondent has issued net worth certificate of the LRPL. The Respondent in his certificate nowhere mentioned that his certificate is based on Provisional Financial Statement issued by any other Chartered Accountant. The Complainant stated that the main defence of the Respondent was that the financial default by the LRPL was not because of the false net worth certificate issued by him but for other extraneous factors.

6.2 The Complainant stated that the following paras of the Guidance Note for issuance of certificate for special purpose merit consideration:-

i) Para 1.1 states that an audit report or certificate for special purpose is one to which the format of general purpose audit report is not applicable.

ii) Para 2.1(c) states that audit reports or certificates for special purposes may be issued in connection with compliance with requirements of any agreement or statute or regulation.

iii) Para 4.1 states that a reporting auditor should have a clear understanding of the scope and nature of the terms of his assignment. It is desirable for him to obtain the terms in writing to avoid any misunderstanding.

iv) Para 4.2 states that he should state his limitations clearly in the report or certificate. At the same time, he should indicate the extent to which he has been able to exercise

his own professional skill and judgement with regard to the matter being reported upon.

v) Para 6.2 states that where a special purpose engagement is undertaken after the statutory audit has been completed, a reporting auditor should invariably review the statutory audit report to ascertain whether there are any matters which have a bearing on his report or certificate.

6.3 The Complainant stated that their allegation is not based on the financial default by the LRPL to the Complainant Company but on professional misconduct arising from gross negligence of the Respondent in issuing a net worth certificate. The crux of the Respondent's submissions is that the Commodity Exchange scam was in effect perpetrated by the Complainant Company and the Complainant Company was asked to stop trading in Commodities by the Forward Markets Commissions on 31st July, 2013 and the same led to the Complainant Company defaulting in payments to its investors. This submissions by the Respondent is without any basis and irrelevant to the extent proceedings.

6.4 The Complainant stated that the Respondent relied upon certain documents which are at best "Provisional" and cannot be relied upon in any circumstances. It is pertinent to note that neither the Companies Act, 1956 allows preparation and reliance on such "Provisional Financial Statements". Further, the Respondent failed to produce any document apart from few bank statements. There was no delay in filing the complaint against the Respondent. The Respondent is expected to have all his working papers for seven years.

6.5 The Complainant stated that the Disciplinary Committee raised certain queries as under:-

- i) What is the relevance of net worth certificate with relation to the LRPL and NSEL and why does NSEL hold the certificate to be issued in gross negligence of professional standards.
- ii) How much exposure NSEL took on the basis of the net worth certificate & why ?


6.5.1 In response to above first query, the Complainant stated that NSEL provided an electronic platform for purchase and sale of commodities by the willing buyers and sellers on its exchange platform. The member was allowed to trade in specified commodities on the

exchange platform after taking into account several parameters, such as their background, creditworthiness, area of operations, financial capacity, past track record etc. Net worth of the Company was one of the important parameters to determine the member's creditworthiness and financial capacity to allow him to continue to trade.

6.5.2 In respect of above second query, the Complainant stated that as an electronic platform for purchase and sale of commodities by the willing buyers and sellers, does not take any exposure on its own, but allows its members to take exposure based on margin / collateral deposited with the exchange, given its overall creditworthiness and financial capacity. Therefore, though net-worth is not the only criteria to arrive at exposure of a member, however, it is an important parameter to determine the creditworthiness and financial capacity of a member to allow him to continue to trade.

6.6 The Complainant stated that forensic auditors appointed by EOW, Mumbai Police has demonstrated the diversion of funds by the LRPL and have proved beyond doubt the fraud could not have been committed but for the abetment of the Respondent by issuing false certificates. The Complainant further stated that the statement of Mr. Mulraj D. Gala given before the SFIO clearly establishes that there was no underlying basis upon which a said certificate can be issued.

7. In respect of charge as mentioned above, the Respondent in his defence made his detailed submissions through his written as well as verbal submissions made before the Disciplinary Committee as under:-

7.1 The Respondent stated that the Complainant Company (NSEL) was asked to stop trading in by the Forward Trading Commission (FMC) on 31st July, 2013. This led to NSEL defaulting in payments to its investors. NSEL in turn attributed its failure to the default made by its members who owed NSEL huge amount of money. The Company, LRPL was one of the defaulters to the NSEL. The default by the Company was only because it did not have resources at that point of time and that cannot have a meaning that the Company did not have sufficient assets to meet its Commodities obligation even in the past also. Further, net worth of a company does not guarantee fulfilment of payment obligation, because net worth is the net of all assets and liabilities. 

7.2 The Respondent stated that the dues payable by the LRPL to the Complainant Company (NSEL) was about Rs.252.00 Crores as per information available in public domain and that fact shows that the NSEL has permitted the Company to take exposure nearly 94 times of its net worth of Rs.2.67 Crores which was certified by the Respondent as on 30.09.2012. The said fact proves that the Complainant did not rely upon the net worth certificate of Rs.2.67 Crore issued by the Respondent. Had the net worth of the Company been the criterion for granting the credit exposure, the Company, LRPL would not have been granted a credit exposure 100 times of the said net worth.

7.3 The Respondent stated that total current assets as on 30.09.2012 was Rs.12.99 Crore. The actual bank balance with UCO bank as on 30.09.2012 was Rs.4.61 crore and balance with HDFC bank was Rs.4.85 crore. All these facts prove that the Company's net worth as on 30.09.2012 was represented by the real assets and there was no error or incorrectness in the net worth certified by the Respondent.

7.4 The Respondent also stated that the Director (Discipline) raised suspicion on the genuineness of the figures related to sales and profit for the six months ended 30.09.2012. As per audited accounts of the LRPL, Sales for the first six months of 2012-13 was Rs.821.00 Crore. Therefore, there was no room to suspect the genuineness of the revenue numbers in the Profit & loss account. The Director (Discipline) overlooked the fact that the Company started trading on NSEL platform in 2012-13 which led to exponential increase in the volume of revenue as compared to the financial year 2011-12. Therefore, there was no case to suspect the huge variation in revenue as wrongly concluded by the Director (Discipline). Similarly, the amount of net profit of Rs.2.42 crore earned during the first six months of 2012-13 was also an audited number and barely constituted 0.29% of the total turnover.

7.5 The Respondent stated that he had apart from relying upon a certificate or a balance sheet signed by other chartered accountant, also examined the trial balance, books of accounts and bank statements and found presence of more balances in the bank accounts than what was in books of accounts. Apart from the share capital and reserve which constituted Rs.2.68 crore, there was an unsecured loan of Rs.7.86 crore from the promoters. These facts established without any doubt that the networth of the Company was Rs.2.67 crore and was duly represented by net assets of the Company. Hence, the Respondent stated that the instant

matter is not a case of not applying due diligence / gross negligence. On the contrary, from the above fact, it is evident that he has exercised high degree of caution and professional care.

7.6 The Respondent stated that the Guidance Notes are recommendatory publication issued by ICAI to facilitate CAs in discharging their professional duties. It is not clear as to what points are being tried to establish by the Complainant by pointing the various paras of the Guidance note. Further, the allegation that the net worth certificate was issued by relying upon the provisional balance sheet was baseless as the provisional balance sheet was one among the various evidences running about 315 pages filed by him with the ICAI.

7.7 The Respondent stated that from the extract taken from NSEL (Complainant Company) records in the name of the Company (LRPL) discloses as under:-

	Margin with NSEL HDFC Account Balance – Rs.	Delivery Obligation to NSEL – Rs.	Margin account Operation credit Rs.
30.09.2012	2.63 Crore	Nil	61.69 Crore
31.03.2013	15.65 Crore	38.07 Crore	143.96 Crore
Page Nos.	24, 26	40, 48	22-24, 25-26

7.8 The Respondent stated that from the table above, it was clear that net settlement to the tune of Rs.61.69 crore was routed through Margin account during six month ending 30.09.2012. As against the current requirement of 5% margin for trading in commodity exchange, if it is supposed that 7.5% was the average margin collected in 2012 considering occasional extra margins dependent on trade volumes and products, margin settlement of Rs.61.69 crore for six months period upto 30.09.2012 leads to approximate turnover of Rs. 821.00 crore. This fact removes any doubt about the genuineness of the sale that was relied upon by the Respondent. As the profit Rs.2.43 crore was barely 0.29% of the turnover which matches with market benchmarks in case of stock / share commodity traders. Therefore, the accumulated amount in reserve & surplus that contributed to the net worth of Rs.2.68 crores has been reasonable explained from the documents filed by the Complainant itself.

7.9 As regard the statement of CA. Mulraj D. Gala, the Respondent stated that his statement covers questions on audits of 2010-11 and 2011-12 only. There was no specific question about the provisional financial statement as on 30.09.2012 attested by CA. Mulraj D. Gala. He was asked as to whether he did the audit of LRPL for financial year 2012-13, to which he replied

negatively. That fact does not in any way undermine the truth that the provisional accounts were attested by him. Regardless of whether CA. Mulraj D. Gala attested the financials or not, the reasonable accuracy of the numbers in the provisional financials has already been established with independent evidences.

7.10 The Respondent while concluding his submissions stated that no case of gross negligence has been established in the instant matter as the net worth Rs. 2.68 crore as certified by him primarily constitute net profit of Rs.2.43 crore earned from sales of Rs.821 crore which was proven as accurate as described above.

8. After taking into accounts all the submissions made by the Complainant and the Respondent and documents on record, the Committee submits its findings as under:

9. It is noted that the main charge was that the Respondent who has issued a net worth certificate for the Company (LRPL), was negligent in certifying the certificate of net worth. It was alleged by the Complainant that net worth certificate issued by the Respondent was not correct. On perusal of the certificate, it is noted that the Respondent in his certificate mentioned as under:-

"This is to certify that the net worth of M/s. Lotus Refineries Private Limited having its registered office at 402, 4th Floor, Town Centre-II, Opp. Times Square Building, Sakinaka, Andheri (E), Mumbai as on 30.09.2012 as per the statement of computation of even date annexed to this report is Rupees 268.27 lacs only.

We further certify that:

The computation of Net Worth, based on our scrutiny of the books of accounts, records and documents, is true and correct to the best of our knowledge and as per information provided to our satisfaction."

9.1 It is further noted that the Respondent computed net worth of LRPL as on 30th September, 2012 as under:-

Paid up Capital	0.25 Cr.
Add: Reserve & Surplus	2.43 Cr.
Less: Miscellaneous Expenditure	0.0046 Cr.
Total Net Worth	2.68 Cr.

9.2 From the facts on documents and submissions on record, it is observed that the main defence of the Respondent was that apart from placing reliance on provisional balance sheet signed by CA. Mulraj D. Gala, he also examined the trial balance, ledger account and bank statement of the Company and hence, the provisional balance sheet was not the sole documents on which he placed reliance before issuing the net worth certificate. In support of his defence, the Respondent brought on record copy of the provisional balance sheet, bank statements of the Company (LRPL), extract of share capital account, sundry debtors account, sundry creditors accounts and details of advance given by the LRPL. The Respondent also brought on record certain facts such as bank balance and current assets as on 30th September, 2012 was Rs.21.00 crore. In order to support his defence that his certificate was not primary document based on which credit exposure was allowed by the NSEL to the LRPL, the Respondent stated that there was huge difference between the net worth certified by him and amount of default made by the LRPL. The default by the Company was 94 times of net worth certified by him. In view of above facts brought on record by the Respondent, the Committee agreed with the submissions of the Respondent that mere based on net worth certificate of the Respondent, credit exposure of more than 94 times cannot be allowed. Moreover, the Complainant also did not challenge the said fact in his final submissions and appears to be agreed with the above submissions of the Respondent while making his final submissions on the charges.

9.3 As regard the figures of paid up capital and reserve & surplus, it is noted that the Complainant did not raise doubt on the amount of paid capital. However, it was alleged that the Respondent relied upon unaudited figures of sales and did not mention the said fact in his certificate. In this regard, the Respondent in his defence pointed out that as per credit requirement, average credit margin of 7.5% was allowed to the LRPL and if balance of margin is taken for calculation of traded volumes on NSEL, the same would amount to Rs.821.00 crore of turnover. The Respondent also pointed out that percentage of net profit matches with the market benchmarks. Keeping in view all the facts on record, it is noted that net worth certificate was issued on 29th October, 2012 for the net worth as on 30th September, 2012. Though questions were raised on the amount of sale took place during the 6 months, yet the Respondent brought on certain facts that he had examined ledger account and bank statement apart from placing reliance on the balance sheet. Further, a certificate is a written confirmation

of the accuracy of the facts stated therein and does not involve any estimate or opinion. When a CA issues a certificate, he is responsible for the factual accuracy of what is stated therein. The Respondent brought on record that he has applied his mind as regard to verification of amount of sales.

9.3.1. However, from the documents on record, it appears that the Respondent had relied upon unaudited figures and further, the financial statements certified by CA. Mulraj D. Gala clearly indicates that it was provisional. Though the Respondent stated that it was audited financial statement as it was subject to audit report of CA. Mulraj D. Gala but he cannot bring on record copy of audit report signed by CA. Mulraj D. Gala. The Committee noted that as per para 5(2)(j) of the afore-stated Guidance note, where the statement on which CA is required to give his report or certificate, includes some information which has not been audited, CA should clearly indicate in his report or certificate the particulars of such information. Further, as per para 6.4 of the Guidance note, if where the reporting auditor prepares his report or certificate on the basis of duly audited general purpose financial statements he may take the following precautions:

- (i) He may clearly state in his report or certificate that the figures from the audited general purpose financial statements have been used and relied upon.
- (ii) He may include in his report or certificate a statement showing the reconciliation between the figures in the general purpose financial statements and the figures appearing in his report or certificate.

It is viewed that in both the above conditions as to whether the financial statements was audited or unaudited, the Respondent was required to mention the fact in his certificate but he appears to have failed to do so. Further, it is noted that net worth as certified by the Respondent as on 30th September, 2012 consist of paid up capital and reserve & surplus only. As per provisional balance sheet, amount of net profit was Rs.2.42 crore which was part of reserve & surplus as mentioned in the net worth certificate of Rs.2.43 crore and the same fact clearly represents that reserve & surplus was mainly made from net profit earned by the Company during the period 01.04.2012 to 30.09.2012. Since except the provisional financial statements of the Company, no other financial statement was brought on record by the Company, it has been observed that for the figures of reserve & surplus or net profit, the Respondent relied upon the provisional financial statements. As per requirement of the guidance note, the Respondent was required to

mention his certificate that he relied upon unaudited financial statements so as to enable the users of the same to decide the degree of reliance to be placed on the same.

9.4 It is noted that in respect of applicability of the Guidance notes, the Respondent in his written submissions stated that the guidance note are not mandatory in nature and they are recommendatory in nature. It is not necessary for a Chartered Accountant to follow the requirement of the same where figures mentioned in the certificate represent that due care has been exercised. In this regard, it is viewed that though Guidance Notes are generally recommendatory in nature but a chartered accountant should ordinarily follow recommendations in a guidance note relating to an auditing matter except where he is satisfied that in the circumstances of the case, it may not be necessary to do so. But in the matter, the Respondent failed to satisfy as to why he did not disclose information that net worth certificate was substantially based on provisional financial statement. Hence, the Committee is of the view that the Respondent failed to exercise due diligence in discharging his professional duties. Thus, he is guilty of professional misconduct falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

Conclusion:-

10. Thus in the considered opinion, 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.

Sd/-

Sd/-

(SHRI JUGAL KISHORE MOHAPATRA, I.A.S.(RETD.)) GOVERNMENT NOMINEE & PRESIDING OFFICER	(MS. RASHMI VERMA, I.A.S. (RETD.)) GOVERNMENT NOMINEE
Sd/-	Sd/-
(CA. BABU ABRAHAM KALLIVAYALIL) MEMBER	(CA. DAYANIWAS SHARMA) MEMBER

DATE : 03rd February, 2020
PLACE : New Delhi

NSEL -Vs- Naresh Kumar (M.No.090860)

Certified True Copy

SRIMALATHI PRAKASH
Executive Officer
Disciplinary Directorate
The Institute of Chartered Accountants of India
ICAI Bhawan, I.P. Marg, New Delhi-110 002