



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

[PR-114/2014/DD/126/2014/DC/672/2017]

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.

[PR-114/2014/DD/126/2014/DC/672/2017]

Shri K.S. Kaushik
Serious Fraud Investigation Office
Ministry of Corporate Affairs
Govt. of India
2nd Floor, Paryavaran Bhawan
C.G.O. Complex, Lodhi Road
New Delhi-110 003

.....Complainant

Versus

CA. Chandra Kant Garg (M. No. 079692)
D-197, Lakshmi Nagar
New Delhi-110092

.....Respondent

Date of Order : 25th June, 2021

MEMBERS PRESENT:

1. CA. Nihar N Jambusaria, Presiding Officer
2. Ms. Nita Chowdhury, I.A.S (Retd.), Government Nominee
3. CA. G. Sekar, Member
4. CA. Manu Agarwal, 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 03.02.2020 the Disciplinary Committee was inter-alia of the opinion that **CA. Chandra Kant Garg (M. No. 079692)** (hereinafter referred to as the **Respondent**) was **GUILTY** of professional



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misconduct falling within the meaning of Clauses (5), (7) and (8) of Part I of the Second Schedule to the Chartered Accountant Act, 1949.

2. That an action under Section 21B (3) of the Chartered Accountants (Amendment) Act, 2006 was contemplated against the Respondent and a communication dated 09th June, 2021 was addressed to him thereby granting an opportunity of being heard in person and/or to make a written representation before the Committee on 25th June, 2021.

3. The Respondent appeared before the Committee through video conferencing and made oral as well written submissions dated 14.06.2021 and requested the Committee to take a lenient view and assure the Committee that in future he will be more careful and vigilant while discharging his professional duties.

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

4.1 The Respondent being the Statutory Auditor of the Company (M/s. Abcindya Networks Pvt. Ltd.) for the Financial Year 2007-08, 2008-09 and 2009-2010 had not fulfilled his duties and also failed to report in his audit report that the financial statements did not furnish the information which was true.

4.2 Further, he also stated in the Annexure to his Audit Reports for the Financial Years 2008-09 and 2009-2010 that the Company has not accepted any deposit within the meaning of Section 58A of the Companies Act, 1956 which was allegedly to be against the records maintained by the Company.



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4.3 Accumulated cash in hand of over Rs. 1 cr during FY 2009-10 out of which Rs. 90.00 lakhs were withdrawn by Director of the Company and shown as "Advance recoverable in Cash or kind".

5.The findings of the earlier Committee in respect of said charge is as under:-

5.1 *"The Committee on perusal of the documents on records and the defense of the Respondent noted that the purchaser/subscriber was given to participate in online gaming at abcinya.com. On perusal of Invoice (W-25), it was observed that the purchaser/subscriber was given the participation in online gaming. Further, in point (ii) of 'Annexure to the audit report' of the Company for the year ending 31.03.2009 (C-124), 31.03.2010 (C-142) it was reported that the Company was dealing in subscription services for online gaming and multilevel marketing. For multilevel marketing there was an agreement and subscription service was subject to some terms and conditions. In other words, in order to assess the nature of receipt being so received and the point of time when it could be treated to be earned as revenue the Respondent being the statutory auditor in normal course of audit was required to check the related agreement and terms & conditions. The Committee noted that the Respondent has submitted to have relied on MOA of the Company which allowed it to carry the said business but said Members' Agreement was never produced before him. It was viewed that when the Respondent in his audit report had reported that he had obtained all the information necessary for the purpose of his audit then he could not contend that said agreement was never brought before him by the management of the Company, moreover, when it was related to revenue being earned by the Company. In this regard, the Committee was of the opinion that since the Respondent has, in extant case, failed to verify revenue in view of the terms and condition of the agreement between the Company and the subscribers, it reflects lack of due diligence on the part of the Respondent on account of which he failed to unearth the actual nature of transaction.*



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On review of Members' Agreement as brought on record (C-91) it was noted that while para 1 to 4 of the Agreement requires the members to subscribe for online gaming, there is separate portion for 'REFUND' and its last clause states that if refund is applied for after 365 days the entire amount be refunded. In other words, in such cases, the Company was not charging anything for its services. Further, on review of profit and loss account (C-103, 115) that there was no other source of income except subscription. When the Committee asked the Respondent to state the basis of evaluating the business model for reviewing going concern assumption in context of the Company, the Respondent stayed silent on the same. It was viewed that when the clause exists to refund the amount, it could not be treated as income/ revenue of the Company. Hence, such receipt was in the nature of deposit. Hence, his reporting that the Company had not received deposits within the meaning of Sec 58A of the Act, was not correct in each year audited by him. Thus, the Committee was of the opinion that the Respondent not only failed to obtain sufficient information for expression and opinion but also failed conduct his duties in diligent manner.

The Committee, further, noted that it was alleged that the Company had accumulated cash in hand of over Rs.1 crore during 2009-2010 out of which the Director of the Company had withdrawn cash of Rs.90.00 lakhs which was shown as "Advance Recoverable in Cash or in Kind" in the financials of 2009-2010 (C-151 read with C-178). The Committee noted the submission of the Respondent in this regard wherein he stated that the Company had not withdrawn any cash in fact it was utilized to pay advances. He further submitted that he had diligently and carefully verified all cash entries during the course of their audit and counterchecked with the cash receipts produced before them for the purpose of audit and since the Company was holding accumulated cash balances, the payments were made in cash utilizing the accumulated cash balance in the books of company. It was observed that the Respondent had brought on record before the Disciplinary Committee a letter dated March 31, 2010 issued to him by the Managing Director of the Company, stating that such amount



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was given to five individuals for refunding to subscriber's referred by them. It also stated the reasons as to why it was paid to third person and not to subscriber himself. It was noted that the reason of huge Cash payment being provided before Disciplinary Committee was different to that given before Director(Discipline) wherein it was stated that the Company was not having sufficient balance in its bank account and as on the date of these transactions the parties were pressing very hard to make the payment (W-13). It was noted that since latter reason was uprightly rejected considering the cash ledger (C-159 to C-178) and frequent withdrawals occurring from bank accounts and huge cash balance held throughout the year, the Respondent had tried to justify it with other evidence.

In any case, it was viewed that firstly evidence that such payments were made has not been brought on record. Even if the Respondent is believed to have relied on the Management's letter now brought on record, then it is also an important fact that refunded subscription could not be shown as 'advances recoverable in cash or kind'. Further, holding huge cash balance throughout the year and making it negligible at the end of the year did not sound reasonable and would have not found acceptance by an auditor who is bound to exercise due diligence. The Committee further considering the fact that the amount was advanced in cash that too pertaining to refund of subscription, viewed that the Respondent was required to have made an appropriate scrutiny and qualified his report this regard which he had failed to do. The Respondent on the contrary chose to remain silent on this issue. Accordingly, the Committee was of the view that since the Respondent not only failed to disclose material fact in the Balance Sheet but also failed to adopt appropriate audit procedures in this regard."

6. Looking upon above professional misconduct on the part of the Respondent, the Committee was of the view that it is matter of non-compliance in reporting under Section 227 and Section



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628 of the Companies Act, 1956. Thus, ends of justice could be met if punishment awarded is in commensurate with misconduct held and established against him.

7. Therefore, keeping in view the facts and circumstances of the case, material on record, and submissions of the Respondent before it, the Committee ordered that the Respondent i.e. CA. Chandra Kant Garg (M. No. 079692) be reprimanded.

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

[Approved through mail dated 09/08/2021]
(MS. NITA CHOWDHURY, I.A.S RETD.)
GOVERNMENT NOMINEE

[Approved through mail dated 13/08/2021]
(CA. G. SEKAR)
MEMBER

[Approved through mail dated 06.09.2021]
(CA. MANU AGARWAL)
MEMBER

प्रमाणित सत्य प्रतिलिपि / Certified true copy

सी.ए. सुनील कुमार / CA. Suneel Kumar
सहायक सचिव / Assistant Secretary
अनुशासनमालक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
अहमदिया रोड, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahdara, Delhi-110032

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DISCIPLINARY COMMITTEE [BENCH-III (2019-20)]

(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-114/2014-DD/126/14-DC/672/2017

In the matter of:

Shri K.S. Kaushik
Serious Fraud Investigation Office
Ministry of Corporate Affairs
Govt. of India
2nd Floor, Paryavaran Bhawan
C.G.O. Complex, Lodhi Road
New Delhi-110 003

.....Complainant

Versus

CA. Chandra Kant Garg (M. No. 079692)
D-197, Lakshmi Nagar
New Delhi-110092

.....Respondent

Members Present:

CA. Prafulla Premsukh Chhajed, Presiding Officer
Shri Ajay Mittal, Member (Govt. Nominee)
CA. Debashis Mitra, Member

Date of Final Hearing: 26th November, 2019 (decided on 15th January 2020)

Place of Final Hearing: New Delhi

Parties Present:

- (i) Smt. Deepmala Bagri, Asstt. Director (Law), SFIO – Complainant's Representative**
- (ii) Shri Pradeep Chandra Sati, Consultant, SFIO – Complainant's Representative**
- (iii) Shri Kunal Rawat, Advocate – Counsel for Complainant**
- (iv) CA. Chandra Kant Garg – Respondent**
- (v) CA. Sandeep Manektala – Counsel for Respondent**

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Allegations of the Dy. Director, SFIO:

1. Shri K.S. Kaushik, Serious Fraud Investigation Office, Ministry of Corporate Affairs, New Delhi (hereinafter referred to as the "Complainant") has filed complaint in Form 'I' dated 16th May, 2014 (C-1 to C-210) against CA. Chandra Kant Garg, (M. No. 79692), (for the Financial Years 2007-08, 2008-09 and 2009-2010), New Delhi, (hereinafter referred to as the "Respondent"). The background in brief in respect of the the Complainant against the Respondent is as under:-

1.1 The Government of India, Ministry of Corporate Affairs ordered an investigation into the affairs of M/s Abcindya Networks Private Limited (hereinafter referred to as the "Company") by the Serious Fraud Investigation Office (SFIO). In its investigation report, it recommended disciplinary proceedings against the Respondent for his professional misconduct. Accordingly, the complaint was filed under the Chartered Accountants Act, 1949.

1.2 The Respondent was the statutory auditor of M/s Abcindya Networks Private Limited (hereinafter referred to as the "Company") for the Financial Year 2007-08, 2008-09 and 2009-2010. During the course of investigation into the affairs of the Company statements of accounts of the Company for the years 2007-08, 2008-09 and 2009-2010 were investigated and it was found that the Company formed member's agreement and according to the member's agreement, the Company invited people to invest in the Company by way of subscription for online gaming. The amount of investment has to be in multiples of Rs.10,000/-. The period of investment was for 30 months. The investment was refundable at the option of the investor after 90 days. The Company promised to pay interest in the form of recurring bonus @ 10% per month in this way, the money was more than doubled in a year. Therefore, this business model as sought to have been projected by the Company, where it was offered free of cost online gaming and paying recurring Bonus, binary incentives, level / direct incentives and refund of subscription money, therefore such business model cannot be an economically viable business model, in the absence of any other income generating productive investment.

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1.3 Investigation concluded that the surrounding circumstances, the relationship and character of the transaction and the manner in which parties treated the transaction in the light of the fact were to be viewed in totality. The fact is that the facility of online gaming was free of cost and the charge for providing the service of online gaming in the form of subscription was returned to the user with interest and hence subscription as received by the Company was nothing but the deposit and the same were invited and accepted in violation of the Section 58A of the Companies Act, 1956.

1.4 The entire subscription received was accounted as income in the profit & loss account of the Company, the expenditure incurred on payment of bonus, binary and level incentive etc. paid to subscribers was accounted under the head 'Commission and Incentives including refund paid during the year. However, the Company failed to make adjustment for refund paid. Further, the cash ledger of the Company during financial year 2009-10 had accumulated cash in hand of over Rs.1 crore whereas the directors of the Company had withdrawn cash of Rs.90 lakhs which was shown as 'advance recoverable in Cash or in Kind' for FY 2009-10.

Against the aforesaid background, the allegations alleged against the Respondent are under:

1.5 The Respondent being the Statutory Auditor of the Company for the Financial Year 2007-08, 2008-09 and 2009-2010 had not fulfilled his duties and also failed to report in his audit report that the financial statements did not furnish the information which was true. Further, he also stated in the Annexure to his Audit Reports for the Financial Years 2008-09 and 2009-2010 that the Company has not accepted any deposit within the meaning of Section 58A of the Companies Act, 1956 (C-124),(C-142) which was allegedly to be against the records maintained by the Company and the accumulated cash in hand of over Rs. 1 cr during FY 2009-10 out of which Rs. 90.00 lakhs were withdrawn by Director of the Company and shown as "Advance recoverable in Cash or kind". Accordingly, it is alleged that there were false certification of material facts in his audit report in terms of the provisions of Section 227 of the Companies Act.

Proceedings:

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2. At the time of hearing on 26th November, 2019, the Committee noted that the Complainant and Respondent along with their respective Counsels were present during the hearing. On being asked by the Committee whether they had received the Prima-Facie Opinion formed by the Director (Discipline), both the parties accepted to have received the same. Since it was the first hearing in the matter, the Respondent was put on oath. Thereafter, the Committee asked the Respondent as to whether he wished the charges to be read out or these could be taken as read. The Respondent stated that he was aware of the charges against him. On being further asked whether he pleaded guilty or not, the Respondent pleaded not guilty and opted to defend his case.

The Committee decided to proceed further and asked the Counsel for the Respondent to make his submissions. The Counsel for the Respondent, thereafter, made his oral submissions before the Committee. Thereafter, the Committee examined the Respondent on the submissions made by him. The Complainant department stated that they have nothing to submit beyond what had already been made part of the Disciplinary records. After the hearing both the parties, the Committee directed the Respondent to submit the following within a period of 10 days from the date of hearing:

- 1) Submission as to whether the said receipts could be treated as income.
- 2) On what grounds it was treated as income.
- 3) Specify the head in which refund was shown in balance sheet
- 4) How the Respondent had evaluated the business model (that undertook to pay interest @10% per month, bonus, commission and other benefits) in order to assess going concern assumption
- 5) Copy of the assessment order of the Company

The Committee further directed that the additional documents be sent to the Committee only for its perusal. Thereafter, based on the documents available on record and after considering both oral and written submissions made by the Complainant and the Respondent, the Committee concluded hearing in the matter and the Judgment was kept reserved.

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3. On 15th January, 2020, the Committee noted that the Respondent vide his letter dated 5th December 2019 submitted certain documents/explanation as sought by the Committee. Accordingly, based on the documents as well as information/clarification available on record, the Committee decided the matter on merits.

Findings of the Committee:

4. The Committee noted that the first allegation relates to receipts which are alleged to be deposits from the members in violation of Section 58A of the Companies Act, 1956. As per the Complainant the modus operandi was as under:

a. The Company formed member's agreement and according to the member's agreement, the Company invited people to invest in the Company by way of subscription for online gaming (**sample of Members' agreement given on C-91 to C-96**).

b. The amount of investment has to be in multiples of Rs.10,000/-. The period of investment was for 30 months. The investment was refundable at the option of the investor after 90 days.

c. The Company promised to pay interest in the form of recurring bonus @ 10% per month in this way, the money was more than doubled in a year.

According to the Complainant, this business model as projected by the Company, where it was offered free of cost online gaming and paying recurring bonus, binary incentives, level / direct incentives and refund of subscription money, could not have been an economically viable business model, in the absence of any other income generating productive investment. It was argued that the facility of online gaming was free of cost and the charge for providing the service of online gaming in the form of subscription was returned to the user with interest and hence subscription as received by the Company was nothing but the deposit and the same were invited and accepted in violation of the Section 58A of the Companies Act, 1956.

Thus, it was alleged that the Respondent had stated in his Audit Reports for the Financial Years 2008-09 and 2009-2010 that the Company has not accepted any deposit within the meaning of Section 58A of the Companies Act, 1956 (**C-124**), (**C-142**) which was against the records maintained by the Company and thus

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amounted to false certification of material facts in terms of the provisions of Section 227 of the Companies Act.

5. The Committee noted the submissions of the Respondent wherein he had stated that he had relied on the copies of invoices which were produced for the purpose of audit and there was nothing to suspect the availability of Members' Agreement. The management of the Company always maintained that the Company was providing online gaming services to its clients and all the receipts of Company were by virtue of payment done by online gaming subscribers. He brought on record copy of Memorandum of Association (**W-15 to W-24**). He also stated that he took necessary steps and instructions as required and did not fail to point out the possible irregularities in the maintenance of the books of accounts in his audit report as he had obtained all the information/records for audit and the same was mentioned in the respective audit reports. He further stated that the Company was carrying on the business of multi-level marketing and the **online gaming** was the main business of the company which was being carried with help of agents. Moreover, the selection of the business model was decision of the management. However, the member's agreement with the subscribers was in line with the object clause contained in the Memorandum and Article of Association of the Company.

6. The Committee on perusal of the documents on records and the defense of the Respondent noted that the purchaser/subscriber was given to participate in online gaming at abcinya.com. On perusal of Invoice (**W-25**), it was observed that the purchaser/subscriber was given the participation in online gaming. Further, in point (ii) of 'Annexure to the audit report' of the Company for the year ending 31.03.2009 (**C-124**), 31.03.2010 (**C-142**) it was reported that the Company was dealing in subscription services for online gaming and multilevel marketing. For multilevel marketing there was an agreement and subscription service was subject to some terms and conditions. In other words, in order to assess the nature of receipt being so received and the point of time when it could be treated to be earned as revenue the Respondent being the statutory auditor in normal course of audit was required to

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check the related agreement and terms & conditions. The Committee noted that the Respondent has submitted to have relied on MOA of the Company which allowed it to carry the said business but said Members' Agreement was never produced before him. It was viewed that when the Respondent in his audit report had reported that he had obtained all the information necessary for the purpose of his audit then he could not contend that said agreement was never brought before him by the management of the Company, moreover, when it was related to revenue being earned by the Company. In this regard, the Committee was of the opinion that since the Respondent has, in extant case, failed to verify revenue in view of the terms and condition of the agreement between the Company and the subscribers, it reflects lack of due diligence on the part of the Respondent on account of which he failed to unearth the actual nature of transaction.

7. On review of Members' Agreement as brought on record (C-91) it was noted that while para 1 to 4 of the Agreement requires the members to subscribe for online gaming, there is separate portion for 'REFUND' and its last clause states that if refund is applied for after 365 days the entire amount be refunded. In other words, in such cases, the Company was not charging anything for its services. Further, on review of profit and loss account (C-103, 115) that there was no other source of income except subscription. When the Committee asked the Respondent to state the basis of evaluating the business model for reviewing going concern assumption in context of the Company, the Respondent stayed silent on the same. It was viewed that when the clause exists to refund the amount, it could not be treated as income/ revenue of the Company. Hence, such receipt was in the nature of deposit. Hence, his reporting that the Company had not received deposits within the meaning of Sec 58A of the Act, was not correct in each year audited by him. Thus, the Committee was of the opinion that the Respondent not only failed to obtain sufficient information for expression and opinion but also failed conduct his duties in diligent manner. Accordingly, the Respondent is held 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.

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7. The Committee, further, noted that it was alleged that the Company had accumulated cash in hand of over Rs.1 crore during 2009-2010 out of which the Director of the Company had withdrawn cash of Rs.90.00 lakhs which was shown as "Advance Recoverable in Cash or in Kind" in the financials of 2009-2010 (**C-151 read with C-178**). The Committee noted the submission of the Respondent in this regard wherein he stated that the Company had not withdrawn any cash in fact it was utilized to pay advances. He further submitted that he had diligently and carefully verified all cash entries during the course of their audit and counterchecked with the cash receipts produced before them for the purpose of audit and since the Company was holding accumulated cash balances, the payments were made in cash utilizing the accumulated cash balance in the books of company. It was observed that the Respondent had brought on record before the Disciplinary Committee a letter dated March 31, 2010 issued to him by the Managing Director of the Company, stating that such amount was given to five individuals for refunding to subscriber's referred by them. It also stated the reasons as to why it was paid to third person and not to subscriber himself. It was noted that the reason of huge Cash payment being provided before Disciplinary Committee was different to that given before Director(Discipline) wherein it was stated that the Company was not having sufficient balance in its bank account and as on the date of these transactions the parties were pressing very hard to make the payment (**W-13**). It was noted that since latter reason was uprightly rejected considering the cash ledger (**C-159 to C-178**) and frequent withdrawals occurring from bank accounts and huge cash balance held throughout the year, the Respondent had tried to justify it with other evidence.

In any case, it was viewed that firstly evidence that such payments were made has not been brought on record. Even if the Respondent is believed to have relied on the Management's letter now brought on record, then it is also an important fact that refunded subscription could not be shown as 'advances recoverable in cash or kind'. Further, holding huge cash balance throughout the year and making it negligible at the end of the year did not sound reasonable and would have not found acceptance by an auditor who is bound to exercise due diligence. The

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Committee further considering the fact that the amount was advanced in cash- that too pertaining to refund of subscription, viewed that the Respondent was required to have made an appropriate scrutiny and qualified his report this regard which he had failed to do. The Respondent on the contrary chose to remain silent on this issue. Accordingly, the Committee was of the view that since the Respondent not only failed to disclose material fact in the Balance Sheet but also failed to adopt appropriate audit procedures in this regard, therefore he is Guilty of Professional Misconduct falling within the meaning of Clauses (5),(7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

Conclusion:

9. 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), (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

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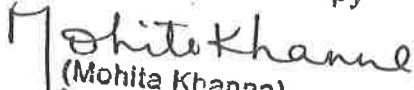
Sd/-
(CA. Prafulla Premsukh Chhajed)
Presiding Officer

Sd/-
(Shri Ajay Mittal)
Member (Govt. Nominee)

Sd/-
(CA. Debashis Mitra)
Member

Date: 3rd February, 2020

Place: New Delhi

Certified to be True Copy

(Mohita Khanna)
Assistant Secretary
Disciplinary Directorate
The Institute of Chartered Accountants of India