



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

[PR-341/17/DD/358/2017/BOD/543/2020]

**ORDER UNDER SECTION 21A(3) OF THE CHARTERED ACCOUNTANTS ACT, 1949**

**READ WITH RULE 15(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATIONS OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007**

In the matter of:-

Shri H.G. Nagaraju,

Bengaluru.

.....Complainant

-Vs-

CA. Lingaraj M. Pujari (M.No.225579),

M/s Lingaraj Pujari and Co.,

Chartered Accountants,

Bengaluru.

.....Respondent

[PR/341/17/DD-358/2017/BOD/543/2020]

**MEMBERS PRESENT(in person):**

CA. Rajendra Kumar P, Presiding Officer

Ms. Dolly Chakrabarty (IAAS, Retd.), Government Nominee

**Date of Final Hearing: 19<sup>th</sup> April, 2023**

**Place of Final Hearing: Chennai**

1. The Board of Discipline vide Findings dated **10<sup>th</sup> February 2023** was of the view that **CA. Lingaraj M. Pujari (M.No.225579)** is Guilty of "Other Misconduct" falling within the meaning of Item (2) of Part-IV of the First Schedule to the Chartered Accountants Act, 1949 read with Sec 22 of the said Act.
2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against **CA. Lingaraj M. Pujari (M. No.225579)** and communication dated 27<sup>th</sup> March, 2023 was addressed to him thereby granting him an opportunity of being heard in person and/or to make written representation before Board on 19<sup>th</sup> April 2023.
3. **CA. Lingaraj M. Pujari (M.No.225579)** was present in person before the Board on 19<sup>th</sup> April 2023 and made his oral representation before it.

Shri H.G. Nagaraju, Bengaluru

-Vs- CA. Lingaraj M. Pujari (M.No.225579) of M/s Lingaraj Pujari and Co., Chartered Accountants, Bengaluru



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[PR-34117/DD/358/2017/BOD/543/2020]

4. CA. Lingaraj M. Pujari (M.No.225579) in his written representation, inter-alia, submitted as under:

- (i) The Board, in its observation under Paragraph 5.6 of the Findings incorrectly equates the nature, requirements and role of the Respondent vis-à-vis issuing the Certificate pursuant to an appointment/engagement letter dated January 9, 2017 (“**Engagement Letter**”), with that of the Unqualified Audit Reports issued from FY 2011 to FY 2017.
- (ii) His findings pursuant to the specific and limited mandate under the Engagement Letter did not amount to ‘material’ misstatements i.e. for the purpose of findings in the Unqualified Audit Report for FY 2016-17.
- (iii) The Unqualified Audit Report in respect of FYs 2011-12 to 2015-16 issued by the previous auditors viz. Shekar & Yatish, Chartered Accountants also did not qualify the transactions reported in the Certificate, as the previous auditors did not consider them as ‘material’ in accordance with the applicable ICAI Standard.
- (iv) His classification of expenditures being attributable to ‘FY 2016-2017’ was merely for uniformity of the Certificate’s contents (which had been reported in terms of Financial Years). The Certificate assumes that the directors of the Company, being persons of ordinary prudence, would consider that items of expenditure in FY 2016-17 set out in the Certificate would include, and pertain only to expenditures incurred till January 31, 2017 i.e. the date on which the Certificate was issued.
- (v) The Board’s observations set out in Paragraph 5.1, 5.2, 5.3, 5.4, and 5.5 of the Findings, merely reiterate the sequence of events set out in the Director (Discipline)’s Prima Facie Opinion in the present proceedings dated December 16, 2019; the Board did not record its opinions or observations in respect of the aforementioned facts/events in its Findings.
- (vi) He was not, and not at present, a party to the Police Complaint against the Complainant. He could neither control, nor be responsible for the words used in the Police Complaint. The Certificate neither mentions, nor alleges that his findings are in relation to, or portray in any manner, the misappropriation of funds by the Complainant (or any other person). Thus, the mere fact of the Certificate forming a part of the Police Complaint against the Complainant cannot amount to an act of wrongful collusion and/or malafide intention on his part.
- (vii) Since the Engagement Letter was issued on behalf of the Company, it could reasonably be concluded that although the Company was the ‘addressee’, the Company’s board of directors could amount to ‘*other intended users*’ and hence the usage of the words “To Whomsoever it May Concern”.
- (viii) It is a mere coincidence that the transactions (relating to the Complainant) constitute the majority of entries in terms of value.
- (ix) The Certificate was issued by him to the Company’s Board of Directors. Since it was marked as “*To Whomsoever it May Concern*”, the Company is entitled to share it with anyone it deems fit for whom the information reported therein is relevant. This decision vests solely with the Company, and he had no say in the matter or any control over the same.



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5. The Board has carefully gone through the facts of the case along with the oral and written representation of **CA. Lingaraj M. Pujari (M.No.225579)**.

6. As per the Findings of the Board as contained in its report, the Respondent was appointed by the Company vide its appointment letter dated 9<sup>th</sup> January 2017 for issuing a Certificate showing expenditures which are not supported by any bills, vouchers, documents, etc. and unapproved payments from the Financial Year 2011-12 to the Financial Year 2016-17. The Respondent issued a Certificate of expenditure dated 31<sup>st</sup> January, 2017 for the financial years 2011-12 to 2016-2017 where no support or approvals were available. The Certificate issued by him was not addressed to the company but addressed to "To Whomsoever It May Concern" and the purpose for which the same had been issued was not specified therein. The Board viewed that Guidance Note issued by the Institute (ICAI) i.e. "Guidance Note on Reports or Certificates for Special Purposes" clearly states that there is no standardized format for reporting on such engagements. Instead, certain basic elements were identified which include to identify addressee. However, it is also mentioned that in some cases such Certificate or report could be for other intended users hence, could be issued to such other unidentifiable user. However, since in the instant case, the Respondent had been appointed by the company and the Certificate was not addressed to the company but to unidentified users by usage of phrase "To Whomsoever It May Concern", the Board was of the view that the very purpose for which the Certificate had been issued by the Respondent becomes questionable and misleading. The Board on bare perusal of the entries in the Annexures to the Certificate issued by the Respondent noted that the majority of the entries provided therein which were allegedly unapproved, pertained to the Complainant only. Thus, the Board was of the view that the act of the Respondent of issuing a Certificate addressed to unidentified users indicates that the same had been issued by him in collusion with the other directors of the company. The Board was of the view that it was the duty of the Respondent to perform a thorough and careful examination of the fact/data and issue an unbiased certificate which in the instant case was lacking. The said compromising conduct of the Respondent shows his malafide intention of acting in collusion with the other directors of the company which is clearly unbecoming of a Chartered Accountant and thus, has brought disrepute to the profession. Accordingly, the Board held the Respondent Guilty of "Other Misconduct" falling within the meaning of Item (2) of Part-IV of the First Schedule to the Chartered Accountants Act, 1949 read with section 22 of the said Act.



**THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA**  
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[PR-34117/DD/358/2017/BOD/543/2020]

7. Thus, upon consideration of the facts of the case, the consequent misconduct of CA. Lingaraj M. Pujari (M. No.225579) and keeping in view his oral and written representation before it, the Board decided to Reprimand of CA. Lingaraj M. Pujari (M. No.225579).

Sd/-

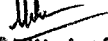
CA. Rajendra Kumar P  
(Presiding Officer)

Sd/-

Ms. Dolly Chakrabarty (IAAS, retd.)  
(Government Nominee)

DATE: 22-05-2023

सही प्रतिलिपि होने के लिए प्रमाणित /  
Certified to be true copy

  
नीलम पुंडीर / Neelam Pundir  
कार्यकारी अधिकारी / Executive Officer  
अनुशासनमयक विभाग / Disciplinary Directorate  
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया  
The Institute of Chartered Accountants of India  
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032  
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

CONFIDENTIAL

**BOARD OF DISCIPLINE**

**Constituted under Section 21A of the Chartered Accountants Act 1949**

**Findings under Rule 14(9) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007**

**File No. : [PR-341/17/DD/358/2017-BOD/543/2020]**

**CORAM (present in person):**

**CA. Prasanna Kumar D., Presiding Officer  
Ms. Dolly Chakrabarty (IAAS, Retd.), Government Nominee  
CA. (Dr.) Raj Chawla, Member**

**In the matter of:**

**Shri H. G. Nagaraju  
#384, 1st Floor, 7th Cross,  
ITI Layout, Mallathahalli,  
BENGALURU – 560056**

**.....Complainant**

**Versus**

**CA. Lingaraj M Pujari (M No. 225579)  
M/s. Lingaraj Pujari and Co. (FRN 0145035)  
No 1/1, 1st Floor  
34th Croxx Jooganahalli,  
Dr Rajkumar Road,  
BENGALURU - 560010**

**.....Respondent**

**DATE OF FINAL HEARING : 23<sup>rd</sup> November, 2022.  
PLACE OF FINAL HEARING : New Delhi / through video conferencing**

**PARTIES PRESENT (in person):**

**Complainant : Shri H.G. Nagaraju  
Respondent : CA. Lingaraj M. Pujari along with CA. S. Venkatesan**

**FINDINGS:**

**BRIEF FACTS OF THE CASE:**

1. The Complainant had worked as an Additional and First Director of M/s. Robust Materials Technology Pvt. Ltd. (hereinafter referred to as "Company") for the period from 2010 until October 2016 during which he was handling finance, accounts, administration, business development and maintaining the day-to-day financial affairs of the Company. It is stated by the Complainant that he was coerced to resign from his post as a director of the Company when he allegedly highlighted various instance of mismanagement by the Company including failure to conduct AGM as required by the Companies Act. The Complainant has also informed that an unsecured loan was given by him to the Company amounting to Rs. 1,05,41,023/- which was only partly repaid and a balance of Rs. 52,38,123/- was yet to be paid by the Company.

**CHARGE ALLEGED:**

- 2.1. The Complainant has alleged that the Respondent has issued a Certificate of expenditure at the behest and in connivance with other directors of the Company to report expenditures made during financial year 2011-12 to 2016-17 in respect of which, as per the Certificate, no supporting and approvals were found. The Complainant has stated that in order to cover up the mismanagement unrooted by him and avoid repaying the outstanding loan amount owed to him, other directors of the Company made several attempts to oust him from the directorship of the Company. The above said Certificate of expenditure was one of those attempts for harassing him.
- 2.2. The Complainant has stated that the Respondent was engaged by the other directors of the Company to prepare a false report against the Complainant despite external statutory auditors verifying all books of accounts and records of the Company for the period 2011-12 to 2016-17 and certifying that the Company's records were properly maintained and that the company's Financial Statements reflected a true and fair account of Company's financial position. He argued that had there been any instance of false payments or diversion of funds, the statutory auditor would have certainly detected and reported the same in their audit report, which was not the case. Further had there been any issue with the accounts of the Company of the FY 2010-11 to 2016-17 to the Financial Statements would have never been signed by the Directors.

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- 2.3. Further, he alleged that the Certificate of expenditure issued by the Respondent was not addressed to the Directors but was addressed "To whom so ever it may concern" which mean that the firm intended it to be produced before various third parties.

**BRIEF OF PROCEEDINGS HELD:**

- 3.1. At the time of hearing held in the aforesaid case on 23<sup>rd</sup> November, 2022, the Complainant and the Respondent along with his Counsel were present before the Board through video conferencing. The Complainant and the Respondent were put on oath and they confirmed that they have read and understood the contents of the modalities and protocols of e-hearing and follow them. The charges alleged against the Respondent were taken as read with the consent of the parties present. On being asked by the Board as to whether the Respondent pleaded guilty in respect of the charges alleged against him, he replied in negative and his Counsel made detailed oral submissions to defend the charges alleged against him. Thereafter, the Complainant also made his detailed submissions to substantiate the allegations alleged against the Respondent. The Board posed certain questions to the Respondent which was replied to by him. On consideration of the documents and submissions on record, the Board concluded the proceedings in the case.

**BRIEF SUBMISSIONS OF THE RESPONDENT:**

4. The Respondent in his defence, inter-alia, submitted as under:
- 4.1 According to observations/opinion as per para no. 8.1 of the Prima Facie Opinion, the Certificate is dated 31st January 2017 and it gives the information relating to FY 2016-17 without specifying that the said information is only till 31st January 2017 or an earlier date: hence a reader of the Certificate can be misled to think that the information is from April 2016 to March 2017. The Respondent disagreed with this observation for the following reasons:
- i. When the Certificate is dated 31st January 2017, it automatically implies that the information relating to the financial year is till 31st January 2017. Any reader, of ordinary prudence, would easily understand, after reading the date of the Certificate, that the

information for the financial year 2016-17 cannot include the months of February 2017 and March 2017. (Even if he reads the Certificate at any time after January 2017)

- ii. In this connection, to draw attention to an analogy derived from the provisions of section 174 of the Income Tax Act, 1961 which gives the power to the assessing officer to assess the income of the non-resident leaving India, from the 1<sup>st</sup> April to the probable date of leaving in respect of previous year of departure. The normal Income Tax return form is used for this purpose which refers to the previous year. Previous year normally means 1<sup>st</sup> day of April to 31 day of March. However, in case of Section 174 proceedings, it automatically means 1<sup>st</sup> April to the date of probable departure. The same analogy applies, whenever a Certificate is issued before the close of a financial year by referring to that financial year, it automatically means that the period covered for that financial year is from the 1<sup>st</sup> April to the date of the Certificate.
- iii. Even assuming that there was an error of not mentioning the closing date in the Certificate, the error was at best a technical error arising from an accidental omission and does not invalidate the Certificate. Further, no cause of action arises to a reader who is misled to think that the Certificate is till 31<sup>st</sup> March 2017, as he does not suffer from any grievous injury by being so misled.

4.2. According to observation/opinion as per Para No.8.2 of the Prima Facie Opinion, 1) as regards the apparent Contradiction between the amounts reported in the Certificate in question for FY 2016-17 and clean opinion expressed by Respondent in Audit Report on Financial Statements (FS) for the same FY and 2) regarding clean audit report issued by earlier statutory auditor, the Respondent clarified as under: -

- i. The scope of work in respect of a certification work and the relative responsibilities of a CA, essentially, flows from the terms of engagement mentioned in the Engagement Letter issued by the client. On the other hand, the scope of work, rights and responsibilities of a CA, in respect of a statutory audit of Financial Statements of a company, flows from the provisions of the Companies Act, 2013, besides the Accounting and Auditing Standards and the Guidance Notes issued by the ICAI. The certification work is focused on particular aspects specified in the Engagement Letter whereas the statutory audit was wide in



scope. The reporting requirements for a statutory audit are completely different from the reporting requirements of a Certificate issued under an engagement letter issued by the client.

- ii. The Certificate issued by the Respondent: Respondent had reported a sum of Rs.8,20,506/- for FY 2016-17 as total expenditure/payments where supporting or approvals are not available with date-wise amounts mentioned in the Annexure. In this connection, the Respondent referred to the engagement letter of the client which required to report the following:

*"All cash and bank payments made or expenses accounted during the financial years 2011-12 to 2016-17 which are not supported by Bills or vouchers or other external documentary evidence or payments made for which the necessary approvals were not obtained as per the payment policy and procedure of the company and the repayments of Loans to Mr. H.G. Nagaraju and Mr. Gopal B. which are not supported by Board Resolution(s)."*

- iii. Out of this amount of Rs.8,20,506/- amounts aggregating to Rs.7,32,000/- were paid (as repayment of Loans) to Mr. Nagaraju H.G (Erstwhile Director) and was not supported by a Board Resolution and Rs.88,506/- being aggregate of expenses for which Bill/Voucher was not available. As it can be observed, there was no mandate to Respondent to report the validity of a payment/expenditure. The mandate is only to report those which fall in these criteria. This means that even if expenditure is genuine and valid, if it falls within the criteria "No Bill/No voucher/No Board Resolution" it has to be reported in the Certificate. In other words, there was no mandate to check the genuineness of an expenditure/payment. For instance, lunch expenses may be genuine but will have to be reported when it is not supported by a Bill or an approval. Similarly, the repayments of Loans have to be reported when there is no board resolution, even though they may be valid payments. The Respondent's objectives were to obtain reasonable assurance about whether the Financial Statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes Respondent's opinion. Reasonable assurance is a high level of assurance but is not a guarantee that an

audit conducted in accordance with SAs will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements. There is no requirement to qualify anything in a statutory audit report, unless there is a misstatement. Even when there is a misstatement it has to be evaluated as required by SA 450, part of which is reproduced below: -

*"Evaluating the Effect of Uncorrected Misstatements Before evaluating the effect of uncorrected misstatements, the auditor shall reassess materiality determined in accordance with SA 320 to confirm whether it remains appropriate in the context of the entity's actual financial results. The auditor shall determine whether uncorrected misstatements are material, individually or in aggregate. In making this determination, the auditor to consider following aspects: i) The size and nature of the misstatements, both in relation to particular COTABD (class of transactions, account balances or disclosures) and the FS as a whole, and the particular circumstances of their occurrence; and ii) The effect of uncorrected misstatements related to prior periods on the relevant COTABD, and the FS as a whole."*

- iv. In instant case, the values reported in the impugned Certificate do not constitute a misstatement at all. The transactions of aggregate amounts of Rs.7,32,000/- repaid to Mr. Nagaraju H.G. towards the loan taken from him were valid transactions. They were recorded in the books of accounts and reduced from the dues towards Loan. Absence of Board Resolution for these payments, were made up by the approval of the accounts by the Board on 2nd September 2017 which signifies an effective ratification. Furthermore, no Board Resolution is statutorily required for the repayment of Loans (It was just an internal requirement). Similarly, the expenses of Rs.88,506/-, although not supported by bills, were accepted by the company and booked under relevant expenses in the books of account. The books of account and the FS for FY 2016-17 were approved by the Board of Directors on 2<sup>nd</sup> September 2017 (subsequent to the issuance of Certificate) which virtually amounts to ratification of these expenses/payments by the Board. As for the

expenses of Rs.88,506/-, these were immaterial as compared to the total expenses of the company Rs.1,34,39.952/- for FY 2016-17 which constitutes a mere 0.66% of the total expenses of Company. Even if the said expenses of Rs.88,506/- is considered as uncorrected misstatements, it does not call for reporting as it can be classified as "not material" by any standard.

- v. Now coming to the observation/opinion, as to why the statutory auditors for the years 2011-12 to 2015-16 have not qualified in their reports, the facts relating to the figures mentioned in the impugned Certificate. Although, this largely remains a judgment of the concerned auditors. The Respondent could possibly attribute to the same reasons as to why Respondent had not done for the FY 2016-17. Since, Respondent have not done the audit for those years, he is unable to form any precise judgment on that aspect. However, the Respondent stood firm to state that the information contained in the Certificate for the years 2011-12 to 2016-17 confirmed to the terms of engagement specified in the engagement letter.

**OBSERVATIONS OF THE BOARD:**

- 5.1. At the outset, the Board noted that the Respondent was appointed by the Company vide its appointment letter dated 9<sup>th</sup> January, 2017 for issuing a Certificate showing expenditures which are not supported by any bills, vouchers, documents, etc. and unapproved payments from the Financial Year 2011-12 to the Financial Year 2016-17. It is noted that, in the said appointment letter the following was provided:

*Issue a Certificate of expenditure/payments falling within the following criteria:-*

*"All cash and bank payments made or expenses accounted during the financial years 2011-12 to 2016-17 which are not supported by Bills or vouchers or other external documentary evidence or payments made for which the necessary approvals were not obtained as per the payment policy and procedure of the company and the repayments of Loans to Mr. H.G Nagaraju and Mr. Gopal B which are not supported by Board Resolution(s)."*

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5.2. The Board further noted that the Respondent issued a Certificate of expenditure dated 31<sup>st</sup> January, 2017 for the financial years 2011-12 to 2016-2017 where no supporting or approvals were available and the relevant portion of the same is reproduced below:

*“Following is the total of expenditures/payments for the following financial years:*

Sl. No.	Financial Year	Total of expenditures/payment where supporting or approvals not available (in Rs.)
1.	2011-12	4,43,010
2.	2012-13	4,49,,612
3.	2013-14	42,26,161
4.	2014-15	39,12,766
5.	2015-16	64,313
6.	2016-17	8,20,506
	Total	99,16,368

5.3. The Board also noted that an Annexure was annexed to the said Certificate which indicated that certain bills and vouchers were not available in relation to certain payments made by the Company and that no valid board approval was there for certain loan repayments made to the Complainant.

5.4 The Board noted that the Financial Statements for the period of certification done by the Respondent were duly signed/authenticated by 2 directors of the Company, namely the Complainant and Mr. K.R. RaviKumar and audited on the following dates:-

F.Y. 2011-12	03.08.2012
F.Y. 2012-13	14.08.2013
F.Y. 2013-14	28.08.2014
F.Y. 2015-16	01.09.2016

5.5 The Board further noted that earlier Statutory Auditors have not taken cognizance of the fact that such supporting documents or approvals were not available. Nowhere had they qualified their report with respect to non-existence of alleged supporting documents and approvals as certified by the Respondent and had infact given a clean report. It was also

noted that the audit of F.Y. 2016-17 was carried out by the Respondent himself and he had reported as on 2<sup>nd</sup> September 2017 that he had obtained all the information and that proper books of account as required by law were being maintained.

- 5.6 In this regard, the Board observed that the word Certification refers to a written affirmation of the truth of the facts mentioned in the document and does not include any estimate or opinion. Whereas, an Audit Report is a document in writing that carries the independent professional opinion of the auditor about the truth and fairness of Financial Statements in showcasing the results of operations and the financial position of the accounts checked by the auditor. Thus, while performing certification, the auditor needs to perform a thorough and careful examination of the fact of each and every piece of content written in it. The Board was of the view that when the Financial Statements of F.Y.2011 to 2016 had already been audited and authenticated by the management of the Company then any expenditure not backed by documentary evidence or unapproved or loan payment/repayment that had been unapproved automatically stands ratified by the management of the Company. The Board also noted that the other director i.e. Mr. K.R. Ravikumar who authenticated the Financial Statements of the company along with the Complainant for the period of certification done by the Respondent had only issued the appointment letter to the Respondent for the said certification.
- 5.7. The Board further noted that the Certificate issued by the Respondent was dated 31st January 2017, whereas in the said Certificate he has purported to present the expenditures/payments for the whole period 2016-17 which is generally perceived to be a period of financial year from April 2016 to March 2017. Thus, it is viewed that presentation of such information in Certificate is misleading when the date of limited period up to 31st January 2017 was not explicitly mentioned.
- 5.8 The Board noted that, Dr. H. Mallesha (one of the directors of the company) made a complaint dated 23<sup>rd</sup> February, 2017 on behalf of the Company, against the Complainant before the police, Bengaluru and subsequently a FIR dated 24<sup>th</sup> February, 2017 had been lodged on the basis of the same against the Complainant. The relevant portion of the said Complaint is reproduced below:-



*“Since Mr. H.G. Nagaraju joined as Director and he was in-charge of finance and administration of our Company, M/s Robust Materials Technology Pvt. Ltd. As per the Board meeting held on 20<sup>th</sup> September 2016, the Board members felt that Mr. H.G. Nagaraju failed to give satisfactory financial details of the company and the board suspected that possibility of misappropriation in Finance and Administration department handling by him. Finally the board resolved that all in-charge given administration, Finance and Accounts handled by Mr. HG. Nagaraju to be handed over to Dr. Ravikumar, CEO from immediate effect, 20<sup>th</sup> September 2016. The Board also resolved to conduct scrutiny from the competent Chartered Accountant in Finance and Accounts department in this regard. Subsequent to this, with the fear of legal accountability, Mr. H.G. Nagaraju tendered his resignation for Directorship of the company M/s Robust Materials Technology Pvt. Ltd and same has been accepted to the Board meeting held on 24<sup>th</sup> October 2016 and same has been filed in Registrar of Company (ROC) 3<sup>rd</sup> November 2016.*

*Subsequent to above, a notice has been sent to him on 7th January 2017 for his Gross negligence in duties and responsibility of Director - Finance and Administration and reply has not received from him so far.*

***Meanwhile we have received financial scrutiny report from chartered accountant and called for the Board meeting on 22<sup>nd</sup> February 2016 to discuss on above subject. The board had discussion on scrutiny report received from chartered accountant and concluded that a huge money misappropriation from him in the Company. As per the financial records of the company and auditors statement revealed that he had misappropriated the amount of Rs.9916358/-fraudulently and used these funds for his own personal gains. Due to this the company has suffered at huge financial loss and image.”***

From the above, it is clear that on the basis of the Certificate issued by the Respondent complaint was made to the police that the Complainant misappropriated the funds of the company and used for his personal purpose while handling the finance and administration of the Company.

The Board also noted that a Notice dated 07<sup>th</sup> January 2017 was sent to the Complainant for explanation about the financial loss and the loss of image of the company. Thereafter, the Respondent was appointed by the company on 9<sup>th</sup> January 2017 for issuing the Certificate under question. The Certificate was issued by the Respondent on 31<sup>st</sup> January 2017. The Complaint was filed by one of the directors of the company before the Police only on 23<sup>rd</sup> February 2017 and thereafter, on 24<sup>th</sup> February 2017, FIR was registered against the Complainant.

- 5.9 The Board further noted that the Respondent had been appointed by the company to issue the said Certificate. However, the Certificate issued by him was not addressed to the company but addressed to “To Whomsoever It May Concern” and the purpose for which the same had been issued was not specified therein. The Board viewed that Guidance Note issued by the Institute (ICAI) i.e. “Guidance Note on Reports or Certificates for Special Purposes” clearly states that there is no standardized format for reporting on such

engagements. Instead, certain basic elements were identified which include to identify addressee. However, it is also mentioned that in some cases such Certificate or report could be for other intended users hence, could be issued to such other unidentifiable user. However, since in the instant case, the Respondent had been appointed by the company and the Certificate was not addressed to the company but to unidentified users by usage of phrase "To Whomsoever It May Concern", the Board was of the view that the very purpose for which the Certificate had been issued by the Respondent becomes questionable and misleading.

5.10 The Board on bare perusal of the entries in the Annexures to the Certificate issued by the Respondent noted that the majority of the entries provided therein which were allegedly unapproved, pertained to the Complainant only.

5.11 Hence, in view of the above, the Board was of the view that the act of the Respondent of issuing a Certificate, addressed to unidentified users indicates that the same had been issued by him in collusion with the other directors of the company. The Board was of the view that it was the duty of the Respondent to perform a thorough and careful examination of the fact/data and issue an unbiased certificate which in the instant case was lacking. The said compromising conduct of the Respondent shows his malafide intention of acting in collusion with the other directors of the company which is clearly unbecoming of a Chartered Accountant and thus, has brought disrepute to the profession. Accordingly, the Board held the Respondent guilty in respect of the charge alleged.

**CONCLUSION:**

6. Thus, in conclusion, in the considered opinion of the Board, the Respondent is **GUILTY** of Other Misconduct falling within the meaning of Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with section 22 of the said Act.

Sd/-  
CA. Prasanna Kumar D.  
(Presiding Officer)

Sd/-  
Ms. Dolly Chakrabarty (IAAS, ret'd.)  
(Government Nominee)

Sd/-  
CA. (Dr.) Raj Chawla  
(Member)

DATE: 10<sup>th</sup> February 2023

प्रमाणित सत्य प्रतिलिपि / Certified true copy  
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