

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-151/14-DD/167/2014/BOD/329/2017

QUORUM:

**CA. (Dr.) Debashis Mitra, Presiding Officer
Shri R. K Tewari, Government Nominee**

In the matter of:

**Shri Kamal Banerjee
BJ 364, Salt Lake City
Kolkata – 700091**

.....Complainant

Versus

**CA. Chinmoy Ghatak (M.No.003591)
107, NSC Bose Road,
Flat #GB, Sripal Apartment,
Ground Floor,
Kolkata 700040**

..... Respondent

DATE OF HEARING: 02.12.2017

PLACE OF HEARING: KOLKATA

**PARTIES PRESENT : None
(Concluded Ex-Parte.)**

FINDINGS:

1. The Board noted that the charge on which the Respondent has been held prima facie guilty is that he had certified Form 32 filed with ROC regarding the appointment of Mr. Sankar Bhattacharya and Mrs. Shila Bhattacharya as Directors of M/s Nautica Hospitality Consulting Pvt. Ltd. (hereinafter referred to as the Company)

without any authorisation from the Complainant who was the Managing Director to the Company.

2. The Board noted that neither the Complainant nor the Respondent were present before it at the time of hearing in spite of the due service of notice of hearing. Thus, the Board of Discipline decided to proceed ahead with the hearing ex-parte the Complainant and the Respondent.

3. The Board on perusal of copy of Form 32 certified by the Respondent noted that the Company had inducted Mr. Sankar Bhattacharya and Mrs. Shila Bhattacharya as its Executive and non Executive Directors respectively without attaching therewith the copy of any resolution appointing as Directors of the Company. The Complainant being the MD of the Company stated that Sh. Sankar Bhattacharya and Smt. Shila Bhattacharta are illegal shareholders of the Company. There has never been any board resolution to induct these fraudulent shareholders as Directors.

4. The Board further noted that on being asked at the stage of Rule 8(5) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules 2007 about the action taken by him in respect of misuse of DSC, wherein he had replied that Kolkata Police accepts only criminal case relating to rape, murder, robbery, accidents, fire, snatching, pick pockets etc. and the instant case does not fall in any of the above category which plea don't seems to be plausible.

5. The Board also noted that the Respondent's defence has been centred around the issue that his DSC has been misused by unauthorised persons.

6. The Board also noted that the Complainant in his Rejoinder at the stage of Rule 8(4) of the Chartered Accountants Rules 2007 also pointed out that Form 23 has also been filed with ROC with Respondent's certification on the basis of illegal resolution.

7. The Board is of the view that the defence of the Respondent is not acceptable as certification has been carried out using his DSC. The act of surrendering his DSC that has been misused, does not correct the fallacy of the alleged illegal appointment of the directors of the Company. Further, the Complainant also pointed out that Mr. Sankar Bhattacharya and his wife Mrs. Bhattacharya conspired with the intention to take over and control the management of the Company and have issued themselves ghost shares, illegally and in violation of the provisions of the Companies Act, 1956, which were never authorised by the Directors. This illegal act is sub-judice.

8. Thus, the Board is of the view that a Chartered Accountant holds a position of public confidence, integrity and trust and any alleged act of a Chartered Accountant which appears to be compromising with highest ethical standards set by the profession, needs to be viewed seriously in a manner which would act as a deterrent to others in future.

CONCLUSION:

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

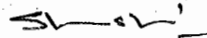
-Sd/-
(DEBASHIS MITRA)
PRESIDING OFFICER

-Sd/-
(R K TEWARI)
GOVERNMENT NOMINEE

DATE: 10TH FEBRUARY, 2018

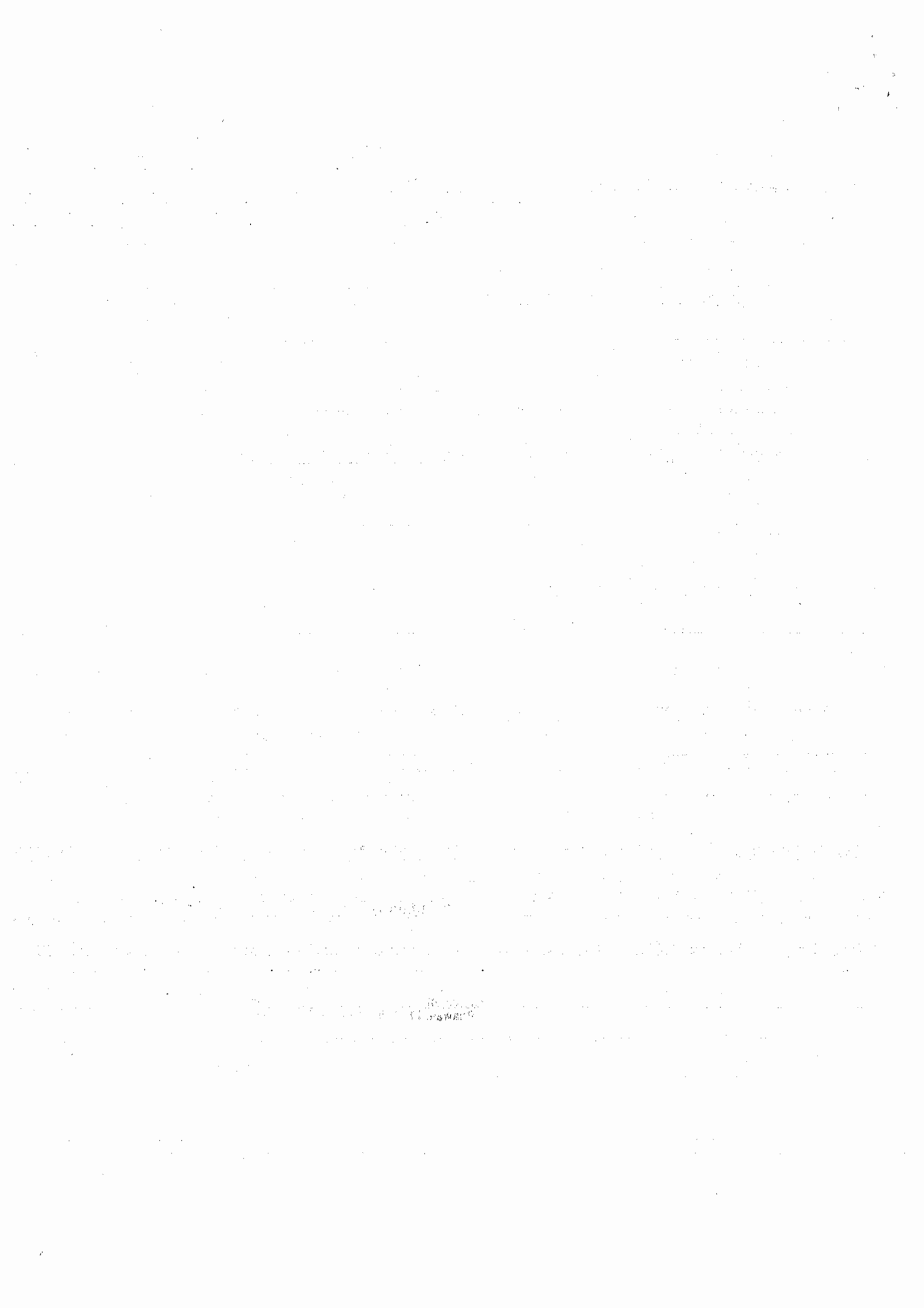
PLACE: NEW DELHI

Certified True Copy



Shashi Mahajan
Assistant Secretary
Disciplinary Directorate

The Institute of Chartered Accountants of India
ICAI Bhawan, I.P. Marg, New Delhi-110 002





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

ORDER UNDER SECTION 21 A(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.

Shri Kamal Banerjee, Kolkata

....Complainant

-Vs-

CA. Chinmoy Ghatak (M. No.003591),

Kolkata

.....Respondent

[PR-151/14-DD/167/2014/BOD/329/2017]

CORAM:

CA. G. Sekar, Presiding Officer
Shri R.K. Tewari (Government Nominee)
CA. Dhinal Ashvinbhai Shah, Member

1. That vide Report dated 10th February, 2018, the Board of Discipline was of the opinion that CA. Chinmoy Ghatak is guilty of Other Misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of said Act.
2. That an action under Section 21A(3) of the Chartered Accountants Act, 1949 was contemplated against CA. Chinmoy Ghatak and communication dated 3rd April, 2018 was addressed to him thereby granting him an opportunity of being heard in person and/or to make written representation before the Board on 19th April, 2018.
3. That despite due service of the notice of the hearing for award of punishment, CA. Chinmoy Ghatak did not appear before the Board. The Board took a serious view of the conduct of the Respondent on account of his non-appearance before the Board both at the time of enquiry earlier and also presently for award of punishment.
4. This Board has carefully gone through the facts of the case.
5. As per the findings of the Board dated 10th February, 2018, the Respondent had certified Form 32 filed with ROC regarding the appointment of Mr. Sankar Bhattacharya and Mrs. Shila Bhattacharya as Directors of Company without

[Handwritten signatures]



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attaching therewith the copy of any resolution appointing as Directors of the Company.

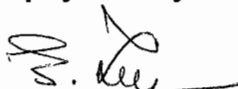
6. The Board also noted from its report that the defence of the Respondent was centered on the issue that his DSC has been misused by unauthorized persons. The Board is of the view that act of surrendering his DSC that has been misused, does not correct the fallacy of the alleged illegal appointment of the directors of the Company as mentioned in the findings holding the Respondent guilty.

7. A Chartered Accountant holds a position of public confidence, integrity and trust and any alleged act of a Chartered Accountant which appears to be compromising with highest ethical standards set by the profession, needs to be viewed seriously in a manner which would act as a deterrent to other in future.

8. As per the findings of the Board as contained in its report, it has already been conclusively proved that **CA. Chinmoy Ghatak** is guilty of Other Misconduct falling within the meaning of Clauses (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949.

9. Upon consideration of the facts of the case, the consequent misconduct of **CA. Chinmoy Ghatak**, and keeping in view other cases against him wherein he is also held guilty which goes to establish that he seems to be habitual offender, the Board was of the view that the ends of justice shall be met if maximum punishment is awarded to him.

10. Accordingly, the Board decided to remove the name of **CA. Chinmoy Ghatak** from the Register of Members for a period of 3 (three) months and further impose a fine of Rs. 1,00,000/- (Rupees One lakh) upon him, which shall be payable by him within a period of 60 days from the receipt of the Order.


(G. SEKAR)

PRESIDING OFFICER


(R K TEWARI)

GOVERNMENT NOMINEE


(DHINAL ASHVINBHAI SHAH)

MEMBER

DATE : 19th APRIL, 2018

PLACE : KOLKATA