



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

[PR/147/20/DD/156/2020/BOD/679/2023]

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:-

Sh. Girdhar Viramgama

Plot no. 390 to 393, Unity Industrial Estate,
Surat Navsari Road, Bhestan, Surat – 395023

Gujarat.

..... Complainant

-Vs-

CA. Arvind Soni (M No. 127992)

3024 3rd Floor World Trade Centre,
Near Udhanà Darwaja Ring Road, Surat – 395003,
Gujarat.

..... Respondent

[PR/147/20/DD/156/2020/BOD/679/2023]

MEMBERS PRESENT (through video conferencing):

CA. Rajendra Kumar P, Presiding Officer

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

CA. Priti Savla, Member

Date of Hearing and passing Order: 17th December 2023

1. The Board of Discipline vide its Findings dated 6th December 2023 was of the view that **CA. Arvind Soni (M No. 127992)** is guilty of "Professional and Other Misconduct" falling within the meaning of Item (11) of Part I and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act.
2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against **CA. Arvind Soni (M No. 127992)** and communication dated 11th December 2023 was addressed to him thereby granting him an opportunity of being heard on 17th December 2023. The Board noted that the Respondent was not present before it and his Counsel CA. Darshan Gandhi, was present in person before it. The Board was of the view that although there is no specific stipulation as regard representation through an authorized representative in Rule 15 of The Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, yet, looking into the Order dated 12th October 2023 passed by the Hon'ble High Court of Judicature at Madras in the matter of The Institute of Chartered Accountants of India and Anr. Vs. N. Sethuraman and the Order dated 5th October 2023 passed by the Hon'ble Madras High Court (Madurai Bench) in the matter of P. Ramalingam Vs. The Institute of Chartered Accountants of India, the Board, to provide a fair opportunity of being heard to the Respondent allowed the Counsel for the Respondent to represent him before it.
3. Thereafter, the Counsel for the Respondent confirmed receipt of the Findings of the Board by the Respondent. He also submitted a copy of the Petition no F/SCA/36922 of 2023 dated 15th December 2023 filed by the Respondent before the Hon'ble High Court of Gujarat with the Disciplinary Directorate through the Board of Discipline as one of the Respondents for passing Order for setting aside the impugned Order and during the pendency and final disposal of the petition, to

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stay the disciplinary proceedings .He requested the Board to stay the disciplinary proceedings till the final disposal of the said writ petition. The Board noted that no stay Order had been passed by the Hon'ble High Court of Gujarat on the said petition of the Respondent. Further, in terms of the Order dated 23rd June 2023 passed by the Hon'ble High Court of Gujarat, the Board was to decide on the issue in question within a period of six months from the date of the receipt of the Order. Thus, the Board did not accede to the request of the Respondent to adjourn the proceedings and asked the Counsel for the Respondent to avail of the opportunity of being heard which had been provided to the Respondent. Thereafter, the Counsel for the Respondent made representation on the Findings of the Board.

3. The Board heard the Counsel for the Respondent and also informed him that all the Findings have been taken on record and a detailed Order holding the member Guilty has been passed by the Board. The Board also brought to the notice of the counsel for the Respondent that no fresh grounds can be adduced at this stage.

4. Thus, upon consideration of the facts of the case, the consequent misconduct of **CA. Arvind Soni (M No. 127992)** and keeping in view the representation made by the Counsel for the Respondent before it, **the Board decided to Reprimand CA. Arvind Soni (M No. 127992) and also imposed a Fine of Rs.50,000/- (Rs. Fifty Thousand only) upon him.**

Sd/-

CA. Rajendra Kumar P
(Presiding Officer)

Sd/-

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

Sd/-

CA. Priti Savla
(Member)

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

बिष्व नाथ तिवारी / Bishwa Nath Tiwari
कार्यकारी अधिकारी / Executive Officer
अनुशासनशास्त्रक विभाग / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आर्वाइवमेंट भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahdara, 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/147/2020/DIRECTOR(DISCIPLINE)/156/2020/BOD/679/2023]

CORAM (present in person):

CA. Rajendra Kumar P, Presiding Officer

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

CA. Priti Savla, Member

In the matter of:

Sh. Girdhar Viramgama

Plot no. 390 to 393, Unity Industrial Estate,

Surat Navsari Road, Bhestan, Surat – 395023

Gujarat, India.

..... Complainant

-Vs-

CA. Arvind Soni (M No. 127992)

3024 3rd Floor World Trade Centre,

Near Udhana Darwaja Ring Road, Surat – 395003,

Gujarat, India.

..... Respondent

DATE OF FINAL HEARING : 21st November 2023

PLACE OF FINAL HEARING : Mumbai

PARTIES PRESENT(in person) :

Complainant : Shri Girdhar Viramgama

Counsel for the Complainant : Shri Dhiren R. Dave, Advocate

FINDINGS:

BRIEF BACKGROUND OF THE CASE:

1. From the perusal of an MOU dated 20-06-2013 and FIR dated 01-02-2021 filed by the Complainant against the Respondent and other documents on record, it is noted that M/s Balaji Embroidery Pvt. Ltd. (hereinafter referred to as 'Company') was started in



2005 with four Directors and investors namely Mr. Sanjay Jayrambhai Viramgama, Mr. Piyush Dhirajbhai Surani and Mr.Sukhdevbhai Nathapai Sanepara who invested money and the Respondent who invested in the form of plot no.390-393, Unity Industrial Estate, Surat on which the company was situated. Due to some disputes between the Directors regarding the running of company in 2010 an MOU dated 21-06-2010 was executed between all four promoter directors (including the Respondent) and it was decided that the Company would be taken over by the Respondent while the other three directors would be paid by the Respondent and would leave the Company. The Complainant acted as a responsible witness to such MOU and accordingly in case of any default in payment by the Respondent it was the Complainant who was responsible to pay the amount. As stated, the MOU could not be implemented as the Respondent could not pay the agreed amount to the other three directors. Consequently, the Complainant vide MOU dated 20-06-2013 paid the agreed amount to the other three director/investors and in lieu get a power of attorney executed in his (complainant's) favour. Now there has been disputes over such plot and the Company going on between the Complainant and the Respondent in Court and NCLT. Further, such land (plot no.390-393, Unity Industrial Estate, Surat) of the Respondent was mortgaged by the Company to Bank of Baroda to obtain loans for its operations.

CHARGES ALLEGED:

2. Against the aforesaid background, the following charges have been alleged against the Respondent:
 - 2.1 The Respondent was engaged in business or occupation other than profession of Chartered Accountant without the permission of the Council of ICAI as he was a director in M/s Balaji Embroidery P Ltd. and Partner in M/s Sahara Exports.
 - 2.2 The Respondent filed false and frivolous Form DIR-12 for removal of the Complainant without the copy of resignation letter and Board Resolution and thereby he had done fraud against the Order of the Hon'ble NCLT in the matter as the Hon'ble NCLT had cancelled all his oppressive acts and deeds and Forms filed by the Respondent and ordered to maintain status- quo.



2.3 Further, on the basis of such fraudulent Form DIR-12, the Respondent misrepresented before Bank of Baroda and when bank came to know about the fraud, he made failed attempt of filing complaint against the Bank in Banking Ombudsman. It is stated that the Bank had sent an email to the Complainant to provide clarification about fraudulent acts.

2.4 The Respondent as an individual and a partner in Sharp & Associates (Respondent's firm) is also alleged to be involved in malpractices and fraudulent activities.

The Board noted that the Director(Discipline) in his Prima Facie Opinion held the Respondent prima facie guilty in respect of only one entity i.e. M/s Balaji Embroidery P Ltd. in the charge specified at para 2.1 above and the charge specified at para 2.2 and 2.3 only. Accordingly, the conduct of the Respondent was examined by the Board only with respect to the entity i.e. M/s Balaji Embroidery P Ltd. in the charge specified at para 2.1 above and the charge specified at para 2.2 and 2.3 above.

BRIEF OF PROCEEDINGS HELD:

3.

S.No.	Date of Hearing(s)	Status of hearing(s)	Compliance of the directions given by the Board, if any
1	23 rd May 2023	Part-heard and adjourned with the direction to the parties to the case to provide the following documents with a copy to the other party to the case: <u>The Complainant:</u> 1. To produce original Minutes of the meeting of the Board of Directors of the company M/s Balaji Embroidery Pvt. Ltd. since its incorporation in 2005 till the period of allegation at the next date of hearing. 2. Copy of an Affidavit filed by the Respondent before the CLB/NCLT regarding he, being the owner of the land, which has been given to the company for its use.	In compliance of the directions of the Board, the Complainant submitted the following documents: i. False, unaudited balance sheet signed by the Respondent and uploaded on the MCA website. ii. Copy of Affidavit. iii. NCLT Order. iv. The Respondent has kept all the statutory records and registers including

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		<p>3. Details alongwith the current status of the complaint made to any Authority as regard the wrongful use of his name in the MOU.</p> <p>4. Copy of all the Orders passed by the NCLT in the matter under question.</p> <p><u>The Respondent</u></p> <p>1. Copy of the resolution dated 4th July 2020 passed by the Board of Directors of the company M/s Balaji Embroidery Pvt. Ltd. authorising the Respondent to sign Form no. CHG-4.</p> <p>2. Copy of the Order dated 21st December 2022 passed by the Institute of Company Secretaries of India in the matter of complaint made by the Respondent against CS. Dhiren R.Dave (DC 576/2021) alongwith the copy of the Order passed by the Appellate authority, if any, in respect of the appeal filed against the said Order.</p> <p>3. Copy of the first MOU dated 21st June 2010 in which the Respondent was one of the parties.</p>	<p>concocting Balance Sheet signed by himself.</p> <p>The Respondent in compliance with the direction given by the Board submitted as follows:</p> <p>a. Copy of the resolution dated 4th July 2020 passed by the Board of Directors of the company M/s Balaji Embroidery Pvt. Ltd. authorising the Respondent to sign Form no. CHG-4. – He is not in the position to provide the required resolution from the company as the same is lying at the address Plot no 390, Unity Industrial Estate, Surat. which property is currently illegally occupied by the complainant himself and the same can be verified from the complainant's communication address.</p> <p>b. Copy of the Order dated 21st December 2022 passed by the Institute of Company Secretaries of India in the matter of complaint made by the Respondent against CS. Dhiren R. Dave (DC 576/2021) alongwith the copy of the Order passed by the Appellate authority, if any, in respect of the appeal filed against the said Order.</p> <p>c. Copy of the first MOU dated 21st June 2010 in which the Respondent was</p>
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			one of the parties.
2	1 st September, 2023	Hearing adjourned to provide a final opportunity to the Respondent to present his case before the Board.
3	2 nd November, 2023	Part-heard and adjourned with the direction to the Respondent to provide the following: (a) English translation of the MOU dated 17 th June, 2010 which is in Gujarati language submitted by the Respondent.	
4.	21 st November, 2023	Heard and concluded on the basis of the documents and submissions on record.

BRIEF SUBMISSIONS OF THE PARTIES TO THE CASE:

(a) Respondent:

4. The Respondent in his defence, inter-alia, submitted as under: -
- 4.1 The prima facie opinion is based on MOU dated 20/06/2013 and FIR dated 24/01/2021 (wrongly mentioned as 01/12/2021 in prime facie opinion) filed by the complainant against the Respondent.
- 4.2 The Respondent is not party to MOU dated 20/06/2013 and the terms and conditions is not binding on the Respondent. It is surprising that Director(Discipline) has based his opinion taking MOU as a background where in the Respondent is not a party. The Director(Discipline) has not given any evidence for concluding that Respondent could not pay the agreed amount. The Director(Discipline) has wrongly observed that the Respondent has invested in form of plot number 390-393, Unity Industrial Estate, Surat.
- 4.3 The property comprising of Plot number 390-393, Unity Industrial Estate, Surat is owned by the Respondent and the same was given to the company for carrying out manufacturing activities. The said property was mortgaged to the bank as security to secure loans availed by the company. This is evident from the balance sheet of the company which confirms that the said property was never transferred to or owned by the company.
- 4.4 The matter has already been adjudicated by NCLT and the High court and the remarks made by Director(Discipline) in background of prima facie opinion is biased and he has exceeded his authority to remark on the matters which has already been adjudicated by honourable NCLT and High Court.
- 4.5 It appears that Director(Discipline) has hurriedly form the opinion in view of application filed by the complainant before the Honourable High Court of Gujarat. The prima facie

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opinion was issued on 23/12/2022 being a returnable date of complainant application before Gujarat High Court.

4.6 As regard the first charge, the Respondent stated that the Director(Discipline) has failed to appreciate that forms were digitally signed by him as professional and not as a director of company. He never engaged himself in business of company nor took any remuneration. It is quite natural that being a CA on Board the management would prefer to have his services to ensure proper compliance. Merely digitally signing some e-forms does not amount to engagement in business of company. It is a statutory obligation of company to file return under the Companies Act and it is not the business of company. The Director(Discipline) has failed to verify that all Forms were digitally signed by other directors and were merely signed by the Respondent as professional and not as a director. The Director(Discipline) has failed to establish how digitally signing of e-forms amounts to engagement in business of company leading to violations of CA Act and Rules. The working of the company comprising of sale , purchase and manufacture was not looked after by the Respondent and on account of dispute no business was carried out since 2011 and there is no question of managing the affairs of the company.

4.7 As regard the second charge, the Respondent stated that it is on record that NCLT has vide Order dated 27/06/2019 directed the Company to restore position in management immediately as on date of MOU dated 21/06/2010. The Respondent as director of company was obliged to take action to comply with the Order. The following DIR-12 has been filed by Respondent on behalf of the company:

(a) DIR-12 for cessation of Complainant and Madhvi Viramgama (wife of complainant) as Director of company. This was done to comply with directions of NCLT Order which has directed that position at the time of MOU be restored. It is on record that neither Complainant nor Madhvi Viramgama (wife of complainant) were directors at the time of MOU. The directorship as on date of MOU is clear from the document submitted by the complainant.

Any action taken to implement NCLT Order cannot amount to guilt under CA Act and Rules. The Director(Discipline) has miserably failed to appraise the situation and preferred to give Opinion on sub-judice matters. A contempt application is pending before the NCLT and such opinion is premature and would invite litigations. The Respondent denied that any violation is made in filing DIR-12 since the same was filed to set right the status against wrong doings by the appellatant himself.

4.8 As regard the third charge, the Respondent stated that Form CHG-4 was filed as per authority vide Board resolution dated 04/07/2020. The Director(Discipline) failed to appreciate that once charge is satisfied it is statutory obligation to file Form CHG-4 within specified time limit failing which directors and company are liable for penalty and prosecution. The Respondent was duly authorized to digitally sign the form by board resolution dated 27/08/2020. The satisfaction of charge was in respect of property owned by the respondent in his own name and no prejudice has been done to the company or any other stakeholder. Even the order from the H'onorable High Court of Gujarat required that process of satisfaction be completed.



OBSERVATIONS OF THE BOARD:

5.1 As regard the first charge alleged against the Respondent that he had been in active practice as a Chartered Accountant besides working as the Promoter director of the Company namely M/s Balaji Embroidery without obtaining the specific and prior approval of the Council, the Board took into view Regulation 190A of Chartered Accountants Regulations, 1988, which deals with the provision for Chartered Accountants in practice not to engage in any other business or occupation, and the same reads as below:

"A Chartered Accountant in practice shall not engage in any business or occupation other than the profession of accountancy, except with the permission granted in accordance with a resolution of the Council".

The permissible categories of engagements approved by the Council under Regulation 190A, are available in Appendix No. 9 to the Chartered Accountants Regulations, 1988. Further, a member in practice shall be permitted to be a Director (Director Simplicitor), Promoter/Promoter Director, Subscriber to the Memorandum and Articles of Association of any company including a Board Managed Company. Further, the expression 'Director Simplicitor' shall be used for an ordinary/simple Director, who fulfills the following conditions :

(a) he is required to attend the Board meetings only.(emphasis provided)

(b) He will not be paid any remuneration except the sitting fees for attending the Board meetings; and

(c) He will be devoting his time for the company only to attend Board meetings and not for any other purpose. (emphasis provided)

A Member in practice is permitted generally to be a Director Simplicitor in any Company including a Board-Managed Company and as such he is not required to obtain any specific permission of the Council in this behalf irrespective of whether he and/or his relatives hold substantial interest in that Company. Further, there is no bar for a member to be a Promoter/Signatory to the Memorandum and Articles of Association of any Company. There is also no bar for such a promoter/signatory to be a Director Simplicitor of that Company irrespective of whether the objects of the Company include areas which fall within the

scope of the profession of Chartered Accountancy. Therefore, members are not required to obtain specific permission of the Council in such cases.

5.2 The Board also noted the intent behind such restrain as provided in the Code of Ethics 2009:

"This is a provision introduced to restrain a member in practice from engaging himself in any business or occupation other than that of Chartered Accountant except when permitted by the Council to be so engaged. The objective is to restrain members from carrying on any other business in conjunction with the profession of accountancy and combining such work with any business which is not in keeping with the dignity of the profession. Another reason for the introduction of such prohibition is that a Chartered Accountant, if permitted to enter into all kinds of business, would be able to advertise for his other business and thereby secure an unfair advantage in his professional practice. The Council, on a very careful consideration of the matter, has formulated Regulations 190A & 191 which are reproduced below, specifying the activities with which a member in practice can associate himself with or without the permission of the Council."

5.3 The Board noted that in the instant case, the Respondent was one of the Promoter Director of the company w.e.f. 09-05-2005 with 25% shareholding in the Company while holding full time Certificate of Practice w.e.f. 03-10-2007. He also authenticated the financial statements of the company from the FY 2011-12 to 21-22 in the capacity of a Director of the company despite there being one other director in the company apart from the one authenticating with him.

5.4 The Board further noted that the Respondent was actively participating in the management of the Company as evident from various AOC-4 Forms and MGT-7/MGT-7A/23AC for submitting financials and annual returns respectively on MCA portal under his digital signatures as director as detailed hereunder:

Year	MGT-7/MGT-7A/20B (Forms to submit Annual Return)	AOC-4/23AC (Form to submit Financials)	DIR-12 (Form for change in Directors)	CHG-4 (Particulars for satisfaction of charge)

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				thereof) Dated 25-08-2020
2021-22	MGT-7A	AOC-4	Dated 12-04-2022 for appointment of Ms. Kusum Arvind Soni w.e.f.31-03-2022	
2020-21	MGT-7A	AOC-4	Dated 23-05-2020 - For appointment of Mr. Pawan Rathi w.e.f. 19-03-2020 and Cessation of Ms. Madhvai GirdharBhai Viramgama and the Complainant	CHG-4
2019-20	MGT-7	AOC-4		

5.5 The Board also noted that he was also a signatory to the Board's Report of the company for the FY 2013-14,2014-15,2017-18,2018-19, 2019-20 and 2020-21.

5.6 In view of the above, the Board observed that although the Respondent was formally not holding any position in the Company as Whole Time Director or Managing Director yet, looking into his active participation (being a director) in submitting various Forms of the Company on MCA portal in the capacity of one of the directors of the company and authenticating the financial statements of the company from the FY 2011-12 to 21-22 in the

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capacity of a Director of the company despite there being one other director in the company apart from the one authenticating with him and being a signatory to the Board's Report of the company for the FY 2013-14,2014-15,2017-18,2018-19, 2019-20 and 2020-21s vis a vis the definition of Director 'Simplicitor', the Board held that the Respondent being a director in the company was instrumental in the management of the day to day affairs of the Company .Thus, he has violated the provisions of Item (11) of Part I of First Schedule to the Chartered Accountants Act 1949 read with Regulation 190A which prohibits a practicing Chartered Accountant to engage in any business and occupation other than the profession of Chartered Accountants without permission of the Council of ICAI and thus, is held guilty in respect of the charge alleged.

5.7 As regard the second charge, the Board noted that the Respondent submitted the alleged Form DIR-12 on 23-05-2020 with the ROC for the cessation of the Complainant and his wife Ms. Madhavi Girdharbhai Viramgama from the directorship of the company. The Board also observed that the said DIR -12 was digitally signed by the Respondent (as Director of the Company). It was devoid of any Board Resolution and resignation letter of Complainant and his wife as director in the company and also not certified by any professional. Further, despite being specifically asked, the Respondent could not bring on record the copy of the board resolution on the basis of which he had filed the DIR -12 as regard the cessation of the directorship of the Complainant. It had been the case of the Complainant that he never resigned from the position of the director of the company. The Respondent could not substantiate with documentary evidence on the basis of which he filed the alleged DIR 12. The Board noted that the Hon'ble NCLT in its Order dated 27-06-2019 passed in T.P. no. 45-A of 2016 in the matter of Girdhar Viramgama & ors. v/s Balaji Embroidery Pvt. Ltd. & Ors. cancelled all the oppressive acts and deeds and forms filed by the Respondent and ordered to maintain status quo. The relevant part of the Order reads as follows:

"2. the Petitioner No.1(Complainant herein) was the Director and Shareholder of the Company, but he was allegedly removed from the Directorship of the Company without complying with the provisions of the Act, under Section 284 of the Act, despite he was holding 11,050 shares in the Company which comes to 7.36% of the total paid up capital of the Company but these shares have also been allegedly transferred to Respondent/Third

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Party without his express consent and by following proper procedure and even without proper filling up of valid shares transfer form and consideration.

26. it is seen that the P1(Complainant herein) was illegally removed from the directorship of the company and was induced to transfer his shares to Respondent on the pretext of such MoU, which is not acceptable to the R1 Company as per the own contentions of R2(Respondent herein) himself. Hence, if such MoU is not found legally enforceable on behalf of the R1 Company, then any further act on the part of rest of the Respondent in the name of R1 Company is improper and invalid and tantamount to reduce the P1 in the minority with such a malafide intention to oust him from the R1 company which is bad in Law.

34. Hence, in our humble view, no change could have been made in the management of the company on the strength of such MoU for transferring share holdings of Petitioner No.1 or removing from the directorship of the company as it is not legally justified action and it is void because the alleged MoU entered between the parties was not expressly signed on behalf of with seal and signature of the authorized signatory of the R- 1 Company, hence, such MoU has lost its entity, so far as the Company being a corporate person is concerned. Moreover it is already found that it has not been performed fully even by its signatory and/party even in their individual capacity. Hence such MoU cannot be acted upon.

38. The alleged MoU dated 21-06-2010 cannot be acted on behalf of the R1 Company and it is frustrated, being not fully performed and acted upon by the parties concerned. Hence, the decision taken/resolution passed by the management of the company on the pretext and in implementation of such MoU is not legally valid and is inoperative. Therefore, the company is hereby directed to restore the position in management and shareholding position/pattern as was immediately on the date of such MOU (as already declared inoperative).(emphasis added)

39. Further, the Petitioners as well Respondents are hereby directed to maintain **status quo** by reinstating Directorship of Petitioners in the company.

40. The further transferring of shares of petitioner to the Respondent or a third party pursuant to such MoU is also declared illegal, null and void.

42. The Petitioner No.1 and other Petitioners are entitled to buy back their shares in by the Respondent No.1 Company from Respondents which were allegedly sold by the R1 to other

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Respondents or to a third party by making payment of amount of consideration to the extent of the fair value of such share as on the date of its alleged transfer. "

Thus, the Board was of the view that the Order of the Honorable NCLT further strengthens the case of the Complainant that the said Form DIR -12 had been filed by the Respondent as the director of the company with dubious intention. Accordingly, the Board held the Respondent guilty in respect of the charge alleged.

5.8 As regard the charge that the Respondent had misrepresented before Bank of Baroda on the basis of such fraudulent Form DIR-12 to get the documents back of the property (on which Company is situated) mortgaged with Bank and when bank came to know about the fraud, he made failed attempt of filing complaint against Bank in Banking ombudsman, the Board noted that the Complainant brought on record an email dated 01-06-2020 written by Bank of Baroda to the Company informing the Company that the name of the Complainant was not appearing as director on ROC/MCA portal while earlier it was appearing as director. Thus, it is evident that after filing such alleged DIR-12 towards cessation of the directorship of the Complainant, his name stopped appearing as Director on MCA portal. It is further noted in such email that the Company (with Respondent's signature on the application for satisfaction of charge as one of its directors) had been demanding satisfaction of charge on the property and also demanding the release of property papers (on which company was situated) as the loan was repaid in full by the Respondent. The Board further noted that the Hon'ble Gujarat High Court which took cognizance of the Respondent's Writ Petition No.7645/2020 passed Its Order dated 06-08-2020 directing the bank to release the title documents to the Respondent as the title deeds which had been deposited in the bank were the personal property of the Respondent and not that of the company. The Board further noted that post this Court Order dated 06-08-2020, Form CHG-4 was submitted on 27-08-2020 with the digital signature of the Respondent for satisfaction of charge of his property, however, there was no board resolution number authorizing the Respondent to sign and submit the Form on behalf of the Board of the Company. Further, the attachment to the said Form CHG-4 did not pertain to the company. The Board also noted that the despite being given the opportunity to bring on record the copy of the Board resolution dated 04/07/2020 on the basis of which the alleged Form had been filed by the

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Respondent, the Respondent failed to do so. Thus, the Board was of the view that the dispute between the directors of the company was quite evident and the Respondent had been carrying out acts which did not carry the authorisation/ratification of the Board of directors of the company. 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 Professional and Other Misconduct falling within the meaning of Item (11) of Part I and 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. Rajendra Kumar P

(Presiding Officer)

Sd/-

Ms. Dolly Chakrabarty (IAAS, rettd.)

(Government Nominee)

Sd/-

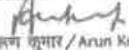
CA. Priti Savla

(Member)

DATE: 06-12-2023

सही प्रतिलिपि होने के लिए प्रमाणित

Certified to be true copy


अरुण कुमार / Arun Kumar
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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