



भारतीय सनदी लेखाकार संस्थान

(संसदीय अधिनियम द्वारा स्थापित)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

PR/78/2019-DD/95/2019-DC/1359/2020

[DISCIPLINARY COMMITTEE [BENCH-II (2024-2025)]

[Constituted under Section 21B of the Chartered Accountants Act, 1949]

ORDER UNDER SECTION 21B (3) OF THE CHARTERED ACCOUNTANTS ACT, 1949 READ WITH RULE 19(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATIONS OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007

[PR/78/2019-DD/95/2019-DC/1359/2020]

In the matter of:

CA. Nimai Gautam Shah (M. No. 100932),
605-606-607, Silver Oaks,
Near Mahalaxmi Char Rasta, Paldi,
Ahmedabad – 380007.

..... Complainant

Versus

CA. Keshav Vishwanath Chaubey (M. No. 044900)
M/s. KMA & Co. (FRN 111899W),
Chartered Accountants
124-126/2B, Ostwal Ormate,
Opp. Jain mandir, Jesal Park,
Bhayandar (East)
Thane - 401105.

..... Respondent

Members Present:-

CA. Ranjeet Kumar Agarwal, Presiding Officer (in person)
Mrs. Rani S. Nair, IRS (Retd.), Government Nominee (through VC)
Shri Arun Kumar, IAS (Retd.), Government Nominee (in person)
CA. Sanjay Kumar Agarwal, Member (in person)
CA. Cotha S Srinivas, Member (in person)

Date of Hearing: 19th March, 2024

Date of Order: 9th May, 2024

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, the Disciplinary Committee was, inter-alia, of the opinion that **CA. Keshav Vishwanath Chaubey (M. No. 044900)** (hereinafter referred to as the '**Respondent**') is **GUILTY** of Professional Misconduct falling within the meaning of Item (2), (5), (6), (7), (8) and (9) of Part-I of the Second Schedule as well as Item (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

2. That pursuant to the said Findings, an action under Section 21B (3) of the Chartered Accountants (Amendment) Act, 2006 was contemplated against the Respondent and a communication was addressed

CA. Nimai Gautam Shah (M. No. 100932) -vs- CA. Keshav Vishwanath Chaubey (M. No. 044900)



भारतीय सनदी लेखाकार संस्थान

(संसदीय अधिनियम द्वारा स्थापित)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

PR/78/2019-DD/95/2019-DC/1359/2020

to him thereby granting opportunity of being heard in person / through video conferencing and to make representation before the Committee on 19th March 2024.

3. The Committee noted that on the date of the hearing held on 19th March 2024, the Respondent was present through video conferencing and made his verbal representation on the Findings of the Disciplinary Committee, inter-alia, stating that during the alleged period of misconduct, he was not keeping well and was under mental trauma as his brother had expired. He accepted that the mistake made by him was on account of his ignorance, ill health and mental condition, but his intention was not to defraud anyone. Looking into his professional practice of around 30 years, he requested a lenient view in the case. The Committee also noted that the Respondent in his written representation on the Findings of the Committee, inter-alia, stated as under:

- (a) The Complainant had not brought on record any communication about his intimation of his appointment as a resolution professional till the accounts were prepared, audited, and adopted.
- (b) The fire took place only in the Unit II of the factory of the Auditee Company.
- (c) Audit pertained to F.Y. 2017-18 whereby reporting of Cash losses and going concern was dropped from CARO 2016.
- (d) Audit was conducted on test check basis, and he never claimed that there was 100% vouching or verification.
- (e) On the one hand, the Complainant claims that all original data was lying with him since June 2018 and on other hand, he is demanding Tally data from the Respondent on 13th February 2019.

4. The Committee considered the reasoning as contained in the Findings holding the Respondent Guilty of Professional Misconduct vis-à-vis written and verbal representation of the Respondent.

5. Keeping in view the facts and circumstances of the case, material on record including verbal and written representations on the Findings, the Committee noted that the information about the Resolution of the Company was given by way of an advertisement in English and a vernacular language newspaper and was also uploaded on the website designated for the purpose by Insolvency and Bankruptcy Board of India. Thus, there was no doubt that being the auditor of the Company, the Respondent was required to be fully aware of such proceedings held against the Company and the appointment of a Resolution Professional especially when Respondent was associated with the management of the Company for holding various meetings with various stakeholders as well as insurance surveyors. Thus, the Committee held that Respondent was negligent in pointing out the defect in certification of the financial statement of the Company which constituted a breach of the provisions outlined in the Insolvency and Bankruptcy Code (IBC), 2016. Further, mere submission of bills was insufficient to establish the Company's status as a Going Concern especially when the Respondent had not provided any evidence on record which indicates the Management's future plans to revive the business. The Committee noted that the Respondent had contended to have audited provisional accounts of the Company for the period 01.04.2017 to 23.10.2017 (i.e., till the date when fire has occurred) signed as on 30.01.2018 and on comparing the provisional financial statements with the annual audited accounts of the Company for F.Y. 2017-18 signed as on 05.09.2018, it was found that there was a significant difference in the basis for preparation and the figures of provisional accounts vis a vis annual audited accounts of the Company for F.Y. 2017-18. The Committee also noted that if the Respondent had declared to have examined the Bank Books, Cash Book,



भारतीय सनदी लेखाकार संस्थान
(संसदीय अधिनियम द्वारा स्थापित)

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

PR/78/2019-DD/95/2019-DC/1359/2020

Journal, Ledger, Purchase Register, Sales Register as well as Stock Register for tax audit and that if tally data was available with him, he would have provided all due working papers as envisaged in SA-230. The Company has violated the requirement of AS 9 and the Respondent being the auditor has not reported the same in his Audit Report. While considering the material impact of non-reporting of Order of commencement of CIRP led to omission of material information which was known to the Respondent, the Committee held that the non-disclosure of such significant event was not acceptable on the part of the Respondent being the auditor of the Company. Further, the usage of Firm name, 'M/s. Keshav Chaubey & Co.' which was no more approved for usage is in violation of Regulation 190 of CA Regulations 1988. The Committee held that issuance of Certificate by the Respondent without exercising due diligence resulted in non-discharge of other obligations by the Company leading to violation of the provisions of Companies Act, 2013. The Committee observed that the Respondent conducted his audit without proper books and vouchers. Hence, professional misconduct on the part of the Respondent is clearly established as spelt out in the Committee's Findings dated 7th February 2024 which is to be read in consonance with the instant Order being passed in the case.

6. Accordingly, the Committee was of the view that ends of justice will be met if punishment is given to him in commensurate with his professional misconduct.

7. Thus, the Committee ordered that CA. Keshav Vishwanath Chaubey (M. No. 044900), Thane be reprimanded and also a Fine of Rs. 25,000/- (Rupees Twenty-Five Thousand only) be imposed upon him payable within a period of 60 days from the date of receipt of the Order.

sd/-

(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

sd/-

(MRS. RANI S. NAIR, IRS RETD.)
GOVERNMENT NOMINEE

sd/-

(SHRI ARUN KUMAR, IAS RETD.)
GOVERNMENT NOMINEE

sd/-

(CA. SANJAY KUMAR AGARWAL)
MEMBER

sd/-

(CA. COTHA S. SRINIVAS)
MEMBER

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2023-2024)]

[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/78/2019-DD/95/2019-DC/1359/2020

IN THE MATTER OF:

**CA. Nimai Gautam Shah (M. No. 100932),
605-606-607, Silver Oaks,
Near Mahalaxmi Char Rasta, Paldi,
AHMEDABAD - 380007**

..... Complainant

VERSUS

**CA. Keshav Vishwanath Chaubey (M. No. 044900)
M/s. KMA & Co. (FRN 111899W),
Chartered Accountants
124-126/2B, Ostwal Ormate,
Opp. Jain mandir, Jesal Park,
Bhayandar (East).
THANE - 401105**

..... Respondent

MEMBERS PRESENT

**CA. Ranjeet Kumar Agarwal, Presiding Officer (In person)
Smt. Rani Nair, I.R.S. (Retd.), Government Nominee (In person)
Shri Arun Kumar, I.A.S. (Retd.), Government Nominee (In person)
CA. Sanjay Kumar Agarwal, Member (In person)
CA. Sridhar Muppala, Member (Through Video Conferencing Mode)**

DATE OF FINAL HEARING: 25.08.2023 (Through Physical / Video Conferencing Mode)

PARTIES PRESENT

Complainant - CA. Nimai Gautam Shah (Through Video Conferencing Mode)

Respondent - CA. Keshav Vishwanath Chaubey (Through Video Conferencing Mode)

Counsel for Respondent – CA. Bhupendra Shah (Through Video Conferencing Mode)

BACKGROUND OF THE CASE

1. The brief background of the case is that:
 - a. **M/s. R. R Polynet Pvt. Ltd.**, (hereinafter referred to as the '**Company**') had entered insolvency proceedings following destruction of its fixed assets by fire on 23rd October 2017 on the claim of its one of the creditors.
 - b. The Complainant in the instant case was appointed as a Resolution Professional of the Company in June 2018 by NCLT, Ahmedabad vide Order dated 30th May 2018.
 - c. The Respondent Firm (i.e., M/s KMA & Co.) was the Statutory and Tax Auditor of the Company during several years including the year 2017-18
 - d. The Respondent had audited and signed the financial statements of the Company for the Financial year 2017-18 on 05th September 2018 i.e., after the appointment of the Resolution Professional.

CHARGES IN BRIEF

2. The Complainant, vide his complaint in Form I dated 21st February 2019, has levelled 5 allegation(s) against the Respondent which are as under:
 - a. Allegation 1: Improper signing of Audited Accounts for FY 2017-18: As per Section 17 of the Insolvency and Bankruptcy Code, 2016, the suspended directors cannot exercise any powers as a director and that the audited accounts of the Company under resolution cannot be signed by the suspended directors. The audited financial statements dated 5th September 2018 have been signed by Mr. Ram Singh and Mr. Vinay Singh, the two suspended directors of the Company without Complainant's (Resolution Professional) written consent. The Respondent being statutory auditor of the

Company certified the audited accounts based on the accounts approved by the suspended directors, which is in violation of the Insolvency and Bankruptcy Code, 2016.

- b. Allegation 2: Failure to Qualify Audit Report: The Respondent has failed to qualify the audit report on the grounds that despite the Company not being a Going Concern, especially after the destruction of tangible fixed assets in a fire, the Company had prepared the accounts on going concern basis.
- c. Allegation 3: Non Adherence to Basic Audit verification Procedures: The Respondent has not asked for the original accounting records of the Company which were in the possession of the Complainant and had even refused to cooperate in providing necessary audit evidence and working papers based on which he audited the accounts of the Company for financial year 2017-18, particularly related to Tally software data lost in the fire, raising doubts about compliance with basic audit procedures.
- d. Allegation 4: Errors and Omissions in Financial Statements: The Respondent failed to report significant errors and omissions in the financial statements, including:
- Absurd negative values of tangible assets
 - Improper recognition of an unreceived insurance claim, violation of accounting principles.
 - Failure to disclose NCLT Order initiating Corporate Insolvency Resolution process under section 9 of the IBC in the audit report and
 - Misused M/s. KMA & Co.'s letterhead and registration number in certifying Form 3CA and 3CD for tax audit, but signed in his capacity of partner of M/s. Keshav Chaubey and Co., with same Firm Registration Number as that of M/s. KMA & CO.
- e. Allegation 5: Suo-Moto Changes in Certified Accounts: The Respondent Firm issued a certificate dated 11th February 2019 certifying certain suo-moto changes made by them in audited accounts of the Company for the financial year 2017-18 originally certified by them on 5th September, 2018. As per the certificate:
- a. The fixed assets were stated to be reduced by Rs 10,102/-.

- b. Secured loans were increased by Rs 27,42,521/-.
- c. Unsecured loans were reduced by Rs 8,44,203/-.
- d. Trade payables were reduced by Rs19,08,420/-.

The Respondent being the Statutory as well as the Tax Auditor suo-moto made changes in audited accounts and revised the income tax return of the Company using the digital signature of Mr. Ram Singh in his possession on 5th February 2019, including reductions in fixed assets, increase in secured loans, and reductions in unsecured loans and trade payables, without proper disclosure for the purpose of rectifying various anomalies observed by forensic auditor in the audited accounts. It was alleged that issuance of such a certificate appears to have been done for accommodating Mr. Ram Singh, the suspended director, for the purpose of rectifying various anomalies observed by the forensic auditors and surveyors of the insurance companies in the audited accounts presented to them. Thereby, it was alleged that the Respondent has violated Section 130, 131 of the Companies Act, 2013.

- 3. The Respondent in his reply dated 24th April 2019 at the stage of PFO had, inter-alia, stated as under:
 - a) The Complainant had neither intimated the suspension of the said directors nor had given any information regarding detailed powers or authority provided to him by the NCLT. Since the said Directors were involved in the audit during the above stated period and preceding years and were also handling the matters related to bank liability, insurance claim and claim of the creditors, therefore, signing the accounts by the Director(s) namely Mr. Ram Singh and Mr. Vinay Singh, was nowhere prejudicial to the interest of the revenue, lender(s) and creditors.
 - b) With respect to allegation relating to non-reporting about preparation of the financial statements on going concern basis, the Respondent submitted that the fire only occurred in Unit II of the factory and in no case, it could be presumed that the Company would not be a Going Concern. It was informed that the matter went to the NCLT after the claim of one of the creditors. Upon verification and considering the observations and

explanations provided by the management, it was not determined at the time of signing the Balance Sheet that the Company would not be considered a Going Concern. As per the Respondent, the Complainant was predicting the liquidation of the Company while the Management was struggling to recover the loss from the Insurance Company, fulfill obligation of the bankers and settle the liability of the creditors and to promptly resume business operations to retain customers.

- c) With respect to allegation relating to the basis for conducting audit when the accounting records were in possession of the Complainant, the Respondent stated that he was unaware that the Complainant held the original documents of the Company's accounts. The Respondent also clarified that Respondent's Firm lacked authorization to retain accounting data, such as Tally accounts and bill vouchers, in their office. Even, he had always requested the Director(s) of the Company to co-operate with the Complainant, who was Resolution Professional, as and when he approached them for information and explanations.
- d) With respect to the allegation relating to errors and omissions in the financial statement of the Company, the Respondent in his defense has stated that:
- i. The negative balances of some of the assets were presentation error, the intention of which was not to mislead anyone or to defraud anyone or to earn anything extra.
 - ii. The Complainant should have appointed an accountant and auditor to find out the real facts of the Company and should have approached the insurance company for settlement of the claim. As the Respondent Firm was supporting the management in settling the insurance claim by finalizing the audit just on humanitarian ground and that they had neither charged for this additional work nor for any audit fees which indicates that their Suo-moto was to help the person in need and not to generate revenue for their personal benefits. Regarding insurance claim, as per the

Respondent, it is the duty of the Company and the auditors to provide the same claim in the Balance Sheet even if it is unrealized on the Balance Sheet date.

- iii. As regards the Respondent signing as Partner of M/s. Keshav Chaubey & Co. using the Firm Registration Number of M/s. KMA & Co., the Respondent stated that M/s. KMA & Co. was formerly known as M/s. Keshav Chaubey & Co. and its name was changed from 28th November 2016.
- e) With respect to last allegation relating to certificate issued in February 2019, the Respondent submitted that:
- i. It was stated in the certificate that they had finalized the audit of the Company for the Financial Year 2017-18 on 5th September 2018 after verification of all original documents.
 - ii. During an insurance surveyors' meeting, a couple of fixed assets lost in the fire were found unaccounted for. The management presented bills and a representation letter for account changes that certain bills pertaining to plant and machinery, which were lodged with Bank of Baroda, were unaccounted in books of accounts of the Company.
 - iii. He issued the certificate on the telephonic request from the insurance surveyors.
 - iv. He issued certificate for account changes, emphasizing no material impact on related parties' insurance claims.
 - v. The certificate was issued on humanitarian grounds, led to a transparent revision of the income tax return.
 - vi. The Respondent apologized for any inconvenience caused, stating that he had no intention to defraud or generate revenue.

4. The Director (Discipline) had in his Prima Facie Opinion dated 24th June 2020, noticed that as under:

a) With respect to **first charge**, related to acceptance of accounts of the Company approved by the suspended Director(s) without obtaining consent of the Complainant i.e., the Resolution Professional, it was noted that in view of the provisions of Section 17 of Insolvency and Bankruptcy Code, 2016, as on date of signing the annual audited accounts of the Company for FY 2017-18 on 5th September 2018, the powers of the Board of Directors of the Company stood suspended and were to be exercised by the Resolution Professional i.e., the Complainant. Moreover, as per Insolvency and Bankruptcy Code, 2016, the information about the appointment of Resolution Professional of the Company was given by way of an advertisement in English and a vernacular language newspaper and was also uploaded on the website designated for the purpose by Insolvency and Bankruptcy Board of India, that the insolvency commenced from 5th March 2018. Accordingly, in the instant matter considering the information about the appointment of Resolution Professional as on 30th May 2018 had been given. Thus, there was no doubt that the Respondent was fully aware of such proceedings held against the Company and the appointment of Resolution Professional as he was associated with the management for holding various meetings with various stakeholders as well as insurance surveyors. Thereby, it was viewed that the Respondent had violated the provisions of IBC by accepting the accounts approved by the suspended Directors.

b) With respect to **second charge**, regarding failure to qualify the Audit Report when the financial statements of the Company had not included any information about its uncertainty to continue as going concern in near future, it was noted from the submission of the Respondent that there were two units of the Company i.e., Unit I and Unit II:-

i. It was noted that Unit II was the only owned unit of the Company and it was entirely destroyed by fire. Even entire building, machinery and stock in hand were destroyed and the manufacturing

operations of the Company were closed, this fact was also reported by the Respondent in his Audit Report.

- ii. However, the fact as to whether the Company would continue as going concern in near future was neither discussed in notes to accounts nor in the audit Report. It states that management was struggling to recover the loss from the Insurance Company to pay bankers settling its liabilities.
 - iii. The Respondent has brought on record copy of sales bills, electricity bills, bank statements which as per him indicates the relevance of going concern, however no evidence was produced which could indicate that Unit I was sufficient for the Company to revive the business and that the management's had future plans for revival of business, the financial statements were prepared on going concern basis.
 - iv. This was not appropriate as the uncertainty to continue as Going Concern was neither disclosed in notes to account nor auditor drew attention to this fact in his report especially when the management had not filed resolution plan with the authority even on the date of signing the Audit Report. Accordingly, it was viewed that the Respondent not only failed to obtain sufficient audit evidence as required under standards of auditing but also did not disclose a material fact known to him.
- c) With respect to the **third charge**, regarding basic procedures with respect to verification of accounting records not adopted by the Respondent while conducting the audit of the Company for Financial Year 2017-18, it was noted from the audited provisional accounts of the Company for the period 1.04.2017 to 23.10.2017, which were signed on 30.01.2018, that there was a significant difference in the basis for preparation and the figures of provisional accounts vis-a-vis annual audited accounts of the Company for F.Y. 2017-18. Moreover, the documents provided by the Respondent do not contain any trial balance or ledger accounts of trade payables or loan accounts. Further, at the time of audit, the bills of fixed assets purchased

were not available due to which a certificate was issued by the Respondent regarding revision in accounts in February 2019. It was viewed that if the Respondent had examined the bank books, cash book, Journal, Ledger, Purchase Register, Sales Register as well as stock register for tax audit and that if tally data was available with him, he would have been able to provide all due working papers as envisaged in SA-230. Based on the reasons herewith, it is evident that the Respondent conducted his audit without proper books and vouchers.

- d) With respect to the **fourth charge** regarding discrepancies in the financial statements, the Disciplinary Directorate with regard to the following leg(s) of the allegation has viewed that:
- i. With regard to the **first leg** of reporting negative value of fixed assets making the fixed assets schedule absurd and in violation of basic accounting principles, it was noted that as per accounting principles, depreciation cannot be charged in excess of original cost of asset (which forms the gross block). Thereby, reporting of negative figures of fixed assets amounts to the wrong approach used for computation of depreciation by the Respondent.
 - ii. With regard to the **second leg** of charge of recognizing insurance claim of Rs. 6,24,19,913/- based on claims lodged with the insurance company without considering the uncertainty relating to its measurability and collectability, it was noted that the approach adopted by the Company was not appropriate and was not in line with the requirements of AS-9. Thus, non-reporting of the instant approach adopted by the Company lead to negligence on the part of the Respondent being the auditor.
 - iii. With regard to the **third leg** of non-mentioning of NCLT Order passed declaring commencement of Corporate Insolvency Resolution Process (CIRP) against the Company in the Audit Report, it is noted that as soon as Resolution Professional gets appointed, the Company was under obligation to provide a resolution plan – with realistic approach in the absence of which the Company would be liquidated. Hence, the

given event had material impact on the Company, non-disclosure Order under Section 9 of Insolvency Bankruptcy Code (IBC) declaring commencement of Corporate Insolvency Resolution process against the Company in March 2018, had led to omission of material information which was known to the Auditor i.e., the Respondent. Moreover, the Respondent nowhere denies being not aware of the situation. Hence, non-disclosure of such a significant event was not acceptable.

- iv. With regard to the **fourth leg** mentioning the name of M/s. KMA & Co. in all documents including the letter head of Form 3CA, however signing the said form as the partner of M/s. Keshav Chaubey & Co, it was noted that originally the name of the Respondent Firm was M/s. Keshav Chaubey & Co. which was changed to M/s. KMA & Co. w.e.f. 28th November 2016. Thus, it was viewed that usage of the old name M/s. Keshav Chaubey & Co, which was no more approved for usage is in violation of Regulation 190 of CA Regulations.
- e) With regard to the **fifth charge**, regarding issuance of a certificate revising the figures of annual audited accounts as well as tax audit returns based on a management representation letter it was noted that in the said certificate the Respondent had mentioned that there was mistake in addition of certain fixed assets payment as the same remained unrecorded. It was noted that for rectification of the said mistake, the Respondent had issued this certificate certifying the adjustments made in the value of annual audited accounts. wherein, the value of Fixed Assets was reduced by Rs. 10,102/- and the value of Secured Loans was increased by Rs. 27,42,521/- however, on the other side, the value of Unsecured Loans was reduced by Rs. 8,44,203/- and Trade Payables by Rs. 19,08,420/-. Thus, it was viewed that it is gross violation of Section 130 and 131 of the Companies Act, 2013. It was viewed that the said certification resulted in changes of annual accounts and such an act of change in the figures of fixed assets cannot be perceived as issuance of certificate. In fact, it resulted in changes of annual accounts under the provision of section 131 of Companies Act, 2013. However, the

Respondent had failed to explain the law under which he opted to revise the Annual Accounts or Tax Audited Accounts. Since the said changes resulted in changes of Annual Accounts for which Section 131 of Companies Act, 2013 also imposes other obligations on the directors to ensure that information about such revision is communicated to all readers who received the original ones and also requires revision of other documents viz. director's report. Thus, it was viewed that such a certificate by the Respondent effectively resulted in the Company not discharging with other obligations which led to violation of the Companies Act, 2013.

5. Accordingly, the Director (Discipline) in terms of Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, held the Respondent Prima-facie **Guilty** of Professional Misconduct falling within the meaning of Items (2), (5), (6), (7), (8) and (9) of Part I of Second Schedule as well as Item (1) of Part II of Second Schedule to Chartered Accountants Act, 1949. The said items in the Schedule to the Act states as under:

Clause (2) of Part-I of the Second schedule

“A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he: -

(2) certifies or submits in his name, or in the name of his firm, a report of an examination of financial statements unless the examination of such statements and the related records has been made by him or by a partner or an employee in his firm or by another chartered accountant in practice”

Clause (5) of Part-I of the Second schedule

“A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he: -

(5) fails to disclose a material fact known to him which is not disclosed in a financial statement, but disclosure of which is necessary in making such financial statement where he is concerned with that financial statement in a professional capacity”

Clause (6) of Part-I of the Second schedule

“A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he: -

(6) fails to report a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity”

Clause (7) of Part I of the Second Schedule.

“A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he: -

(7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties”

Clause (8) of Part-I of the Second schedule

“A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he: -

(8) fails to obtain sufficient information which is necessary for expression of an opinion, or its exceptions are sufficiently material to negate the expression of an opinion”

Clause (9) of Part-I of the Second schedule

“A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he: -

(9) fails to invite attention to any material departure from the generally accepted procedure of audit applicable to the circumstances”

Clause (1) of Part-II of the Second schedule

“A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he: -

(1) contravenes any of the provisions of this Act or the regulations made thereunder any guidelines issued by the Council

SUBMISSION OF THE RESPONDENT ON PRIMA FACIE OPINION: -

6. The Committee noted that the Respondent vide letter dated 17th December 2021 had submitted his submissions wherein he, inter-alia, stated as under: -
- a. That one Mr. Saurabh Jhaveri was the Interim Resolution Professional who took physical possession of all the accounting reports and handed over the same to the Complainant at the time of his appointment as the Final Resolution Professional. Therefore, the question of the Respondent having all the accounting report ruled out as per the Prima-facie opinion itself.
 - b. He was unaware of any appointment of a Resolution Professional until the accounts were prepared, audited and adopted as there was lack of communication or intimation. Even the Complainant neither communicate about finalization of accounts nor inquired about the Statutory Audit status of the accounts of the Company.
 - c. The Public notice u/s 17 of IBC, 2016 alone was not sufficient to prove any lack of bonafide on the part of the Respondent.
 - d. The signing of accounts by the then Directors was nowhere prejudicial to the interest of Revenue, Creditors, Shareholders and Lender. The Complainant did not intimate any time about the suspension of the Directors of the Auditee Company in spite of vast powers vested with him under the said Order of the NCLT.
 - e. The fire incident solely affected Unit II of the Auditee Company's factory, and thus there was no reason to doubt the Company's status as a Going Concern. There were no justifiable grounds to believe otherwise during the audit. The Respondent received explanations regarding efforts to recover losses, settle liabilities and revive business operations. The absence of a mention of the Going Concern Concept in the Audit Report aligns with the dropping of such reporting from CARO 2016. Regarding SA 570, the Respondent was reasonably assured of the management's intent to

continue operations, and temporary disruptions were not deemed indicative of an inability to revive the business as a Going Concern.

- f. All original bills, vouchers and Tally data were with the Company's management and were made available for audit. The communication dated 13th February 2019 produced by the Complainant regarding the production of documents / records of the Company, came after the audit was completed on 5th September 2018. The Complainant's claim of having possession of original documents since June 2018 raises questions about the need for Tally data from the Respondent. The Complainant neither intimated the Respondent about holding the original documents nor approached the Respondent for verification of the documents or working paper required by the Complainant. The Respondent asserts that as a Statutory Auditor, the Respondent Firm was not authorized to hold accounting data like Tally accounts and bills-vouchers of the client in their office premises.
- g. He had made the disclosure of the fire incident and its impact on assets adequately in the Audit Report and its annexure. Even the severe impact of the fire on the Company and the management's efforts to assess losses to plant, machinery and inventory was also highlighted.
- h. The Respondent, during a joint meeting with the surveyors, was not informed about any non-realizability of the insurance claim.
- i. The quantum of the insurance loss was quantified by the management and explained to the Respondent and therefore accordingly shown in the Financial Statements on the basis of loss of assets. The Respondent had nothing to do with further process in the settlement of insurance claim.
- j. The figures of inaccurate Schedule of Fixed Assets were clarified by the management and the same was necessary to rectify earlier error of presentation. The Tax Audit rectification became necessary in view of correction pointed out by the management. The Company was a closely held SME enterprise, the issuance of clarification by the Respondent has not resulted into any loss of revenue or any miscommunication or lack of

truth and fairness. In fact, the said certificate has actually clarified the correct figures pointed out in the management representation letter. The Respondent therefore requested to not to equate the said certificate with revision of accounts postulated u/s 131 of the Companies Act, 2013.

BRIEF FACTS OF THE PROCEEDINGS

7. The Committee note that the instant case was fixed for hearing on following dates:

S. No	DATE	STATUS OF HEARING
1.	27-12-2021	Part Heard and Adjourned
2.	11-04-2023	Part Heard and Adjourned
3.	25-08-2023	Heard and Concluded.

8. On the day of the first hearing held on 27th December 2021, the Committee noted that the Complainant was present from his place through Video Conferencing mode. The Respondent was not present and had sought adjournment on health issues. Thereafter, the Complainant was administered on Oath and looking into the fact that this being the first hearing, the Committee decided to adjourn the hearing to provide one more opportunity to the Respondent. Thus, the hearing in the matter was partly heard & adjourned.
9. On the day of the second hearing held on 11th April 2023, the Committee noted that the Complainant was present from his place through Video conferencing mode. The Committee further noted that the Respondent vide email dated 10th April 2023, sought adjournment due to the ill health of his counsel. Thereafter, looking into the adjournment request by the Respondent and the fact that this was the first hearing before the present bench, the Committee decided to adjourn the hearing to a future date. With this, the hearing in the matter was partly heard and adjourned.

10. On the date of third hearing held on 25th August 2023, the Committee noted that the Respondent and his Counsel CA Bhupendra Shah were present through Video Conferencing Mode. The Committee noted that the Complainant was also present through Video Conferencing Mode.
11. The Committee noted that the Complainant apart from his earlier submissions on record submitted that due to fraudulent financial statements submitted by the Respondent containing the negative figures of fixed assets, Honorable Court and Insurance Company rejected the insurance claim of Rs. Seven crores.
12. Thereafter the Respondent was asked to submit his submission, to which the Counsel of the Respondent stated that:
 - a) He was unaware about the fact that Board was superseded, and the Complainant had entered into the shoes of the existing Director(s).
 - b) Not even a single communication was made till date to the Respondent with regard to the appointment of the Complainant as Resolution Professional.
 - c) There were two units, and both were not burnt by fire. So, there was no reason to believe that the unit was not a Going Concern.
 - d) The Complainant had demanded the documents / records only after the date when the Balance Sheet was signed.
 - e) He had not done 100% verification of all the vouchers during the audit.
 - f) He asserts that there might be certain error(s) in presentation, but the ultimate result is positive, and ultimate figure is correct.
 - g) By mistake the wrong firm's name was mentioned by the Respondent. However, correct Firm membership number was mentioned.
 - h) During the joint meeting on July 12, 2018, no resolution professional was in attendance. Subsequently, allegations were made against the Respondent.

- i) He denied that the certificate was the revision of accounts. Section 131 of the Companies Act was not invoked, and he had not gone for revision of accounts.
- j) He had made provisional accounts on account of loss to the Company due to fire and had submitted them to the Bank as well as the Insurance Company.
- k) There was a difference in Secured and Unsecured loans, both increasing and decreasing, solely due to alterations in groupings.
- l) The Respondent was not aware of the availability of information for the purpose of auditing the financial statements of the Company.
- m) That the Complainant without going into details made the charges.

12.1 Thereafter, the Committee posed certain questions to both the parties to understand the issue involved and the role of the Respondent in the case. With this, the hearing in the matter was heard, concluded.

FINDINGS OF THE COMMITTEE

13. With respect to the **first charge** related to violation of the provisions of Insolvency and Bankruptcy Code, owing to the certification of financial statements by the suspended Director(s), despite the appointment of the Complainant being the Resolution Professional, the Committee noted that the Respondent has taken the defence that he was not aware about the initiation of Insolvency process of the Company and the appointment of the Complainant as Resolution Professional in relation thereto and that the signing of accounts by the then Directors was nowhere prejudicial to the interest of Revenue, Creditors, Shareholders and Lender. To which the Committee noted that Section 17 of Insolvency and Bankruptcy Code, 2016 provides that:

“Section 17: Management of affairs of corporate debtor by interim resolution professional.

- 1) **From the date of appointment of the interim resolution professional,—**
 - (a) *the management of the affairs of the corporate debtor shall vest in the interim resolution professional;*
 - (b) *the **powers of the board of directors** or the partners of the corporate debtor, as the case may be, **shall stand suspended and be exercised by the interim resolution professional;***
 - (c) *the officers and managers of the corporate debtor shall report to the interim resolution professional and provide access to such documents and records of the corporate debtor as may be required by the interim resolution professional;*
 - (d) *the financial institutions maintaining accounts of the corporate debtor shall act on the instructions of the interim resolution professional in relation to such accounts and furnish all information relating to the corporate debtor available with them to the interim resolution professional.*

- 2) *The interim resolution professional vested with the management of the corporate debtor shall—*
 - (a) *act and execute in the name and on behalf of the corporate debtor all deeds, receipts, and other documents, if any;*
 - (b) *take such actions, in the manner and subject to such restrictions, as may be specified by the Board;*
 - (c) *have the authority to access the electronic records of corporate debtor from information utility having financial information of the corporate debtor;*
 - (d) *have the authority to access the books of account, records and other relevant documents of corporate debtor available with government authorities, statutory auditors, accountants and such other persons as may be specified. may be specified; and*
 - (e) *be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor.”*

- 13.1 The Committee in view of the provisions of Insolvency and Bankruptcy Code, 2016, noted that there was no doubt that as on date of signing the annual audited accounts of the Company for FY 2017-18, the powers of the Board of Directors of the Company stood suspended and were to be exercised by the Resolution Professional who was also responsible to comply with the requirements of the law. The Committee noted that since the authority of the board of directors was suspended after the appointment of Resolution Professional vide an Order dated 30th May 2018 of Adjudicating Authority, thereby the Respondent should have ensured that the financial statements were signed by the Resolution Professional only and not by the suspended Director(s).
- 13.2 The Committee, with regard to the defense of the Respondent that he was not aware about the appointment of the Complainant as Resolution Professional, also noted that the information about the Resolution of the Company was given by way of an advertisement in English and a vernacular language newspaper and was also uploaded on the website designated for the purpose by Insolvency and Bankruptcy Board of India. Thus, there was no doubt that being the auditor of the Company, the Respondent was required to be fully aware of such proceedings held against the Company and the appointment of a Resolution Professional especially when Respondent was associated with the management of the Company for holding various meetings with various stakeholders as well as insurance surveyors.
- 13.3 Also, the Respondent was in regular touch / contact with the management and was helping the management to get insurance claim on humanitarian grounds. Thus, the Committee held that it is highly unexpected that the Respondent was not aware about the appointment of Resolution Professional.
- 13.4 Further, if it is assumed that the directors of the Company had kept the Respondent in dark regarding insolvency proceedings, then the Respondent was required to submit any document to evidence that he had taken any action against the directors. The Committee noted that the Respondent failed to produce any document regarding the same and due to misdeeds of the directors, the Respondent had to face disciplinary proceedings.

13.5 The Committee also noted that the law explicitly stipulates that the powers of the Board of Directors of the Company stood suspended and were to be exercised by the Resolution Professional i.e., the Complainant. Thus, considering the facts on record and the submission of the Respondent, the Committee noted that Respondent's negligence in pointing out the defect in certification of the financial statement of the Company constitute a breach of the provisions outlined in the Insolvency and Bankruptcy Code (IBC), 2016.

13.6 Accordingly, the Committee observed that the Respondent failed to exercise due diligence in conduct of his professional duties and held the Respondent **Guilty** of Professional Misconduct for the said allegation within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

14.1 The Committee with regard to **second charge** related to non-qualification of the audit report on the grounds that the Company not being a Going Concern had prepared its accounts on going concern basis, noted that the Respondent had stated that firstly there were two units of the Company and fire was held only in one unit and secondly as per their verification, observations and explanations given by the management, at the time of signing the financial statements, it was nowhere determined that the Company would not continue as going concern. The Committee noted that the Respondent had also stated that the management was struggling to recover the loss from the Insurance Company to pay to bankers, settling liability of creditors along-with maintaining the customers.

14.2 The Committee further noted that contradictorily, the Complainant informed that

"It was Unit II, which was the only owned unit of the Company, and it was entirely destroyed by fire, even the entire building, machineries and stock in hand were destroyed and that the manufacturing operations of the Company were closed which was also reported by the Respondent in his Audit Report. However, the fact as to whether the Company would continue as going

concern in near future was neither discussed in notes to accounts nor in the audit report”.

14.3 The Committee noted that the Respondent failed to negate the above statement by placing documentary evidence in this regard.

14.4 The Committee noted that SA 570, Going Concern provides that:

“Going Concern Basis of Accounting

(2) Under the going concern basis of accounting, the financial statements are prepared on the assumption that the entity is a going concern and will continue its operations for the foreseeable future. General purpose financial statements are prepared using the going concern basis of accounting, unless management either intends to liquidate the entity or to cease operations, or has no realistic alternative but to do so.

...

(11) The auditor shall remain alert throughout the audit for audit evidence of events or conditions that may cast significant doubt on the entity’s ability to continue as a going concern.

...

(20) If events or conditions have been identified that may cast significant doubt on the entity’s ability to continue as a going concern but, based on the audit evidence obtained the auditor concludes that no material uncertainty exists, the auditor shall evaluate whether, in view of the requirements of the applicable financial reporting framework, the financial statements provide adequate disclosures about these events or conditions.

...

(21) If the financial statements have been prepared using the going concern basis of accounting but, in the auditor’s judgment, management’s use of the going concern basis of accounting in the preparation of the financial statements is inappropriate, the auditor shall express an adverse opinion.”

- 14.5 The Committee also noted that the fact as to whether the Company would continue as going concern in near future was neither discussed in notes to accounts nor in the Audit Report given by the Respondent.
- 14.6 Further, from the documentary evidence(s) on record, the Committee noted that the Respondent had provided copies of certain Sales Bills, Purchase Bills, Electricity Bills and Bank Statements vide his letter dated 17th December 2021 which as per him indicates the relevance of Going Concern. It was also noted that out of the said Purchase and Sales Bills, few were dated January and February 2018, and the Bank Statement pertains to the period 01.04.2017 - 19.03.2018.
- 14.7 It was also noted that the Bank statement merely contains the payment with respect to the loan. Thus, the Committee observed that the mere submission of bills was insufficient to establish the Company's status as a Going Concern especially when the Respondent had not provided any evidence on record which indicates the Management's future plans to revive the business.
- 14.8 Thus, the Committee noted that the Respondent has failed to obtain sufficient audit evidence and has also failed to disclose a material fact known to him in his Audit Report. Accordingly, the Committee held the Respondent **Guilty** of Professional Misconduct falling within the meaning of Item(s) (5), (6), (7) and (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949.
- 15 The Committee with regard to the **third charge** regarding conducting of the audit without original records by the Respondent and had not provided audit evidence and working papers upon request to the Complainant, noted that the Respondent has neither provided the Trial Balance, Ledger Accounts of Trade Payables, Loan Accounts nor the bills of Fixed Assets purchased. Even the Respondent has not provided the working paper(s) / audit evidence to establish his submissions that he had conducted the audit after considering the original records of the Company.
- 15.1 The Committee noted that as per the claim of the Complainant that since the original accounting records of the Company for FY 2017-18 were in the

possession of the interim resolution professional from the time of date of commencement of insolvency proceedings of the Company i.e., 05th March, 2018 and thereafter received by the Complainant in June 2018 the Complainant had alleged doubt on the accounting records based on which the audit was conducted by the Respondent.

- 15.2 The Committee noted that the Respondent had contended to have audited provisional accounts of the Company for the period 01.04.2017 to 23.10.2017 (i.e., till the date when fire has occurred) signed as on 30.01.2018 and on comparing the provisional financial statements with the annual audited accounts of the Company for F.Y. 2017-18 signed as on 05.09.2018, it was found that there was a significant difference in the basis for preparation and the figures of provisional accounts vis a vis annual audited accounts of the Company for F.Y. 2017-18.
- 15.3 Further, considering copy of few purchase and sales bills provided by the Respondent, the Committee noted that the same were insufficient to demonstrate / establish that the Respondent had audited the Financial Statements taking into consideration the original records of the Company and that too only relates to the month of January and February 2018 only.
- 15.4 Moreover, Committee also noted that if the Respondent had declared to have examined the Bank Books, Cash Book, Journal, Ledger, Purchase Register, Sales Register as well as Stock Register for tax audit and that if tally data was available with him, he would have had provided all due working papers as envisaged in SA-230.
- 15.5 Accordingly, the Committee concluded that the Respondent conducted his audit without proper books and vouchers thereby, he is **Guilty** of Professional Misconduct falling within the meaning of Item (2), (7) and (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949.
- 16 With regard to the **fourth charge** of various discrepancies in the financial statements detailed in following paragraphs:

- 16.1 With regard to the **first leg** of instant charge relating to reporting of negative figures of fixed assets namely plant and machinery, electrical installation, furniture and fixture in Schedule G to financial statements, the Committee noted that the said schedule G of Tangible Assets in the financial statements of the Company for the financial year 2017-2018, certain negative figures of fixed assets were shown as under:

Assets	Balance as on 01.04.2017	Addition during the year	Sales during the year	Balance as at 31.03.2018	As on 01.04.2017	Charged during the year	Total	Balance as at 31.03.2018
Unit 2:								
Plant and Machinery	1,06,65,682	83,87,237	1,75,25,100	15,27,819	44,40,355	6,58,350	50,98,714	(35,70,895)
Unit 1:								
Plant and Machinery	89,87,580	--	72,51,500	17,36,080	51,27,285	4,18,665	55,45,950	(38,09,870)
Electric Installation	6,52,021	--	17,59,138	(11,07,116)	4,16,636	37,160	4,53,796	(15,60,912)
Furniture & Fixture	3,76,613	--	2,24,100	1,52,513	2,46,544	20,098	2,66,642	(1,14,129)

- 16.2 From the above schedule of Fixed Assets, the Committee noted that the Company had disclosed the negative value of fixed assets namely plant and machinery, electrical installation, furniture and fixture at Rs. 38.09 lakh, Rs. 15.60 lakhs and Rs. 1.14 lakh in the net block balance as on 31.03.2018.
- 16.3 Though the total value of net block of all fixed assets was reported as Rs 30,55,007/-, but it is observed that figure of land itself was Rs 40,50,767/- and that means that other assets were demonstrating negative figures. Thus, whole schedule was absurd and in violation of accounting principles.
- 16.4 The Committee also noted that as evident from the said schedule, the depreciation has been charged appropriately, but owing to the value of sales during the year of the said fixed assets amounting to Rs. 175.25 lakh, Rs. 72.51 lakh, 17.59 lakh and 2.24 lakh disclosed in the said schedule, the net

block of fixed assets amounts at negative value(s) of Rs. Rs. 38.09 lakh, Rs. 15.60 lakhs and Rs. 1.14 lakh as on 31.03.2018.

- 16.5 The Committee in this regard noted from AS 10, Property, Plant and Equipment which provides that:

“De-recognition

74. The carrying amount of an item of property, plant and equipment should be derecognised

(a) on disposal; or

(b) when no future economic benefits are expected from its use or disposal.

75. The gain or loss arising from the derecognition of an item of property, plant and equipment should be included in the statement of profit and loss when the item is derecognised (unless AS 19, Leases, requires otherwise on a sale and leaseback). Gains should not be classified as revenue, as defined in AS 9, Revenue Recognition.”

- 16.6 The Committee noted that as per the provisions of Accounting Standard 10 (AS 10), it is clear that when a particular fixed asset block is sold, then the carrying amount of the disposed asset along with any accumulated depreciation and impairment losses is to be removed from the relevant balance sheet and any gain or loss on the disposal should be recognized in the statement of profit and loss unless it is related to revalued assets.

- 16.7 However, the Committee noted that the Company had recognized the said sales of fixed assets at sales proceeds value (including the gain) and not at carrying value of the said fixed assets. Further, the Committee noted that the Respondent, being the auditor of the Company, had failed to acknowledge and report the same. The Committee also noted that in this regard the Respondent instead in his submissions at a later stage had only asserted that there would be certain error(s) in presentation, but the ultimate result was positive and ultimate figure was correct. Thus, the Committee concluded that this indirect acknowledgment implies an acceptance of mistakes, concealed

through mitigating statements by Respondent. Accordingly, this negligence on the part of the Respondent is not acceptable.

- 16.8 With regard to the **second leg** of the instant charge related to violation of AS-9 pertaining to recognition of insurance claims based on claims lodged with the Insurance Company without considering its certainty, the Committee noted that, as per AS 9, revenue is to be recognized when the same is measurable and realized, however in the instant matter the Respondent had not ensured that the insurance claim has been recognized or not, and despite the same has not been realized the Respondent had acknowledged the same by auditing the financial statements and without giving any qualification report. Even the Respondent in his submission had also admitted that he had not ensured the settlement of insurance claim, nor he was informed about the non-realizability of the same and had also stated that he had nothing to do with further process in the settlement of insurance claim. Thus, considering the fact of the matter and submissions of the Respondent, the Committee noted that recognition of insurance claim as lodged without the same being realized was not in line with the requirements of AS 9. Thereby, the Committee viewed that the Company has violated the requirement of AS 9 and the Respondent being the auditor has not reported the same in his Audit Report.
- 16.9 With regards to the **third leg** of the instant charge related to non-reporting of Order under Section 9 of IBC declaring commencement of Corporate Insolvency Resolution process in the Audit Report, the Committee noted that as soon as Resolution Professional was appointed, the Company had an obligation to provide a resolution plan – with realistic approach in the absence of which the Company would be liquidated. Moreover, the Committee noted that the Respondent in his submission at a later stage has also stated that he was unaware about the said Order. The Committee noted that it is the duty of an auditor to obtain sufficient audit evidence to conclude that if the preparation of financial statements of an entity was on going concern basis or not, and the non-disclosure and indirect admission of the Respondent about being unaware of the NCLT Order indicates Respondent's negligence in

obtaining sufficient documentary evidence while conducting the audit. Thus, the Committee concluded that considering the material impact of non-reporting of Order of commencement of CIRP led to omission of material information which was known to the Respondent. Hence, non-disclosure of such significant event was not acceptable on the part of the Respondent being the auditor of the Company.

16.10 With regards to the **fourth leg** of the instant charge related to the use of wrong name of the audit firm in Form 3CA, the Committee noted that the name of the Firm M/s. Keshav Chaubey & Co. was changed to M/s. KMA & Co. w.e.f. 28.11.2016. Thus, the Respondent should have used the new name M/s. KMA & Co. Thereby, the Committee concluded that the usage of Firm name M/s. Keshav Chaubey & Co. which was no more approved for usage is in violation of CA Regulation 190.

16.11 Accordingly, the Committee viewed that for the above legs of the allegation the Respondent is held **Guilty** of Professional Misconduct within the meaning of Items (5), (6), (7) and (9) of Part I as well as item (1) of Part II of Second Schedule to Chartered Accountants Act, 1949.

17 With regard to **fifth charge** relating to issuance of certificate revising the figures of annual audited accounts as well as tax audit returns of the Company based on management representation letter, it was noted that in the said certificate, the Respondent had mentioned that there was mistake in addition of fixed assets payment as certain fixed assets were unrecorded. The payment of these fixed assets was made through Bank.

17.1 The Committee noted that for rectification of the mistake in value of fixed assets, the Respondent had issued a certificate certifying the adjustments made in the value of annual audited accounts. In the said certificate, the Respondent had certified that the value of Fixed Assets was to be reduced by Rs. 10,102/- and the value of Secured Loans was to be increased by Rs. 27,42,521/- and subsequently for balancing the Unsecured Loans should be reduced by Rs. 8,44,203/- and Trade Payables by Rs. 19,08,420/-.

- 17.2 On consideration of the said certificate, the Committee noted that such an act of change in the figures of fixed assets cannot be perceived as issuance of certificate as it had resulted in changes of annual accounts and further the Income tax return of the Company.
- 17.3 Further, in this regard the Respondent in his submissions at later stage stated that issuance of clarification in the certificate had not resulted into any loss of revenue or any miscommunication and in fact, the certificate had clarified the correct figures pointed out in management representation letter. Thereby, the said certificate shall not be equated with revision of accounts as per Section 131 of the Companies Act, 2013.
- 17.4 However, considering the facts on record and submission of the Respondent, the Committee also noted that the Respondent had failed to explain the law under which he opted to revise the Annual Accounts or Tax Audited Accounts. The Committee observed that since the said changes resulted in changes of Annual Accounts under Section 131 of Companies Act, 2013, thereby imposing other obligations on the directors to ensure that information about such revision is communicated to all readers who received the original ones and also requires revision of other documents viz. director's report.
- 17.5 The Committee noted that there was no revision in the Director's Report. Thus, the Committee held that such issuance of certificate by the Respondent without exercising due diligence resulted in the Company not discharging with other obligations which led to violation of the Companies Act, 2013.
- 17.6 Accordingly, the Committee held the Respondent **Guilty** of Professional Misconduct within the meaning of Items (6), (7) and (8) of Part I of Second Schedule to Chartered Accountants Act, 1949.

CONCLUSION

- 18 In view of the above observations, considering the submissions of the Respondent and documents on record, the Committee held the Respondent **GUILTY** of Professional Misconduct falling within the meaning of Items (2), (5), (6), (7), (8) and (9) of Part-I of the Second Schedule as well as Item (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

Sd/-

**(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER**

Sd/-

**(MRS. RANI NAIR, I.R.S. RETD.)
GOVERNMENT NOMINEE**

Sd/-

**(SHRI ARUN KUMAR, I.A.S, RETD.)
GOVERNMENT NOMINEE**

Sd/-

**(CA. SANJAY KUMAR AGARWAL)
MEMBER**

Sd/-

**(CA. SRIDHAR MUPPALA)
MEMBER**

DATE: 07th February, 2024

PLACE: New Delhi