



भारतीय सनदी लेखाकार संस्थान

(संसदीय अधिनियम द्वारा स्थापित)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

[DISCIPLINARY COMMITTEE [BENCH-IV (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.

[PPR/P/57/2017-DD/356/INF/2017-DC/1253/2019]

In the matter of:

**CA. Vishal Chandra Gupta (M. No. 093908),
1214, Chiranjiv Tower 43,
Nehru Place,
New Delhi- 110019**

.....Respondent

MEMBERS PRESENT:

- 1. CA. Ranjeet Kumar Agarwal, Presiding Officer (In person)**
- 2. Shri Jiwesh Nandan, I.A.S (Retd.), Government Nominee (In person)**
- 3. Ms. Dakshita Das, I.R.A.S. (Retd.), Government Nominee (Through VC)**
- 4. CA. Abhay Chhajed, Member (In person)**

DATE OF HEARING : 19th MARCH, 2024

DATE OF ORDER : 16th May,2024

1. That vide Findings dated 05.02.2024 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. Vishal Chandra Gupta (M. No. 093908)** (hereinafter referred to as the **Respondent**) is **GUILTY** of Professional Misconduct falling within the meaning of Clauses (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

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

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3. The Committee noted that on the date of hearing on 19th March 2024, the Respondent was not present at the appointed time, despite the fact that a notice intimating the date, time and venue of the meeting was duly served upon him through speed post and email. However, the Committee noted that the Respondent had submitted written representation dated 27th February 2024 on the Findings of the Committee, which, inter-alia, are given as under:

- (a) There was no gross negligence or otherwise on his part.
- (b) He diligently performed the professional duties.
- (c) The certificate in question was not itself an "utilisation certificate" of IPO funds but was a certificate of sharing of limited extracts of audited balance sheet.
- (d) The Pendency of disciplinary proceedings for 6 years had already given immense pain and stress to the Respondent which itself caused more than a punishment to him.
- (e) He requested the Committee to take a sympathetic view in the present matter.

4. The Committee considered the reasoning as contained in the Findings holding the Respondent Guilty of Professional Misconduct vis-à-vis written representation of the Respondent. The Committee noted that the issues/ submissions made by the Respondent as aforesaid have been dealt with by it at the time of hearing under Rule 18.

5. Thus, keeping in view the facts and circumstances of the case, material on record including written representation of the Respondent on the Findings, the Committee noted that there was a contradictory information between the audit report and the subject certificate issued by the Respondent on the same date i.e., 30th May 2015 regarding the utilization of IPO proceeds by the Company. The Committee observed that there was a significant variance of Rs. 1479.32 lakhs between the amount proposed to be utilized as per the prospectus and the actual utilization certified by the Respondent in the subject certificate; and that the subject certificate does not mention anywhere that it should be read in conjunction with the audit report containing the qualified opinion.

6. The Committee held that the Respondent issued a certificate that provided wrong and misleading information about utilization of IPO proceeds by the Company and failed to appropriately point out the discrepancies in the utilization of IPO proceeds by the Company. The Committee noted that actual utilization of IPO proceeds was significantly different from the certificate issued by the Respondent and that the utilization certificate issued by him was not true, and contained information in a distorted manner which might mislead the decision of the

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investors. Hence, the Professional Misconduct on the part of the Respondent is clearly established as spelt out in the Committee's Findings dated 05th February 2024, which is to be read in consonance with the instant Order being passed in the case.

7. Accordingly, the Committee was of the view that the ends of justice would be met if punishment is given to him in commensurate with his Professional Misconduct.

8. Thus, the Committee ordered that the name of the Respondent i.e., CA. Vishal Chandra Gupta (M. No. 093908) be removed from the register of members for a period of 06 (Six) months.

Sd/-

(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

Sd/-

(SHRI JIWESH NANDAN, I.A.S. {RETD.})
GOVERNMENT NOMINEE

Sd/-

(MS. DAKSHITA DAS, I.R.A.S. {RETD.})
GOVERNMENT NOMINEE

Sd/-

(CA. ABHAY CHHAJED)
MEMBER

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

Charan Singh

श्री ए.ए. चरण सिंह / Charan Singh

कार्यकारी अधिकारी / Executive Officer

अनुशासनिक निदेशक / Disciplinary Director

भारतीय सनदी लेखाकार संस्थान

The Institute Chartered Accountants of India

आईसीआईएन, बंगला, बिल्डिंग नगर, बाराक, दिल्ली-110032

ICAI Bhawan, Vishwa Nagar, Barak, Delhi-110032

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – IV (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.: [PPR/P/57/2017-DD/356/INF/2017-DC/1253/2019]

In the matter of:

**CA. Vishal Chandra Gupta (M. No. 093908), New Delhi in Re:
408, Kusal Bazar,
32-33, Nehru Place,
New Delhi- 110019**

MEMBERS PRESENT:

**CA. Ranjeet Kumar Agarwal, Presiding Officer (in person)
Shri Jiwesh Nandan, I.A.S. (Retd.), Goevrnment Nominee (in person)
Ms. Dakshita Das, I.R.A.S. (Retd.), Government Nominee (in person)
CA. Mangesh P Kinare, Member (through VC mode)**

DATE OF FINAL HEARING : 26th December 2023

PARTIES PRESENT:

**Respondent : CA. Vishal Chandra Gupta (through VC)
Counsel for Respondent : Adv. Bhaskar Bhardwaj (through VC)**

1. Background of the Case:

Investigation in the matter of IPO of M/s Tarini International Limited ('Company') was conducted by the Informant Department and pursuant to investigation, it was inter alia observed that the Company did not utilize the IPO proceeds for the purpose of objects stated in the prospectus and diverted the IPO proceeds to various entities through group companies and other entities. The Respondent was the Statutory Auditor of the Company and had audited its financial statements and issued his audit report for the

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Financial Year 2014-15 on 30th May 2015. The Respondent had also issued a certificate on 30th May 2015 certifying the utilization of IPO proceeds received by the Company.

2. Charges in brief:

2.1 During the investigation, it was observed that the Respondent, being the Statutory Auditor of the Company, had issued a certificate dated 30th May 2015, certifying that the Company had incurred Rs. 1630.98 lakhs out of IPO proceeds for the purpose of objects stated in the prospectus. It was observed that the actual utilization of IPO proceeds for the purpose of objects stated in the prospectus, ascertained pursuant to the investigation, was significantly different from the certificate issued by the Respondent. Thus, it was observed that the certificate issued by the Respondent, certifying the utilization of IPO proceeds by the Company, was not true and the same was misleading and contained information in distorted manner which might influence the decision of the investors.

3. The relevant issues discussed in the Prima facie opinion dated 28th August 2018 formulated by the Director (Discipline) in the matter in brief, are given below:

3.1 On perusal of the certificate dated 30th May 2015, it was noted that the Respondent had stated therein that 'he had examined the audited accounts of the subject Company with reference of utilization of the proceeds of public issue and based upon his examination of books and explanation and information provided to him, he certified the expenditure incurred by the Company out of proceeds of public issue'. Thus, it was apparent from the contents of the certificate that the same was based upon audited financial statements, which itself was certified / audited by the Respondent on the same day i.e., on the day of issuing certificate.

3.2 On perusal of the audit report issued by the Respondent for the Financial Year 2014-15, it was observed that the Respondent had reported the following in his audit report:

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"We draw attention to the note 30 of the financial statements whereby the holding company has raised the money by way of Public Issue, during the year. Further, there has been variation in the utilisation of money, between the objects of public issue contained in the prospectus and actual utilisation, which was needed to be authorised from the members. In view of this, we are unable to comment upon the appropriateness of variation in utilisation of money by holding company."

3.3 Further, in the certificate dated 30th May 2015, the Respondent in the very first line, had made a reference to the audited accounts of the Company and thereafter, provided the details of utilization. It was thus observed that the Respondent had made necessary disclosure in his Audit Report with regard to the variation in utilization and had indirectly given a reference to the audited accounts of the Company while issuing the certificate.

3.4 It was observed that the allegations received from SEBI percolates from the fact that they had sought an explanation from the Respondent as to the basis of his certification but the Respondent in his reply to them, had been able to produce evidence in respect of utilization to the tune of Rs. 151.60 lakhs only which was at variance with the amount mentioned in certificate for Rs. 1630.98 lakhs. Thus, considering an overall view of the facts and circumstances of the case, it was difficult to accept the explanation of defence taken by the Respondent as there were some irregularities in the actual amount utilised which was at variance with the certification done by the Respondent. Therefore, on this aspect, it was felt that the matter required to be looked into for further investigation.

3.5 Further, looking into the contents of the certificate issued by the Respondent, it was apparent that the Respondent had certified that the amount (i.e. Rs. 1630.98 lakhs) proposed to be utilized as per the prospectus had been actually utilized i.e. Rs. 1630.98 lakhs. However, it was observed that in respect of General Corporate purpose, the amount proposed to be utilized as per prospectus was Rs. 250.00 lakhs but actual expense incurred for said purpose was Rs.430.00 lakhs. Similarly, issues of expenses incurred were also more than what were proposed in the prospectus.

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3.6 The Respondent in his written statement had also submitted that the said certificate was issued clearly stating that the same was based upon audited accounts of the Company which meant that the certificate was required to be read with audited accounts which included qualification / emphasis of matter in actual utilization of IPO proceeds. This inference was not correct interpretation of the said certificate as it was unlikely that the said certificate would have been necessarily read with the audited financials of the Company as being inferred by the Respondent. The plea/defence of the Respondent was thus not acceptable as by perusal of the certificate dated 30th May 2015 issued by the Respondent, it was observed that it was not coming out that this certificate was required to be read along with audited accounts of the Company.

3.7 The Director (Discipline) in his Prima Facie Opinion dated 28th August 2018 opined that the Respondent was Guilty of Professional Misconduct falling within the meaning of Clause (7) and (8) of Part – I of the Second Schedule to the Chartered Accountants Act, 1949. The said Clauses of the Schedule to the Act, states as under:

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."

3.8 The Prima facie opinion formed by the Director (Discipline) was considered by the Disciplinary Committee at its meeting held on 25th November 2019. The Committee on consideration of the same, concurred with the reasons given against the charges and thus, agreed with the prima facie opinion of

the Director (Discipline) that the Respondent is GUILTY of Professional Misconduct falling within the meaning of Clause (7) and (8) of Part – I of the Second Schedule to the Chartered Accountants Act, 1949 and accordingly, decided to proceed further under Chapter V of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. The Committee also directed the Directorate that in terms of the provisions of sub-rule (2) of Rule 18, the prima facie opinion formed by the Director (Discipline) be sent to the Respondent including particulars or documents relied upon by the Director (Discipline), if any, during the course of formation of prima facie opinion and the Respondent be asked to submit his written statement in terms of the provisions of the aforesaid Rules, 2007.

4. Date(s) of Written submissions/Pleadings by parties:

The relevant details of the filing of documents in the instant case by the parties are given below:

S. No.	Particulars	Dated
1.	Date of 'Information Letter'	17 th January 2018
2.	Date of Written Statement filed by the Respondent	28 th February 2018
3.	Date of Prima facie Opinion formed by Director (Discipline)	28 th August 2018
4.	Date of further submissions filed by the Respondent	29 th June 2020 and 21 st December 2023
5.	Date of further submissions filed by the Complainant	09 th March 2020

5. Further written submissions filed by the Respondent:

5.1 The Committee noted that the Respondent vide letters dated 29th June 2020 and 21st December 2023 had made additional written submissions. The Committee noted the Respondent's submissions stating that while issuing the certificate of utilization of IPO proceeds, he had considered the definition of 'Working Capital' and 'General Corporate Purposes' as per relevant

Guidance Note issued by ICAI and Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations 2009 respectively. The Respondent submitted that while issuing the certificate of utilization of IPO proceeds, he had considered the definition of 'Working Capital' as per the Guidance Note on terms used in Financial Statements GN(A) 5 issued by ICAI which states that the "working capital is funds available for conducting day-to-day operations of an enterprise. Also, represented by the excess of current assets over current liabilities including short term loans" and the definition of "General Corporate Purposes" as per the Regulation 2(na) of the SEBI (ICDR) Regulations is "General Corporate Purpose include such identified purposes for which no specific amount is allocated or any amount so specified towards General Corporate Purpose or any such purpose by whatever name called, in the draft offer document filed with the Board. According to the proviso to the said clause, any issue related expenses shall not be considered as a part of General Corporate Purpose merely because no specific amount had been allocated for such expenses in the draft offer document filed with the Board". The Respondent further submitted that GM, SEBI vehemently failed to consider these definitions while alleging that the actual utilization was lower than the amounts mentioned in the certificate. These definitions, in fact, were the basis of working of actual utilization of IPO funds as stated in the certificate when compared with the proposed utilization as per the Prospectus as there were no specific accounting heads such as "Working Capital" and "General Corporate Purpose" in any accounting framework.

5.2 The Respondent further submitted that the alleged variance i.e., figures in the certificate dated 30th May 2015, were amounts not actually utilized, was a result of convenient disregard of accounting and accounting terms / important definitions as per the Guidance Note issued by ICAI and the SEBI (ICDR) Regulations, 2009, by SEBI. It is also submitted that the certificate in comparative tabular form showing inter head variance was self-explanatory.

5.3 The Respondent further added that the amounts in the certificate dated 30th May 2015 were amounts actually utilized / incurred and duly recorded in the books of account based on supporting documents and vouchers. Therefore, there was no variance. As regards the inter head variance, the same was

given in comparative tabular form, which was self-explanatory and had more clarity for any literate user / investor. The Respondent stated that the certificate dated 30th May 2015 was not included in the Annual Report. The director's report, however, on Page 15 of the Annual Report contained the table of "Disclosure in respect of the utilization of funds in terms of the Prospectus" showing the comparative figures of proposed and actual utilization of IPO proceeds along with a note that *'the Statutory Auditor has qualified his report on this account. Your directors have given their reply regarding this qualification elsewhere in this report'*. Therefore, the reason given that there was no mention of qualification as marked by the Respondent in Audit Report, was unfounded, baseless and without any substance as such allegation's percolates from the imagination that the certificate was included in the Annual Report, and which might influence the decision of investor.

5.4 The Respondent has also provided a statement showing the reconciliation of amount utilized with the amount alleged as wrongly certified in Annexure -1. The said statements is reproduced below:

ANNEXURE -1 Statement showing reconciliation of amount utilized with the amount alleged as wrongly certified					
Objects of the issue	Amount proposed to be utilized as stated in the prospectus (Rs. In Lacs)	Amount utilized as certified by Statutory auditor in its Utilization Certificate dated 30.05.2015 (Rs. In Lacs)	Actual Utilization of fun funds allegedly ascertained pursuant to investigation for which statutory auditors provided the documents (Rs. In Lacs)	Amount allegedly wrongly certified by the auditor (Rs. In Lacs)	Reference of figures in the audited accounts as at 31.3.2015 based on actual transaction duly recorded in the books of account on the basis of supporting documents and vouchers

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To Finance Long Term Incremental Working Capital Requirements	1000	888.38	14.90	873.48	Short term loans and advances to related parties under Note - 10 LOANS AND ADVANCES	
					Name of the party	Amount (Rs. in Lakhs)
					Tarini Infrastructure Limited	400.00
					Tarini Wilderness Innovations Pvt Ltd	65.00
					Venture Infrastructure Limited	175.00
					B. Soilmec India Private Limited	45.00
					Banthia Fintrade Private Limited	100.00
					Total (a)	785.00
					Repayment of dropline Overdraft facility (b) - Rs. 55.38 lakh Salaries Paid © - Rs. 33.10 lakh Grand Total -- Rs. 873.48 lakhs (a+b+c)	
Renovation and interior of Registered Office	160	159.28	2.70	156.58	Short term loans and advances to related parties under Note - 10 LOANS AND ADVANCES	

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					B Soilmec India Private Limited (a) - Rs.120 Lakhs CWIP (b) - Rs. 36.58 Lakhs Grand Total - Rs. 156.58 Lakhs [(a)+(b)]
Brand Building	150	72.95	54.02	18.93	Salary of senior Management (a) - Rs. 11.90 Lakhs Travelling Expenses (b) - Rs. 2.29 Lakhs Payment to (c) Raka Advertising -Rs. 2.00 Lakhs Prana PR Pvt Ltd - Rs.2.74 Lakhs Grand Total - Rs. 18.93 Lakhs [(a)+(b)+(c)]
General Corporate Purposes	250	430	-	430	Short term loans and advances to Related Parties under Note - 10 LOANS AND ADVANCES Tarini Sugar & Distillaries Limited - Rs. 430 Lakhs
Issue Expenses	70.98	80.37	80.05	0.32	Courier expenses - Rs. 0.32 Lakhs to Seaman International Inc.
Total	1630.98	1630.98	151.66	1479.32	

5.5 The Respondent stated that pursuant to the IPO, the amount was utilized through the Company's subsidiaries i.e., Tarini Infrastructure Limited, Tarini Wilderness Innovations Pvt Ltd, Venture Infrastructure Limited, B. Soilmec India Private Limited, and Banthia Fintrade Private Limited as given in the above table under Long-Term Working Capital Requirement. The Respondent stated that it was not in dispute that the alleged amount had not

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been transferred to these companies. These were actually incurred and duly recorded in the books of account, correctly classified, and presented in financial statements. SEBI had considered these payments in isolation as payment to related parties and in its information letter, an attempt had been made to allege that the Company had by way of transfer of such funds had financed the capital expenditures of its group companies which was wrong. Attention was drawn to the Agreements entered between the Company and its subsidiaries which clearly showed that the same was paid for working capital requirements. It was also clarified that the Company to maintain the transaction at arm's length had made a provision of interest @ PLR+2% to TIL whereas SEBI had erred in terming the same as financial activity.

- 5.6 The Respondent in respect to the issue pertaining to details of qualification given in the Audit Report with reference to the Note 28 and 30 in standalone / consolidated accounts submitted that the CARO notified on 10th April 2015 had done away with the requirement of reporting on the end use of money raised by public issues. However, he had applied his professional skepticism and during the audit procedures, noted the variation in the heads and accordingly, qualified his audit report for variation in utilization of money so raised regarding the objects of IPO. The Company had made a disclosure in Note no. 28 of its financial statements for the FY 2014-15 in respect of listing of its fully subscribed shares which was referred to in the basis for qualified opinion paragraph in Auditor's report. The Respondent stated that it was a pertinent fact that the GM, SEBI did not raise any concern about the audited accounts, or the audit report issued thereupon.

6. **Further written submissions filed by the Informant:**

- 6.1 The Informant vide letter dated 09th March 2020 stated that the adjudication proceedings were approved against the Respondent firm (i.e., VCG & Co.) and the Respondent in the subject matter by the competent authority of SEBI and adjudication order dated 20th February 2020 had been passed. The Informant provided the copy of said order dated 20th February 2020 wherein the competent authority of SEBI had imposed a penalty of Rs 15,00,000/- (Rupees Fifteen Lakh only) on the Respondent firm (i.e., VCG & Co.) and the Respondent jointly and severally in terms of section 15HA of the SEBI Act, for the violation of the provisions of section 12 A (a), (b) and (c) of the SEBI

Act, 1992 and Regulations 3 (a), (b), (c), (d), 4(1), 4 (2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations.

7. Brief facts of the Proceedings:

7.1 The details of the hearing(s) fixed and held/adjourned in said matter is given as under:

Particulars	Date of meeting(s)	Status
1 st time	02 nd May, 2023	Part heard and adjourned.
2 nd time	14 th December, 2023	Part heard and adjourned.
3 rd time	26 th December, 2023	Hearing concluded and decision taken

7.2 On the day of first hearing on 02nd May 2023, the Committee noted that the Respondent along with his Counsel, were present through Video Conferencing Mode. Thereafter, the Respondent was put on oath and the Committee enquired from the Respondent as to whether he was aware of the charges; and the same as contained in Para 2 above, were also read out. The Respondent replied that he is aware about the charges but pleaded 'Not Guilty' on the charges levelled against him. Thereafter, in view of Rule 18(9) of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee adjourned the case to a later date and accordingly, the matter was part heard and adjourned.

7.3 On the next date of hearing on 14th December 2023, the Committee noted the presence of the Respondent along with his Counsel through video-conferencing mode. The Committee asked the Counsel to present his submissions in the matter. The Counsel for the Respondent submitted that the Respondent was Statutory Auditor of the Company, and he had audited the financial statements of the Company and on the same date, he had issued the certificate in respect of utilization of IPO proceeds of the Company. He further submitted that in the certificate, the Respondent had clearly stated that this was based upon the audited financial statements of the Company, and hence the certificate should be read along with the financial statements. After considering the submissions of the Counsel for the Respondent, the Committee directed him to file his reply / submissions

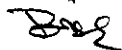
on four points, within 10 days, viz., the qualification given in the independent audit report, the certificate issued by him where the actual utilization certified by him was not in consonance with the report of the investigation done by the SEBI, contradictions coming in the audit report and the subsequent certificate issued by him and the order of the Adjudicating Authority imposing some penalty and the order of Securities Appellate Tribunal (SAT). Thus, the matter was part heard and adjourned to a later date.

7.4 On the day of final hearing on 26th December 2023, the Committee noted the presence of the Respondent along with his Counsel though video conferencing. Thereafter, the Committee asked the Counsel for the Respondent to present his submissions. The Counsel submitted that the certificate issued by the Respondent was not a utilization certificate. It was a replica of the contents reproduced in the audit report. It was neither a fresh certificate nor a certificate issued for any other purpose. Secondly, the prospectus issued for raising IPO was with regard to the completion of projects for which long-term capital was required.

7.5 After detailed deliberations, and on consideration of the facts of the case, various documents / material on record as well as the oral and written submissions, the Committee concluded the hearing in the instant case.

8. **Findings of the Committee:**

8.1 The Committee after considering the submissions made by the Respondent, thoroughly examined the charges, and noted that the Respondent had audited the financial statements of the Company for the Financial Year 2014-15 and issued the audit report dated 30th May 2015 on those financial statements. The Committee also noted that the Company came out with an IPO for public issue of 39,78,000 equity shares of face value of Rs. 10 each at a price of Rs. 41 per share aggregating to Rs. 16,30,98,000/- on 26th June 2014. The Committee noted that on investigation conducted by SEBI to ascertain whether IPO proceeds were utilized for the objects other than those mentioned in the prospectus, SEBI concluded that the actual utilization was significantly different from the certificate dated 30th May 2015 issued by the Respondent. In this regard, the Committee also took into consideration



the order of learned Adjudicating Officer of the Securities and Exchange Board of India (SEBI) bearing reference no. Order/VV/JR/2019-20/6885-6886 dated 20th February 2020 imposing a penalty of Rs. 15 lakh on the Respondent and Respondent firm, jointly and severally, for violation of provisions of Section 12A (a), (b) and (c) of the SEBI Act, 1992 and Regulations 3 (a), (b), (c), (d), 4(1), 4(2)(f), (k) and (r) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003. The Committee also noted that the Respondent and Respondent firm had filed an appeal before the Securities Appellate Tribunal, Mumbai against the afore-said order of the learned Adjudicating Officer of the Securities and Exchange Board of India. The Committee noted that the Securities Appellate Tribunal, Mumbai vide its order dated 12.10.2022 set aside the above-said order of learned Adjudicating Officer of the Securities and Exchange Board of India. In this regard, the Committee took note of Para 15 of the order of the Securities Appellate Tribunal, Mumbai, which reads as under:

"15. We find that the AO has only established that the appellants have falsely certified the Unqualified Utilization Certificate. There is no finding that the appellants were party to preparation of false and fabricated accounts. There is no finding that the appellants had manipulated the books of accounts with knowledge and intention in the absence of which the appellants cannot be accused of fraud. There is also no finding by the AO on collusion with the Company in the absence of which the charge of aiding and abetting the Company cannot be sustained. It is an admitted fact that the appellants had qualified the annual accounts on the matter of utilization of funds of the IPO and such a qualification is mentioned in the Annual Report which is in the public domain. In absence of a finding that there was deceit or inducement, the appellants can only be held guilty for professional lapse or negligence for which the appropriate authority to take action is ICAI. SEBI has already made a complaint to the ICAI in the instant case and ICAI is holding an inquiry against the appellants."

8.2 The Committee observed that Securities Appellate Tribunal, Mumbai vide its order dated 12.10.2022 while holding that there was no deceit or inducement, also concluded that the appropriate authority to take action BSS

against the Respondent and Respondent firm for professional lapse or negligence is ICAI; and that ICAI is holding the inquiry in the matter based on the reference made by SEBI. The Committee examined the findings of the investigation report of the SEBI in the subject matter. The Committee noted that Para 3 of the findings of the reports of the investigation reports the variations in the total amount proposed to be utilized as stated in the prospectus with the amount certified by the Statutory Auditor and as ascertained by the SEBI pursuant to its investigation. The said reporting done by the SEBI is reproduced below:

Objects of the Issue	Amount proposed to be utilized as stated in the prospectus (Rs. in Lacs)	Amount utilized as certified by statutory auditor (Rs. in Lacs)	Actual utilization of funds ascertained pursuant to investigation (Rs. in Lacs)
To finance long term incremental working capital requirements	1000.00	888.38	14.90
Renovation and interior of registered office	160.00	159.28	-
Brand building	150.00	72.95	9.59
General Corporate Purposes	250.00	430.00	2.37
Issue Expenses	70.98	80.37	63.56
Total	1630.98	1630.98	90.42

8.3 From the above, the Committee observed that the actual utilization of IPO proceeds certified by the Respondent in his certificate was significantly different from that which was ascertained by the SEBI pursuant to its investigation. The Committee then took note of the Annexure-1 showing the 'reconciliation of IPO proceeds utilized with the amount alleged as wrongly certified' which has been provided by the Respondent along with his written submissions dated 29th June 2020. In this regard, the Committee also took note of the comments/observations of the Informant Department in respect of those items / heads as contained in the findings of the investigation report of the SEBI. The Committee then examined the details of reconciliation of IPO

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proceeds utilized by the Company provided by the Respondent vis-à-vis the findings of investigation report of the SEBI (Informant Department) in respect of amount utilized under various items / heads and the objects attached to it. Accordingly, a statement containing comparison on the above aspect is given below:

Objects of the issue	Amount allegedly wrongly certified by the auditor (Rs. in Lacs)	Reconciliation provided by the Respondent in respect of alleged differences	Comments of the SEBI														
To Finance Long Term Incremental Working Capital Requirements	873.48	Short term loans and advances to related parties under Note – 10 LOANS AND ADVANCES	i. Regarding payments to Tarini Infrastructure Limited, Tarini Wilderness Innovations Pvt Ltd, Venture Infrastructure Limited and B. Soilmec India Private Limited, from the copies of loan agreements submitted by the auditor, it was clear that the IPO proceeds were utilized by the Company for financing the capital expenditure of its group companies by way of loans at the interest of PLR+2%, which was in the nature of financing activities and same was not forming part of the objects of the issue disclosed in the prospectus. Thus, it was evident that the Statutory														
		<table border="1"> <thead> <tr> <th data-bbox="613 1103 832 1261">Name of the party</th> <th data-bbox="832 1103 961 1261">Amount (Rs. in Lakhs)</th> </tr> </thead> <tbody> <tr> <td data-bbox="613 1261 832 1432">i. Tarini Infrastructure Limited</td> <td data-bbox="832 1261 961 1432">400.00</td> </tr> <tr> <td data-bbox="613 1432 832 1663">ii. Tarini Wilderness Innovations Pvt Ltd</td> <td data-bbox="832 1432 961 1663">65.00</td> </tr> <tr> <td data-bbox="613 1663 832 1834">iii. Venture Infrastructure Limited</td> <td data-bbox="832 1663 961 1834">175.00</td> </tr> <tr> <td data-bbox="613 1834 832 2004">iv. B. Soilmec India Private Limited</td> <td data-bbox="832 1834 961 2004">45.00</td> </tr> <tr> <td data-bbox="613 2004 832 2163">v. Banthia Fintrade Private Limited</td> <td data-bbox="832 2004 961 2163">100.00</td> </tr> <tr> <td data-bbox="613 2163 832 2224">Total (a)</td> <td data-bbox="832 2163 961 2224">785.00</td> </tr> </tbody> </table>		Name of the party	Amount (Rs. in Lakhs)	i. Tarini Infrastructure Limited	400.00	ii. Tarini Wilderness Innovations Pvt Ltd	65.00	iii. Venture Infrastructure Limited	175.00	iv. B. Soilmec India Private Limited	45.00	v. Banthia Fintrade Private Limited	100.00	Total (a)	785.00
		Name of the party		Amount (Rs. in Lakhs)													
		i. Tarini Infrastructure Limited		400.00													
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		iii. Venture Infrastructure Limited		175.00													
		iv. B. Soilmec India Private Limited		45.00													
		v. Banthia Fintrade Private Limited		100.00													
Total (a)	785.00																
Repayment of dropline																	

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		<p>Overdraft facility (b) – Rs. 55.38 lakh</p> <p>Salaries Paid - Rs. 33.10 lakh</p> <p>Grand Total – Rs. 873.48 lakhs (a+b+c)</p>	<p>Auditor had wrongly certified that the Company had utilized that Rs.6,85,00,000 (sum of amounts paid to entities at sl. nos. 1 to 4) to finance long term incremental working capital requirements.</p> <p>ii. Regarding payments made to Banthia Fintrade Private Limited, from the qualification made by the Respondent in the audit report, it was clear that the statutory auditor could not verify that if the company had actually utilized Rs. 100 lakhs to meet the long-term working capital requirements of the Company. Contrary to the qualification in the audit report dated May 30, 2015, the Statutory Auditor in certificate dated May 30, 2015 had knowingly issued a false certificate that the Company had utilised Rs.100 lakhs to finance long term incremental working capital requirements.</p> <p>iii. Regarding payments</p>
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			<p>made to ICICI bank, it was noted that the ICICI bank account of the Company had a negative balance of Rs. 55,38,174 as on April 01, 2014 which was before the IPO date. After transfer of IPO proceeds in June 2014 in ICIC bank account, the negative balance in the current account of the bank turned positive and the same amounts to repayment of existing bank loan and cannot be considered as utilization of IPO proceeds for meeting long term incremental working capital requirements. It was also noted that the prospectus did not mention repayment of bank loan as one of the objects of the issue. Thus, it was evident that the statutory auditor in certificate dated May 30, 2015 had wrongly certified that the Company had utilised Rs.55,38,174 to finance long term incremental working capital requirements.</p> <p>iv. Regarding payment of</p>
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			<p>salaries, out of Rs. 48,00,000 certified by Statutory Auditor, expenditure of only Rs. 14,90,000 could be independently verified and the same was considered as utilized towards the working capital and the balance amount i.e., 33,10,000 could not be verified.</p> <p>v. Thus, based on the examination of documents relied by Statutory Auditor to issue utilisation certificate, it was observed that the Company had incurred only Rs. 14,90,000 to finance long term incremental working capital requirements as against Rs. 8,88,38,174 certified by Statutory Auditor. In view of above, the Respondent in certificate dated May 30, 2015 had wrongly certified that the Company had utilised the IPO proceeds to finance long term incremental working capital requirements to the extent of Rs.8,73,48,174 (i.e., Rs. 8,88,38,174 – Rs.</p>
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			14,90,000).
Renovation and interior of Registered Office	156.58	<p>Short term loans and advances to related parties under Note - 10 LOANS AND ADVANCES</p> <p>B Soilmec India Private Limited</p> <p>(a) - Rs.120 Lakhs</p> <p>CWIP (b) - Rs. 36.58 Lakhs</p> <p>Grand Total - Rs. 156.58 Lakhs</p> <p>[(a)+(b)]</p>	<p>Based on the examination of documents relied by Statutory Auditor to issue utilisation certificate, it was observed that the Company had incurred only Rs. 2,69,650/- for renovation and interior of registered office of the Company as against Rs. 1,59,27,930 certified by Statutory Auditor. In view of above, the Respondent in certificate dated May 30, 2015 had wrongly certified that the Company has utilised the IPO proceeds for renovation and interior of registered office of the Company to the extent of Rs. 1,56,58,280 (i.e., Rs. 1,59,27,930 – Rs. 2,69,650).</p>
Brand Building	18.93	<p>Salary of senior Management</p> <p>(a) - Rs. 11.90 Lakhs</p> <p>Travelling Expenses</p> <p>(b) - Rs. 2.29 Lakhs</p> <p>Payment to (c)</p> <p>Raka Advertising -Rs. 2.00 Lakhs</p> <p>Prana PR Pvt Ltd - Rs.2.74 Lakhs</p> <p>Grand Total - Rs. 18.93 Lakhs</p> <p>[(a)+(b)+(c)]</p>	<p>Based on the examination of documents relied by Statutory Auditor to issue utilisation certificate, it was observed that the Company had incurred only Rs. 54,01,662/- for brand building as against Rs. 72,95,098 certified by Statutory Auditor. In view of above, the Respondent in certificate dated May 30, 2015 had wrongly certified that the Company has utilised the IPO</p>

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			proceeds for brand building to the extent of Rs. 18,93,436 (i.e., Rs. 72,95,098 - Rs. 54,01,662).
General Corporate Purposes	430	Short term loans and advances to Related Parties under Note - 10 LOANS AND ADVANCES Tarini Sugar & Distillaries Limited - Rs. 430 Lakhs	The Respondent had provided the copy of loan agreements dated July 30, 2014 entered into between the Company and Tarini Sugars & Distilleries Ltd. As observed from the said loan agreements, the Company had advanced loan of Rs. 430 lakhs for the purpose of purchase of Land and setting up of Sugar Factory by Tarini Sugars and Distilleries at Parbhani,, Maharashtra and thus, it does not relate to Tarini International Limited. In view of above, it was evident that the Statutory Auditor in certificate dated May 30, 2015 had wrongly certified that the Company had utilised Rs. 4,30,00,000 for general corporate purposes of the company.
Issue Expenses	0.32	Courier expenses - Rs. 0.32 Lakhs to Seaman International Inc.	With respect to payments made to Seaman International Inc, the Statutory Auditor has neither provided the copies of invoices nor stated the nature of good bought/services availed from the vendor. Thus, the Statutory Auditor in

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			<p>certificate dated May, 30, 2015 has wrongly certified that the company has utilised Rs. 32,608/- for Brand Building. Based on the examination of documents relied by the Respondent to issue utilisation certificate, it was observed that the Company had incurred only Rs. 80,04,817/- for issue expenses as against Rs. 80,37,425/- certified by Statutory Auditor. In view of above, the Respondent in certificate dated May 30, 2015 had wrongly certified that the Company has utilised the IPO proceeds for issue expenses to the extent of Rs. 32,608 (i.e., Rs. 80,37,425 - Rs. 80,04,817).</p>
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8.4 The Committee noted the conclusion given in the investigation report of the Informant Department which states as under:

"Conclusion: The break-up of details of utilisation of IPO proceeds certified by Statutory Auditor under each heads of objects was verified with the documents relied upon for issuing the said certificate. As discussed in the preceding paragraphs, based on the examination of documents relied by statutory auditor to issue utilisation certificate, it was observed that the company has incurred only 151.66 lakhs out of IPO proceeds for objects stated in prospectus as against 1630.98 lakhs certified by statutory auditor. In view of above, the statutory auditor in certificate dated May 30, 2015 has wrongly certified that the company has utilised the IPO proceeds for public issue expenses to the extent of Rs. 1479.32 lakhs (i.e., ₹1,630.98 lakhs - ₹151.66 lakhs). The object wise breakup of the same is as under.

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Objects of the Issue	Amount certified by Statutory Auditors in certificate dated May 30, 2015 (Rs. in Lacs)	Actual amount for which statutory auditors provided the documents relied upon (Rs. in Lacs)	Amount wrongly certified (Rs. in Lacs)
To finance long term incremental working capital requirements	888.38	14.90	873.48
Renovation and interior of registered office	159.28	2.70	156.58
Brand building	72.95	54.02	18.93
General Corporate Purposes	430.00	-	430.00
Issue Expenses	80.37	80.05	0.32
Total	1630.98	151.66	1479.32

8.5 The Committee then examined the audit report pertaining to Financial Year 2014-15 issued by the Respondent. The Committee noted that in the audit report, the Respondent had given the qualified opinion and one of basis under basis for qualified opinion, reads as under:

"(b) We draw attention to the note 28 of the financial statements whereby the Company has raised the money by way of Public Issue, during the year. Further, there has been variation in the utilization of money, between the objects of public issue contained in the prospectus and actual utilization, which was needed to be authorized from the members. In view of this, we are unable to comment upon the appropriateness of variation in utilization of money."

8.6 The Committee also took note of Note 28 as referred to in the audit report of the Respondent which reads as under:

"28. Pursuant to the Listing Agreement Dated June 24, 2014, the Company has got listed its share with Bombay Stock Exchange (BSE) under Small and Medium Enterprise (SME) platform during the year, which were fully subscribed, and accordingly paid-up share capital has been increased from Rs 90,200,000 to Rs 129,980,000."

8.7 The Committee thereafter considered the allegation that the certificate issued by the Respondent certifying the IPO proceeds of the Company was not true and was misleading; and in this context, it examined and took note of the contents of the certificate dated 30th May 2015 issued by the Respondent which reads as under:

"We have examined the audited accounts of the Company, M/s Tarini International Limited, having registered office at D-2, Amar Colony, Lajpat Nagar - IV, New Delhi - 110024 with reference to the utilization of the proceeds of public issue of 3978000 equity shares of Rs.10/- each (face value) at a premium of Rs. 31 - per share.

Based on our examination of books and explanation and information provided to us, we hereby certify that the following are the details of expenditure incurred by the Company out of the proceeds of the above public issue:

S. No.	Particulars	Amount proposed to be utilized as per the prospectus. (Rs. in Lacs)	Actual utilization of amount. (Rs. in Lacs)
1	To finance long term incremental working capital requirements	1000.00	888.38
2	Renovation and interior of registered office	160.00	159.28
3	Brand building	150.00	72.95
4	General Corporate Purposes	250.00	430.00
5	Issue Expenses	70.98	80.37
	Total	1630.98	1630.98

8.8 In this context, the attention of the Committee was also drawn to the Director's report dated 31.08.2015 addressed to the members of the subject Company wherein they had stated that the Company had utilized the amount of Rs. 1630.98 lakhs in terms of the prospectus. The Committee also took note of the Respondent's submissions stating that he had carried out the verification while issuing the certificate and had also taken into consideration the various information contained in the Prospectus and explanations provided by the management of the Company and thus, the certificate had

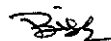
been issued stating the factual positions of the transactions of the IPO proceeds and there was no false and misleading information in the certificate. The Committee noted that the audit report on the financial statements of the Company for Financial Year 2014-15 and the subject certificate, both had been issued and signed by the Respondent on 30th May 2015. In this specific context, the Committee observed that contradictory information had been given in the audit report read with financial statements of the Company audited by the Respondent for Financial Year 2014-15 and the subject certificate which had been issued on the same date. The Committee noted that the Respondent had qualified his opinion on the matter of utilization of IPO proceeds by the Company by reporting that there had been variation in the utilization of money, between the objects of public issue contained in the prospectus and actual utilization. The Committee noted that at the same point of time, the Respondent had issued certificate on the utilization of the proceeds of public issue wherein he certified that Rs. 1630.98 lakhs were actually utilized by the Company out of those proceeds of IPO. Thus, the Committee observed that both documents, dated 30th May 2015, provided contradictory information regarding the utilization of IPO proceeds by the Company.

- 8.9 The Committee also took note of the Respondent's submissions given in respect of producing evidence regarding actual utilization done by the Company to the tune of Rs. 151.60 Lakhs. The Respondent stated that there was a difference of opinion as to the definition of heads of objects of the issue, consideration of information and detail of projects disclosed in the prospectus under various objects. The Respondent asserted that the amount had been actually incurred and duly recorded in the books of account on the basis of supporting documents and vouchers, correctly classified, and presented in the financial statements as per the requirement of Schedule III of the Companies Act, 2013 and rules framed thereunder and in fact, the figures in the Certificate had been used and grouped from the said audited accounts as per the relevant definitions, for the purpose of classification as per the objects stated in the prospectus and therefore, there was no variance. The Committee observed that from the observations of the informant department contained in their investigation report based on the supporting documents produced by the Respondent before them, it was

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evident that the Company had incurred only Rs. 151.66 lakhs out of IPO proceeds for objects stated in prospectus as against Rs. 1630.98 lakhs as certified by the Respondent. The Committee also observed that the subject certificate issued by the Respondent was clearly referring to the amount which was proposed to be utilized as per the prospectus. Against the same, the Respondent had reported the actual utilization of amount wherein the Respondent had certified that the Company had utilized the amount of Rs. 1630.98 lakhs as proposed to be utilized in the prospectus. Thus, the Committee observed that there was a significant variance of Rs. 1479.32 lakhs (i.e., ₹1,630.98 lakhs - ₹151.66 lakhs) in the utilization of proceeds of IPO, between the objects of public issue contained in the prospectus and actual utilization as certified by the Respondent in the subject certificate.

- 8.10 The Committee also took note the Respondent's another argument that *'he had issued the Certificate in question for internal utilization of Company. The said certificate clearly states "we have examined the Audited Accounts of the Company M/s Tarini International Limited having registered office at D-2, Amar Colony, Lajpat Nagar-IV New Delhi with reference to the utilization of the proceeds of public issue of 3978000 equity shares of Rs. 10.00 each (face value) at a premium of Rs. 31 per share..."*. Therefore, the said certificate was not an independent certification of utilization of proceeds of IPO but only repetition of amounts stated in audited accounts of the Company and report thereon'. In this context, the Committee noted that the title of the subject certificate dated 30th May 2015 reads as *'To whomsoever it may concern'*. Thus, the Committee observed that the subject certificate was not addressed to any specific person or did not mention that it was meant for internal purposes of the Company only. Further there was no such engagement letter produced by the Respondent from the Company to give such certificate for 'internal purpose'. The Committee further observed that in the subject certificate, it is coming out that the Respondent had examined the **audited accounts** of the Company for the purpose of issuing the subject certificate and however the certificate does not mention anywhere about the qualifications in the audit report on the **audited accounts**. The Committee was of opinion that even if it is assumed that the certificate was for internal utilization; a chartered accountant cannot have two opinions on the same subject matter. Therefore, the instant assertions of the Respondent were



observed to be not tenable in this specific case and the preliminary objection was thus rejected by the Committee.

- 8.11** The Committee also observed that the primary submission of the Respondent was that the utilization certificate should be read in conjunction with the audit report issued on the financial statements of the Company for the Financial Year 2014-15 which contained a qualification on the matter of variation in utilization of funds between the objects of public issue contained in the prospectus and actual utilization. The Committee observed that the subject certificate was only mentioning that the Respondent had examined the audited accounts of the Company for the relevant period for issuing the said certificate. In this certificate, the Respondent has certified the utilization of proceeds of the public issue brought by the Company. The Respondent in the certificate, has certified that the Company has actually utilized the amount of Rs. 1630.98 lakhs. The Committee observed that there was nowhere mentioned in the subject certificate that it had be read in conjunction with the audit report issued by him containing qualified opinion on the subject matter. Thus, the Committee observed that these assertions of the Respondent were also not tenable in this case.
- 8.12** Thus, on consideration of overall facts, submissions, and documentary evidence(s)/material on record and after thoroughly considering the charges against the Respondent, the Committee observed several discrepancies and contradictions in the actions of the Respondent. The Committee noted contradictory information between the audit report and the subject certificate issued by the Respondent on the same date i.e., 30th May 2015 regarding the utilization of IPO proceeds by the Company. The Committee also observed that there was a significant variance of Rs. 1479.32 lakhs between the amount proposed to be utilized as per the prospectus and the actual utilization certified by the Respondent in the subject certificate. The Committee also observed that the subject certificate does not mention anywhere that it should be read in conjunction with the audit report containing the qualified opinion.
- 8.13** In light of these observations, the Committee concluded that the Respondent issued a certificate that provided wrong and misleading information utilization of IPO proceeds by the Company and failed to appropriately point out the

discrepancies in the utilization of IPO proceeds by the Company. The Committee also noted that the actual utilization of IPO proceeds was significantly different from the certificate issued by the Respondent and that the utilization certificate issued by the Statutory Auditor was not true, and contained information in a distorted manner which might mislead the decision of the investors. Accordingly, the Committee held the Respondent **GUILTY** of Professional Misconduct falling within the meaning of Clauses (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

9. **Conclusion:**

In view of the findings stated in above paragraphs, vis-à-vis material on record, the Committee gives its charge wise findings as under:

Charges (as per PFO)	Findings	Decision of the Committee
Para 2.1 as above	Para 8.1 to 8.12 as above	Guilty – Clause (7) and (8) of Part I of Second Schedule

10. In view of the above observations, considering the oral and written submissions of the Respondent and material on record, the Committee held the Respondent **GUILTY** of Professional Misconduct falling within the meaning of Clause (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

Sd/-

(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

Sd/-

(SHRI JIWESH NANDAN, I.A.S. (RETD.)
GOVERNMENT NOMINEE

Sd/-

(MS. DAKSHITA DAS, I.R.A.S. (RETD.)
GOVERNMENT NOMINEE

Sd/-

(CA. MANGESH P KINARE)
MEMBER

सही प्रतिलिपि होने के लिए जमागित
Certified to be true copy

DATE: 05th FEBRUARY 2024
PLACE: New Delhi

बिषा नाथ तिवारी / Bishwa Nath Tiwari
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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