



# 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.

[PR/103/20-DD/104/2020-DC/1618/2022]

In the matter of:

CA. Ashu Goel (M No. 405072)

III-A/81,

Nehru Nagar,

Ghaziabad - 201001

.....Complainant

Versus

CA. Ambika Nagar (M No. 521156)

FC-38 Chandanvan,

Mathura - 281001

.....Respondent

MEMBERS PRESENT:

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

DATE OF HEARING : 19<sup>th</sup> MARCH, 2024

DATE OF ORDER : 17<sup>th</sup> 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. Ambika Nagar (M No. 521156)** (hereinafter referred to as the **Respondent**) is **GUILTY** of Professional and Other Misconduct falling within the meaning of Items (5), (6), (7) and (8) of Part I of the Second Schedule and Item (2) of Part IV of the First 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 her thereby granting an opportunity of being heard in person/ through video conferencing and to make representation before the Committee on 19<sup>th</sup> March 2024.

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3. The Committee noted that on the date of hearing on 19<sup>th</sup> March 2024, the Respondent was present through video conferencing and verbally reiterated her written representation dated 15<sup>th</sup> March 2024 on the Findings of the Disciplinary Committee. The Committee also noted that the Respondent had submitted written representation dated 22<sup>nd</sup> February 2024 on the Findings of the Committee, which, inter-alia, are given as under:

(i) The Complainant has informed the Respondent that he has withdrawn the Complaint against her, and the same has been communicated by the Complainant to Hon'ble ICAI, Disciplinary Committee, Bench IV vide letter dated 24.01.2024 for closure of the case. The Respondent brought on record a copy of withdrawal letter dated 24.01.2024 sent by the Complainant to the Disciplinary Directorate whereby he has requested the Hon'ble Committee that he wished to withdraw the said complaint and did not want to pursue it for further action and requested to close the same.

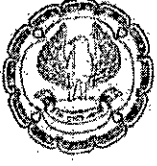
(ii) The Respondent requested the Committee to consider the withdrawal letter of the Complainant and requested for the closure of instant complaint against her.

4. The Committee at the outset noted that "Rule 6" of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 stipulates that "The Director, on receipt of a letter of withdrawal of a complaint by the complainant, shall place the same before the Board of Discipline or the Committee, as the case may be, and the Board of Discipline or the Committee, as the case may be, may, if it is of the view that the circumstances so warrant, permit the withdrawal, at any stage, including before or after registration of the Complaint." Accordingly, the Committee was of view that the grant of request of withdrawal of the complaint is the prerogative of the Committee.

5. The Committee was of the view that it is not inclined to consider the said withdrawal request of the Complainant having regard to the fact that the final decision in the matter on merits had already been taken by the Committee on 22<sup>nd</sup> January 2024 in the presence of the Complainant and his Authorised Representative wherein at that time, no such request was made by him before it. Accordingly, the Committee did not permit the withdrawal of the Complaint.

6. The Committee noted that the final hearing and decision in the instant matter under Rule 18, was taken on 22<sup>nd</sup> January 2024, wherein the Complainant and his authorised representative made their final arguments/ submissions and the Respondent was not present in that hearing. Further, it is also noted that the letter of withdrawal forwarded by the Respondent is dated 24<sup>th</sup> January 2024 which is after the disposal of matter by the Committee on 22<sup>nd</sup> January 2024. The Committee further noted that the withdrawal letter dated 24<sup>th</sup> January 2024 was received from the Complainant through courier on 26<sup>th</sup> February 2024 and upon perusal of

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the courier track sheet, it is noticed that the aforesaid letter was posted only on 23rd February 2024, although the letter is dated 24.01.2024.

7. The Committee noted that the Respondent had again submitted written representation dated 15<sup>th</sup> March 2024 on the Findings of the Committee, which, inter-alia, are given as under:

- (a) That Respondent's friend "CA. Vaibhav Bajaj" forged her signature on documents.
- (b) That CA. Vaibhav Bajaj, through telephonic conversation and messages, persuaded her to admit the forged signature as genuine in order to avoid further complications and police actions and also threatened her not to report this matter to the police.
- (c) That written statements made by her before the Committee were factually incorrect as it was the story dictated by CA. Vaibhav Bajaj.
- (d) That CA. Vaibhav Bajaj also brought her a letter from CA. Ashu Goel (Complainant) for withdrawal of the Complaint and convinced her that now nothing will happen in the matter and the matter will be closed.
- (e) That she will be lodging a FIR against CA. Vaibhav Bajaj for the offence committed by him and is in the process of obtaining a handwriting expert's opinion to confirm that her signatures were forged by CA. Vaibhav Bajaj.
- (f) The Respondent requested the Committee to reopen the case and allow her to bring on record the facts and circumstances to prove herself innocent.

8. On consideration of the matter, the Committee noted that it had already held the Respondent "Guilty" of Professional and Other Misconduct, vide Findings dated 05th February 2024. The Committee did not consider the Respondent's submissions dated 15th March 2024, as these submissions were not brought by the Respondent at the time of hearing before it by way of written submissions, and these submissions were made by the Respondent for the first time at the stage of award of punishment under Rule 19. The Respondent had earlier submitted her written statement dated 19th January 2024 in defense to the allegations levelled together with the copy of Management Representation letter.

9. The Committee observed that the submissions of Respondent dated 15th March 2024 are contradictory to the submissions dated 19th January 2024 submitted by her before it. The Committee also noted that there is no provision in the current mechanism to review the Findings arrived at by the Committee. Moreover, it was noted that the recent submissions of the Respondent at this stage appeared to be an afterthought.

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10. The Committee considered the reasoning as contained in Findings holding the Respondent 'Guilty' of Professional and Other Misconduct vis-à-vis verbal and written representation of the Respondent. As regards the submissions of the Respondent, the Committee held that due consideration to the submissions and documents on record had been given by the Committee before arriving at its Findings and that no fresh grounds can be adduced at this stage.

11. Thus, keeping in view the facts and circumstances of the case, material on record including verbal and written representation of the Respondent, the Committee noted that despite disclaimer of opinion in the audit report for FY 2016-17 and FY 2017-18 and qualified opinion in FY 2015-16 by the previous auditor, the Respondent failed to address those issues in her audit report for the financial year 2018-19 and did not even bother to rule them out before issuing clean report. The Committee was of the view that the Respondent by mentioning in the audit report that CARO was not applicable has avoided reporting the issues raised by the Complainant which otherwise would have required expression of opinion by the Respondent.

12. The Committee held that the Respondent has been negligent in the performance of her duties as Statutory Auditor of the Company and failed to disclose a material fact of pending litigations against the Company which were not appearing in the financials of the Company for the year ended 31st March 2019. The Committee was of the view that the Respondent relied merely on the Management Representation Letter, ignored the continuous negative net worth of the Company for past 3 years, low current ratio, inability to meet credit obligations, adverse remarks of the previous auditor in the audit report of FY 2017-18 and failed to do additional procedures to obtain sufficient appropriate evidence in support of her opinion.

13. The Committee held that the Respondent was negligent in discharge of her duties as she failed to report the clear violation of AS-15 despite being mentioned in the Notes to accounts and report of previous auditors. Hence, the Professional and Other Misconduct on the part of the Respondent is clearly established as spelt out in the Committee's Findings dated 05<sup>th</sup> February 2024, which is to be read in consonance with the instant Order being passed in the case.

14. Accordingly, the Committee was of the view that the ends of justice would be met if punishment is given to her in commensurate with her Professional and Other Misconduct.

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15. Thus, the Committee ordered that the Respondent i.e., CA. Ambika Nagar (M No. 521156), be REPRIMANDED and also imposed a fine of Rs. 25,000/- (Rupees Twenty five thousand) upon her, which shall be paid within a period of 60 (sixty) days from the date of receipt of the Order.

NS

Sd/-

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

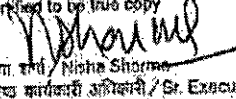
Sd/-

(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

  
निशा शर्मा / Nisha Sharma  
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer  
अनुशासनिक विभाग / Disciplinary Directorate  
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया  
The Institute of Chartered Accountants of India  
आईसीएआई भवन, विहार नगर, शाहदरा, दिल्ली-110032  
ICAI Bhawan, Visthaa Nagar, Shahdara, 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.: [PR/103/20-DD/104/2020-DC/1618/2022]**

**In the matter of:**

**CA. Ashu Goel**

III-A/81,

Nehru Nagar,

Ghaziabad - 201001

..... Complainant

**Versus**

**CA. Ambika Nagar (M No. 521156)**

D-1/46, First Floor,

South City - II,

Gurgaon - 122018

.....Respondent

**MEMBERS PRESENT:**

**CA. Ranjeet Kumar Agarwal, Presiding Officer (In person)**

**Shri Jiwesh Nandan, I.A.S (Retd), Govt. Nominee (In person)**

**Ms. Dakshita Das, I.R.A.S.(Retd), Govt. Nominee (In person)**

**CA. Mangesh P. Kinare, Member (In person)**

**CA. Cotha S. Srinivas, Member (In person)**

**DATE OF FINAL HEARING : 22<sup>nd</sup> January 2024**

**PARTIES PRESENT:**

**Complainant : CA. Ashu Goel (Through VC)**

**Counsel for Complainant: Adv. Bhaskar Bhardwaj (Through VC)**

1. **Background of the Case:**

The Complainant had invested in M/s ISEO Chemdis Pvt. Ltd. (hereinafter referred to as 'the Company') a total amount of Rs.20.25 Lakhs in the year 2015-16 (Rs.5 Lakhs) and 2016-17 (Rs.15.25 Lakhs) with an understanding with the Managing Director of the Company that in lieu of such an amount, the Complainant would be allotted the shares of the company. Owing to certain disputes in February, 2017, it was offered by the Director of the Company to refund the amount to the Complainant at the latest by 31st March, 2017 however, only an amount of Rs.2 Lakhs was refunded on (15<sup>th</sup> May 2019 & 21<sup>st</sup> January 2020) and the remaining amount of Rs.18.25 Lakhs (exclusive of interest) was not refunded to the Complainant till the date of the Complaint. The Complainant also stated that the previous auditor in the FY 2015-16 has qualified his opinion and in the FY 2016-17 and FY 2017-18 has disclaimed his opinion in respect of the issues raised by the Complainant.

2. **Charges in brief:**

- 2.1. It is stated that the amount shown under the head Share Application Money - Pending Allotment in the financial statement of the company for the year ended 31st March, 2018 was not refunded by the Company to the Complainant during the year 2018-19. However, such amount had been shown as 'NIL' in the audited financial statement of the Company for the period ended 31<sup>st</sup> March, 2019. The Respondent in her audit report for the period ended 31st March, 2019 had not mentioned anything in this regard. Hence, it is alleged that the Respondent, without determining whether such cause still existed or not, deleted the same from her audit report for the period ended 31st March 2019. Thus, allegedly she was hand in gloves with the company and helped it to window dress its accounts.
- 2.2. It is alleged that the Respondent in her audit report for the period ended 31<sup>st</sup> March, 2019 had not reflected the undisputed statutory dues to be paid by the company towards ESIC, EPF, TDS, and Labour Welfare Fund as per the reporting requirements under CARO.
- 2.3. It is alleged that the Respondent had not reported the fact that the company had not been maintaining any inventory records.

2.4. It is alleged that the Respondent failed to include in her audit report for the period ended 31<sup>st</sup> March, 2019 that the Complainant had issued a Legal Notice to the Company alleging non-payment / refund of his share application money. The same was issued even after a lapse of 3 years under Section -8 of the Insolvency and Bankruptcy Code. The Company also failed to make a provision or to show as contingent liability in respect of pending criminal case against the company/its directors under Section 139 of Negotiable Instrument Act wherein lately warrants have been issued by District Court, Ghaziabad. It is further alleged that various pending legal cases were going on against the Company and its Directors which had a material impact on the company but the Respondent failed to mention that in her audit report for the period ended on 31<sup>st</sup> March, 2019.

2.5. It is alleged that the Respondent failed to comment on 'Going Concern' aspect of the Company in her audit report despite being aware of the negative net-worth of the Company in the financial statement for the year ended on 31<sup>st</sup> March 2019.

2.6. It is alleged that the Respondent assisted the management in manipulating the accounts by failing to provide a qualification in her audit report regarding non-compliance with Accounting Standard – 15 "Employee Benefits and also about the fact that the Company was doing the accounting on a cash basis.

3. **The relevant issues discussed in the Prima facie opinion dated 01<sup>st</sup> February 2022 formulated by the Director (Discipline) in the matter in brief, are given below:**

3.1. In respect of the first charge, from the perusal of the audited Balance Sheet of the Company for the year ended 31<sup>st</sup> March 2016, it was noted that an amount of Rs. 15 Lakhs was shown under the head 'Share Application Money-Pending Allotment'. Further in the Balance Sheet for the period ended on 31<sup>st</sup> March 2017, the amount under the same head was increased to Rs. 1.0975 Crores. It was also seen in the audit report for the same period ended 31<sup>st</sup> March, 2017 that the previous auditor had given disclaimer of opinion and one of basis of his such disclaimer was non-allotment of preferential shares against the money received by the company from various persons. Since the shares were not allotted within 60 days of receiving of the money, the violation of Section 42(6)



of Companies Act, 2013 was also mentioned. In continuation of it, in the Balance Sheet for the year ended 31st March, 2018 the amount under the head 'Share Application Money - Pending Allotment' was shown as Rs. 94.75 Lakhs along with a disclaimer of opinion by the previous auditor in his audit report dated 8<sup>th</sup> March 2019. Further, it was also noted that in the Director's report dated 8<sup>th</sup> March, 2019 of the same period ended 31<sup>st</sup> March, 2018, the Directors while giving their comments on the qualifications of auditor in audit report on this particular allegation of pending share application money, had mentioned that the Company was in financial difficulty and the management would do the needful in due course. Further, it was also noted that vide letter dated 12th October, 2019 on record issued by the Director of the company on its letter head in favour of the Complainant, it was confirmed that as per the books of accounts of the company an amount of Rs.19.25 Lakhs was outstanding in the name of the Complainant which he had paid to the Company during 2016-17. In the said letter, it was also assured/confirmed that an amount of Rs.15.25 lakhs would be transferred to Complainant's account by 3<sup>rd</sup> November 2019 and an amount of Rs.4 Lakhs payable against Section 138 (Negotiable Instrument Act) case instituted by the Complainant in District Court, Ghaziabad would be paid on or before next hearing of such case. However, from the perusal of audited financials of the company for the year ended 31<sup>st</sup> March, 2019 along with the audit report thereon dated 29<sup>th</sup> June 2019 signed by the Respondent, it was noticed that the amount under the head 'Share Application Money - Pending Allotment' was shown as 'NIL' and nothing was mentioned in respect of any such matter of pending allotment of shares in the audit report of the Respondent. Further, as per the audited financials of the company dated 8<sup>th</sup> March, 2019, for the year ended 31<sup>st</sup> March, 2018, the amount of Rs.95.75 Lakhs was shown as payable under the head Share Application Money Pending Allotment. It was very surprising to note that within approximate 4 months of such report, the financials of the company for the period ended 31<sup>st</sup> March, 2019 audited by the Respondent on 29<sup>th</sup> June, 2019 were showing the same as 'NIL' amount under the head Share Application Money – Pending Allotment. The Respondent in her audit report dated 29<sup>th</sup> June, 2019 had not mentioned anything about such pending application amount and had given a clean report. Accordingly, the Respondent was held prima facie guilty of professional misconduct falling within the meaning of Items (6), (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

3.2. In respect of the **second and third charge**, it was noted that in the audit report dated 29<sup>th</sup> June, 2019 on the financials of the Company for the year ended 31<sup>st</sup> March, 2019 which was issued just after 4 months of the last audit report of the previous auditor dated 8<sup>th</sup> March, 2019 issued on the financials of the Company for the year ended 31<sup>st</sup> March, 2018. The Respondent failed to mention any such irregularity either in the matter of payment of statutory dues or in the non-maintenance of record of inventory by the Company. Further, on examining the applicability of order (CARO, 2016) to the Company, through the perusal of financials of the Company for the year ended 31<sup>st</sup> March 2019, it was observed that the Company had a Short-Term Liability of Rs. 5.99 Crores which it had taken in the form of an Export Packing Credit Limit and a Bank OD from State Bank of India. This means CARO, 2016 was clearly applicable to the Company as the amount borrowed from the Bank was more than Rs. 1 crore. Despite that, the Respondent without ensuring the applicability of CARO, 2016 on the Company stated in her audit report that the said order was not applicable to the Company. Further, from the perusal of 'Other Current Liabilities' head in the balance sheet of the Company for the financial year ended 31<sup>st</sup> March 2019, it was noticed that an amount of Rs. 50.77 Lakhs and Rs.18.43 Lakhs were still shown payable towards Provident Fund/ESI and towards TDS/Service Tax Payable respectively. It appeared that the Respondent had not performed her audit with due diligence, and she was negligent while auditing and reporting on the financials of the company. She reported that proper books of accounts as required by law have been kept whereas the records of the inventory were not properly maintained. Thus, the Respondent failed to report on the matter of non-maintenance of proper records of inventory as well as payment of statutory dues for which the previous auditor had disclaimed his opinion for the past 2 years. Accordingly, the Respondent was held prima facie guilty of professional misconduct falling within the meaning of Items (5), (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

3.3. In respect of the **Fourth Charge**, on perusal of the letter dated 12<sup>th</sup> October 2019, issued by the Director of the Company to the Complainant it was noted that the matter was referred to Ghaziabad District Court by the Complainant wherein a sum of 4 lakhs was payable by the Company on or before next date of hearing. However, it was noticed that neither there was any mention of such liability against the Company nor the reference of any such notice was given in

the financials of the company for the year ended 31<sup>st</sup> March 2019. The Respondent too in her audit report on such financials had not mentioned about any such court case or any legal notice issued by the Complainant against the Company. Further, it was also seen that in the audit report on the financials of the Company for the period ended 31<sup>st</sup> March 2018, the previous auditor had disclaimed his opinion regarding non-maintenance of sufficient information as regards litigation matters. On the contrary, it was noted that the Respondent in the audit report on the Financials of the company for the year ended 31<sup>st</sup> March 2019, had mentioned that '*The Company did not have any pending litigation impacting its financial position.*' Thus, it was viewed that the Respondent had been negligent in the performance of her duties as statutory auditor of the Company and failed to disclose a material fact of pending litigations against the Company that was not appearing in the financials of the Company for the year ended 31<sup>st</sup> March 2019. In the absence of such disclosures, the financials of the company appeared to be misleading. Further, it was also viewed that she gave her opinion on the financials of the company without collecting the necessary information in support of her opinion. She failed to bring on record any evidence to refute the allegation of the Complainant. Accordingly, the Respondent was held prima facie guilty of professional misconduct falling within the meaning of Items (5), (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

- 3.4. In respect of the **Fifth Charge**, it was noted that the Company had been incurring continuous loss for the past two financial years viz. a loss of Rs.1.85 Crores (Cash Loss - Rs.1.47 Crores) was incurred during 2016-17 and a loss of Rs.1.11 Crores (Cash Loss - Rs.0.68 Crores) was incurred during 2017-18. One of the reasons for the previous auditor of the Company to give a disclaimer of opinion on the financials of the Company in his audit report for the year ended 31<sup>st</sup> March, 2017 and 31<sup>st</sup> March, 2018 was that due to such loss, the net worth of the company was dropped to negative as Rs. (-) 0.7579 Crores as on 31<sup>st</sup> March 2017 and Rs. (-)1.86 Crores as on 31<sup>st</sup> March 2018. Thereby, the previous auditor was doubtful about the Company's ability to continue as a going concern. Further, to add such negative net worth, in the F.Y 2018-19 too, had incurred a loss of Rs.1.04 Crores (C-97) and thereby the negative Net

worth of the Company further got increased to Rs. (-) 2.91 Crores. The Respondent failed to mention in her audit report about such negative net worth or its impact on the Company's ability to continue as going concern. Further, on perusal of the Balance Sheet of the Company for the year ended 31<sup>st</sup> March 2019, it was also noticed that the Current Ratio of the Company was also adverse as 0.65:1 (calculated on the basis of Current Assets being Rs. 6,41,31,087/- and Current Liabilities being Rs.9,81,20,981/-) as appearing in such Balance Sheet which is one of the conditions that, individually or collectively, may cast significant doubt on the entity's ability to continue as a going concern. In this regard, the Director (Discipline) by giving reference to the SA-570 & SA-315, viewed that seeing the continuous negative net worth of the company for past 3 years, there was serious/ material uncertainty about the continuity and existence of the Company in the long run which should have been disclosed in the financials for the year ended 31<sup>st</sup> March, 2019. The Respondent failed to report such material fact in her audit report and further since the 'Going Concern Assumption' being the underlying assumption of preparing the financials was threatened, the financials were viewed to be materially misstated. Accordingly, the Respondent was held prima facie guilty of professional misconduct falling within the meaning of Items (5), (6), (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

- 3.5.** In respect of the **Sixth Charge**, it was stated that as per the relevant provision of Accounting Standard-18 on "Employee Benefits" the entity is required to recognize a liability in its accounts pertaining to the amount that is required to be paid to its employee in future i.e. after the termination of his employment thus, the said amount is recognised when it is due. Further, the previous auditor of the Company in his audit reports for all the past 3 Financial years ended 31<sup>st</sup> March 2016, 31<sup>st</sup> March 2017 and 31<sup>st</sup> March 2018, reported that as far as gratuity and leave encashment were concerned, the Company was not following Accounting Standard – 15 'Employee Benefits' and the same were accounted for by the Company on cash basis. It was also reported that the amount of outstanding liabilities on account of gratuity and leave encashment was not quantifiable. Upon perusal of the notes to the audited financial statements of the Company for the FY 2018-19, it was noted that the Company has disclosed that

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it was still adopting cash basis of accounting. However, it was noted that Respondent in her audit report dated 29<sup>th</sup> June, 2019 on the financials of the Company for the year ended 31<sup>st</sup> March, 2019 didn't mention such violation of the provisions of AS-15, rather she stated that the financial statements of the Company comply with the Accounting Standards specified under section 133 of the Act read with Rule 7 of the Companies (Accounts) Rules, 2014. Further, the Respondent failed to bring on record any information, document or evidence in her defence or the reasons behind forming such an opinion despite of the apparent violation of AS-15 on the face of the Financials itself. Hence, it was viewed that the Respondent while auditing had shown gross negligence while reporting as she clearly failed to report the violation of provisions of the Accounting Standard – 15 by the Company in its financials. Also, she formed her opinion without collecting sufficient information in its support. Accordingly, the Respondent in respect of this charges was held prima facie guilty of professional misconduct falling within the meaning of Items (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

- 3.6. The Director (Discipline) in his Prima Facie Opinion dated 01<sup>st</sup> February 2022 opined that the Respondent was prima facie **Guilty** of Professional and Other Misconduct falling within the meaning of items (5), (6), (7) and (8) of Part – I of the Second Schedule and item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949. The said items of the Schedule to the Act, states as under:

**Item (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".*

**Item (6) of Part I of the Second Schedule:**

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

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*(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."*

**Item (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."*

**Item (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."*

**Item (2) of Part IV of the First Schedule:**

"A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he:

*(2) in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work."*

- 3.7. The Prima facie opinion formed by the Director (Discipline) was considered by the Disciplinary Committee in its meeting held on 26<sup>th</sup> August 2022. 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 and Other Misconduct falling within the meaning of items (5), (6), (7) and (8) of Part – I of the Second Schedule and item (2) of Part IV of the First 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 and the Complainant 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 Complaint in Form 'I' filed by the Complainant	15 <sup>th</sup> March 2020
2.	Date of Written Statement filed by the Respondent	---
3.	Date of Rejoinder filed by the Complainant	---
3.	Date of Prima facie Opinion formed by Director (Discipline)	01 <sup>st</sup> February 2022
4.	Written Submissions filed by the Respondent after PFO	19 <sup>th</sup> January 2024
5.	Written Submissions filed by the Complainant after PFO	16 <sup>th</sup> January 2024

**5. Written submissions filed by the Complainant:**

The Complainant vide email dated 16<sup>th</sup> January 2024 submitted his further Rejoinder which is summarized as under: -

- 5.1 The instant case was fixed for hearings on 05<sup>th</sup> June 2023, 25<sup>th</sup> July 2023, 02<sup>nd</sup> November 2023 and 28<sup>th</sup> November 2023 but the Respondent has appeared only once and has sought time to file her reply. The Respondent neither filed her reply nor appeared before the committee and has sought adjournments on various occasions. The Complainant further submitted that the Respondent has not filed any written statement before the Director (Discipline) and has not even submitted anything for her defense or towards the denial of allegations. The Complainant requested that the matter should be heard and decided at the hearing dated i.e., on 22.01.2024.

**6. Written submissions filed by the Respondent:**

The Respondent vide email dated 19<sup>th</sup> January 2024 submitted her further submissions which are summarized as under: -

**6.1 Submissions made by the Respondent vide email dated 19<sup>th</sup> January 2024**

- (i) In respect of the first charge, the Respondent denied the allegation and stated that the Company has provided financials along with MRL dated 7<sup>th</sup> June 2019 duly signed and affirmed by the Board of Directors of the Company. Wherein it has been stated that the Board of Directors have refunded/ repaid the entire amount of share application money pending allotment amounting to Rs. 95.75 lakhs to the investors from their personal accounts and the same was not shown in the unaudited financials submitted to the Respondent for audit. The Respondent further stated that the Board of Directors are responsible for the preparation of the financial statements position and financial performance in accordance with the accounting principles accepted in India.
- (ii) In respect of the Second and Third Charge, the Respondent denied both the allegations and stated that the Complainant has not raised the allegation in the complaint on the applicability of CARO and the Disciplinary Directorate has created a new allegation on the applicability of CARO, against the Respondent. The Respondent further stated that the Board of Directors of the Company has specifically mentioned in MRL that *"the statutory dues which remain unpaid, if paid, as on 31<sup>st</sup> March 2019 will be paid by the Company on or before the due date of filing the income tax return of the Company for the financial year 2018."* Further, with respect to the allegation for the matter of non-maintenance of record of inventory by the Company, the Respondent stated that she received the representation in the form of MRL from the Board of Directors of the Company stating that the Company is not maintaining records of inventory of raw material, finished goods and WIP and the Stock taken is as per estimates of the management. The same was also mentioned in the Note No. 10 of the Notes to Accounts of the financial statements of the Company.
- (iii) In respect of Fourth Charge, the Respondent denied the allegation and stated that the Respondent relied upon the MRL received from the board of directors stating that *"The Company does not have any pending litigations which would*



*impact its financial position or going concern concept of the Company” and she accordingly, disclosed in her audit report that the “Company did not have any pending litigation impacting its financial position.”*

- (iv) In respect of the fifth charge, the Respondent denied the allegation and stated that although the Company has incurred losses in the current year under consideration and the previous year, the turnover of the Company has increased from Rs.4.90 crores in the previous year 2017-18 to 5.74 crores in the period 2018-19. The Respondent further stated that the negative net worth of the Company is not a material and only factor depicting the serious/material uncertainty about the continuity and existence of the Company in the long run. Further, it is the responsibility of the Board of Directors of the Company to identify the events or conditions that may cast significant doubt on the entity's ability to continue as a going concern. Moreover, she relied upon the MRL as per which the Company has prepared the annual accounts on a going concern basis.
- (v) In respect of the sixth charge, the Respondent denied the allegation and stated that short-term employee benefits are recognized as an expense in the statement of profit & loss of the year in which related services are rendered and she relied on representation provided by Board of directors of the Company in MRL. The management in the notes to accounts of the financial statement for the FY 2018-19 has also mentioned that the employee benefits are recognized on cash basis and therefore no provision has been made in this regard.

## 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 <sup>st</sup> time	05 <sup>th</sup> June, 2023	Adjourned at the request of the Complainant.
2 <sup>nd</sup> time	25 <sup>th</sup> July, 2023	Part heard and Adjourned.
3 <sup>rd</sup> time	02 <sup>nd</sup> November, 2023	Adjourned at the request of the Respondent.
4 <sup>th</sup> time	28 <sup>th</sup> November 2023	Adjourned at the request of the Respondent
5 <sup>th</sup> time	22 <sup>nd</sup> January 2024	Hearing concluded and decision taken

- 7.2 On the day of the first hearing on 05<sup>th</sup> June 2023, the Committee noted that the Counsel for the Complainant and the Respondent were present through Video conferencing mode. The Counsel for the Complainant apprised the Committee that due to ill health, the Complainant was not able to attend the hearing. Being first hearing of the case, the Respondent was put on oath. Thereafter, the Committee enquired from the Respondent as to whether she was aware of the charges levelled against her and whether she pleaded GUILTY to the same. In response, the Respondent stated that she is aware about the charges but pleaded herself Not Guilty on the charges levelled against her. The Respondent informed that her address got changed since 2011 and updated her address and email ID. Thereafter as per Rule 18(9) of the Chartered Accountant (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rule, 2007, the Committee adjourned the case to a later date and accordingly the matter was adjourned.
- 7.3. On the day of the hearing on 25<sup>th</sup> July 2023, the Committee noted that the Counsel for the Complainant and the Respondent were present through Video conferencing mode. Thereafter, the Committee asked the Respondent to make the submissions in the matter. The Respondent sought time for engaging the Counsel and for filing the submissions in the subject case. At the request of the Respondent, the Committee granted her 15 days' time to file the submissions and directed her that if she failed to appear before the Committee at the next meeting, the case would be decided ex-parte the Respondent. Thus, the matter was part heard and adjourned to a later date.
- 7.4. On the day of the hearing on 02<sup>nd</sup> November 2023, the Committee noted that Counsel for the Complainant was present through Video conferencing mode. The Committee noted that the Respondent has sought adjournment in the present matter over the phone. The Committee acceded to the request of the Respondent and adjourned the matter to a later date.
- 7.5. On the day of the hearing on 28<sup>th</sup> November 2023, the Committee noted that the Counsel for the Complainant was present through Video conferencing mode. The Committee noted that the Respondent has sought adjournment on the medical grounds vide mail dated 27<sup>th</sup> November 2023. The Committee

noted that the Complainant had never appeared before it and was yet to put on oath. In view of this, the Committee directed the office to inform the Complainant to appear before the Committee for taking of oath at next hearing. The Committee adjourned the case to a later date and directed the Office to inform the parties that in case of their failure to appear before it, the case would be decided ex-parte. With this, the case was adjourned to a future date.

**7.6.1** On the day of the final hearing on 22<sup>nd</sup> January 2024, the Committee noted that the Complainant along with the Counsel were present through Video conferencing mode. The Complainant who was present before the Committee for the first time was put on oath. The Committee noted that CA. Vaibhav Bajaj, claiming to be Representative of the Respondent was present before the Committee and requested to make his arguments on behalf of the Respondent on the charges levelled against the Respondent. However, since he was not having any power of attorney or authorization for the same from the Respondent, the Committee did not permit him to represent the case on behalf of the Respondent. Thereafter, the Committee noted that at its meeting held on 28/11/2023, the Respondent was directed to appear before the Committee for making her final submissions and in case of her failure to appear before it, the case would be decided ex-parte. Despite the specific directions of the Committee, the Respondent failed to appear before it and Committee decided to proceed ex-parte, the Respondent based on information/ written submissions before it. The Committee noted that the Respondent has given written submissions dated 19.01.2024..

**7.6.2.** Thereafter, the Committee asked the Complainant to make his submissions. The Counsel for the Complainant inter-alia stated as under:-

- a. He read out all the allegations against the Respondent before the Committee and also stated that the Respondent had never submitted her written statement.
- b. The Counsel by referring to the written submissions made by the Respondent on 19<sup>th</sup> January 2024 stated that the whole statement of the Respondent was based on the MRL issued by the management.

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- c. Further, in respect of the share application money, the submission of the Respondent that in MRL, the management mentioned that the money due to the Complainant was paid by them from their personal accounts. After that the Counsel placed on record the letter of the management signed after the date of audit report wherein the management admitted that the share application money was due for payment.
- d. The Counsel further stated that even if the amount had been paid by the management from their personal accounts, then why there was no qualification in the audit Report of the Respondent stating that the Company has taken the deposits from the outsider and no shares were allotted to outsider.
- e. That the issues raised/discussed in MRL are those which have been raised by the Complainant in his complaint.

7.7 Based on the documents, material and information available on record and after considering the oral and written submissions of the parties and due deliberations, the Committee decided to conclude hearing in the matter and passed its judgement.

8. **Findings of the Committee:**

8.1 The Committee observed that the **First Charge**, against the Respondent was that the Respondent without determining whether the share application money pending allotment amounting to Rs. 94.75 lakhs in the financial statements of 2017-18 has been refunded back to the applicants, audited the financial statements with amount "Nil" in Share Application Money pending allotment and did not report the same in her audit report for the financial year 2018-19.

8.1.1 The Committee noted the submission of the Respondent that she relied on the MRL dated 07<sup>th</sup> June 2019 wherein it was stated that the amount has been repaid to the applicants by the Board of Directors from their personal accounts while signing the audit report of the Company for the financial year 2018-19 on 29<sup>th</sup> June 2019.

8.1.2 The Committee also considered the copy of the letter received by the Complainant from the directors of the Company dated 12<sup>th</sup> October 2019 i.e.,

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after the date of signing of financial statements by the Respondent wherein the following was mentioned: -

*"We confirm that in our books, there is a sum of Rs. 19,25,000/- outstanding against your name being amounts paid into the Company by yourself in 2016-17.*

*We further confirm that this sum will be repaid to you in the following manner:*

- 1) *A sum of Rs. 15,25,000/- (Rupees fifteen lakhs twenty-five thousand) by 3<sup>rd</sup> November 2019, by transfer into your account registered in our books to which we have previously transferred Rs. 1 lakh.*
- 2) *A sum of Rs. 4 lakhs balance payable against the Sec 138 case instituted by yourself in Ghaziabad District Courts, on or before the next date of hearing.*

*Further, for interest payable w.e.f. August 2016 on the said amount, Mr. Rakesh Aggarwal will be the person to mediate and come to an acceptable amount of payment and the mode thereof and his decision will be binding."*

**8.1.3** The Committee, on perusal of the aforesaid letter dated 12<sup>th</sup> October 2019 observed that it was amply clear that the aforesaid amount was outstanding to be repaid to the Complainant as on 31<sup>st</sup> March 2019. Further, in case the Respondent relied upon the MRL produced by the management dated 07<sup>th</sup> June 2019 regarding repayment from the personal accounts of the Board of Directors, she should have asked either for the bank statements evidencing such payments or confirmations from the applicants.

**8.1.4** The Committee in this regard considered that the relevant paras of SA -580 "Written Representations" reads as under: -

*"Written Representations as Audit Evidence*

*2. Audit evidence is all the information used by the auditor in arriving at the conclusions on which the audit opinion is based. Written representations are necessary information that the auditor requires in connection with the audit of the entity's financial statements. Accordingly, similar to responses to inquiries, written representations are audit evidence.*

*3. Although written representations provide necessary audit evidence, they do not provide sufficient appropriate audit evidence on their own*

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*about any of the matters with which they deal. Furthermore, the fact that management has provided reliable written representations does not affect the nature or extent of other audit evidence that the auditor obtains about the fulfillment of management's responsibilities, or about specific assertions."*

**8.1.5** On perusal of the abovementioned provisions, the Committee observed that apart from obtaining MRL, the Respondent was required to obtain sufficient appropriate evidence for confirming that the pending amount of share application money has actually been refunded to the applicants which she failed to do. The Committee also considered that this delay in refund of the share application money received from the applicants was also one of the reasons for the previous auditor to disclaim his opinion wherein he also reported that penalty provisions can be invoked by MCA/ROC which cannot be quantified by him. The Committee was of the view that despite such disclosure in the financial statements of the previous year, the Respondent was expected to be more cautious in her approach in examining the issues pointed out by the previous auditor while doing the audit of the financial statements of the Company for FY 2018-19. Thus, the Committee opined that she failed to discharge her duties diligently and also failed to report the material misstatement known to her as appearing in the financial statements and held that the Respondent was **Guilty** of professional misconduct falling within the meaning of item (6), item (7) and item (8) of Part I of the Second Schedule to the Chartered Accountants Act 1949.

**8.2** The Committee noted that **the second and third charge** against the Respondent was that the Respondent in her audit report for the period ended 31<sup>st</sup> March 2019 has not reflected the undisputed statutory dues to be paid by the company towards ESIC, EPF, TDS and Labor Welfare Fund as per the reporting requirements under CARO. The Respondent has not reported the fact that the company had not been maintaining any inventory records.

**8.2.1** The Committee on perusal of the records examined that in compliance with the reporting requirement under CARO – 2016, the previous auditor of the company, in annexures to the main Audit Report on the financials of the

company for the year ended 31<sup>st</sup> March 2016, 31<sup>st</sup> March 2017 and 31<sup>st</sup> March 2018 had reported:

(i) That the company was not regular in depositing its undisputed statutory dues related to TDS, ESI, PFI and Labour Welfare Fund and the previous auditor in respect of such irregularities on the part of the company had given his qualified opinion in his main audit report on the financials of the company for the year ended 31<sup>st</sup> March, 2016 and 'Disclaimer of Opinion' in his audit reports on the financials of the company for the year ended 31<sup>st</sup> March, 2017 and 31<sup>st</sup> March, 2018 along with the details as mentioned below:

**Details as mentioned in Audit Report on the financials for the year ended on:**

	31-03-2016	31-03-2017	31-03-2018
<b>Nature of Liability/Dues</b>	<b>Amount Outstanding as on 31-03-2016/ Amount Pending for more than one year (Rs.)</b>	<b>Amount Outstanding as on 31-03-2017/ Amount Pending for more than one year (Rs.)</b>	<b>Amount Outstanding as on 31-03-2018/ Amount Pending for more than one year (Rs.)</b>
Tax Deducted at Source	11,55,326 / 8,14,089	12,61,344 / 11,55,326	14,33,286 / 12,61,344
Provident Fund	34,13,130 / 16,10,162	42,66,759 / 34,13,130	36,54,855 / 15,22,844
Employees State Insurance	11,13,299 / 7,15,012	15,93,554 / 11,13,999	21,35,832 / 15,93,554
Labour Welfare Fund	1,16,400 / 84,420	1,45,070 / 1,16,400	1,75,250 / 1,45,070
Income Tax Due (not accounted for in the books of accounts)	3,85,485 / Demands related to A.Y. 200-03, 2003-04, 2005-06, 2006-07 and 2011-12	3,85,485 / 3,85,485	-
Service Tax under Reverse charge	76,161 / 73,851	-	-

(ii) That the company was not maintaining record of its inventory in respect of raw material, work in progress and finished goods. The previous auditor in respect of such irregularity on the part of the company had given his qualified opinion in his main audit report on the financials of the company for the year ended 31<sup>st</sup> March, 2016 and 'Disclaimer of Opinion' in his audit reports on the financials of the company for the year ended 31<sup>st</sup> March, 2017 and 31<sup>st</sup> March, 2018 as mentioned below:

Qualification given in the Audit Report on the Financials for the year ended 31 <sup>st</sup> March, 2016	Disclaimer of Opinion given in the Audit Report on the Financials for the year ended 31 <sup>st</sup> March 2017	Disclaimer of Opinion given in the Audit Report on the Financials for the year ended 31 <sup>st</sup> March, 2018
<p><i>'The company is not maintaining the proper records of the Inventory of Finished goods and Work in Progress. The company has undertaken a physical verification of its stock on 31/03/2016 which has been the basis for valuation of closing stock of these goods. In the absence of proper records of the inventory, it is not possible for us to independently verify the valuation of the same and we have solely relied on the valuation taken and certified by the management.'</i></p>	<p><i>'The company is <u>not maintaining the records</u> of the Inventory of Finished goods, Raw Material and Work in Progress. The stock taken is as per the estimate of the management which we are unable to verify.'</i></p>	<p><i>'The company is <u>not maintaining the records</u> of the Inventory of Finished goods, Raw Material and Work in Progress. The stock taken is as per the estimate of the management which we are unable to verify in the absence of sufficient and appropriate information and records not made available to us for our verification by the management.'</i></p>

**8.2.2** The Committee considered that the Respondent in the audit report dated 29<sup>th</sup> June 2019 on the financials of the Company for the year ended 31<sup>st</sup> March, 2019 has not mentioned any such irregularity either in the matter of payment of statutory dues or in the matter of non-maintenance of record of inventory by the Company. Rather, the Respondent in her Audit Report has mentioned the following:

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*'As required by the Companies (Auditor's Report) Order, 2016 (the order) issued by the Central Government of India in terms of sub-section (11) of Section 143 of the Act, is not applicable.'*

**8.2.3** The Committee further considered that the relevant para of CARO 2016, in this regard, reads as under: -

**CARO 2016 is not applicable to –**

*'a private limited company, not being a subsidiary or holding company of a public company, having a paid up capital and reserves and surplus not more than rupees one crore as on the balance sheet date and which does not have total borrowings exceeding rupees one crore from any bank or financial institution at any point of time during the financial year and which does not have a total revenue as disclosed in Scheduled III to the Companies Act, 2013 (including revenue from discontinuing operations) exceeding rupees ten crore during the financial year as per the financial statements.'*

On perusal of the above provisions, the Committee analysed that the above order was applicable on the Company as the Company was availing credit facilities amounting to Rs. 5.99 crores from the Bank as per its financial statements for the year 2018-19. Whereas the Respondent in her report has stated otherwise.

**8.2.4** The Committee, on further perusal of the 'Other Current Liabilities' head in the balance sheet of the Company for the financial year ended 31<sup>st</sup> March 2019, noted that an amount of Rs. 50.77 Lakhs and Rs.18.43 Lakhs were still shown payable towards Provident Fund/ESI and towards TDS/Service Tax Payable respectively. Further, it was also seen that the Respondent in her audit report (for FY 2018-19) required under Section 143(3) of the Companies Act,2013 has specifically mentioned the following:

*'In our opinion, proper books of accounts as required by law have been kept by the company so far as appears from the examination of those books.'*

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8.2.5 The Committee was of the view that though the applicability of CARO was not the part of allegations raised by the Complainant, yet the issues raised by the Complainant formed part of the compliances confirmed under CARO only. Thus, the submission of the Respondent that the Complainant has not raised the allegation in the complaint on the applicability of CARO is not tenable. Further, as regards the reliance of the Respondent on the MRL is concerned, wherein the following was stated:

*"H. Statutory Dues*

a) *The undisputed statutory dues including provident fund, ESI and other material statutory dues, have been deposited during the year by the Company with the appropriate authorities and the statutory dues which remain unpaid, if any, as on 31<sup>st</sup> March 2019, will be paid by the Company on or before the due date of filing the Income tax return of the Company for the Financial year 2018-19.*

*P. Inventory*

4. *The Company is not maintaining records of inventory of Raw Material, Finished Goods and WIP. The stock taken is as per the estimates of the Management.*

8.2.6 The Committee noted that the above issues were required to be reported by the Respondent in compliance with CARO, 2016. They have been mentioned as "Not applicable" by the Respondent despite these being part of the issues which led to disclaimer of opinion in the audit report for the FY 2017-18 and FY 2016-17 and qualification of opinion in the audit report for the FY 2015-16 by the previous auditor.

8.2.7 The Committee noted that the relevant provisions of CARO 2016 as regards inventory and statutory dues are as under: -

**Matters to be reported under CARO 2016:**

2. *INVENTORIES [3(ii)]: Whether Physical Verification of Inventory has been conducted at reasonable intervals by the Management, and*

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*whether any material discrepancies were noticed and if so, whether they have been properly dealt with in the books of accounts.*

*7. STATUTORY DUES [3(vii)]: (a) Whether the Company is regular in depositing Undisputed Statutory dues including Provident Fund, Employees' State Insurance, Income-Tax, Sales-Tax, Service Tax, Duty of Customs, Duty of Excise, Value Added Tax, Cess and any other Statutory Dues to the Appropriate Authorities and if not, the extent of the arrears of outstanding Statutory Dues as on the last day of the financial year concerned for a period of more than 6 months from the date they became payable, shall be indicated.*

*(b) Where dues of Income Tax or Sales Tax or Service Tax or Duty of Customs or Duty of Excise or Value Added Tax have not been deposited on account of any dispute, then the amounts involved and the Forum where dispute is pending shall be mentioned. (A mere representation to the concerned Department shall not be treated as a dispute).*

**8.2.8** The Committee observed that it was the professional responsibility of the Respondent to specifically check the above matters mentioned in 8.2.7 above and report the same in her Audit Report. The Committee was of the view that the Respondent by mentioning in the audit report that CARO was not applicable has avoided reporting the issues raised by the Complainant which otherwise would have required expression of opinion by the Respondent. The Committee also considered that the audit report stated that proper books of accounts as required by law were maintained whereas the financial statements clearly depicted that statutory dues of the Company were pending to be paid and the Company was not maintaining proper inventory record. Thus, the Committee held that the Respondent was Guilty of professional misconduct falling within the meaning of item (5), item (7) and item (8) of Part I of the Second Schedule to the Chartered Accountants Act 1949.

**8.3** The Committee noted that the **fourth charge** against the Respondent was that the Respondent failed to report pending litigation against the Company and its directors as required in the audit report. In this regard, the Committee noted that

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the Respondent failed to submit his written statement in the matter and at the time of hearing failed to bring on record any evidence to support his defence apart from copy of a Management Representation letter wherein it was mentioned that the Company does not have any pending litigations which would impact its financial position or going concern concept of the Company which in itself cannot be considered as a sufficient and appropriate evidence.

**8.3.1** The Committee on perusal of the audit report of the Company for the financial year 2017-18 considered that the previous auditor had disclaimed his opinion and one of the reasons for his disclaimer was as under: -

*'9. Sufficient information or record is not maintained by the company with respect to the pending litigation by and against the company. Further, no information has been provided to us with respect to the same.'*

*'8. Due to the defaults of loans by the company with the State Bank of India, the company accounts have been classified as Non-Performing Assets (NPA) by the bank. The company has been served with the SARFAESI notice on 28th Feb 2018 with total amount outstanding Rs.7,02,03,358/- The balance outstanding in the books is Rs.6,78,06,611/- the difference of Rs. 23,96,747/- have not been accounted for in the books. In the absence of proper information, we are unable to ascertain its impact on the Balance Sheet and Profit and Loss of the Company.*

*As informed by the management, the company has gone into the court and filed litigation against SARFAESI notice which has been stayed and the management is in talks with the bank for One Time Settlement (OTS).*

*This casts significant doubt on the entity's ability to continue as a going concern and accordingly we are unable to determine whether the entity would continue as going concern in foreseeable future.'*

**8.3.2** The Committee observed that despite the above comments and disclaimer of opinion, the Respondent failed to ascertain the status of pending litigation against the Company and merely on the basis of an MRL concluded that no litigation was pending against the Company. The Committee further observed that the Respondent failed to point out that in the Contingent liabilities in Notes to accounts, it has been stated that *"The Company has not given any guarantee or availed any Loans or is a party to any term loan or working capital"* whereas

the Company was availing working capital facilities from SBI in form of packing credit and Bank OD with outstanding of Rs. 5,99,62,624/- as on 31<sup>st</sup> March 2019 and action against the Company was initiated under SARFAESI which casts a significant doubt on the quality of the audit carried out by the Respondent.

- 8.3.3 The Committee further considered that as per the letter dated 12th October, 2019 issued by the Director of the Company to the Complainant detailed at point 8.1.2 above, it is clear that the case related to the dues payable to the Complainant was filed by him and was pending litigation against the Company in Ghaziabad District Court which further strengthened the contentions of the Complainant that litigation against the Company was subsisting as on 31<sup>st</sup> March 2019.
- 8.3.4 The Committee derived that the Respondent without looking into the facts pointed out in 8.3.1 to 8.3.3 above, in his audit report on the financial statements of the Company for the year ended 31<sup>st</sup> March 2019 has stated that, '*The Company did not have any pending litigation impacting its financial position*'. The Committee was of the view that the Respondent has been negligent in the performance of her duties as statutory auditor of the company and failed to disclose a material fact of pending litigations against the company which were not appearing in the financials of the company for the year ended 31<sup>st</sup> March 2019. The Committee also viewed that she failed to obtain necessary information in support of her opinion as she could not bring on record any evidence to refute the charges against her except for an MRL which cannot be considered as sufficient and appropriate evidence. Accordingly, the Committee held that the Respondent was Guilty of professional misconduct falling within the meaning of item (5), item (7) and item (8) of Part I of the Second Schedule to the Chartered Accountants Act 1949.
- 8.4 The Committee considered that the **Fifth Charge** against the Respondent was that the Respondent failed to make a comment on 'Going Concern' aspect of the Company seeing its negative net-worth in its financials as on 31<sup>st</sup> March 2019. In this regard, the Committee noted that the Respondent in his defense stated that the negative net worth of the Company is not a material fact and the

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only factor depicting the serious/ material uncertainty about the continuity and existence of the Company in long run. It is the responsibility of the Board of Directors to identify the events and conditions that may cast doubt on entity's ability to continue as a going concern. The Respondent also brought on record the copy of an MRL dated 07<sup>th</sup> June 2019 as per which the Company has prepared the accounts on going concern basis.

**8.4.1** The Committee referred the relevant extract of SA – 570 in this regard which states as under: -

*A3. The following are examples of events or conditions that, individually or collectively, may cast significant doubt on the entity's ability to continue as a going concern. This listing is not all-inclusive nor does the existence of one or more of the items always signify that a material uncertainty exists.*

*Financial:*

- *Net liability or net current liability position.*
- *Fixed-term borrowings approaching maturity without realistic prospects of renewal or repayment; or excessive reliance on short-term borrowings to finance long-term assets*
- *Indication of withdrawal of financial support by creditors.*
- *Negative operating cash flows indicated by historical or prospective financial statements.*
- *Adverse key financial ratios.*
- *Substantial operating losses or significant deterioration in the value of assets used to generate cash flows.*
- *Arrears or discontinuance of dividends*
- *Inability to pay creditors on due dates.*
- *Inability to comply with the terms of loan agreements.*
- *Change from credit to cash-on-delivery transactions with suppliers.*
- *Inability to obtain financing for essential new product development or other essential investments*

**8.4.2** The Committee on perusal of the above provisions analyzed that the current ratio of the Company was below 1, which is an adverse key financial ratio. Further as mentioned at 8.3.1 above, as per the audit report of the previous

auditor on the financial statement of the Company for the year ended on 31<sup>st</sup> March 2018, the Company's account has been declared as NPA which shows inability of the Company to pay the creditors on due dates. The Committee also considered that SBI has served a notice to the Company under SARFAESI which is an indication of withdrawal of financial support by creditors. Thus, there were events or conditions that cast significant doubt on entity's ability to continue as a going concern.

**8.4.3** Further, the following Paras of SA – 570 throw light on the reporting responsibility of the auditor in the matter:

*'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.'*

If the Auditor concludes that use of going concern basis of accounting is inappropriate:

*'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.'*

If the Auditor concludes that use of going concern basis of accounting is appropriate but a Material Uncertainty Exists and adequate disclosure of a material uncertainty is not made in the Financial Statements.

*'23. If adequate disclosure about the material uncertainty is not made in the financial statements, the auditor shall: (Ref: Para. A32–A34) (a) Express a qualified opinion or adverse opinion, as appropriate, in accordance with SA 705 (Revised); and (b) In the Basis for Qualified (Adverse) Opinion section of the auditor's report, state that a material*

*uncertainty exists that may cast significant doubt on the entity's ability to continue as a going concern and that the financial statements do not adequately disclose this matter.'*

**8.4.4** The Committee, on the combined perusal of the above provisions, derived that it was amply clear that since the material uncertainty was existing in the company and even immediate previous auditor has also commented in his audit report regarding the same as mentioned in 8.3.1 above, the Respondent was required to perform additional procedure and collect audit evidence to conclude that the going concern assumption of the management as stated in the MRL is appropriate. Thus, in any case when the material uncertainty in the form of adverse financial ratio and inability to meet obligations of the creditors on due dates was existing in the company and since the company had not given any disclosure regarding those events/uncertainty, the Respondent was required to report the same in compliance with above mentioned provision of SA-570.

**8.4.5** The Committee further considered that the Respondent relied merely on the MRL, ignored the continuous negative net worth of the company for past 3 years, low current ratio, inability to meet credit obligations, adverse remarks of the previous auditor in the audit report of FY 2017-18 and failed to do additional procedures to obtain sufficient appropriate evidence in support of her opinion. This act of the Respondent amounts to negligence in the performance of her audit of the company in accordance with the applicable Auditing Standard. Accordingly, the Committee held that the Respondent was Guilty of professional misconduct falling within the meaning of item (5), item (6), item (7) and item (8) of Part I of the Second Schedule to the Chartered Accountants Act 1949.

**8.5** The Committee noted that the **sixth charge** against the Respondent was that the Respondent failed to report the non - compliance of the Accounting Standard -15 "Employee Benefits" in her audit report and thus helped the management in manipulating accounts. In this regard, the Respondent stated that short-term employee benefits are recognized as an expense in the statement of profit & loss of the year in which related services are rendered and she relied on representation provided by Board of directors of the Company in MRL dated 07<sup>th</sup> June 2019. The Respondent also stated that the management



in the notes to accounts of the financial statement for the FY 2018-19 has also mentioned that the employee benefits are recognized on cash basis and therefore no provision has been made in this regard.

**8.5.1** The Committee considered that the relevant para of AS -15 in this regard states as under: -

*'This Standard requires an enterprise to recognise:*

*(a) **A liability** when an employee has provided service in exchange for employee benefits to be paid in the future.*

*(b) An expense when the enterprise consumes the economic benefit arising from service provided by the employee in exchange for employee benefits.'*

**8.5.2** The Committee on perusal of the above provisions analysed that entity is required to recognize a liability in its accounts of the amount, it is going to pay to its employee in future i.e., after the termination of his employment thus, the amount is recognised on due basis. The Committee on perusal of Notes to Accounts of the financial statements of the Company for the financial year ended on 31<sup>st</sup> March 2019 noted as under:

*'The estimated liability of gratuity on the Balance Sheet date has not been quantified. The same is accounted for on actual basis. Employees are entitled to encash leave during the period of service which is accounted for on cash basis. This is not considered as a retirement benefit and therefore no provision is made in the accounts. Company's contribution to Provident Fund is charged to Profit & Loss Account.'*

**8.5.3** The Committee derived that firstly, the financial statement for the FY 2018-19 does not specifically state that AS-15 has not been followed by the Company. The Committee further observed that the disclosure by the Company regarding non-compliance of any accounting standard does not relieve the auditor from his responsibility of reporting the same in her audit report. The Committee also considered that despite reporting the non-compliance, the Respondent in her audit report in compliance with Section 143(3) of Companies Act, 2013 has mentioned the following:

*M*

*'In our opinion, the Balance Sheet, Statement of Profit & Loss, and Cash Flow Statement comply with the Accounting Standards specified under Section -133 of the Act read with Rule 7 of the Companies (Accounts) Rules, 2014.'*

**8.5.4** The Committee also observed that the Respondent failed to obtain sufficient and appropriate evidence to conclude that the Company was complying with the Accounting Standards and also ignored the adverse remarks of the previous auditor on this count disclaiming his opinion. The Committee was of the view that the Respondent was negligent in discharge of his duties while reporting as she failed to report the clear violation of AS- 15 despite being mentioned in the Notes to accounts and report of previous auditors. Accordingly, the Committee held that the Respondent was Guilty of professional misconduct falling within the meaning of item (7) and item (8) of Part I of the Second Schedule to the Chartered Accountants Act 1949.

**8.6** The Committee highlighted that despite disclaimer of opinion in the audit report for FY 2016-17 and FY 2017-18 and qualified opinion in FY 2015-16 by the previous auditor clearly specifying the issues leading to such opinion, the Respondent failed to address those issues in her audit report and did not even bother to rule them out before issuing clean report. In view of the shortcomings in the audit carried out by the Respondent apparent from the documents and material on record and in view of her continuous assertion and absolute reliance merely on the MRL which enfolds all the charges against the Complainant, the possibility of her association with the management of the Company cannot be ruled out.

**8.6.1** Accordingly, the Committee held the Respondent guilty of Other Misconduct falling within the meaning of item (2) of Part IV of the First Schedule to the Chartered Accountants Act 1949.

**9. Conclusion:**

In view of the findings stated in above paras, vis-a-vis material on record, the

*M* Committee gives its charge wise findings as under:

CA Ashu Goel, Ghaziabad, Vs. CA. Ambika Nagar (M. No. 521156) Surpan

Charges (as per PFO)	Findings	Decision of the Committee
Para 2.1 as above	Para 8.1 to 8.1.5 as above	<b>Guilty</b> – Clause (6), (7) and (8) of part I of Second Schedule
Para 2.2 and 2.3 as above	Para 8.2 to 8.2.8 as above	<b>Guilty</b> – Clause (5), (7) and (8) of part I of Second Schedule
Para 2.4 as above	Para 8.3 to 8.3.4 as above	<b>Guilty</b> – Clause (5), (7) and (8) of part I of Second Schedule
Para 2.5 as above	Para 8.4 to 8.4.5 as above	<b>Guilty</b> – Clause (5), (6), (7) and (8) of part I of Second Schedule
Para 2.6 as above	Para 8.5 to 8.5.4 as above	<b>Guilty</b> – Clause (7) and (8) of part I of Second Schedule
Para 8.6 as above	Para 8.6 to 8.6.1 as above	<b>Guilty</b> – Clause (2) of Part IV of First 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 and Other Misconduct falling within the meaning of item (5), Item (6), item (7) and item (8) of Part I of the Second Schedule and item (2) of Part IV of the First 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

Sd/-

(CA. COTHA S. SRINIVAS)  
MEMBER

DATE: 05/02/2024

PLACE: New Delhi

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

मीनू गुप्ता / Meenu Gupta  
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer  
अनुशासनात्मक निदेशालय / Disciplinary Directorate  
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया  
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