



भारतीय सनदी लेखाकार संस्थान
(संसदीय अधिनियम द्वारा स्थापित)
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)

PR/441/2019/DD/55/2020/DC/1583/2022

[DISCIPLINARY COMMITTEE [BENCH-II (2024-2025)]
[Constituted under Section 21B of the Chartered Accountants Act, 1949]

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

[PR/441/2019/DD/55/2020/DC/1583/2022]

In the matter of:

CA. Naresh Kumar Saluja (M. No. 071430)
210, Citi Centre,
Begum Bridge Road,
Near Baccha Park,
Meerut – 250 001.

.... Complainant

Versus

CA. Ravi Gandhi (M. No. 073087)
247, Delhi Road
Meerut – 250 002.

.....Respondent

Members Present: -

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

Date of Hearing : 10th April, 2024

Date of Order : 28th May, 2024

1. That vide Findings under Rule 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Disciplinary Committee was, inter-alia, of the opinion that **CA. Ravi Gandhi (M. No. 073087), Meerut** (hereinafter referred to as the '**Respondent**') is **GUILTY** of Professional Misconduct falling within the meaning of Item (8) and (9) of Part I of the First Schedule and Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.



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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 opportunity of being heard in person / through video conferencing and to make representation before the Committee on 10th April 2024.

3. The Committee noted that on the date of the hearing held on 10th April 2024, the Respondent was present through video conferencing and made his verbal representation on the Findings of the Disciplinary Committee, inter-alia, accepting his mistake with regard to the charge of non-communication with the previous auditor i.e., the Complainant, before accepting the audit assignment for the financial year 2018-19. He also informed that the Complainant got his fees directly from the Company only. The Committee also noted that the Respondent in his written representation on the Findings of the Committee, inter-alia, stated as under:

- a) During the hearing, he was neither physically fit nor mentally ready to face the proceedings. Thus, he missed to submit his defence. The Complainant had actually created such a situation that Directors of the Company were left with no option other than to change the auditor of the Company, M/s. Abhinav Advertising Agency Private Limited.
- b) The letter of communication was never accepted by the Complainant despite sincere attempts made by the Respondent. Due to the fact that both the Respondent and the Complainant were hailing from the same town, the Respondent never opted to send the letter through post as hand delivery was found to be quicker and more convenient mode of delivery.
- c) The Respondent has complied with the provisions in spirit but due to non-cooperation of the Complainant, acknowledgment of hand delivery could not be obtained. The fact of the matter is that the Complainant was well aware of the appointment of the Respondent and the reasons behind it as he discussed and fought with the Directors over phone many times (as evident from the Affidavit of the Accountant of the Auditee Company) and showed his highest degree of non-cooperation to the Respondent who is his professional brother hailing from same town.
- d) The Respondent however had satisfied himself with the Management of the Auditee Company as regard compliance of the provisions of Section 140 of the Companies Act 2013 and was informed beside showing records of the Company that the copy of the notice was sent to the Complainant as well who although disputed the said appointment over phone but never gave any representation.
- e) With respect to the responsibilities for Form AOC-4 certification, he stated that it is nowhere coming out that the Respondent, as a certifying professional was required to



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verify whether the Complainant has done the certification of Financial Statements correctly or not.

- f) If the Complainant has given unsigned /partially certified copy by affixing only his stamp to the Company, then no responsibility can be affixed on the Respondent in this regard. Rather it is the Complainant who should be charged for non-exercise of reasonable care while carrying out the attest functions. Since, the attachment of Form AOC-4 was correctly verified from the original records of the company, therefore, there is no lapse on part of the Respondent as a certifying professional.
- g) With regard to mentioning of CARO 2016 in Form AOC-4, the Respondent submitted that same is an inadvertent error/minor lapse in filling the Form AOC-4 which crept in due to oversight.

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

5. Thus, keeping in view the facts and circumstances of the case, material on record including verbal and written representation on the Findings, the Committee with respect to the first charge noted that the Respondent was given several opportunities to produce the evidence in his defence to show that written communication was made with the Complainant before accepting the statutory audit by him for the financial year 2018-19, however, he failed to produce anything in this regard. Thus, the Committee held that the Respondent failed to communicate with the previous auditor before accepting the audit as required in terms of the requirement of Item (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949 read with Code of Ethics (Edition 2009) issued by ICAI.

5.1 With respect to the second charge, in absence of any evidence of compliance of provisions of Section 140 of the Companies Act, 2013, the Committee held that the Respondent failed to ensure compliance of Section 140 of the Companies Act, 2013.

5.2 With respect to the third charge, the Committee noted that being the certifying professional, the Respondent bore the responsibility to verify that the financial statements were annexed with Form AOC-4. This verification encompassed ensuring strict adherence to regulatory requirements and confirming the proper endorsement through signatures. The Committee also noted that the complaint made by the Complainant addressed the issue of the applicability of CARO 2016. However, inspite of clear applicability of CARO on the Company as apparent from the financial statements itself, the Respondent had reported the other way round. Thus, the



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Committee held that the Respondent was grossly negligent while certifying Form AOC-4 and provided incorrect and incomplete information therein.

5.3 Hence, professional misconduct on the part of the Respondent is clearly established as spelt out in the Committee's Findings dated 7th February 2024 which is to be read in consonance with the instant Order being passed in the case.

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

7. Thus, the Committee ordered that a Fine of Rs. 25,000/- (Rupees Twenty-Five Thousand only) be imposed upon CA. Ravi Gandhi (M.No.073087), Meerut payable within a period of 60 days from the date of receipt of the Order.

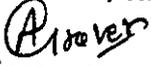
sd/-
(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

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

sd/-
(SHRI ARUN KUMAR, IAS RETD.)
GOVERNMENT NOMINEE

sd/-
(CA. SANJAY KUMAR AGARWAL)
MEMBER

sd/-
(CA. COTHA S SRINIVAS)
MEMBER

प्रमाणित सत्य प्रतिलिपि / Certified True Copy

अनु ग्रोवर / ANNU GROVER
सहायक सचिव / Assistant Secretary
अपराध-सम्बन्धित विभाग / Disciplinary Department
भारतीय सनदी लेखाकार संस्थान
The Institute of Chartered Accountants of India
अधिकारियों का कार्यालय, विद्यास मयूर, शाहपुरा
ICAI Tower, 2nd Floor, Vidya Sagar, Shahpura

CONFIDENTIAL**DISCIPLINARY COMMITTEE [BENCH – II (2023-2024)]****Constituted under Section 21B of the Chartered Accountants Act, 1949****Findings under Rule 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.****File No: PR/441/2019/DD/55/2020/DC/1583/2022****In the matter of:****CA. Naresh Kumar Saluja (M. No. 071430)**210, Citi Centre,
Begum Bridge Road,
Near Baccha Park,
Meerut – 250 001**.... Complainant****Versus****CA. Ravi Gandhi (M. No. 073087)**247, Delhi Road
Meerut – 250 002**.....Respondent****MEMBERS PRESENT:****CA. Ranjeet Kumar Agarwal, Presiding Officer (In person)****Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee (In person)****Shri Arun Kumar, I.A.S. (Retd.), Government Nominee (In person)****CA. Sanjay Kumar Agarwal, Member (In person)****CA. Sridhar Muppala, Member (In person)****DATE OF FINAL HEARING : 14.12.2023 (through physical / video conferencing mode)****PARTIES PRESENT****Complainant : CA. Naresh Kumar Saluja (through VC)**
Respondent : Not Present*Big*

BACKGROUND OF THE CASE:

1. As regard the background of the case, the Committee noted that the Complainant had been appointed as the Statutory Auditor of **M/s. Abhinav Advertising Agency Private Limited** (hereinafter referred to as the "**Company**") for the financial years 2017-18 to 2019-20 vide resolution dated 30.09.2017 in the Annual General Meeting of the Company. The Complainant had conducted the Statutory Audit of the Company for the financial year 2017-18 and issued the audit report. The Respondent was proposed to be appointed as the Statutory Auditor of the Company for the financial year 2018-19 in the 8th Annual General Meeting of the Company to be held on 30.09.2018.

CHARGES IN BRIEF:

2. The Committee noted that the allegations levelled against the Respondent by the Complainant were as under: -

S. No.	Allegations	View of Director (Discipline)
1.1	Non-Communication with the previous auditor i.e., the Complainant, before accepting the audit assignment for the financial year 2018-19.	Guilty
1.2	That the appointment of Respondent as Statutory Auditor of the Company for the financial year 2018-19 was in violation of Section 140 of Companies Act, 2013.	Guilty

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1.3	<p>The Respondent did not exercise due diligence in the conduct of his professional duties, as he concealed some facts in Form AOC 4 for the financial year 2017-18, which he had certified. These facts were as follows: -</p> <ul style="list-style-type: none"> • Mentioned that unqualified Audit Report was issued despite the qualifications being mentioned in the Audit Report of FY 2017-18. • Not reported violation of Section 185 and 186 of Companies Act, 2013, in the Form AOC-4. • Annexed unsigned balance sheet and profit and loss account for the year 2017-18 along with Form AOC 4. 	<p>Not Guilty</p> <p>Not Guilty</p> <p>Guilty</p>
1.4	<p>While certifying AOC-4, the Respondent failed to mention that CARO, 2003 is applicable on the Company.</p>	<p>Guilty</p>

3. The Committee noted that at PFO stage, the Respondent had not submitted his written statement on the allegations.

4. The Director (Discipline) had, in his Prima Facie Opinion dated 01st April 2022, observed as under: -

4.1 With respect to the **first allegation**, related to non-communication with the previous auditor, it was observed that despite being aware of the fact that the Complainant was the previous auditor of the Company, the Respondent had not communicated with the Complainant before accepting the audit assignment for the financial year 2018-19. Moreover, the Respondent had failed to submit his written statement and additional documents in this matter to substantiate any communication done with the Complainant. Accordingly, it was clearly evident that the Respondent failed to comply with the requirements of the Chartered Accountants Act and Code of Ethics 2009 of ICAI of communicating with the previous auditor before accepting his

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appointment as Statutory Auditor of the Company for the F.Y. 2018-19 making him prima facie **Guilty** of professional misconduct falling within the meaning of Item (8) of Part I of First Schedule to the Chartered Accountants Act, 1949.

4.2 With respect to **second allegation**, related to appointment of the Respondent in violation with Section 140 of Companies Act, it was noted that the Complainant was appointed as the Statutory Auditor of the Company for three years i.e., FYs 2017-18 to 2019-20. The notice calling the AGM only mentioned the appointment of the Respondent as the Statutory Auditor of the Company for FY 2018-19 but it did not mention that there was change in auditor of the Company or that the appointment of the Respondent was owing to the resignation/ removal of the existing auditor i.e., the Complainant. Thus, keeping in view the appointment of Respondent before the expiry of term of the Complainant and in the absence of information regarding Complainant's removal or resignation from the position of Statutory Auditor of the Company, it was clearly evident that the removal of the Complainant was not in compliance with provisions of Section 139 and Section 140 of Companies Act, 2013 and that the Respondent being the auditor had failed to ensure the same. Accordingly, the Respondent was opined as prima facie **Guilty** of professional misconduct falling within the meaning of Item (9) of Part I of the First Schedule to the Chartered Accountants Act 1949.

4.3 With respect to the **third allegation** that the Respondent had concealed some facts in AOC-4 certified by him, the Director (Discipline) observed as under: -

a) With respect to the first leg of allegation that despite being aware of the fact that the Complainant had issued qualified report for the FY 2017-18, the Respondent mentioned unqualified report in AOC-4, the Director (Discipline) observed that whenever an auditor issues a modified report, he has to specifically include a paragraph in the auditor's report that provides a description of the matter giving rise to the modification. The auditor is required to place this paragraph immediately before the opinion paragraph in the auditor's report by using the heading "Basis for Qualified Opinion", "Basis for Adverse Opinion", or "Basis for Disclaimer of Opinion",

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as appropriate. However, while perusing the audit report as issued by the Complainant for the FY 2017-18, it was seen that he has nowhere given any such paragraph which may indicate that whether he has modified his report meaning thereby that he has issued a clean or an unqualified report for FY 2017-18 (C-8). Thus, it was viewed that the allegation of Complainant that despite qualifying the Audit Report, the Respondent has certified the unqualified facts in AOC 4 for FY 2017-18 does not stand against the Respondent. Hence, for the instant allegation, the Respondent was held prima facie **Not Guilty** of Professional Misconduct falling within the meaning of Item 7 of Part I of Second Schedule to the Chartered Accountants Act, 1949.

b) As regard the second leg of allegation of non-reporting of violation of Sections 185 & 186 of the Companies Act, 2013 in Form AOC-4, the Director (Discipline) observed that on perusal of impugned Form AOC4, it appears that there was no specific column to show/ report that the Company had violated the provision of Sections 185 and 186 of Companies Act, 2013, thereby it cannot be said that the Respondent was grossly negligent in conduct of his work for not mentioning the same. Hence, this leg of instant allegation was also not maintainable against the Respondent. Accordingly, the Respondent was held prima facie **Not Guilty** of professional misconduct falling within the meaning of Item 7 of Part I of Second Schedule to the Chartered Accountants Act, 1949.

c) With regard to third leg of the allegation, regarding annexing unsigned balance sheet and profit & loss account for the financial year 2017-18 along with form 'AOC-4', it was noted that the said financial statements were only stamped by the Complainant and were unsigned. Therefore, it was concluded that being the certifying professional of Form AOC-4, the Respondent was obligated to ensure the completeness and correctness of financial statements, annexed to the said Form AOC-4. Therefore, the Respondent was opined as prima facie **Guilty** of professional misconduct

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falling within the meaning of item (7) of Part I of the Second Schedule of the Chartered Accountants Act, 1949.

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

Item (8) of Part I of First Schedule:

"A chartered accountant in practice shall be deemed to be guilty of professional misconduct if he-

(8) accepts a position as auditor previously held by another chartered accountant or a certified auditor who has been issued certificate under the Restricted Certificate Rules, 1932 without first communicating with him in writing."

Item (9) of Part I of First Schedule:

"A chartered accountant in practice shall be deemed to be guilty of professional misconduct if he-

(9) accepts an appointment as auditor of a company without first ascertaining from it whether the requirements of Section 225 of the Companies Act, 1956 (1 of 1956), in respect of such appointment have been duly complied with."

Item (7) of Part I of 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."

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SUBMISSIONS OF THE RESPONDENT ON PRIMA FACIE OPINION: -

5.1 The Committee noted that the Respondent did not submit his written submissions on the prima facie opinion of the Director (Discipline).

BRIEF FACTS OF THE PROCEEDINGS: -

6. The Committee noted that the instant case was fixed for hearing on the following dates: -

S. No.	Date	Status of Hearing
1.	31.05.2023	Adjourned at the request of the Respondent.
2.	23.08.2023	Fixed & Adjourned in absence of Respondent.
3.	16.10.2023	Adjourned at the request of the Respondent.
4.	31.10.2023	Adjourned in absence of both the parties.
5.	13.12.2023	Adjourned in order to give one more opportunity to the parties on 14.12.2023.
6.	14.12.2023	Heard and Concluded.

6.1 On the day of the first hearing held on 31st May, 2023, the Committee noted that the Complainant was present through video conferencing mode. The Respondent vide e-mail dated 29th May 2023 sought adjournment due to the hospitalization of his mother. Thereafter, the Complainant was administered on Oath. The Committee, after looking into the fact that this was the first hearing and considering the adjournment request of the Respondent, decided to adjourn the hearing to a future date.

6.2 On the day of the second hearing held on 23rd August, 2023, the Committee noted that the Complainant was present through video conferencing mode. The Respondent did not appear before the Committee despite due delivery of notice. Since the Respondent was not present, the Committee decided to adjourn the case and directed that no more adjournment would be granted to the parties and the matter would be proceeded ex-parte in absence of any party. The Committee also directed the office to provide the UDIN details of

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the Respondent in the next hearing. Thus, the Committee decided to adjourn the hearing to a future date.

- 6.3** On the day of the third hearing held on 16th October, 2023, the Committee noted that the Complainant was present through video conferencing. The Respondent vide his e-mail dated 16th October 2023 sought an adjournment in the matter on the grounds that his mother was hospitalized. The Committee informed the Complainant about the same. Thereafter, the Committee decided to give one last opportunity to Respondent to appear in the next hearing before the bench and gave the directions to the office to inform the Respondent that the next hearing would be the last hearing and the case would be decided ex-parte in the absence of the Respondent. With this, the Committee decided to adjourn the hearing to a future date.
- 6.4** On the day of the fourth hearing held on 31st October 2023, the Committee noted that when the case was taken up for hearing, both the parties were absent. The Committee also noted that the Respondent did not appear despite due delivery of notice. Thus, the Committee in the absence of both parties, decided to give a final opportunity to the Respondent failing which the matter would be decided ex-parte. Accordingly, the matter was adjourned to the next date.
- 6.5** On the day of fifth hearing held on 13th December 2023, the Committee noted that when the case was taken up for hearing, none of the parties were present. The Committee, therefore, in absence of both the parties decided to give one more opportunity to the parties and directed the office to fix the hearing on 14th December 2023 and communicate with the parties accordingly.
- 6.6** On the day of the final hearing held on 14th December 2023, the Committee noted that the Complainant was present through video conferencing. The Respondent was not present. The Committee noted that the Respondent never appeared before the bench during the course of hearing(s); however, he had generated more than 2500 UDINs which proved that he was actively

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involved in day to day affairs but did not care to appear before the Bench. The Committee, accordingly, decided to proceed ahead in the matter ex-parte the Respondent. Thereafter, the Complainant explained the charges against the Respondent. The Committee, after considering all papers available on record and after detailed deliberations and recording the submissions, concluded the matter and passed its judgment.

FINDINGS OF THE COMMITTEE: -

7. As regard the **first charge** related to non-communication with the previous auditor before accepting the audit for the financial year 2018-19, the Committee noted that the Complainant was appointed as the Statutory Auditor of the Company for the financial year(s) 2017-18 to 2019-20 vide resolution dated 30.09.2017 passed in the Annual General Meeting. As regards the confirmation of said appointment, ADT-1 was filed by the Company with the ROC on 01.10.2017. Thereafter, the Complainant conducted the Statutory Audit of the Company for the financial year 2017-18.
- 7.1 The Committee observed that despite the appointment of the Complainant as statutory auditor for the three financial years i.e., from 2017-18 to 2019-20, the Company proposed the appointment of the Respondent as its statutory auditor for the financial year 2018-19 as apparent from the resolution of the AGM to be held on 30.09.2018. It was also observed that the Respondent was duly aware that the Complainant was the previous auditor of the Company, as the Respondent had certified Form AOC-4, wherein he himself mentioned the name of the Complainant as the statutory auditor of the Company for the financial year 2017-18.
- 7.2 The Committee also noted that the Respondent was given several opportunities to produce the evidence in his defence to show that written communication was made with the Complainant before accepting the statutory audit by him for the financial year 2018-19, however, he failed to produce anything in this regard. Moreover, he chose not to appear before the Committee in any of its hearing. In this regard, the Committee noted that on

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one side, the Respondent was actively engaged in his professional work as evident from the details of UDIN generated by him on UDIN website, and on the other hand, he did not care to appear before it to make his submission in the matter.

7.3 Accordingly, the Committee holds the view that the Respondent's absence from the disciplinary proceedings, combined with the lack of submissions addressing the merits of the case, may be considered as an admission of guilt on his part. Hence, the Committee concluded that the Respondent failed to communicate with the previous auditor before accepting the audit as required in terms of the requirement of the schedule to the Chartered Accountants Act, 1949 read with Code of Ethics (Edition 2009) issued by ICAI. Thus, the Committee held the Respondent **Guilty** of Professional Misconduct falling within the meaning of Item (8) of Part I of First Schedule to the Chartered Accountants Act, 1949.

8. The Committee noted that the **second charge** was that the Respondent had failed to ensure compliance of Section 140 of the Companies Act, 2013 before acceptance of audit. In respect of this allegation, the Committee noted that the Respondent neither appeared nor submitted any submission on merits of the case. Accordingly, as mentioned in the preceding paragraph, the Respondent's absence from the disciplinary proceedings, combined with the lack of submissions addressing the merits of the case, may be considered as an admission of guilt on his part. Hence, in absence of any evidence of compliance of provisions of Section 140 of the Companies Act, 2013, the Committee concluded that the Respondent failed to ensure compliance of Section 140 of the Companies Act, 2013. Thus, the Committee held the Respondent **Guilty** of professional misconduct falling within the meaning of Item (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

9. The Committee noted that the **next charge** was that the Respondent had failed to exercise due diligence while filing AOC-4, as he annexed an unsigned balance sheet and profit & loss account for the FY 2017-18 with it. In this regard, on perusal of the documents on record as provided by the

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Complainant such as audit report, balance sheet and profit and loss account annexed with Form AOC-4, the Committee noticed that these documents were only stamped by the Complainant as the auditor of the Company for the said financial year 2017-18 but were not signed by him. Further, the said fact was also confirmed from the AOC-4 and its attachment downloaded from MCA website wherein the annexed balance sheet and profit & loss account was found to be unsigned.

9.1 The Committee also noted that while certifying AOC-4, the Respondent declared in AOC-4 as under: -

".....I verified the above particulars (including attachment(s)) from the original/ certified records maintained by the Company/ applicant which is subject matter of this form and found them to be true, correct and complete and no information material to this form has been suppressed. I further certify that:

1) the said records have been properly prepared, signed by the required officers of the Company and maintained as per the relevant provisions of the Companies Act, 2013 and were found to be in order.

2) All required attachments have been completely and legibly attached to this form...."

9.2 From the above, it is observed that the Respondent confirmed that the records were properly signed and the attachments were complete but the attached financial statements and audit report were not signed by the Respondent. Further, the financial statements and schedules were not signed by any director. Therefore, the same clearly indicates that the Respondent failed to verify the attachment before annexing the same with AOC-4. The Committee noted that being the certifying professional, the Respondent bore the responsibility to verify that the financial statements were annexed with Form AOC-4. This verification encompassed ensuring strict adherence to regulatory requirements and confirming the proper endorsement through signatures. Accordingly, the Committee concluded that the Respondent was grossly negligent while certifying the AOC-4.

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9.3 The Committee also observed that that the Respondent, in Form AOC-4 had certified that CARO was not applicable. But, on examining the provisions of applicability of CARO, 2016, the Committee observed as under: -

- “1. *Short title, application and commencement.- (1) This Order may be called the Companies (Auditor's Report) Order, 2016.*
2. ***It shall apply to every company*** including a foreign company as defined in clause (42) of section 2 of the Companies Act, 2013 (18 of 2013) [hereinafter referred to as the Companies Act], **except-**
 - (i) *a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);*
 - (ii) *an insurance company as defined under the Insurance Act, 1938 (4 of 1938);*
 - (iii) *a company licensed to operate under section 8 of the Companies Act;*
 - (iv) *a One Person Company as defined under clause (62) of section 2 of the Companies Act and a small company as defined under clause (85) of section 2 of the Companies Act; and*
 - (iv) *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.”*

9.3.1 Considering the above provisions and on perusal of the financial statements of the Company for the F.Y. 2017-18, the Committee noted that the Company had the paid-up capital and reserve and surplus of Rs. 1.91 crore, and it had taken loan as long-term borrowings of Rs. 1.57 crores from UCO Bank and M/s. Infoline Housing Finance. Since, the paid capital and long-term borrowing of the Company exceeded the exempted limit specified in the applicability of CARO (Companies Auditor's Report Order) 2016, the provisions of CARO 2016 were applicable to the Company. But, despite being

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aware of the same, the Respondent mentioned in AOC-4 that CARO 2016 is not applicable to the Company.

9.3.2 Further, surprisingly, in the very next financial year 2018-19, the Respondent himself mentioned the applicability of CARO in Form AOC. Thus, the Committee concluded that in spite of clear applicability of CARO on the Company as apparent from the financial statements itself, the Respondent had reported the other way round. The Committee also noted that the complaint made by the Complainant did not address the issue of the applicability of CARO 2016. However, the facts related to it confirmed that the Respondent was grossly negligent while certifying Form AOC-4 and provided incorrect and incomplete information therein.

9.3.3 In view of the above, the Committee held that the Respondent is **Guilty** of professional misconduct falling within the meaning of Item (7) of Part I of Second Schedule to Chartered Accountants Act, 1949 in respect of the charge related to annexing unsigned balance sheet and profit and loss account with Form AOC-4.

CONCLUSION

10. In view of the findings stated in above paragraphs vis-a-vis material & submissions on record, the Committee in its considered opinion, holds the Respondent **GUILTY** of Professional Misconduct falling within the meaning of Items (8) & (9) of Part I of First Schedule and Item (7) of Part – I of the Second Schedule to the Chartered Accountants Act, 1949.

SD/-

(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

SD/-

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

SD/-

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

SD/-

(CA. SANJAY KUMAR AGARWAL)
MEMBER

SD/-

(CA. SRIDHAR MUPPALA)
MEMBER

DATE: 07TH FEBRUARY, 2024

PLACE: NEW DELHI

सही प्रतिलिपि होने के लिए प्रमाणित
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बिष्वा नाथ तिवारी / Bishwa Nath Tiwari
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110022