

[PR-101/20-DD/155/2020-DC/1521/2021]

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2022-2023)]
[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-101/20-DD/155/2020-DC/1521/2021]

In the matter of:

CA Binaya Kumar Jain,
C/o Sh. Sanjay Bansal,
KK 42 Ground Floor,
Rourkela – 769004

....Complainant

Versus

CA. Abhay Balkrishna Upadhye, (M.No.049354)
M/s K K Mankeshwar & Co,
Chartered Accountants,
7, Kingsway,
Nagpur – 440001

.....Respondent

MEMBERS PRESENT:

Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee (Present in person)
Shri Arun Kumar, I.A.S.(Retd.), Government Nominee (Present in person)
CA. Rajendra Kumar P, Member (Present in person)
CA. Cotha S Srinivas, Member (Present in person)

DATE OF FINAL HEARING: 16.01.2023 (Through Physical/ Video Conferencing Mode)

PARTIES PRESENT :

Complainant : CA. Binaya Kumar Jain
Counsel for Respondent : Shri S G Gokhale, Advocate
Respondent : CA. Abhay Balkrishna Upadhye

CHARGES IN BRIEF:-

[PR-101/20-DD/155/2020-DC/1521/2021]

1. The Committee noted that in the present case, the Respondent was held Prima-facie Guilty by the Director (Discipline) 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 on the following charges with respect to his statutory audit for the financial year 2017-18 of M/s Sunil Hitech Engineers Ltd (hereinafter referred to as the “**Company**”):
 - a. That the Respondent did not perform the proper audit procedure in disclosing the step-down subsidiary company in the consolidated financials of the company and merely relied upon the management’s representation.
 - b. That the Company had not given a complete, sufficient, and proper disclosure of Bank Guarantee (BG) and letter of credit (LOC) under the head contingent liability in its financial statements for the period ended 31st March, 2018 and the Respondent has failed to raise any objection/report such non-disclosure and violation of accounting standards by the management of the Company.
 - c. That the Respondent while performing the audit for the financial year 2017-18 did not obtain the external confirmation of book debts as additional evidence along with management representation.
 - d. That an item of Rs. 49.6 crores was continuously reported as “Emphasis of Matter” was continuously referred to in the audit report for the year ended 31st March, 2016 (Page C-29 of the Prima-facie opinion) and 31st March, 2017 (Page C-29 of the Prima-facie opinion) by the previous auditors. The same should have been recognized in the F.Y. 2017-18 as ‘Provisions for Doubtful Debts’.

BRIEF FACTS OF THE PROCEEDINGS:

2. The Committee noted that during the hearing held on 31st October 2022, both parties were present through Video Conferencing Mode. Both the parties were administered on Oath. Thereafter, the Committee enquired from the Respondent as to whether he pleaded guilty to the charges alleged. On the same, the Respondent replied in the affirmative and pleaded Not Guilty to the

charges levelled against him. Being the first hearing, the Committee, adjourned the matter to a future date.

3. The Committee noted that, during the hearing held on 27th December 2022, the Respondent alongwith his Counsel, Shri S G Gokhale, Advocate were present from BKC, Mumbai Office of ICAI. The Complainant was present through Video Conferencing mode. Thereafter, when the Complainant started explaining the charges, the Committee posed the question to him as to how he was affected by the conduct of the Respondent in the present case and what was his locus-standi in the instant matter. On the same the Complainant fails to justify his stand properly.
- 3.1 The Committee thereafter draw his attention to the Judgement of Hon'ble Delhi High Court in the matter of M/s Wholesale Trading Co., which relates to the issue of locus standi of the Complainant in that matter. On the same, the Complainant replied that he is not aware of such judgement.
- 3.2 The Committee, while adjourning the matter, directed the Office to provide both parties with a copy of Judgement of Hon'ble Delhi High Court in the matter of M/s Wholesale Trading Co.. The Committee directed the Complainant to go through the said judgement and provide his submissions on his locus in present matter.
4. On the day of the final hearing on 16th January 2023, the Committee noted that the Respondent alongwith his Counsel Shri S G Gokhale, Advocate was present from BKC, Mumbai Office of ICAI. The Complainant was present through Video Conferencing mode. At the outset, the Committee noted that in the previous hearing, the office was directed to send copy of Judgement of Hon'ble Delhi High Court in the matter of M/s Wholesale Trading Co. to both parties and the Complainant was specifically directed to submit his submissions on his locus-standi in present matter filed by him.

[PR-101/20-DD/155/2020-DC/1521/2021]

- 4.1 The Committee noted that the Complainant, vide his email dated 6th January 2023 had submitted that he is the attorney holder of Mr. Sanjay Bansal, who is a shareholder in the subject Company, i.e. M/s Sunil Hi Tech Engineers Ltd. and his communication address contains the name of Mr. Sanjay Bansal as "c/o". The Committee considered the same and also noted that the Complainant had also provided a copy of a notarized Power of Attorney dated 18th January 2020. The Committee, accordingly, accepted the Complainant's plea of locus-standi and decided to continue the hearing on the merits.
- 4.2 Thereafter, the Complainant submitted his allegations, and the Respondent's Counsel presented his line of defence by presenting his counter arguments. The Committee posed certain questions to arrive at a logical conclusion in the matter. After considering all papers available on record and after detailed deliberations and recording the submissions, the Committee decided to conclude the matter. The Committee noted that the Complainant after conclusion of the hearing had sent an email on same day. The Committee also took consideration of the same in respect of charges wherein the Respondent was held guilty by the Director (Discipline).

FINDINGS OF THE COMMITTEE

5. The Committee with respect to first charge 1(a) noted that the Company has a subsidiary, M/s Future Commodities Investments Pte Limited, Singapore (hereinafter referred to as **subsidiary company/FCI**) which is the holding company of M/s Sapphire Minmetals Corporation Limited, Hongkong (hereinafter referred to **Step down subsidiary / SMC**).
- 5.1 It is noted by the Committee that, as per the charge, the Company in its consolidated financials for the year ended 31st March, 2018 has not disclosed such step down subsidiary, SMC and the Respondent too failed to consider and disclose such step down subsidiary, SMC in his audit report on the consolidated financial statement of the auditee company for the year ended 31st March 2018 in spite of the fact that the step down subsidiary, SMC has considerable equity share capital of HKD 24,73,95,277 and was operating with 720 employees

during the year 2017 and 2018 with a turnover of (as per its financials as on 31-12-2016) Rs. 2900 with a net worth of the Rs.186 Crores. Thus, it is charged that the Respondent did not perform the proper audit procedure in disclosing the subsidiary company to be considered in the consolidated financials of the company and merely relied upon the management's representation.

- 5.2 The Committee noted that the Respondent/ his Counsel in this regard, had submitted as under:
- a. That the financial statements of FCI (subsidiary Company) contained no mention whatsoever about its further subsidiary, (SMC)-the step-down company.
 - b. That audited financial statement of previous year 2016-17 did not mention anything about the alleged step-down company.
 - c. There was no circumstantial evidence that would give him any clue about SMC.
- 5.3 The Committee noted that it is an admitted fact that, as per the provision of IND AS – 110, the Company was required to consolidate the financials of SMC too in its consolidated financial statements for the year ended 31st March, 2018.
- 5.4 The Committee further noted that, as per Note no. 13 of FCI for the year ending on 31st March 2017, brought on record by the Complainant (Page C-5 of the prima-facie opinion), the former had made additional investments in the SMC, and as a result of such investments, the former's shareholding in the SMC becomes 73%. The Committee noted that the Respondent had not verified the previous year's annual report of FCI, because, if he had, he would have known about the existence of such a subsidiary company, SMC, as the FCI purchased additional shares of SMC on 11th May 2017.
- 5.5 The Committee further noted that as per letter dated 8th February 2018, brought on record by the Complainant (Page C-9 of the prima-facie opinion), the Company Secretary/Compliance Officer on behalf of the Company, had informed out- come of abovementioned Board Meeting held on 8th February

[PR-101/20-DD/155/2020-DC/1521/2021]

2018, to BSE and NSE. The Committee noted that had the Respondent properly inspected all minutes of Board meetings, he would have come to know of the existence of step- down subsidiary i.e. SMC.

- 5.6 The Committee noted that the stepdown subsidiary company, i.e., SMC, had substantial business and its net worth has a good amount of turnover in lines, making it a material investor for the audited company, the non-disclosure of which vitiates the Company's true and fair view of its financials and may also impact the decision of the audited company's stakeholder holders.
- 5.7 The Committee, accordingly, concluded that the Respondent has clearly failed to apply his audit procedures diligently and failed to report the violation of an accounting standard made by the management of the Company and also failed to report the existence of such material subsidiary SMC which was not disclosed in the financials of the auditee company. Hence, the Committee hold the Respondent Guilty of Professional Misconduct falling within the meaning of Item (5), and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 in respect of this charge.
6. The Committee noted that the next charge mentioned para 1(b) above relates to insufficient and improper disclosure of bank guarantee under the heading contingent liabilities in the financials of the company for the year ended 31st March, 2018. The Committee noted that the Respondent, in respect of Guarantee shown under heading Contingent Liabilities, in the stand alone Financials of the Company as on 31st March,2018 (Page D-97 of the prima-facie opinion) had disclosed as under:

Contingent liabilities	
Particulars	31-03-2018
Guarantee given to Customers and Financial Institutions	Rs.817.76 Crores
Guarantee given to Banks and Financial Institution on behalf of (i) A Subsidiary Company	Rs.138.48 Crores

[PR-101/20-DD/155/2020-DC/1521/2021]

---Loan/LC/BG outstanding at the year end.	Rs.66.51 Crores
(ii) Jointly Controlled Entity	Rs.189 Crores
---Loan outstanding at the year end	NIL
(iii) Others	Rs.21.70 Crores

6.1 The Committee from the above disclosure, noted as under:

- a. It is not clear as to what is the exact amount of guarantee, whether it was Rs.138.48 Crores or Rs.66.51 Crores (page D-97 of the prima-facie opinion) at the end of Financial Year 2017-18, which was given to Banks and Financial Institution on behalf of Subsidiary Company.
- b. It is not clear whether the amount of Rs.66.51 Crores is given towards bank guarantee or towards LC.
- c. Segregation of Guarantee given to Customers and Financial Institution is also shown as a consolidated amount of Rs.817.76 Crores (page D-97 of the prima-facie opinion).

6.2 The Committee noted that, as per the provision of para 86 of IND AS – 37, a separate disclosure with regard to bank guarantee as well as letter of credit was required.

6.3 The Committee noted that the Respondent/ his Counsel in this regard submitted that his obligation was only related to Bank Guarantee and that the amount was very much mentioned in the financial statements as a liability (page C-23 of the prima-facie opinion). The Committee also noted that the Respondent, in his submissions, had given the actual position of loans and contingent liabilities as under:

S.No.	Particulars	As on 31-03-2018 (Amt. in Lacs)
A	Cash Credit Accounts	45,565.80
B	Term Loan from banks and financial institutions	12,210.49

[PR-101/20-DD/155/2020-DC/1521/2021]

C	Guarantee given to customers and financial institutions including subsidiaries and jointly controlled entities	1,16,768.07
D	Amount included under head Trade Payables which are against LCs issued by banks	73,869.91
E	Total	2,48,414.27

- 6.4 The Committee noted that in the financial statement consolidated amount, the guarantee given to Banks and financial Institutions on behalf of a subsidiary company for loans/LC/BG was mentioned (Page D-97 of the Prima facie opinion). The Committee further noted (Page D-97 of the Prima facie opinion), the total of the contingent liability disclosed is Rs 1,25,148.77 Lakhs. Whereas the Respondent's disclosure in the preceding paragraph is Rs 2,48,414.27 lakhs.
- 6.5 The Committee further observed that the Respondent provided an LC amount of Rs.738.69 Crores as on 31st March, 2018. The Committee noted that the Respondent failed to justify why this amount was not disclosed under the head 'Contingent Liability' in the financials of the company as on 31st March, 2018 (Page C-23 of the Prima facie opinion).
- 6.6 The Committee accordingly concluded that the disclosure in respect of contingent liability given in the financials of the company was not sufficient and proper. This clearly shows that the company was falsely portraying a sound picture of itself to users of its financials as of 31st March 2018, and that the respondent, as the company's auditor, failed to report the same in his audit report. Further, it is a fact on record that the company, whose financial condition as per its financials as of 31st March 2018 was sound enough, suddenly went into liquidation in September 2018, which creates a serious doubt on the reporting of the Respondent.

- 6.7 The Committee accordingly concluded that the Respondent was not vigilant while performing his attestation function and also failed to report on the material amount of contingent liabilities pending against the company, which ought to have been disclosed to show a true and fair view of the financials as of 31st March, 2018 making him prima facie Guilty of professional misconduct falling within the meaning of Item (5) and (7) of Part - I of Second Schedule to the Chartered Accountants Act, 1949.
7. The Committee noted that in the next charge mentioned para 1(c) above, the Respondent relates to the non-obtaining of external confirmation from the Debtors.
- 7.1 The Committee noted that the Respondent had not replied on the merits of the allegation and that he merely mentioned that it was his first year of his audit, was not very conversant with the integrity of the management. He further submitted that he had limited time for the audit and so he addressed to few debtors, and as he had no time to wait for debtor responses, he signed the balance sheet on 30th May, 2018. He also stated that during the audit of such book debts, he enquired with management, who were confident of its recovery; however, he has remained silent on any external confirmation he obtained from any customer, or any other evidence collected in this regard as part of his audit procedure for the audit of book debts.
- 7.2 The Committee also noted that the only working paper available with the Respondent was Management Representation letter dated 29th May, 2018 (Page D-234 of the Prima-facie opinion) from the Company. As a result, the Committee concluded that the Respondent had simply relied on management's assurances and beliefs about the recoverability of such substantial amounts of debtors, without performing any independent audit procedures or gathering any evidence to ensure the debtors' recoverability. It is pertinent to note that the entire amount owed by these debtors was provided as provision for doubtful debts in the quarter ended 31st December, 2018.
- 7.3 Hence, the Respondent has not come forward with complete facts in his defence and has been grossly negligent during his audit for the year ended 31st

[PR-101/20-DD/155/2020-DC/1521/2021]

March, 2018 and also failed to collect the appropriate and sufficient audit evidence in support of such a material item of current assets shown in the financials, which signified a sound financial health of the company. The Committee noted that had he reasonably performed his audit procedure to confirm the material amount of trade debtors shown as good in the financials of the company as on 31st March, 2018, he would have been able to justify more appropriately with sufficient evidences the basis of his opinion in his audit report for the period ended 31st March, 2018.

- 7.4 Accordingly, the Committee holds the Respondent guilty of professional misconduct within the meaning of Items (7) & (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 on this charge.
8. The Committee noted that the next charge mentioned para 1(d) above relates to reporting a matter under the heading 'Emphasis of Matter'. According to the charge, the previous auditors continuously reported an item of Rs. 49.6 crores as "Emphasis of Matter" in the audit report for the years ended 31st March 2016 (Page C-29 of the prima facie opinion) and 31st March 2017 (Page C-30 of the prima facie opinion). The Respondent in the third year, i.e. F.Y. 2017-18, did the same reporting despite recognized the same as "Provisions for Doubtful Debts."
- 8.1 The Committee noted that there has been a recoverable amount of Rs.49.16 Crores by subsidiary of the Company incurred in the development of a coal block project, and in the audit report on the consolidated financial statement of the company, viz. for the year ended 31st March,2016 (Page C-29 of the prima facie opinion) and 31st March,2017 (Page C-30 of the prima facie opinion) the auditors have been showing the same matter under the para 'Emphasis of Matter' as below:

"We draw your attention regarding on-going negotiations towards recoverability of Rs.4916.74 Lacs incurred in the development of coal block project, Our opinion is not qualified in respect of this matter."

9

- 8.2 The Respondent in his audit report for the period ended 31st March, 2018(C-32) also presented the matter on the same lines, i.e. under the heading 'Emphasis of Matter' without referring to any further progress or current status of such negotiations as of the date of his audit report, i.e., 30th May, 2018(C-32).
- 8.3 The Complainant in his complaint has referred to a credit policy shown in the Disclosure Notes to the Financial Statements, which states that when a counterparty fails to make payment within 365 days of its due date, it becomes a default on financial assets. In this regard the Respondent in his written statement has been silent in respect of this statement of the complainant and has not justified his opinion in the matter as given under the para 'Emphasis of Matter' over such a credit policy of the company.
- 8.4 The Committee noted that this amount was not recoverable by the company but was recoverable by a subsidiary of the company. Hence, the primary responsibility for reporting it as a bad debt is that of the auditor of the subsidiary Company. Further, the negotiations with respect to such a recoverable amount must be primarily done by the subsidiary company. The Committee noted that there is nothing on record to establish that the component auditor of the concerned subsidiary had reported the same as doubtful.
- 8.5 Accordingly, the Committee noted that it was at the discretion of the auditor in such a situation to give a modified opinion or to give emphasis on a matter. Further reporting of an unrecoverable amount by a subsidiary, with a maximum impact of Rs. 2.48 crores, is an overabundance of the auditor's responsibilities because such reporting is purely a judgmental issue. Accordingly, the Committee decided to extend benefit in favour of the Respondent and hold him Not Guilty of professional misconduct falling within the purview of Item (7) & (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

CONCLUSION

9. In view of the above findings stated in above paras vis a vis material on record, the Committee gives its charge wise findings as under:

[PR-101/20-DD/155/2020-DC/1521/2021]

Charges (para ref.)	Findings (para ref.)	Decision of the Committee
1 (a)	5 to 5.7	Guilty - Item (5), and (7) of Part I of the Second Schedule
1 (b)	6 to 6.7	Guilty - Item (5) and (7) of Part I of the Second Schedule
1 (c)	7 to 7.4	Guilty - Item (7) and (8) of Part - I of Second Schedule
1 (d)	8 to 8.5	Not Guilty - Item (7) and (8) of Part I of the Second Schedule

10. The Committee, accordingly, in its considered opinion hold the Respondent **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.

Sd/-

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

Sd/-

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

Sd/-

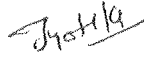
(CA. RAJENDRA KUMAR P)
MEMBER

Sd/-

(CA. COTHA S SRINIVAS)
MEMBER

DATE:11.02.2023

PLACE: New Delhi



प्रमाणित सत्य प्रतिलिपि / Certified true copy

सीए ज्योतिका गेवर / CA. Jyotika Grover
हस्ताक्षर अधिकारी / Assistant Secretary,
अनुशासन/आचार विभाग / Discipline, Directorate
इंस्टीट्यूट ऑफ चार्टर्ड अकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन / ICAI Bhawan, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahdara, Delhi-110032



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

[PR-101/20-DD/155/2020-DC/1521/2021]

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

[PR-101/20-DD/155/2020-DC/1521/2021]

In the matter of:

CA Binaya Kumar Jain,
C/o Sh. Sanjay Bansal,
KK 42 Ground Floor,
ROURKELA – 769004

....Complainant

Versus

CA. Abhay Balkrishna Upadhye, (M.No.049354)
M/s K K Mankeshwar & Co,
Chartered Accountants,
7, Kingsway,
NAGPUR – 440001

.....Respondent

MEMBERS PRESENT:

1. **CA. Ranjeet Kumar Agarwal, Presiding Officer** (Present in person)
2. **Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee** (Present in person)
3. **Shri Arun Kumar, I.A.S. (Retd.), Government Nominee** (Present in person)
4. **CA. Sanjay Kumar Agarwal, Member** (Present in person)
5. **CA. Sridhar Muppala, Member** (Present through video-conferencing mode)

DATE OF HEARING : 28.03.2023 (Through Physical/ Video Conferencing Mode)

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 dated 11.02.2023, the Disciplinary Committee was, inter-alia, of the opinion that **CA. Abhay Balkrishna Upadhye (M. No. 049354)** (hereinafter referred to as the **Respondent**) was **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.



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

[PR-101/20-DD/155/2020-DC/1521/2021]

2. The Committee noted that the instant matter relates to the statutory audit for the financial year 2017-18 of M/s Sunil Hitech Engineers Ltd. (hereinafter referred to as the **"Company"**) undertaken by the Respondent. The Committee further noted that, in its findings, the Respondent is held guilty on the following charges:
 - 2.1 That the Respondent did not perform the proper audit procedure in disclosing the step-down subsidiary company in the consolidated financials of the company and merely relied upon the management's representation.
 - 2.2 That the Company had not given a complete, sufficient, and proper disclosure of Bank Guarantee (BG) and letter of credit (LOC) under the head contingent liability in its financial statements for the period ended 31st March, 2018 and the Respondent has failed to raise any objection/report such a non-disclosure and violation of accounting standards by the management of the Company.
 - 2.3 That the Respondent while performing the audit for the financial year 2017-18 did not obtain external confirmation of book debts as additional evidence along with management representation.
3. The Committee noted that the Respondent was present through Video Conferencing Mode. The Committee noted that the Respondent relied upon his written submissions dated 07th March 2023. The Committee further noted that the Respondent in his submissions before it, inter-alia mentioned as follows:
 - 3.1 That in the hearing held on 27th December 2022, the Disciplinary committee required the Complainant to establish his locus standi considering the judgement of the Hon'ble Delhi Court in case of Wholesale Trading Co. Till that time, the Complainant has never submitted that he has acting on behalf of the shareholder. The complaint was filed on 7th of July 2020 but till 6th January 2023, he has not pointed out that he has been acting on somebody's behalf.
 - 3.2 As regards to the charge of non-disclosure of a step-down subsidiary in the consolidated financials, the Respondent mentioned that in his written statement to PFO vide letter dated



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

[PR-101/20-DD/155/2020-DC/1521/2021]

20th December 2021 he specifically stated that letter was not made available to him, and the said point was not in the agenda of the board meeting. This clearly means that he checked the board meeting agenda. He further submitted that since the step-down subsidiary is not disclosed to him, it is not possible to assess its equity share capital, turnover, and number of employees from a materiality point of view.

- 3.4 With regards to the charge about insufficient and improper disclosure of bank guarantees under the heading contingent liability, he mentioned that the liability of Rs 66.51 crores of subsidiary was a consolidation of actual liabilities outstanding at year-end of loans/LC/BG.
- 3.5 With regard to the charge about non obtaining external conformation about debtors, he had submitted his written statement to Prima-facie opinion vide letter dated 20th December 2021 wherein he had annexed copies of letters seeking conformation of liability.
4. The Committee, after consideration of the same and after listening to the Respondent at length, decided to reserve its decision. Thereafter, this matter was considered by the Committee in its meeting held on 6th April 2023 wherein the same members, who heard the case earlier, were present for consideration of the facts and arriving at a decision by the Committee. Accordingly, the Committee, keeping in view the facts and circumstances of the case, the material on record and the submissions of the parties, the findings of the Disciplinary Committee, and the various submissions of the Complainant and the Respondent on the findings of the Disciplinary Committee, gave its decision.
5. The Committee noted that as regards locus standi of the Complainant, the Complainant had already submitted that he is making complaint on behalf of Mr. Sanjay Bansal and had also submitted authorization letter in this regard.
6. The Committee noted that charges against the Respondent observed that the Respondent has clearly failed to apply his audit procedures diligently, failed to report the violation of an accounting standard made by the management of the Company, and also failed to report the existence of such a subsidiary SMC, which was not disclosed in the financials of the auditee company. The Committee further observed that the disclosure in respect of contingent liability given in the financials of the company was not sufficient and proper, and the respondent, as the company's auditor, failed to report the same in his audit report. The



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

[PR-101/20-DD/155/2020-DC/1521/2021]

Committee also noted that the Company, whose financial position as on 31st March 2018 was sound enough, suddenly went into liquidation in September 2018 raises questions about the diligence exercised by its auditor.

7. Accordingly, the Committee, looking into the charges *vis-a-vis* submissions of the Respondent, decided to give a reasonable punishment to the Respondent in the instant matter.
8. Therefore, keeping in view the facts and circumstances of the case, material on record, and submissions of the Respondent before it, the Committee ordered that the Respondent, CA. Abhay Balkrishna Upadhye (M.No.049354) of M/s. K K Mankeshwar & Co., Chartered Accountants, Nagpur be removed from the Register of members for a period of Three months along with a fine of Rs 1,00,000/- (One lakh Rupees Only).

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: 13th MAY, 2023

PLACE: NEW DELHI

सही प्रतिलिपि होने के लिए प्रमाणित

Certified to be true copy

Nitika Gupta

सीए नीतिका गुप्ता / CA. Nitika Gupta

सहायक निदेशक / Assistant Director

अनुशासनात्मक निदेशालय / Disciplinary Directorate

इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया

The Institute of Chartered Accountants of India

आईसीएआई भवन, विनास नगर, शाहदरा, दिल्ली-110032

ICAI Bhawan, Vishwas Nagar, Shahdara, Delhi-110032