


<p style="text-align: center;">GUJARAT AUTHORITY FOR ADVANCE RULING</p> <p style="text-align: center;">GOODS AND SERVICES TAX</p> <p style="text-align: center;">A/5, RAJYA KAR BHAVAN, ASHRAM ROAD,</p> <p style="text-align: center;">AHMEDABAD – 380 009.</p>	
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ADVANCE RULING NO. GUJ/GAAR/R/2020/16

(IN APPLICATION NO. Advance Ruling/SGST&CGST/2018/AR/29)

Date: 19.05.2020

Name and address of the applicant	:	M/s. Shree Hari Engineers & Contractors, 1 st floor, C Wing, RTO Relocation Site, Opp. VBC Wadi, Bhuj, Kachchh-370 001.
GSTIN of the applicant	:	24ABNFS7999E1ZF
Date of application	:	13.05.2018
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(b) applicability of a notification issued under the provisions of this Act.
Date of Personal Hearing	:	19.03.2020
Present for the applicant	:	Shri Karan Thacker C.A

BRIEF FACTS

The applicant vide their application for Advance Ruling has submitted that they are engaged in the business of providing works contract services. They have been awarded a Tender by M/s. Railtel Corporation of India limited (A Government of India Undertaking, Ministry of Railways). The work to be performed is that of Excavation of trenches and laying of OFC(Optical Fiber Cable) through ducts, testing, commissioning of OFC.

2. The applicant submitted that the said work is an Original work, that the end use of the Optical Fibre Cable is for the purpose of connecting with the Gram Panchayat for socio-economic development hence it is not for the purpose of Commerce, Industry or any other business or profession. They have also submitted that M/s. Railtel Corporation of India Ltd. by whom they have been awarded the tender has 100% share holding by Union Government and is a Government of India Enterprise.

3. The applicant has also submitted photocopies of (i) Tripartite Memorandum of Understanding (MOU) between Department of Telecommunications of Government of India, Government of Gujarat and Broadband Network Ltd. dated 12.04.2013. (ii) Letter of acceptance dated 26.10.2017 issued by M/s. Railtel Corporation of India Ltd. to M/s. Shree Hari Engineers and Contractors, Bhuj-Kachchh containing the schedule of work to be carried out by the applicant alongwith the rates. (iii) Agreement/Contract between M/s. Railtel Corporation of India Ltd.and M/s. Shree Hari Engineers and Contractors, Bhuj-Kachchh dated 09.02.2018 for Rs.1,69,75,575/- (iv) GST Notification No:24/2017-CT dated 21.09.2017. (v) Few R.A. bills issued by the applicant to M/s. Railtel Corporation India Ltd.

4. The applicant has put the following question for advance ruling in their application:-

“Whether the Contract with Railtel Corporation of India Ltd. will fall under the Notification 24/2017-Central Tax (Rate) Sr.No.3(iv)-Construction Service or Original Work to Government Authority, and the rate of tax applicable be 12%?”

5. The applicant vide their submission dated 19.03.2020 have submitted that M/s. Broadband network limited is a corporate body incorporated under the category of ‘Union Government Company’ under Companies Act, that M/s. Bharat Broadband Network Ltd. has entered into a MOU with the Government of India, Government of Gujarat and itself for laying for Optical fiber Cable, that the scope of the work includes: (a) connecting the gram panchayats of India on Optical fiber using the fibers of other PSUs/TSPs and/or laying incremental fiber network for providing broadband connectivity. (b) setting up of suitable telecom network on this national optical fiber network for enabling of various types of applications in the gram panchayats/villages (c) operation and maintenance of this project in accordance with the Central Government/DOT guidelines, that Notification No.24/2017-CGST(Rate) amends Sr.No.3(iii) of Notification No.11/2017-CGST (Rates) as:

“(vi)Services provided to the Central Government, State Government, Union Territory, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of –

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or(iii) an art or cultural establishment; or

(c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017.”

6. The applicant have further stated that the work executed by them is Original work and the laying of Optical Fiber Cable is for the purpose of connecting Gram Panchayat as stated in Object of Tripartite MOU hence it satisfied the condition of ‘Original Work’, that the activity is undertaken for the purpose of connecting Gram Panchayat and thus it will be also be satisfying the condition-predominantly for use other than for commerce, industry or any other business or profession’, that M/s. Bharat Broadband Network Ltd. have further entered into agreement with M/s. Railtel Corporation of India Ltd. to further execute the work entrusted by Government of India for laying of Optical fiber cable, that floating tender for the work, that execution, supervision of the work etc. is done by M/s. Railtel Corporation of India Ltd. on behalf of M/s. Bharat Broadband Network Ltd., that they carry out the activity of excavation of trenches and laying of optical fiber cable and post execution of works contract, they bill to M/s. Bharat Broadband Network Ltd. and submit the bills and other documents to M/s. Railtel Corporation of India Ltd. for their review and processing on behalf of M/s. Bharat Broadband Network Ltd., that M/s. Bharat Broadband Network Ltd. is an entity incorporated under the sub-category of ‘Union Government Company’ under Companies Act and have attached a copy of the said company’s master data. The applicant has attached a copy of MGT-7(as available from the database of Ministry of Corporate Affairs) wherein as per para-VI(a)(Sr.No.2),the Central Government holds 100% shares in M/s. Bharat Broadband Network Ltd. and has stated that the work executed and supplied to M/s. Bharat Broadband Network Ltd. satisfies the condition of

Government entity. The applicant has submitted that 'Government entity' is defined at Clause(x) of para-4 of Notification No.31/2017-Central Tax(Rates) dated 13.10.2017 which reads as under:

(x) "Government Entity" means an authority or a board or any other body including a society, trust, corporation, i) set up by an Act of Parliament or State Legislature; or ii) established by any Government, with 90 per cent. or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority."

The applicant has therefore submitted that M/s. Bharat Broadband Network Ltd. holds more than 90% (i.e. 100%), it satisfies the condition of Government entity.

7. The applicant has submitted that the corporate body M/s. Railtel Corporation of India Ltd. is an entity incorporated under the sub-category of 'Union Government Company' under Companies Act and submitted a copy of the Company Master Data and a copy of MGT-7 (as available from the database of Ministry of Corporate Affairs) wherein as per para-VI(a)(Sr.No.2), the Central Government holds 100% shares in M/s. Railtel Corporation of India Ltd. The applicant has also submitted copies of Notification No:11/2017-Consolidated Rate Notification-Central Tax(Rates), including the amendment as per Notification No.24/2017-Central Tax (Rates) and Notification No.31/2017-Central Tax(Rates) as per Annexure-F, copy of tender as Annexure-G and copy of letter of acceptance of the tender as Annexure-H (containing letter of acceptance dated 12.05.2018 issued by M/s. Railtel Corporation of India Ltd. to M/s. Shree Hari Engineers and Contractors, Bhuj-Kachchh containing the schedule of work to be carried out in 02 blocks of Abdasa and Nakhatrana of Kachchh District) by the applicant alongwith the rates.. The applicant has concluded their submission with a request to consider the issue under the Advance Ruling application and allow them to charge GST at the rate of 12%.

DISCUSSION & FINDINGS

8. We have considered the submissions made by the applicant in their application for advance ruling as well as at the time of personal hearing. The issue involved in this case pertains to applicability of notification no. 24/2017-Central Tax (Rate) dated 21.09.2017, which amends notification no. 11/2017-Central Tax (Rate) dated 28.06.2017, issued under the Central Goods and Services Tax Act, 2017 (herein after referred to as the 'CGST Act'), in the case of the applicant. As per the letter of acceptance/work order issued by M/s Railtel Corporation India Ltd. No.Rail Tel/Tender/OT/WR/NOFN/2017-18/04/LOA dated 26.10.2017 as well as the agreement dated 09.02.2018 signed between the applicant and M/s. Railtel Corporation Ltd., the applicant has been awarded a contract for excavation of trenches and laying of Optical Fibre Cables(OFC) through ducts, testing, commissioning of OFC and maintenance in the 01(one) Block(Nakhatrana) of Kachchh District of Gujarat State. The amount involved in the said contract is Rs.1,69,75,575/-. The applicant has also submitted another letter of acceptance/work order No.Rail Tel/Tender/OT/WR/NOFN/2017-18/49/LOA dated 12.05.2018 issued by M/s Railtel Corporation India Ltd. regarding a contract for excavation of trenches and laying of Optical Fibre Cables(OFC) through ducts, testing, commissioning of OFC and maintenance in the 02 Blocks of Abdasa and Nakhatrana of Kachchh District of Gujarat State valued at Rs.1,86,41,523/-. Further, as per the Tripartite Memorandum of Understanding signed between Department of Telecommunications of Government of India, Government of Gujarat and Bharat Broadband Network Ltd. dated 12.04.2013, the scope of the work in the project includes: (a) connecting the gram panchayats of India on Optical fiber using the fibers of other PSUs/TSPs and/or laying

incremental fiber network for providing broadband connectivity. (b) setting up of suitable telecom network on this national optical fiber network for enabling of various types of applications in the gram panchayats/villages (c) operation and maintenance of this project in accordance with the Central Government/DOT guidelines.

9. The applicant has put the following question for advance ruling in their application:-

“Whether the Contract with Railtel Corporation of India Ltd. will fall under the Notification 24/2017-Central Tax (Rate) Sr.No.3(iv)-Construction Service or Original Work to Government Authority, and the rate of tax applicable be 12%?”

10. On going through the Notification No:24/2017-Central Tax (Rates), it is seen that only Sr.No.3(vi) finds mention whereas there is no mention of Sr.No.3(iv) therein. We find that the original notification issued in this case is Notification No:11/2017-Central Tax (Rates) dated 28.06.2017(which contained Sr.No.3(i) to (iii) pertaining to Works Contract Service) which was first amended by Notification No:20/2017- Central Tax (Rates) dated 22.08.2017 (wherein Sr.No.3(iv) to 3(vi) pertaining to Works Contract Service were inserted) and later on amended by Notification No:24/2017- Central Tax (Rates) dated 21.09.2017(wherein Sr.No.3(vi) of the previous notification was amended and another Sr.No.3(vii) was inserted with respect to Works Contract Service). The said notification has thereafter been amended from time to time. It therefore appears that the applicant has wrongly mentioned Sr.No.3(iv) instead of 3(vi) of Notification No.24/2017- Central Tax (Rates) dated 21.09.2017 which appears to be a typographical error by the applicant. Also, the applicant vide his submission dated 19.03.2020 has referred to Sr.No.3(vi) of Notification No.24/2017-Central Tax (Rates) and the same was also discussed by the representative of the applicant during the course of personal hearing held on 12.03.2020. We would therefore consider the question for advance ruling of the applicant to be as follows:

“Whether the Contract with Railtel Corporation of India Ltd. will fall under the Notification 24/2017-Central Tax (Rate) Sr.No.3(vi)-Construction Service or Original Work to Government Authority, and the rate of tax applicable be 12%?”

11. The issue for consideration is whether the two contracts in question are covered under entry No.3(vi)(a) of Notification No.24/2017-Central Tax(Rate) dated 21.9.2017 (which amends original Notification No.11/2017-Central Tax(Rate) dated 28.06.2017) as amended from time to time, liable to tax at 12% (CGST + SGST together) or not.

12. The entry no.3(vi) of the above notification reads as under:

Sl.No.	Heading	Description of Services	Rate	Condition
(1)	(2)	(3)	(4)	(5)
3.	Heading 9954	“(vi)Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, provided to the Central Government, State Government, Union Territory, a local authority, a governmental authority or a Government Entity by way of construction, erection, commissioning,	12%	Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by

		<p>installation, completion, fitting out, repair, maintenance, renovation, or alteration of –</p> <p>(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;</p> <p>(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or</p> <p>(c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017“</p> <p>Explanation-For the purpose of this item, the term ‘business’ shall not include any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;</p>		<p>the Central Government, State Government, Union territory or local authority, as the case may be.</p>
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Further, the terms ‘Government Authority’ and ‘Government entity’ have been defined in paragraph-4 of the said notification (as amended by Notification No.31/2017-Central Tax(Rate) dated 13.10.2017 as under:

ix) “Governmental Authority” means an authority or a board or any other body, -(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by any Government, with 90 per cent. or more participation by way of equity or control, to carry out any function entrusted to a Municipality under article 243 W of the Constitution or to a Panchayat under article 243 G of the Constitution.

(x) “Government Entity” means an authority or a board or any other body including a society, trust, corporation,

i) set up by an Act of Parliament or State Legislature; or

ii) established by any Government, with 90 per cent. or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority.”.

13. The term ‘original work’ has not been defined under the said notification but has been defined in Notification No.12/2017-Central Tax(Rate) dated 28.06.2017 which also can be used in the context of this notification as both deal with the taxation of services and reads as under:

(zs) Original work means all new constructions:

(i) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable.

(ii) Erection, commission or installation of plant, machinery or equipment or structures, whether fabricated or otherwise.

14. In view of the above, services provided by applicant would be liable to tax at the rate of 12% in terms of entry No.3(vi) of Notification No:11/2017-Central Tax (Rate), as amended from time to time, subject to the following conditions:

- (i) It must be a composite supply of works contract as defined in section 2(119) of the CGST Act, 2017.
- (ii) The contract should be by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of civil structure or any other original works.
- (iii) It must be provided to the Central Government, State Government, Union Territory, a local authority, a Government Authority or a Government Entity.
- (iv) The civil structure or original works must be predominantly meant for use other than for commerce, industry, or any other business or profession.

14.1. **Works Contract** is defined under clause (119) of Section 2 of the Central Goods and Services Tax Act, 2017, as under:

*[(119) “**works contract**” means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of **any immovable property** wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;]*

The contracts the applicant is executing are covered under the definition of ‘Works Contract’ as (a) they are in relation to the completion, erection, installation and commissioning of an immovable property as both the projects are turnkey projects and (b) there is transfer of property in goods involved. Hence the first condition is satisfied.

14.2 The contract is for construction, erection, commission, installation and completion of original work. The contract is a new construction and involves excavation of trenches and laying of Optical Fibre Cables(OFC) through ducts, testing, commissioning of OFC and maintenance in the 03 blocks in Nakhatrana and Abdasa of Kachchh district, thus involves erection, commissioning and installation of equipment or structures and thus the second condition is satisfied.

14.3 Now, the next point to be determined is whether the person to whom the applicant is providing the work/service is covered under the definition of ‘Government Authority’ or ‘Government Entity’. The applicant is executing the work for M/s. Railtel Corporation of India Ltd.(on behalf of Bharat Broadband network Ltd.) which is a Government of India undertaking with 90 percent or more participation by way of equity or control. However, in order to fulfil the definition of being a ‘Government Authority’, the work carried out by the applicant for M/s. Railtel Corporation of India Ltd. should be any function entrusted to a Municipality under Article 243 W of the Constitution or to a Panchayat under Article 243 G of the Constitution. The functions entrusted to a municipality and to a Panchayat under the Constitution of India are listed below:

Functions entrusted to the Panchayats by Article 243G of the Constitution of India:

1. Agriculture, including agricultural extension.
2. Land improvement, implementation of land reforms, land consolidation and soil conservation.
3. Minor irrigation, water management and watershed development.
4. Animal husbandry, dairying and poultry.
5. Fisheries.
6. Social forestry and farm forestry.
7. Minor forest produce.

8. *Small scale industries, including food processing industries.*
9. *Khadi, village and cottage industries.*
10. *Rural housing.*
11. *Drinking water.*
12. *Fuel and fodder.*
13. *Roads, culverts, bridges, ferries, waterways and other means of communication.*
14. *Rural electrification, including distribution of electricity.*
15. *Non-conventional energy sources.*
16. *Poverty alleviation programme.*
17. *Education, including primary and secondary schools.*
18. *Technical training and vocational education.*
19. *Adult and non-formal education.*
20. *Libraries.*
21. *Cultural activities.*
22. *Markets and fairs.*
23. *Health and sanitation, including hospitals, primary health centres and dispensaries.*
24. *Family welfare.*
25. *Women and child development.*
26. *Social welfare, including welfare of the handicapped and mentally retarded.*
27. *Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.*
28. *Public distribution system.*
29. *Maintenance of community assets.*

Functions entrusted to the municipalities under 243W of the Constitution of India:

1. *Urban planning including town planning.*
2. *Regulation of land-use and construction of buildings.*
3. *Planning for economic and social development.*
4. *Roads and bridges.*
5. *Water supply for domestic, industrial and commercial purposes.*
6. *Public health, sanitation conservancy and solid waste management.*
7. *Fire services.*
8. *Urban forestry, protection of the environment and promotion of ecological aspects.*
9. *Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.*
10. *Slum improvement and upgradation.*
11. *Urban poverty alleviation.*
12. *Provision of urban amenities and facilities such as parks, gardens, playgrounds.*
13. *Promotion of cultural, educational and aesthetic aspects.*
14. *Burials and burial grounds; cremations, cremation grounds; and electric crematoriums.*
15. *Cattle pounds; prevention of cruelty to animals.*
16. *Vital statistics including registration of births and deaths.*
17. *Public amenities including street lighting, parking lots, bus stops and public conveniences.*
18. *Regulation of slaughter houses and tanneries.*

The work carried out by the applicant i.e. "Excavation of Trenches and laying of OFC through ducts, testing, commissioning of OFC and maintenances etc. is not a function covered under the list of functions entrusted to a Municipality under Article 243 W of the Constitution of India or the list of functions entrusted to a Panchayat under Article 243 G of the Constitution of India. **In view of the above, M/s. Railtel Corporation of India Ltd. does not fall under the category of 'Government Authority'.**

As discussed earlier, the applicant is executing the work for M/s. Railtel Corporation of India Ltd.(on behalf of Bharat Broadband network Ltd.) which is a Government of India undertaking with 90 percent or more participation by way of equity or control. However, in order to fulfil the definition of being a 'Government Entity', the work carried out by the applicant for M/s. Railtel Corporation of India Ltd. should be a function entrusted by the Central Government, State Government, Union Territory or a local authority. On going through the agreement dated 09.02.2018 signed between M/s. Railtel Corporation of India Ltd.(on behalf of Bharat Broadband

network ltd.) and the applicant M/s. Shree Hari Engineers and Contractors as well as the Letters of acceptance dated 26.10.2017 and 12.05.2018 issued by M/s. Railtel Corporation of India Ltd. to the applicant, it is observed that it contains the following details: (i) type of work to be carried out by the applicant i.e. "Excavation of Trenches and laying of OFC through ducts, testing, commissioning of OFC and maintenances etc. (ii) reference to tender issued by M/s. Railtel Corporation of India Ltd. for the work to be done. (iii) value of the work. (iv) details of equipments and materials to be supplied by the applicant for the execution of the work (v) terms and conditions of the work etc. However, there is no mention therein to the Tripartite Memorandum of Understanding signed between Department of Telecommunications of Government of India, Government of Gujarat and Bharat Broadband Network Ltd. dated 12.04.2013 nor is there any reference therein which infers that the work has been entrusted to them by any Government, Union Territory or a local authority. Thus, the work carried out by the applicant for M/s. Railtel Corporation of India Ltd. is not a function entrusted by the Central Government, State Government, Union Territory or a local authority. **In view of the above, M/s. Railtel Corporation of India Ltd. does not fall under the category of 'Government Entity'.** Hence the third condition is not satisfied.

14.4. Now, the important point that needs to be discussed in detail is as to whether the civil structure that has arisen or come into existence as a result of the work executed/service provided by the applicant for M/s. Railtel Corporation of India Ltd. i.e. optical fiber cables laid under the ground is meant predominantly for use other than for commerce, industry, or any other business or profession as envisaged in 3(vi)(a) of Notification No.24/2017-Central Tax(Rate) dated 21.09.2017. The work done by the applicant for M/s. Railtel Corporation of India Ltd. involves digging of trenches and laying of optical fiber cables for the purpose of supply of internet connection to the Gram Panchayat. However, it cannot be construed that the optical fiber cables laid underground are meant predominantly for use other than for commerce, industry, or any other business or profession. Further, there is an explanation clause which reads as under:

"For the purpose of this item, the term 'business' shall not include any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;"

The said explanation clause is not applicable in the instant case as these are not activities undertaken by the Central government, State Government or a local authority but are undertaken by M/s. Railtel Corporation of India(on behalf of M/s. Bharat Broadband network Ltd.) through the applicant.

The term 'business' is defined in clause(17) of section 2 of the CGST Act, 2017 which reads as under:

(17) "business" includes—

- (a) any trade, commerce, manufacture, profession, vocation, adventure,wager or any other similar activity, whether or not it is for a pecuniary benefit;
- (b) any activity or transaction in connection with or incidental or ancillaryto sub-clause (a);
- (c) any activity or transaction in the nature of sub-clause (a), whether ornot there is volume, frequency, continuity or regularity of such transaction;
- (d) supply or acquisition of goods including capital goods and services inconnection with commencement or closure of business;
- (e) ---
- (f)---
- (g) ---
- (h) ---
- (i) ---

From the above definition of business, it is clear that any activity of trade, commerce, manufacture etc. or any other similar activity is included in the definition of business and it is immaterial whether it is done for a pecuniary benefit, and any activity done in connection with or incidental or ancillary to such activity is also included in the scope of 'business'.

15. Thus, the applicant in the course of providing work contract service to M/s. Railtel Corporation of India Ltd. (on behalf of M/s. Bharat Broadband Network Ltd.) is involved in the laying of trenches and laying optical fiber cables (goods) through which they are providing/supplying internet connectivity to the gram panchayats. However, it cannot be construed that the optical fiber cables laid underground are meant predominantly for use other than for commerce, industry, or any other business or profession as stated by the applicant. Thus, the resultant structure that has arisen under the ground in the form of optical fiber cables due to the work executed by the applicant can be used for commerce, industry, or any other business or profession. Hence the fourth condition mentioned at para-14 above is not satisfied. Therefore, we are of the view that the contract in question does not satisfy the conditions envisaged in 3(vi) of Notification No.24/2017-Central Tax (Rate) dated 21.09.2017.

16. In view of the above facts, we come to the conclusion that the work done by the applicant under the contract with M/s. Railtel Corporation of India Ltd. does not fall under the Notification No.24/2017-Central Tax (Rate) Sr. No.3(vi)-Construction Service of Original Work to Government Authority.

17. In view of the foregoing, we rule as under –

R U L I N G

The Contract of the applicant M/s. Shree Hari Engineers and Contractors with M/s. Railtel Corporation of India Ltd. does not fall under the Notification 24/2017-Central Tax (Rate) Sr.No.3 (VI)-Construction Service or Original Work to Government Authority for the reasons discussed hereinabove.

(SANJAY SAXENA)

MEMBER

(MOHIT AGRAWAL)

MEMBER

Place: Ahmedabad

Date: 19.05.2020.