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

[PPR/P/104/15-DD/77/INF/15/BOD/402/2017]

ORDER UNDER SECTION 21A(3) OF THE CHARTERED ACCOUNTANTS ACT, 1949 READ WITH RULE 15(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATIONS OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007.

In the matter of:-

CA. Khem Chand Gandhi (M.No. 047508), Mumbai in Re: .... Respondent
[PPR/P/104/15-DD/77/INF/15/BOD/402/2017]

MEMBERS PRESENT:
CA. Prasanna Kumar D, Presiding Officer(attended physically at ICAI Bhawan, New Delhi)
Mrs. Rani Nair, (IRS, Retd.), Govt. Nominee (attended through VC)

Date of final hearing: 08th February, 2021

1. The Board of Discipline vide Report dated 26th **June, 2019** was of the opinion that CA. Khem Chand Gandhi (M.No. 047508) is guilty of "Other Misconduct" falling within the meaning of Clause (2) of Part-IV of the First Schedule of the Chartered Accountants Act, 1949 read with section 22 of the said Act.

2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against CA. Khem Chand Gandhi and communication dated 3rd February, 2021 was addressed to him thereby granting him an opportunity of being heard in person and/or to make written representation before the Board on 08th February, 2021.

3. CA. Khem Chand Gandhi made his written representation vide letters dated 07th January, 2020 and 27th January, 2021 and also appeared through video conferencing before the Board on 08th February, 2021 and made his oral representation thereat.

4. CA. Khem Chand Gandhi, in his written representation, inter-alia, submitted that the Board in its report has merely relied on some observations in an unconcluded report of the CBI. The Respondent was only rendering professional services to his clients for obtaining FIPB permissions etc. However, he never indulged in any shady deals. The Respondent requested the Board to keep the proceeding in abeyance till the disposal of his case by the appropriate Court.

5. The Board has carefully gone through the facts of the case and also the oral and written representation of CA. Khem Chand Gandhi. Keeping in view the representation of the Respondent, the Board was of the view that departmental

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proceedings are separate and distinct from civil/criminal proceedings in the sense that the misconduct therein can be proved by preponderance of probabilities having regard to the conduct of the Respondent. While coming to the said view the Board took into consideration the decision of the Hon'ble Supreme Court in the matter of "Ajit Kumar Nag –vs- General Manager (PJ) Indian Oil Corporation Limited-AIR 2005 SC 4217 wherein the Hon'ble Apex Court held as under :-

> *"The degree of proof which is necessary in order to conviction is different from the degree of proof necessary to record the commission of delinquency. The rules relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused beyond reasonable doubt he cannot be convicted by a Court of law. In a departmental enquiry penalty can be imposed on the delinquent officer on a finding recorded on the basis of preponderance of probability."*

Similarly in the matter of Capt. M Paul Anthony –vs- Bharat Gold Mines Limited - AIR....1999 SC 1416 the Hon'ble Supreme Court held as under:-

> *"In departmental proceedings, factors prevailing in the mind of the disciplinary authority may be many, such as enforcement of discipline of to investigate level of integrity of delinquent or other staff. The standard of proof required in those proceedings is also different from that required in a criminal case. While in departmental proceedings, the standard of proof is one of preponderance of probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt."*

Thus, it is not an inflexible rule of Law that disciplinary proceedings must be stayed in each and every case where a trial is pending before the Criminal Court on the very same facts/charges.

6. The Board noted that in Final report (charge sheet) of CBI dated 11.03.2015 filed before the Peial Judge, PC Act, Patiala House Courts, Delhi, the name of the Respondent was appearing as an accused person and the said Final report clearly established the role of the Respondent in the alleged matter. The Board further noted that there was an email from Shri Ashok Kumar Singh, the then Under Secretary, Department of Disinvestment, Ministry of Finance to the Respondent (KC Gandhi) dated 05.02.2015 along with attachments of noting and draft letter copied from the file of one M/s Laxmi Dental Export Pvt. Ltd. As per investigation, contents of this email and file have been proved by the witness Sh. Sushant Sudan, Assistant Director, DIPP, that these are the same documents available in the email, which are copied from the file of M/s Laxmi Dental Export Pvt. Ltd. The documents of M/s

Laxmi Dental Export Pvt. Ltd. were delivered to the Respondent through email dated 05.02.2015.

7. Thus, as per the findings of the Board as contained in its report, it has already been conclusively proved that CA. Khem Chand Gandhi is Guilty of Other Misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule of the Chartered Accountants Act, 1949 read with Section 22 of the said Act.

8. Upon consideration of the facts of the case, the consequent misconduct of CA. Khem Chand Gandhi and keeping in view his oral and written representation before it, **the Board decided to remove the name from the Register of Members for a period of 1 (one) month and also imposed a fine of Rs.1,00,000/- (Rs. One Lakh only) on CA. Khem Chand Gandhi (M.No. 047508) payable within a period of 60 days from the date of receipt of the Order.**

Sd/-
CA. PRASANNA KUMAR D.
(PRESIDING OFFICER)

Certified to be true copy
CA. Harleen Bhalla
Assistant Secretary,
Disciplinary Directorate
The Institute of Chartered Accountants of India,
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

BOARD OF DISCIPLINE (BENCH-II)

(Constituted under Section 21A of the Chartered Accountants Act, 1949)

Findings under Rule 14(9) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007

CA. Khem Chand Gandhi (M.No. 047508), Mumbai in Re:

[PPR/P/104/15-DD/77/INF/15/BOD/402/2017]

CORAM:

CA. Atul Kumar Gupta, Presiding Officer
Shri Arun Kumar (Government Nominee)
CA. Prasanna Kumar D, Member

In the matter of:

CA. Khem Chand Gandhi
Room No.207, Second Floor,
Sona Chambers
507/509 J S S Road (Chira Bazar)
MUMBAI – 400 002 **.....Respondent**

DATE OF FINAL HEARING: 26.06.2019

PLACE OF HEARING: MUMBAI

PARTIES PRESENT:

Respondent : CA. Khem Chand Gandhi

Findings:

1. The Board noted that the Respondent was held guilty by the Director (Discipline) of Other Misconduct falling within the meaning of Clauses (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of said Act on the charge that the Respondent was found involved in seeking confidential information in an unauthorized manner pertaining to Foreign

Investment Promotion Board (FIPB) and DIPP from Government officials through illegal gratification.

2. The Board noted that the Respondent during his various submissions submitted as under:
   a. There was newspaper item on 13.03.2015 about leakage and sale of information relating to foreign investment in Ministry of Finance and Commerce.
   b. Certain officers were arrested. On a mere suspicion, he was also arrested and put into judicial custody for 60 days.
   c. Despite the investigation by highest investigating agency i.e. CBI, no evidence whatsoever has been found for more than 3 years.
   d. It is a settled principle of jurisprudence that whenever any allegation is made, it is the duty of the accuser to produce evidence. The CBI has not been able to produce even an iota of evidence.
   e. Charge-sheet has been filed, but the charges are not framed till date.
   f. There is no further development in the Court. They are just giving the dates. CBI is still searching something.
   g. Accordingly, he requested to reconsider/ defer the decision until CBI produces even prima facie evidence.

3. The Board noted that in Final report (charge sheet) of CBI dated 11.03.2015 filed before the Peial Judge, PC Act, Patiala House Courts, Delhi wherein name of the Respondent was appearing as accused person. The Board further noted that the said Final report clearly established the role of the Respondent in alleged matter. Some of the Instance are as under:

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Investigation had established that accused Ashok Kumar Singh while he was posted in Deptt. Of Economic Affairs, came into contact with accused Khem Chand Gandhi. Accused Khem Chand Gandhi, Chartered Accounts, used to prepare proposal on behalf of prospective companies for FIPB approval. He used to file application and pursue the matter in Ministry. Accused Ashok Kumar Singh was in contact with K.C. Gandhi on his mobile as well as through email Id. Accused Ashok Kumar used to guide K.C. Gandhi to finalize proposals before submitting.

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Investigation has also established that the documents pertaining to M/s Kakade British Realties Pvt. Ltd., M/s Prime Living Pvt. Ltd., M/s BVLGARI and M/s Mordril Properties Investment Pvt. Ltd. as provided on 9th/ 10th March, 2015 by accused Ram Niwas to Lala Ram and further Lala Ram to Ashok Kumar Singh were forwarded to K.C. Gandhi on

11.03.2015 through DTDC Consignment No. V2116850. The said consignment was confiscated by the CBI team on 12.03.2015 at Mumbai.

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Investigation also established that email dated 31/01/2015 at 3:46 P.M. was sent by accused kC Gandhi to accused Ashok Kumar wherein KC Gandhi had asked him to provide copy of minutes and FIPB letter for item no. 5 of rejected item of M/s Kakade British Realty Pvt. Ltd., Pune.

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Investigation further established that vide call no. 6 dated 04/02/2015 Ashok Kumar Singh intimated KC Gandhi that the man deputed for the job is going on leave from Sat to Monday. As per attendance register accused ram Niwas was on leave on 09/02/2015..... Accused Ashok Kumar Singh had further intimated to accused K.C. Gandhi that he would arrange the documents by tomorrow."

4. The Board further noted that there was email from Shri. Ashok Kumar Singh, the then Under Secretary, Department of Disinvestment, Ministry of Finance to the Respondent (KC Gandhi) dated 05.02.2015 along with attachments of noting and draft letter copied from the file of one M/s Laxmi Dental Export Pvt. Ltd. As per investigation, contents of this email and file have been proved by the witness Sh. Sushant Sudan, Assistant Director, DIPP, that these are the same documents available in the email, which are copied from the file of M/s Laxmi Dental Export Pvt. Ltd. The documents of M/s Laxmi Dental Export Pvt. Ltd. were delivered to the Respondent through email dated 05.02.2015.

5. The Board also noted that there are other similar instances in said investigation. Accordingly, the Board noted that as per the Investigation, it is established that that Shri. Ashok Kumar Singh, Under Secretary, Department of Disinvestment , Ministry Of Finance in connivance with Shri Lala Ram Sharma, Section Officer, Department of Economic Affairs, Ministry of Finance, North Block and Shri Daljeet Singh, UDC, Department of Industrial Policy and Promotion (DIPP) , Ministry of Commerce & Industry, Government of India, Udyog Bhawan , New Delhi were passing classified / confidential information in an unauthorized manner pertaining to Foreign Investment Promotion Board (FIPB) and DIPP to CA. Khem Chand Gandhi, who is running a consultancy firm M/s K.C. Gandhi & Co , (Mumbai), in lieu of illegal gratification.

6. The Board accordingly opined that such misdeeds are not expected from a Chartered Accountant and the act of the Respondent had brought disrepute to the profession. Accordingly, the Board hold him guilty.

CONCLUSION:

7. Thus, the Board concluded that the Respondent is **GUILTY** of "Other Misconduct" falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with section 22 of the said Act.

Sd/-	Sd/-	Sd/-
(ATUL KUMAR GUPTA)	**(ARUN KUMAR)**	**(PRASANNA KUMAR D)**
PRESIDING OFFICER	**GOVERNMENT NOMINEE**	**MEMBER**

DATE : 26.06.2019

PLACE : MUMBAI

Certified True Copy

Mukesh Kumar Mittal
Assistant Secretary
Disciplinary Directorate
The Institute of Chartered Accountants of India
ICAI Bhawan, I.P. Marg, New Delhi-110 002