



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

PR/98/15/DD/98/2015/BOD/426/2018

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:-

Ms. Jyoti Balkrishna Totala, Distt. Kolhapur  
Maharashtra

...Complainant

-Vs.-

CA. Dharmesh Ramesh Kumar Hansaben Batavia (M.No. 122536)  
M/s. Dharmesh R. Satavia & Co., Chartered Accountants, Vasai  
...Respondent

[PR/98/15/DD/98/2015/BOD/426/2018]

MEMBERS PRESENT: (Through video conferencing)

CA. Prasanna Kumar D., Presiding Officer  
Mrs. Rani Nair, (IRS, Retd.), Government Nominee  
CA. Satish Kumar Gupta, Member

Date of Final Hearing: 5<sup>th</sup> October, 2021

1. The Board of Discipline vide Report dated 30<sup>th</sup> January, 2021 held that CA. Dharmesh Ramesh Kumar Hansaben Batavia (M.No. 122536) is guilty of "Other Misconduct" falling within the meaning of Item (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. Dharmesh Ramesh Kumar Hansaben Batavia and communication dated 16<sup>th</sup> September, 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 5<sup>th</sup> October, 2021. CA. Dharmesh Ramesh Kumar Hansaben Batavia made his written representation dated 31<sup>st</sup> March, 2021 on the Findings of the Board.

3. CA. Dharmesh Ramesh Kumar Hansaben Batavia appeared before the Board on 5<sup>th</sup> October, 2021 through video-conferencing and made his oral representation thereat.

4. CA. Dharmesh Ramesh Kumar Hansaben Batavia in his written representation dated 31<sup>st</sup> March, 2021, inter-alia, submitted as under:-

- a. As regards the findings mentioned in para 11 of the Report dated 30/01/2021, the Respondent submitted that the said cases are pending and the Court having not given any relief is considered as speaking in volume about the conduct. In the criminal cases, regular bail was granted which itself is relief in pending criminal cases. There has not been any quashing petition filed by the Respondent for having been rejected. The discharge application



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however is still continuing as pending in Court at Kalyan. Even assuming any such application/ petition is rejected, the fact remains that the case is pending for trial and there is no conviction. If any "relief" as contemplated in para 11 is granted then possibly there would not be anything like pending case. Thus, merely having many cases pending against Respondent is considered as misconduct.

Matters/ Aspects totally escaped from considerations

- b. The police complaint filed by the Complainant specifically stated that "*The above named 4 persons admitted in writing that the dues amount of Rs. 1,91,83,556/- and I have also documentary evidence of sale transaction between us. (Last Para of Pg. C-62 of PFO)*". At the hearing held on 20/10/2019 in the cross examination of Complainant's husband, he was asked by the Board to produce said writing which was said to be signed by all four persons. Also, in the hearing held on 18/09/2020 it was reminded by the Counsel for the Respondent that the said writing is not yet produced. But, the Complainant has not produced the said writing till the conclusion of hearing. On this ground alone, the complaint is liable to dismissed.
- c. In para 4 of the Report, it is specifically stated that Board had asked the office to correlate the documents and compliance of direction given at last hearing. In response to the same, at the meeting held on 14/10/2020, the Board considered two documents i.e. Balance Sheet and copy of Settlement which the office seems to have reported as due compliance. The Balance Sheet was directed to be produced by the Complainant and deed of Settlement was directed to be produced by the Respondent but it is mentioned to the effect that the deed of Settlement was also to be produced by the Complainant.
- d. The Respondent, his mother and brother accompanying his father is only an oral testimony of the Complainant and without any collaboration or support of independent witness. The transaction of sale/ purchase of material pertain to 2007/2008 and Criminal Complaint was filed in the year 2011 i.e. after expiry of limitation period for Civil Suit for recovery of money. It is not unusual to find that criminal cases are filed for pressurizing the parties to yield in civil matters.
- e. For allegation of cheating, the intention must be at the inception of transaction. Mere default in payment by itself does not amount to cheating or fraud, where out of amount of Rs. 4,28,11,727/- amount of Rs. 2,76,28,171/- is admittedly paid.
- f. It is inconceivable that a businessman (Mr. Ramesh Kumar Batavia, father of the Respondent) moves from place to place with wife and sons (having their own independent activities) for procuring material for trading. In any kind of business entity of family business, the family members like wife, children etc. remain as some constituent as partner/ director/ shareholder etc. but the Courts and Authorities charge only that person who is actually responsible for the business. It is not unusual to find that many persons are falsely implicated or framed in criminal cases.



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- g. On complete proof of the dealing entities as proprietary concerns of Respondent's father (Mr. Ramesh Kumar Batavia) nothing survives against the Respondent (para 6(h) and (i) and para 8 (viii) of the Report).

Matters/ Aspects erroneously or partly considered

- h. In Para 8(ii) of the Report, the Respondent has already disputed being partner of M/s. R Mahendra Kumar & Co. (para 6(j) of the Report).
- i. In Para 8(iii) of the Report, the Respondent has proved that M/s. R Kishore Kumar & Co. was not a partnership firm (para 6(h) of the Report). Hence, the statement of the proprietor of Aditi Enterprises could not have been considered. In any case he did not appear before the Board.
- j. In Para 8(iv) of the Report, the withdrawal of amount of Rs. 14,35,381 and deposit of Rs. 14,76,457 in the HDFC Bank is already explained by the Respondent. The amount has been received on cancellation of booking of flat and payment has been done towards repayment of housing loan.
- k. In Para 8(v) of the Report, the word "business" appears to have been used by the advocates in contrast to the "Employment" in as much as Respondent was in Practice. The said point was specifically argued in High Court, the High Court has considered the point and have granted bail to the Respondent.
- l. In Para 8(vii) of the Report, the Writ Petition 783/2015 was not for relieving the Respondent from all the complaints and FIR's. It was for action against the Complainants themselves for harassment. The matter still remains pending for consideration by Commissioner of Police, Thane as directed by the High Court.
- m. In Para 8(ix) of the Report, the Respondent in reply to his income as surfaced from the Income Tax returns submitted by him during the proceedings, again in detail provided justification for treatment of his income and consequent filing of respective Forms with Income Tax Department during the years 2003-04 to 2013-14. He stated that he has rightly filed all the income tax returns in Form ITR 4 which is specified by the Income Tax Department. Further, mere filing the returns in ITR 4 does not reflect that Respondent's earnings are from business transactions. The Act provides for only 1 heading for income from Business and income from Profession. There cannot be presumption that the income is from Business only.
- n. In Para 8(x) of the Report, the appeal against the Order of the Additional Sessions Court has been preferred in the High Court and is pending as on date. Since the Order dated 13/11/2017 of the Ld. Additional Sessions Judge, Kalyan has been found by the Directorate by browsing the public portal, there was no occasion to bring on record the pendency of the appeal in the High Court.
- o. In Para 8(xi) and Para 8 (xiii) of the Report, the settlements referred to in the two cases are done by the Respondent's father (Mr. Ramesh Kumar Batavia) only which is clear from para no 3 of the MOU. Infact, it is clear from the said paragraph that the business was done by him only. However, as a procedural requirement it was necessary for all parties to sign the MOU.



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- p. In Para 8(xii) of the Report, the cheque in question was given to the HUF of S R Batavia (Mr. Sagar R Batavia) i.e. brother of the Respondent and it has nothing to do with Respondent's father.
- q. In Para 10 of the Report, with regard to forgery of signature of Respondent, the Respondent denied his signature on the Partnership deed dated 02/05/2006 in the name of M/S R. Mahendra Kumar & Co. Further, there is no application for registration of Firm on record as referred to in said para 10. It is already brought on record that in the Register of Firms no such firm exists.

5. The Board has carefully gone through the facts of the case and also the oral and written representation of **CA. Dharmesh Ramesh Kumar Hansaben Batavia**. On consideration of the facts and documents available on record, the Board observed as under:-

- a. The regular bail granted to the Respondent in criminal cases cannot be taken as relief as the facts of the bail cannot be referred, discussed or relied upon during the trial before the Concerned Trial Court. Further, the grounds of bail are altogether different and Order granting bail cannot be taken to be as a relief in favour of the Respondent as settled by judgments of various High Courts and Hon'ble Apex Court of India. Further, the pendency of discharge application is further an application filed before the Ld. Trial Court to draw an attention of the Ld. Court for discharge of accused on the basis of certain prima facie contradictions in the documents/ statements of witnesses relied upon by the prosecution and the same cannot be considered as a relief as it is merely an application before the Trial Court pending arguments and no specific Order to discharge the Respondent is placed on record.
- b. Regarding the contradictions in the testimony of Complainant's husband and the non-production of writing which was signed by all four persons as raised by the Respondent, the Board was of the view that the Respondent has been held guilty by the Board after due consideration of the documents and submissions on record and mere non production of certain documents as asked by the Board during the proceedings before it cannot be considered as a ground to dismiss the complaint.
- c. Regarding the plea of uncertainty of business family of Respondent roaming from place to place to procure material for trading and the presumption to charge only one person who is actually responsible, the Board viewed that the Respondent failed to bring on record any reliable material to prove his innocence and his non-involvement into the criminal offences as lodged by the Complainant alongwith other aggrieved persons before various investigating agencies.
- d. Regarding the plea that some matters/ aspects were erroneously or partly considered, the Board viewed that the submissions and documents on record were examined by the Board before arriving at its findings and repetition of such plea cannot be considered to ignore the FIRs, Charge Sheets, Income Tax Returns of the Respondent and other applications/ documents filed by the Respondent before investigating agencies and Ld. Courts.



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- e. Regarding the other pleas raised by the Respondent, the Board was of the view that the Respondent in order to divert from the main issue has raised other miscellaneous issues and has further tried to take benefit out of his own wrongs which when seen in totality of the facts of extant disciplinary proceedings conclusively proves the misconduct on the part of the Respondent.
- f. As per the Findings of the Board as contained in its report, the Respondent failed to provide any plausible justification about forgery of his signatures on the partnership deed dated 02/05/2006 in the name of M/s R. Mahendra Kumar & Co. wherein the Respondent was one of the partners along with his father Sh. Ramesh Batavia. The Board further viewed that the Respondent was one of the partners in the application for registration of the said partnership firm, his occupation being shown as 'business' in the copy of Cr. Misc. Appln no. 733/2012 filed before the Honorable Sessions Judge, Solapur, income from business and profession appearing in Respondent's Income Tax Return and registration of various bogus firms/entities. The Board also noted that all the cases filed against the Respondent are sub-judice, but, the fact that the Respondent had been chargesheeted in 6 cases on similar charge and no Court gave relief to the Respondent in respect of his discharge application in the matter of allegation of cheating and fraud, speaks in volume about the conduct of the Respondent, being Member of the Institute.

6. The aforesaid acts of the Respondent are clearly unbecoming of a Chartered Accountant and the Respondent has also brought disrepute to the profession and the Institute and thus, it has already been held that **CA. Dharmesh Ramesh Kumar Hansaben Batavia** is Guilty of Other Misconduct falling within the meaning of Item (2) of Part IV of the First Schedule of the Chartered Accountants Act, 1949 read with Section 22 of the said Act.

7. Upon consideration of the facts of the case, the consequent misconduct of **CA. Dharmesh Ramesh Kumar Hansaben Batavia (M.No. 122536)** and keeping in view his oral and written representation before it, the Board decided to reprimand **CA. Dharmesh Ramesh Kumar Hansaben Batavia (M.No. 122536)** and also imposed a fine of Rs. 1,00,000/- (Rupees One Lakh only) upon him payable within a period of 60 days from the date of receipt of the Order.

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

Date: 10<sup>th</sup> January, 2022

Certified to be true copy



R.S. Srivastava  
Assistant Secretary,  
Disciplinary Directorate

The Institute of Chartered Accountants of India,  
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

ICAR Bikaner, Vidya Vihar, Bikaner, India-334002  
The Institute of Oryzology, Government of India  
Disciplinary Director  
Assistant Director  
ICAR Bikaner

Copy to be filed

**BOARD OF DISCIPLINE**

**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**

**File No. : [PR-98/2015-DD/98/2015/BOD/426/2018]**

**CORAM:**

**CA. Prasanna Kumar D., Presiding Officer**

**Mrs. Rani Nair (IRS, Retd.), Government Nominee**

**In the matter of:**

**Smt. Jyoti Balkrishna Totala,  
5/408, Marathe Mills Corner,  
Date Mala, Ichalkaranji,  
Dist. Kolhapur (Maharashtra) - 416115**

**.....Complainant**

**-Vs-**

**CA. Dharmesh Rameshkumar Hansaben Batavia (M. No. 122536)  
M/s. Dharmesh R Batavia & Co. (FRN 130457W)  
B-206, Ashok Nagar,  
Above Ankur Hospital,  
Amdadi Road Vasai West,  
Dist. Thane,  
Vasai - 401202**

**.....Respondent**

**DATE OF FINAL HEARING : 18<sup>th</sup> September, 2020**

**PLACE OF HEARING : Through video conferencing**

**PARTIES PRESENT:**

**Authorised Representative of the Complainant : Shri Ghanshyam Das Totala,  
father in-law of the Complainant**

**Counsel for the Complainant : CA. (Dr) Rajkumar S. Adukia**

**Respondent : CA. Dharmesh Ramesh Kumar  
Hansaben Batavia**

**Counsel for the Respondent : Shri. S G Gokhale, Advocate**

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**FINDINGS:**

**(A)Background of the case:**

1. The Complainant in her FIR filed against the Respondent and his family members dated 03.11.2011 before the Senior Police Inspector, CID, Kalyan Unit stated that she was doing business of purchase and sale of cloth material/goods under the name of M/s Padmavati Textiles along with her husband and father-in-law. The Respondent, Ramesh Shantilal Batavia (Respondent's Father), Hansa Ramesh Batavia (Respondent's Mother) and Sagar Ramesh Batavia (Respondent's Brother) visited the Complainant in 2007 and told that they were doing the business of purchase and sale of cloth material in the name of M/s "Kishorkumar & Co." and persuaded her to sell the cloth goods on credit basis and also assured her about the payment of said goods. Believing them, the Complainant delivered to them goods from October, 2007 to June, 2008 worth Rs. 4,68,11,727/-. As per the Complainant, with the intention of obtaining her trust, the Respondent and his family members paid her Rs. 2,76,28,171/- and balance amount of Rs. 1,91,83,556/- was outstanding as on that date. The Respondent and his family members showed her documents wherein Mr. Ramesh Shantilal Batavia (Respondent's Father) was shown as Proprietor and when the Complainant met him, they told her to visit the Respondent, Hansa Ramesh Batavia (Respondent's Mother) and Sagar Ramesh Batavia (Respondent's Brother) being partners of the firm. However, later these 3 persons told her to meet Mr. Ramesh Shantilal Batavia (Respondent's Father). The above named 4 persons with malafide intention contacted her on her mobile for entering into transaction with them and thereafter, collusively cheated her. After that the Complainant enquired about these 4 above mentioned persons and observed that they had started bogus firm "R Kishorkumar & Co." to cheat her and invest misappropriated amount in immovable property and that Respondent was engaged in illegal practices and had cheated various persons through operation of bogus firm/s. The Complainant also brought on record FIRs filed by other businessmen from many cities against the Respondent and his family members as under:-

- a. Case No. 24/06 Sub-district Kagdapith Police Station, Ahmedabad
- b. FIR No. 001674 dated 10/04/2012 at Sholapur
- c. Case No. 25/06 Sub-district Kagdapith Police Station, Ahmedabad
- d. FIR No. 46433 dated 01/11/2014 Shanti Nagar, Bhinwadi, Thane
- e. FIR No. 88411 (Sic. I-175/2011) dated 03/11/2011 Bajarpeth, Kalyan, Thane (lodged by the Complainant).
- f. FIR No. 125046 dated 11/11/2014 Nerpoli, Bhiwandi, Thane
- g. FIR No. 140897 dated 18/12/2014 Nerpoli, Bhiwandi, Thane
- h. FIR No. 30822 dated 27/01/2015 Nizampur, Bhiwandi, Thane



The Respondent alongwith other members of his group was involved in various offences including cheating the public at large and several proceedings were initiated before various Courts of competent jurisdiction.

2. The Complainant also informed that the Respondent and his family members were running various bogus partnership firms under the name and style of M/s Shah Exports, Jass Fabrics, Dev Exports, R. Mahendrakumar & Company, R. Kishorekumar & Company, C. Madhav & Company, Alankit Textiles Pvt. Ltd., Alankit Textiles etc. and under the name of said bogus partnership firms and companies had cheated various persons. Further, the Respondent and his family members have opened various false and bogus bank accounts with Vijaya Bank, Vasai (West) Branch; HDFC Bank Ltd., Churni Road, Mumbai Branch; Dhanlaxmi Bank, Vasai (West) Branch; The Shamrao Vitthal Co-Op. Bank Ltd., Vasai (West) Branch; ICICI Bank Limited, Dharshan Building, Kalbadevi Branch; ICICI Bank Limited, Koldongri, Munir Suvart Chhaya Building, Sahar Road, Andheri Branch etc.

(B) Charge alleged :

3. The Respondent had been cheating innocent businessmen, by forming bogus firm, inducing innocent businessman to deliver goods and thereby issue post-dated bogus cheques knowing fully that they will be dishonoured and thereafter closing the place of business. They then flee from the market. It has also been informed that there are number of FIRs registered and several criminal cases are pending against the Respondent in various Courts of India.

(C) Proceedings held:

4. At the time of hearing held on 18<sup>th</sup> September 2020, the authorised representative of the Complainant, the Respondent and their respective Counsels were present before it through video conferencing. Since there was a change in the composition of the Board since the last hearing, the Board gave an option to the parties whether they would like to have a de -Novo enquiry or continue from the last proceedings to which they stated that they would like to continue from the last proceedings. Thereafter, the Counsel for the Respondent made his detailed submissions before the Board. The Counsel for the Complainant also made his counter submissions. On consideration of the submissions and the documents on record, the Board concluded the hearing in the case with the direction to the office to correlate the documents of both the parties available on record and to see whether compliance of the direction given by the Board at the time of last hearing had been done. Accordingly, the decision on the misconduct of the Respondent was kept reserved by the Board. Thereafter, at its meeting held on 14<sup>th</sup> October 2020, the Board noted that at earlier hearing(s), the Complainant was asked to submit copy of Balance Sheet showing that balance is pending from M/s R. Kishore & Co. and the husband of the Complainant who appeared as a

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witness before the Board to produce the copy of the settlement which is in his possession. The Board noted that the Complainant submitted the documents sought and thus, on consideration of the documents together with the submissions on record, the Board took a decision on the misconduct of the Respondent.

5. The Board also noted that keeping in view the provisions of Rule 5(4)(b) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 the 'Information' case bearing no. PPR/P/167/15/DD/66/INF/16 against CA. Dharmesh Rameshkumar Hansaben Batavia (M. No. 122536) had been clubbed with the instant case as charges are substantially the same in both the cases.

**(D) BRIEF OF SUBMISSIONS**

6. The Board noted that the Respondent in his submissions, inter-alia, submitted as under:-
- a. He has no contact with his father and his father's dealings are purely independent from him.
  - b. He was staying at B-304, Soni Kutir, Sai Nagar, Ambadi Road, Vasai (West), Thane – 401202 during the period 1999 to 2006 and the same can be verified from the correspondence with the Institute as he was CA Student and submitted the documents to strengthen his claim.
  - c. Even at the time of his marriage in May-June 2009, he did not even invite his father.
  - d. The Respondent was falsely roped in totally false case filed by the Complainant in November, 2011 and was falsely arrested alongwith his brother.
  - e. The Respondent and his brother were released on bail on 29/11/2011 and his mother was released on bail the next day.
  - f. All the false cases had been registered either by Totala Family or at the instance of them. With respect to another case registered in May, 2014 at Vadgaon, Kohlapur against Respondent and his family at the instance of Totala Family by the Manager of Vadgaon Branch of same firm namely Padmavati Textiles. The facts of the said matter were also similar to the matter in question and the Respondent submitted the copy of Charge Sheet in respect of said matter.
  - g. He never undertook any business activities with any of the Complainants who had filed complaint against him and all the business transactions are done with his father.
  - h. The Respondent submitted following documents alongwith his submissions to substantiate that all these firms are proprietorship concerns and not partnership firms as alleged by the Complainant:-
    - i. Copy of Shop & Establishment certificate of M/s. Shah Exports.
    - ii. Copy of VAT & CST certificate of M/s. Shah Exports.
    - iii. Copy of Shop & Establishment certificate of M/s. R Mahendrakumar & Co.

- iv. Copy of Sales Tax certificate of M/s. R Mahendrakumar & Co.
  - i. The Respondent also submitted copy of letters from two banks i.e. Vijaya Bank, Vasai West Branch and ICICI Bank, Kalbadevi Branch to substantiate that both the accounts were operated by the father of the Respondent.
  - j. The firm R. Kishorkumar & Co. was a proprietary concern and not a partnership firm which can be proved from the ledger confirmation copy submitted by the Complainant herself. The Respondent had not made any false partnership deeds anytime in past. Only one partnership deed of R Mahendrakumar & Co. was made by the Complainant of case at Ahmedabad in May 2006. All stamp papers used for the drafting of the partnership deed were neither in the name of Respondent nor in the name of the Firm or in the name of any other partners mentioned in the deed. The deed was duly notarised, however, there is no notarial number mentioned on it. The Respondent further denied the signatures on the deed as his signatures.
7. The Complainant as part of his submissions submitted the brief facts of the complaints, status of cases filed against the Respondent, Copy of FIRs/ Charge sheets etc. wherein it is seen that Respondent in involved in criminal activities of Cheating, Personation, Criminal Breach of Trust, Forgery and various other criminal offences punishable under Indian Penal Code and also stated that the Respondent has intentionally and deliberately made false statements and that the Respondent has not broken relations with his father which is evident from the following-
- a. An authority letter dt. 10/08/2012 was signed by all the said four persons in favour of their advocate in connection with the case at Kalyan Court.
  - b. On dated 17/01/2012 and dated 25/03/2013 all the said four persons had filed an application in Kalyan Court which was signed by all the said persons.
  - c. As per the letter accompanying with the written statement filed by the Respondent, the address given by the Respondent in his Income Tax Return is A/102, Diwan Mansion, 9 Ambadi Road, Vasai Road (W), Taluka: Vasai, Dist. Thane.
  - d. A Vakalatnama dt.01/10/2016 was filed by the father of Respondent i.e. Ramesh Shantilal Batavia in Peth Vadgaon Dist. Kolhapur (Maharashtra) Court wherein his address is mentioned as 102/9, Dewan Mansion, Ambadi Road, Vasai Road, Near Panchwati Hotel, which is the same address as mentioned in the Income Tax Returns of the Respondent.
  - e. It is apparent from the copy of the bill alongwith receipts issued dated 09/08/2014 by the Jain Bhawan of Patilana, Sourashtra – 354270 that the Respondent was staying with Mr. Ramesh Batavia, Hansaben Batavia, Deepa Dharmesh Batavia and his daughter. On the reverse side of the said document, names of people staying in said Bhawan are mentioned.

- f. On 04/11/2011, police had arrested all the four accused persons from B-206, Ashoknagar, Ambadi Road, Vasai Road (W), Dist. Thane.

**(E) Observations and findings of the Board:**

8. The Board on consideration of the submissions of the parties and documents available on record noted as under:

(i) In the FIR no. 123/06 dated 7<sup>th</sup> Nov 2006, the partnership firm M/s R. Mahendra Kumar & Co. along with the Respondent as its partner amongst others has been made an accused for the offence of cheating by forming bogus firm, inducing to deliver goods without making payment for the same and beat the informant on seeking payment for the goods delivered.

(ii) In the copy of the alleged partnership deed of M/s R. Mahendra Kumar & Co. dated 2<sup>nd</sup> May 2006 and application for registration of firms, the Respondent has been shown as one of its partners.

(iii) In the statement dated 10<sup>th</sup> April 2012 of the proprietor of Aditi Enterprises before Assistant Police INSPECTOR, MIDC Police station, Solapur City it is stated that the Respondent as partner of M/s R.Kishore Kumar & Co. amongst others cheated and dishonestly misappropriated amount from the Complainant.

(iv) In the copy of the HDFC bank statement of the Respondent, a withdrawal of Rs. 14,35,381/- and deposit of Rs. 14,76,457/- has been made in the month of March 2008 when the Respondent was in employment as per his admission. Further, there were cash deposits of more than Rs. 30,000/- in the Respondent's bank account bearing no. 13930100028219 maintained with the Federal bank on 7<sup>th</sup> and 8<sup>th</sup> March 2008 respectively.

(v) In the copy of Cr. Misc. Appln no. 733/2012 filed before the Honorable Sessions Judge, Solapur the Respondent has shown his occupation as 'business'.

(vi) In the audited financial statement of the Complainant proprietorship firm for the F.Y. 2007-08 and 2008-09, R.KishoreKumar & Co.(Jass Fabrics) is shown as a sundry debtor to the tune of Rs.82,34,000/- and Rs. 1,91,83,556/- respectively and the balance is subject to confirmation.

(vii) The Respondent has referred to the writ Petition filed by him at Bombay High Court vide Sr. No 783/2015 to relieve him in respect of all the complaints and FIRs filed against him by all the complainants for the offence of cheating and fraud. The Order of the Bombay High Court dated 11/08/2015 in respect of said writ Petition has been contended by the Respondent to have been ordered in his favour as the Court directed to the concerned Police station to re-look into the matter. However, on perusal of the said Order, the Board noted that it, inter-alia, provided as under:-

*"So far as relief claimed in prayer clause (b) is concerned, in our considered view, this petition can be conveniently disposed of by directing the Commissioner of Police, Thane to look into the grievance made by the petitioner in his complaint dated 16.11.2014."*

Thus, it is observed that the Honorable Court has directed for further investigation in the matter. However, the out-come of any further investigation in the matter has not been brought on record by the Respondent till date.

(viii) The Respondent is one of the suspects among others of the business concern M/s Shah Exports R/o 407, Kalaba Devi Road, Mumbai in the concerned FIRs whereas the Respondent has contended that he has nothing to do with such business concern or any business dealings relating to said firm or any firm relating to his father 'M/s Shah Exports' which is run by Sh.Ramesh Shantilal Batavia, his father.

(ix) In the copy of acknowledgements of Income tax return brought on record by the Respondent in support of his claim that he had no other income from business is not a conclusive proof as these are not the copy of complete returns filed in the Department rather are only acknowledgements. Further, from the perusal of those acknowledgements it appears that for the previous years 2003-04, 2004-05, 2005-06 there was an income under the head 'Income from Business and Profession' and thereafter for the previous years 2007-08, 2008-09, 2009-10, 2010-11 and 2012-13, 2013-14, it is seen that ITR - 4 has been filed by the Respondent which is filed by those tax payers who have any income from Business or Profession and that the Respondent became a member of the Institute on 23<sup>rd</sup> Dec 2005.

(x) On browsing the public portal of the District Courts at Kalyan (Source:<https://services.ecourts.gov.in/>) it was observed that the Respondent alongwith his family members had filed Criminal Revision Application No(s) 63/2012, 64/2012, 65/2012, 147/2015, 7/2016 and 8/2016 for release of property/ movable articles seized during investigation before the Ld. Additional Sessions Judge, Kalyan and while dealing the issue vide Common Judgment/ Order dated 13/11/2017, the Ld. Judge observed as under:-

*"8. On going through the impugned Orders passed by the Ld. Trial Court, it reveals that the Trial Court has considered the scope and object of Section 457 of Cr.P.C. and passed appropriate Orders without committing any legal infirmity. Therefore, I find no substance to interfere into the impugned Orders passed on the applications preferred by the petitioners/accused, and thus, all these four revision petitions are liable to be dismissed being devoid of merits."*

The Respondent filed the Criminal Revision Petition in the matter for release of his properties and from the above Common Judgment/ Order it appears that the Ld. Court by not interfering in the decision of the Ld. Trial Court, has not given the decision in favour of the Respondent.

(xi) The Respondent had been Chargesheeted alongwith others in 8 cases. Out of 8 such cases, in 2 cases, an MOU had been signed between the Complainant(s) therein and the father of the Respondent, Respondent and others to settle the business disputes amongst themselves and the same was placed before the competent Court and the underlying FIR(s) therein had thus been quashed by the competent Court vide Order dated 26<sup>th</sup> August 2019.

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- (xii) The Respondent issued cheque on 13/11/2009 from his HDFC bank account amounting to Rs. 50,000/- in favour of S.R. Bataria HUF (which the Complainant alleged that the payment was to his father Sh. Ramesh Batavia) whereas the Respondent contended that he had no relations with his father for last several years.
- (xiii) In the MOU signed between the Complainant(s) therein and the father of the Respondent, Respondent and others to settle the business disputes amongst themselves, the Respondent is also a party.

9. The Board further observed that Mr. Amit Kothari proprietor of Anita Traders, Shri Pravin Maru, representative of Maru Shirtings Pvt Ltd. were called as a witness before the Board and they deposed before it that the Respondent alongwith others came to their office for initiation of the business with them and that they did not have any relation with the Complainant or any of his family members. However, the evidence of the said witnesses has not been relied upon or considered by the Board while arriving at its findings as the witnesses failed to turn up for cross examination despite issuance of summons thereafter.

10. The Board, thus, in totality, viewed that the Respondent failed to provide any plausible justification about forgery of his signatures on the partnership deed dated 02/05/2006 in the name of M/s R. Mahendra Kumar & Co. wherein the Respondent was one of the partners along with Sh. Ramesh Batavia, his father and also the Respondent was one of the partners in the application for registration of the said partnership firm, his occupation being shown as 'business' in the copy of Cr. Misc. Appln no. 733/2012 filed before the Honorable Sessions Judge, Solapur, income from business and profession appearing in Respondent's Income Tax Return and registration of various bogus firms/ entities.

11. The Board also noted that all the cases filed against the Respondent are sub-judice, but, the fact that the Respondent had been chargesheeted in 6 cases on similar charge and no Court gave the relief to the Respondent in respect of his petition in the matter of allegation of cheating and fraud, speaks in volume about the conduct of the Respondent, being Member of the Institute.

12. The Board was also conscious of the fact that in the current disciplinary proceedings, they are establishing whether the Respondent has committed an act of misconduct as defined under the Chartered Accountants Act 1949 which, if proved would result in civil consequences in the form of punishment under the CA Act. The Chartered Accountants, as professionals, are expected to act in a manner which is befitting the profession at large. It does not behove of a responsible CA to indulge in activities which tarnish the image of the profession.

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13. Thus, having regard to the attendant circumstances, the evidence put forth by the parties to the case and the submissions on record, the Board is of the considered view that the Respondent has brought disrepute to the profession and is thus, guilty of 'Other Misconduct' falling within the meaning of Item(2) of Part IV of the First Schedule to the Chartered Accountants Act 1949 read with Section 22 of the said Act.

**CONCLUSION:**

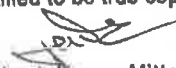
14. The Board of Discipline, in view of the above, is of the considered view that the Respondent is Guilty of "Other Misconduct" falling within the meaning of Item (2) of Part IV of First Schedule to the Chartered Accountants Act 1949 read with Section 22 of the said Act.

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

DATE: 30<sup>th</sup> January, 2021

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Certified to be true copy

  
Mukesh Kumar Mittal  
Assistant Secretary,  
Disciplinary Directorate  
The Institute of Chartered Accountants of India,  
ICAI Bhawan, Vishwas Nagar, Shadra, Delhi-110032

