



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

PPR/473/17-DD/41/INF/19/BOD/596/2021

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 Re:

CA. Naresh Kumar Satyanarayanji Dalmia (M.No.035036), Mumbai

[PPR/473/17-DD/41/INF/19/BOD/596/2021]

MEMBERS PRESENT:

CA. Prasanna Kumar D, Presiding Officer (In person)
Mrs. Rani Nair, (IRS, Retd.), Government Nominee (Through video conferencing)

Date of Final Hearing: 9th February, 2022

1. The Board of Discipline vide Report dated 1st February, 2022 held that CA. Naresh Kumar Satyanarayanji Dalmia (M.No.035036) 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.
2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against CA. Naresh Kumar Satyanarayanji Dalmia and communication dated 4th February, 2022 was addressed to him thereby granting him an opportunity of being heard in person and/or to make written representation before the Board on 9th February, 2022. CA. Naresh Kumar Satyanarayanji Dalmia also submitted his written representation vide email dated 8th February, 2021 on the Findings of the Board.
3. CA. Naresh Kumar Satyanarayanji Dalmia appeared before the Board on 9th February, 2022 through video conferencing and made his oral representation thereat.
4. CA. Naresh Kumar Satyanarayanji Dalmia in his written representation inter-alia stated as under:-
 - a. The Respondent is aged around 61 years and is in full time practice since 1983. In his 39 years of practice, he has carried out his professional duties with full integrity and honesty and has always abided by Institute's Guidelines. ✓



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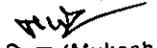
- b. Facts of the case are very much on record and the Respondent has not denied the same. "Information" provided by the Hon'ble Judge was Respondent's own statement being an honest confession given before the CBI Court to support the Government authorities.
- c. The Respondent did not derive any personal benefit out of what he did. His conscience was clear and hence, he stated the truth before the CBI Court. Hon'ble Judge in the Criminal inquiry also did not Order any punishment recognizing his honesty and cooperation.
- d. The Respondent had always responded positively in Disciplinary Proceedings against him and always gave his full cooperation. The Respondent further requested the Hon'ble Board of Discipline to take a sympathetic and considerate view in the matter.
5. The Board has carefully gone through the facts of the case and also the oral and written representation of **CA. Naresh Kumar Satyanarayanji Dalmia**.
6. As per the Findings of the Board as contained in its report, **CA. Naresh Kumar Satyanarayanji Dalmia** appeared as a witness in hearing of a case CBI-ACB, Mumbai vs T. Venkat Mohan and Anr. and admitted his guilt that he had given bribe to Mr. T.V. Mohan, ITO for clearing the Income Tax returns of M/s Service Pharmaceuticals Pvt. Ltd. **CA. Naresh Kumar Satyanarayanji Dalmia** in his written submissions made both at the Prima Facie stage as well as at the hearing stage and also verbally during the hearing held on 3rd January, 2022 before the Board admitted his guilt. Such an action on the part of **CA. Naresh Kumar Satyanarayanji Dalmia** is clearly unbecoming of a Chartered Accountant. Thus, it has already been conclusively held that **CA. Naresh Kumar Satyanarayanji Dalmia** is 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. The BOD was, however, appreciative of the honest conduct of the Respondent both before the CBI Court and also before it.
7. Upon consideration of the facts of the case, the consequent misconduct of **CA. Naresh Kumar Satyanarayanji Dalmia (M.No.035036)** and keeping in view his oral and written representation before it, the Board decided to Reprimand **CA. Naresh Kumar Satyanarayanji Dalmia (M.No.035036)**.

Sd/-

CA. PRASANNA KUMAR D.
(PRESIDING OFFICER)

Date: 11th February, 2022

प्रमाणित सत्य प्रतिलिपि / Certified true copy


मुकेश कुमार मिट्टल / Mukesh Kumar Mittal
सहायक सचिव / Assistant Secretary
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
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CONFIDENTIAL**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. : PPR/473/17-DD/41/INF/19/BOD/596/2021****CORAM:**

CA. Prasanna Kumar D., Presiding Officer	(in person)
Smt. Rani Nair, (IRS, retd.), Government Nominee	(through video conferencing)
CA. Satish Kumar Gupta, Member	(through video conferencing)

In Re:

CA. Naresh Kumar Satyanarayanji Dalmia (M.No.035036), MumbaiRespondent

DATE OF FINAL HEARING	:	3 rd January, 2022
PLACE OF FINAL HEARING	:	New Delhi/ through video conferencing

PARTIES PRESENT:

Respondent	:	CA. Naresh Kumar Satyanarayanji Dalmia
Counsel of the Respondent	:	Ms. Radha P. Halbe, Advocate

FINDINGS:**Charge Alleged:**

1. Sh. P.K. Sharma, CBI Special Judge, City Civil and Sessions Court, Gr. Mumbai (hereinafter referred to as the 'Informant') in his letter of allegation alleged against the Respondent that he appeared as a witness in hearing of a case CBI-ACB, Mumbai vs T. Venkat Mohan and Anr. and admitted his guilt that he had given Rs. 25,000/- as bribe to Mr. T.V. Mohan, ITO for clearing the Income Tax returns of M/s Service Pharmaceuticals Pvt. Ltd.

Brief of Proceedings held:

2. During the hearing held on 3rd January 2022, the Board noted that the Respondent alongwith his Counsel was present before it through video conferencing. The

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Respondent was put on oath. The Respondent alongwith his Counsel confirmed that they have read and understood the contents of the modalities and protocols of e-hearing and follow them. Thereafter, the charges alleged against the Respondent were taken as read with the consent of the Respondent. On being asked by the Board as to whether the Respondent pleaded guilty in respect of the charges against him, he replied in affirmative and his Counsel made her submissions before the Board. The Respondent was examined by the Board. On consideration of the documents and submissions on record, the Board decided to conclude the proceedings in the case.

Brief of the Submissions of the Respondent:

3. The Respondent, in his defence, inter-alia submitted as under:-
 - a. In para 5.1 of PFO, it is stated that Respondent paid Rs.25000/- bribe to ITO 'for clearing' the Income Tax returns of his client. In this regard, it may be noted that the Respondent attended the Assessment proceedings and almost completed the assessment on merit. The ITO demanded the money at the time of completing the assessment, as something like 'goodwill' and not to obtain any sort of favour from the ITO. Ultimately, as per the instruction of client's accountant it was settled for Rs. 20,000/- in the interest of Respondent's client to buy peace and avoid harassment. This is only to highlight that Respondent had completed the assessment with professional competence and integrity.
 - b. The observation in para 5.4 of PFO are rather too idealistic. There cannot be two opinions about it. They say in mythology that such dream situation actually prevailed in 'Satyayug'.
 - c. The Respondent drew the attention of Hon'ble Board of Discipline to Para no. 2 and 3 of his written statement dated January 01,2020 wherein it was clearly stated that CBI was investigating case no. 1 of 2011 against the respective ITO and the said case was not at all connected with Respondent or his client. The Respondent was only called upon to give witness to confirm the Statement regarding acceptance of bribe by the same Officer for Assessment Year 2006-07 in the case represented by the Respondent. Out of clear conscience, the Respondent admitted the fact before CBI Judge what happened long before many years, so that the truth prevails. Hon'ble Board can also refer para 20 of the relevant extract of judgement to verify above facts. The extract of said judgement is already on record. He also submitted the full text of Judgement of CBI Special Court in CBI Spl case no. 01 of 2011 (CBIACB. Mumbai V/S T.Venkat Mohan and Anr) dated 23/05/2018 wherein accused Mr. T.V. Mohan is already acquitted and thus, requested the Board to take a considerate view.
 - d. In these disciplinary proceedings, he was paying the cost of his honesty. The Respondent admitted the fact before the CBI judge since his conscience was

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clear. The CBI judge appreciated this. That is the reason why he did not hold him criminally guilty (although under the Indian Penal Code, it could be treated as a crime). Thus, he indirectly recognized the reality of today's life and did not consider the episode so material and serious. The Respondent also pointed out that he is a victim of the situation, and not a beneficiary.

Observations and Findings of the Board:

4. The Board noted that the Informant has placed on record the following deposition of Respondent as Prosecution Witness No. 9 before Ld. CBI Special Judge, Gr. Mumbai dated 27/09/2017 :

"I do hereby on solemn affirmation state that:-

My Name is : Naresh Dalmiya
 My Age is about : 56 years.
 My Occupation is : Chartered Accountant
 I am residing at : Goregaon, Mumbai.

EXAMINATION IN CHIEF BY SPP MR. FARID KHAN FOR CBI.

I am working as a Chartered Accountant since the year 1986. I know Service Pharmaceuticals Pvt. Ltd. That company was my client since the year 2004. I used to file Income Tax returns of that company. I had filed Income Tax returns of that company for the Assessment Year 2006-07. Regarding that assessment, I had gone to Income Tax Office, Aaykar Bhavan. I met T.V. Mohan who was the Income Tax Officer. He was the Assessing Officer. T.V. Mohan had demanded money. He had demanded Rs.25,000/-. I had given him Rs.20,000/- to avoid the harassment. Thereafter, our Income Tax returns were accepted."

The Board on perusal of the same noted that the Respondent has categorically accepted that he had paid bribe to Income Tax Official to settle the Income Tax matter of his client.

5. The Board also noted that the Respondent has also taken the plea that the main accused Mr. T.V. Mohan, Income Tax Official has already been acquitted in the Criminal case by the Ld. Special Judge for CBI, Gr. Mumbai in [CNR NUMBER – MHCC020008732011] vide judgment dated 23/05/2018.
6. In this regard, the Board opined that Disciplinary proceedings are distinct from Criminal proceedings. The proceedings before the Board of Discipline are quasi-

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judicial in nature where the misconduct can be proved by preponderance of probabilities having regard to the conduct of the Respondent which is distinct from Criminal proceedings where the misconduct has to be proved beyond reasonable doubt. 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 to order a 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 or 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."

7. The Board also took into view recent judgment of Hon'ble Apex Court in the matter of "The State of Rajasthan & Ors. Vs. Heem Singh" decided on 29/10/2020 wherein the Hon'ble Court observed as under:

".....37. Acquittal in a criminal case by itself cannot be a ground for interfering with an Order of punishment imposed by the Disciplinary authority. The High Court did not say that the said fact had not been taken into consideration. The revisional authority did so. It is now a well-settled principle of law that the Order of dismissal can be passed even if the delinquent official had been acquitted of the criminal charge." (emphasis supplied).

The Board on perusal of said judgment of Hon'ble Apex Court observed that the said judgment differ on the point that the errant police official was acquitted in the said case and was punished in the disciplinary proceedings initiated by the Department

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against him. However, in the case before the Board of Discipline, the criminal proceedings were against the errant public servant wherein he had been acquitted and departmental proceedings before the Board were against the Respondent who acted as a Prosecution Witness before the Ld. Special Judge in the Criminal proceedings against the errant public servant. However, the intent of the Apex Court that an individual can be held guilty in Departmental proceedings despite acquittal in Criminal proceedings is evident. Accordingly, the Board viewed that the plea of the Respondent is not sustainable.

8. The Board further observed that the Respondent in his written submissions made both at the Prima Facie stage as well as at the hearing stage and also verbally during the hearing held on 3rd January, 2022 before the Board admitted his guilt.
9. The Board, on consideration of the submissions and documents on record observed that giving bribe to a Public Servant to perform public function is a serious offence and the Respondent in the instant case has admittedly given bribe to Mr. T.V. Mohan, Income Tax Officer for clearing the Income Tax returns of his client, M/s Service Pharmaceuticals Pvt. Ltd. which clearly points out at his misconduct. Such an action on the part of the Respondent is clearly unbecoming of a Chartered Accountant. The Board was also of the view that instead of advising his client to follow Rules and not to succumb to the illegal demand of ITO, the Respondent himself indulged in the activities prohibited by law and thereby certainly brought disrepute to the entire Profession. Accordingly, the Respondent is held guilty in respect of the charge alleged.

CONCLUSION:

10. Thus, in conclusion, in the considered opinion of the Board, the Respondent is **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.

Sd/-

CA. PRASANNA KUMAR D.
(PRESIDING OFFICER)

Date: 01st February 2022

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R. S. Srivastava
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