



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

[PPR/138/13-DD/130130/2013/BOD/294/2017]

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:-

Shri Leif Baecklund,
Bankruptcy Receiver
Quinn Investments Sweden A.B.
Quinn Logistics Sweden A.B.
Quinn Hotels Sweden A.B.

...Complainant

-Vs.-

CA Raghu Marwah (M. No. 502305)
of M/s R.N. Marwah & Co., Bengaluru
[PPR/138/13-DD/130/2013/BOD/294/2017]

...Respondent

Date of Final Hearing: 12th November, 2021
(decision reserved and decided on 9th December 2021)

MEMBERS PRESENT at the time of hearing on 12th November 2021 (through video conferencing):

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

MEMBERS PRESENT at the time of award of punishment on 9th December 2021(through video conferencing):

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

1. The Board of Discipline vide Report dated 11th February, 2021 held that CA. Raghu Marwah (M. No. 502305) 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. Raghu Marwah and communication dated 3rd November, 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 12th November, 2021.
3. CA. Raghu Marwah appeared before the Board on 12th November, 2021 through video conferencing and made his oral representation thereat. Upon consideration of the facts of the case along with the oral representation of the Respondent, the Board was of the view that it is desirable to have the view of all the members of the Board to arrive at a decision on the quantum of punishment to be awarded to the Respondent. Accordingly, the decision on the quantum of punishment to be awarded to the Respondent was reserved by the Board to be taken up in the presence of all the members of the Board on the basis of the documents and representation on record.



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Thereafter, the case was considered on 9th December 2021 wherein all the members of the Board were present and noted that the Respondent in his oral representation, inter-alia, stated as under:

- a. The payment against that fee was not forthcoming despite various reminders. In the interim, there was another work which was assigned. After submission of his initial work of advisory, the companies were pleased with his work. The companies asked him to submit a proposal for another engagement which he did. That engagement started from June and that engagement was signed by the General Manager Mr. Samson Arthur. For two months, the work under the scope of work of the second agreement was also rendered and again, no payment was forthcoming. The Respondent was forced to initiate recovery proceedings and send reminders. In the meantime, the Bankruptcy Receiver was appointed. The companies were unable to make payment because they were struggling to find out what is the real position in terms of ownership. The management of the companies was going through various changes. However, despite various reminders and legal notices, the Respondent had to file a case in the Honorable Andhra High Court where the registered office of the company was situated for recoveries of his dues. The Official liquidator was also appointed but, no favourable Order was there. Almost 20-25% of the recovery amount had already been spent by way of legal fees, expenses, charges for travels and so on and so forth.
 - b. Other firms like KPMG and M/s. Amarchand Mangaldas & Shroff received huge money on this case. The Respondent is the only victim or the only person who ended up with loss of time, money and the hardship and the stigma of being held Guilty by the honorable Institute.
 - c. The Respondent requested the Board to take the most lenient view and be mindful of the Respondent's career which is at stake.
4. The Board has carefully gone through the facts of the case and also the oral representation of **CA. Raghu Marwah**.
5. As per the Findings of the Board as contained in its report, the following are the observations:
- (a) It was alleged that the Respondent entered into Service agreements dated 15/06/2011 and FEMA Advisory Service agreements dated 04/05/2011 with Quinn Lodgings India Private Limited and Quinn Logistics India Private Limited (Companies) and raised false invoices as no services were provided to the said Companies. Further, the Respondent suppressed material facts in the proceedings initiated before the Courts of Competent Jurisdictions and obtained Order from the Court of Competent Jurisdiction as regards winding up of the said Companies.
 - (b) The Board observed that two separate agreements both dated 15th June, 2011 executed between Quinn Logistics India Pvt. Ltd./ Quinn Lodgings India Pvt. Ltd. on first part and Respondent on Other part contained specific clause with respect to responsibilities as stated hereunder:

Agreement between Quinn Logistics India Pvt. Ltd. and the Respondent

"3. RESPONSIBILITIES

3.1 Logistics undertakes to not take any action (whether at any shareholders meeting or at any directors meeting) or any preparatory step (whether by

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convening a shareholders meeting or by convening a directors meeting) to remove any Director unless and until the Beneficiary has provided his written consent for such removal.

- 3.2 *Logistics undertake to not take any action (whether at any shareholders meeting or at any directors meeting) or any preparatory step (whether by convening a shareholders meeting or by convening a directors meeting) to amend any provision of its articles and association relating to the removal of any Director unless and until the Beneficiary has provided his written consent for such amendment.*
- 3.3 *Without prejudice to the generality of the foregoing, Logistics shall undertake all actions necessary to amend its charter documents to incorporate the restrictions stated above."*

Agreement between Quinn Lodgings India Pvt. Ltd. and the Respondent

"3. RESPONSIBILITIES

- 3.1 *Lodgings undertakes to not take any action (whether at any shareholders meeting or at any directors meeting) or any preparatory step (whether by convening a shareholders meeting or by convening a directors meeting) to remove any Director unless and until the Beneficiary has provided his written consent for such removal.*
- 3.2 *Lodgings undertake to not take any action (whether at any shareholders meeting or at any directors meeting) or any preparatory step (whether by convening a shareholders meeting or by convening a directors meeting) to amend any provision of its articles and association relating to the removal of any Director unless and until the Beneficiary has provided his written consent for such amendment.*
- 3.3 *Without prejudice to the generality of the foregoing, Lodgings shall undertake all actions necessary to amend its charter documents to incorporate the restrictions stated above."*

Upon consideration of said clauses, the Board observed that generally such conditions are not made part of service agreements in common business parlance and the same also show that such conditions are not reasonable and contrary to business practice and entering into such an agreement itself raises suspicion/doubt on the genuineness of the said agreements.

(c) The Board observed that bills for the period 01/04/2011 to 31/03/2012 and details of professional fee received during the FY 2011-12 submitted by the Respondent were issued to the said client as per the two Purported Services Agreements both dated 15/06/2011 executed between the parties for monthly payments of Rs. 8,00,000/- per month respectively and for two Letter of engagements both dated 04/05/2011 for FEMA Advisory Services for Rs. 45,00,000/- and Rs. 9,00,000/- respectively. The said letter of engagements dated 04/05/2011 for FEMA Advisory Services contain a clause for "Payment and engagement terms" wherein at point 2 it was stated as hereunder:

"The invoice for the aforesaid amount shall be raised after six months from the date of the engagement and the amount payable within 30 days thereafter."

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[PPR/138/13-DD/130130/2013/BOD/294/2017]

The said bills were much higher in value than the bills ordinarily issued by the Respondent Firm against other clients of the Respondent Firm during the relevant period. The Respondent during hearing dated 30th January, 2021 submitted that he was not sure about why the letter 'A' was inserted in the voucher numbers issued to the Companies and further the Accounts Department of the Respondent Firm follows their own process of issuing the invoices in serial nos. and there is no significance for A or B. Subsequently, the Respondent in written submissions stated that the invoice numbers are raised in serial order by the Accounts Department and to avoid confusion, invoice raised by the Bangalore office are raised with 'A' in the invoice number. The Board also observed that only specific bills had alphabet 'A' inserted and on perusal of the details of Invoices with 'A' issued during the F.Y. 2011-12, the Board observed that around 65 % of the billing was in respect of the said 2 companies only which were not received by it. Also, the Respondent firm adopted the cash basis of accounting. Accordingly, it was viewed that bills would have been issued to clients with original number and doubt is raised that bills to the said 2 companies have been later inserted with alphabet 'A' purposely.

(d) The Board noted that the Respondent instituted two separate proceedings, namely:-

- i. Before Hon'ble High Court of Andhra Pradesh at Hyderabad for winding up of Companies.
- ii. Before Hon'ble Patiala House Courts, Delhi in Suit No. 144/12 in case titled "M/s. RN Marwah & Company Vs. Quinn Logistics India Pvt. Ltd. & Ors." and Suit No. 145/12 in case titled "M/s. RN Marwah & Company Vs. Quinn Lodgings India Pvt. Ltd. & Ors." for recovery of amounts due alongwith injunction for obstructing the Complainant and other stakeholders to take control of assets of Companies.

The Respondent in a pre-planned manner and within short span of time approached two different Forums and did not submit proper facts before the said Forums in order to create unnecessary complications for the Complainant and other stake holders of the said companies.

(e) The Board further noted that CS 144/12 and CS 145/12 instituted by the Respondent was dismissed by Ld. ADJ, New Delhi vide Order dated 03/04/2012 only after giving several opportunities to the Respondent herein to appear and present his case. The Ld. Additional District Judge, New Delhi (ADJ) in the said Order dated 03/04/2012 observed as under:

"Matter has been called out several times since morning. None has appeared on behalf of the plaintiff (Respondent herein). Perusal of file also shows that the plaintiff has not been appearing in the present matter since 08.11.2012. Further, that the plaintiff has also not been taking any steps for the service of defendants no. 2 to 4 [Mr. John (Sean) Ignatius Quinn (defendant no.2), Mr. John Dara O Reilly (defendant no.3) and Mr. Peter Quinn (defendant no.4) all being directors of M/s. Quinn Logistics India Pvt. Ltd.]. It appears that the plaintiff is not interested in pursuing the present case. The present case is, therefore, dismissed in default....."

Thus, on one hand the Respondent initiated the proceedings (CS 144/12 and CS 145/12) for recovery of the amount from the respective Indian Company and on other hand he failed to appear before the Ld. Court and took the plea that the said suit was costing him a lot and therefore, he let go the said proceedings which seems a

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[PPR/138/13-DD/130130/2013/BOD/294/2017]

contrary stand of the Respondent as one cannot be expected to approbate and reprobate.

- (f) The Complainant company filed application before Ld. Additional District Judge, Patiala House Courts, New Delhi under Order 1 Rule 10 r/w Order 39 Rule 4 r/w Section 151 of the Code of Civil Procedure, 1908 and the Ld. Court vide Order dated 06/06/2012 was pleased to partly allow the said application and permitted the Complainant company to be impleaded as defendant number 5 in the said matter.
- (g) The Respondent filed an application dated 14/07/2014 for withdrawal/ not pressing before the Ld. ADJ, Patiala House Courts, New Delhi in suit no. 144/2012 and suit no. 145/2012 under Order 9 Rule 4 and 9 read with Section 151 of the Code of Civil Procedure and accordingly, the said suits were not perused further by the Respondent. Thus, it seems that the Respondent has withdrawn the said Suits only when the Complainant approached the Institute by filing Form 'I' dated 14/05/2013 and Disciplinary proceedings were initiated against him.
- (h) The parent company Quinn Logistics Sweden AB instituted OS No. 19 of 2012 and OS No. 20 of 2012 to protect its assets and Indian subsidiary companies (Quinn Logistics India Pvt. Ltd. and Quinn Lodgings India Pvt. Ltd.). The parent company while seeking permanent injunction restraining the Indian subsidiary companies, their agents/ nominees acting through or under them from alienating any property of Company in any manner or creating third party rights or interests thereon. The parent company also sought injunction restraining the agents/ nominees or anybody through or under them from changing or taking any steps to change the share capital structure of Indian company in any manner. Thus, the parent company initiated the proceedings before the Hon'ble District Courts at Hyderabad restraining the defendant no. 2 to 4 therein from alienating/ creating third party rights in respect of any property of Indian Company and/ or also changing the composition of the shareholding pattern and/ or reconstituting the Board of directors of the Indian Company. The above agreements executed by the Respondent with the respective Indian Company was to bypass the relief sought by the parent company under injunction suit O.S. No. 19 of 2012 and O.S. No. 20 of 2012. Further, the role of the Respondent came into picture only with the execution of said Agreements dated 04/05/2011 and 15/06/2011.
- (i) The said companies as per present status of MCA portal are "Active Compliant" and no such Orders for winding up was proceeded with which further negates the contentions raised by the Respondent.

6. The Board viewed that the conditions stipulated in the agreements entered into by the Respondent with the companies under question were neither reasonable nor generally made part of service agreements in common business parlance. Further, doubt was raised that bills to the said 2 companies had been later inserted with alphabet 'A' purposely. On one hand, the Respondent initiated the proceedings (CS 144/12 and CS 145/12) for recovery of the amount from the respective Indian Companies and on the other hand, he failed to appear before the Ld. Court and subsequently withdrew the said Suits taking the plea that the said Suits were costing him a lot and therefore, he let go the said proceedings which seems a contrary stand of the Respondent as one cannot be expected to approbate and reprobate. Thus, the Board viewed that the Respondent being member of the Institute should work rationally in his professional endeavors and should not be unreasonable in using his professional acumen. The conduct of the Respondent in the explained circumstances is clearly unbecoming of a Chartered Accountant. Thus, as per the Findings of the Board as contained in its report, it has already been held that **CA. Raghu Marwah** is Guilty of Other



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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. Raghu Marwah** and keeping in view his oral representation before it, **the Board decided to remove the name of CA. Raghu Marwah(M.No. 502305) from the Register of Members for a period of 3 (three) months and also imposed a Fine of Rs.1,00,000/- (Rs. 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: 1st February, 2022

सही प्रतिलिपि होने के लिए प्रमाणित /
Certified to be true copy

अरुण कुमार / Arun Kumar
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

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. : [PR-138/2013-DD/130/2013/BOD/294/2017]

CORAM:

CA. Prasanna Kumar D., Presiding Officer

(In Person)

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

(Through Video Conferencing)

In the matter of:

Shri Leif Baecklund,
Setterwalls Advokatbyrå AB,
Arsenalsgatan 6,
Box 1050, SE 101 39, Stockholm,
Sweden

.....Complainant

-Vs.-

CA Raghu Marwah (M. No. 502305)
M/s R.N. Marwah & Co.
813, Oxford Towers,
139, Airport Road,
Bengaluru-560 008

.....Respondent

DATE OF FINAL HEARING : 8th February, 2021

PLACE OF HEARING : New Delhi/ Through video conferencing

PARTIES PRESENT:

Respondent : CA Raghu Marwah (Through Video Conferencing)



Background of the case:

1. The brief background of the matter is as under:-
 - (a) The Respondent entered into fraudulent agreements on 15th June 2011 Purported Service Agreements (PSA) for services each with Quinn Lodgings India Private Limited and Quinn Logistics India Private Limited. The PSAs were signed on behalf of Quinn Lodgings India Private Limited and Quinn Logistics India Private Limited (hereinafter referred to as the "Companies") by Mr. Samson Arthur, who as on that date was not a Director of the said Companies, as per the knowledge of the Respondent. The terms of the PSAs were such that they would not be part of any bonafide commercial engagement for providing professional services under normal circumstances.
 - (b) On 4th May, 2011, the Respondent firm separately entered into agreements with the Companies purportedly for providing FEMA Advisory Services ("FEMA Advisory Agreements"). There is reason to believe that FEMA Advisory Agreements were fraudulent and no such services were provided and false invoices were raised.
 - (c) The Respondent firm on the basis of these PSA, filed suits before the Patiala House Court, New Delhi against the Company seeking recovery of Rs.17,64,800/- against each of these Companies. In the above mentioned suits, the Respondent firm sought an injunction against change in the Board of Directors of the respective Companies or their directors. The aforesaid suits are collusive between the Respondent and the companies in which the alleged representatives of the Company effectively obstructed the Bankruptcy Receiver from taking control of the assets of the Companies.
 - (d) Simultaneously, the Respondent firm without disclosing the proceedings in Patiala House Court, also moved to the High Court of Hyderabad and by suppressing material facts, obtained winding up Order of the said Companies.

Charges alleged :

2. The Respondent entered into Service agreements dated 15/06/2011 and FEMA Advisory Service agreements dated 04/05/2011 with Quinn Lodgings India Private Limited and Quinn Logistics India Private Limited (Companies) and raised false invoices as no services were provided to the said Companies. Further, the Respondent suppressed material facts in the proceedings initiated before the Courts of Competent Jurisdictions and obtained Order from the Court of Competent Jurisdiction as regards winding up of the said Companies. Due to the said conduct, it is alleged that the Respondent has brought disrepute to the Institute and the



profession 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.

Proceedings held:

3. In the above case, the Board noted that while the case was under enquiry before the Board of Discipline for hearing under Rule 14(6) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, an email dated 12th October 2020 was received from the Complainant confirming the withdrawal of the Complaint through affidavit dated 12th September, 2018 against CA. Raghu Marwah of M/s R N Marwah & Co. (M.No.502305) stating that they no longer wish to pursue any claims against CA. Raghu Marwah.

Since the case was under enquiry before the Board of Discipline and meanwhile withdrawal letter from the Complainant had been received, the provisions of Rule 6 were taken into view by the Board.

Accordingly, the Board at its meeting held on 17th December, 2020 considered the withdrawal letter of the Complainant along with the documents on record. Keeping in view the facts of the case and the observations made in the Prima Facie Opinion, the Board did not allow the withdrawal in the case, decided to proceed further in terms of the provisions of Rule 14(6) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 and directed to inform the parties to the case accordingly.

4. During the hearing held on 30th January 2021, the Board noted that the Respondent was present before it through video conferencing, was put on oath and he confirmed that he has read and understood the contents of the modalities and protocols of e-hearing and follow them. Further, an email dated 29th January 2021 had been received from the Complainant stating that he is unable to attend the hearing due to prior commitments and that the disputes and issues with the Respondent stand settled. In view of the same and the fact that the request of the withdrawal of the complainant had not been accepted by the Board, the Board decided to proceed ahead with the hearing in the case. Thereafter, the charges alleged against the Respondent were treated as read. On being asked by the Board as to whether the Respondent pleaded guilty in respect of the charges alleged against him, he replied in negative and made his detailed oral submissions. The



Respondent was examined by the Board.

On consideration of the documents and submissions on record, the Board decided to call the following documents from the Respondent:

- a. Copy of withdrawal application filed in the Patiala High Court and Andhra Pradesh High Court alongwith reason of withdrawal of the aforesaid suits
- b. Details of other invoices raised in respect of FEMA matters
- c. Details of legal costs incurred in respect of their claim for professional fees.
- d. Financial Statement of M/s R.N.Marwah & Co. for the F.Y. 2011-12
- e. Reason for listing of 'A' in the invoice
- f. Facts leading to their appointment as consultant for FEMA matters
- g. Details of work executed

Accordingly, the hearing in the case was adjourned.

The Respondent in compliance of above directions submitted the documents/ information vide his submissions dated 01/02/2021.

5. Thereafter, during the final hearing held on 8th February 2021, the Respondent was present before the Board through video conferencing and made his detailed submissions and was examined by the Board. Upon consideration of the documents and submissions on record, the Board decided to conclude the proceedings in the case with the direction to the Respondent to submit the following:
 1. List of Invoices accrued as professional receipts during the financial year 2011-12 M/s R.N.Marwah & Co.
 2. List of invoices raised during the financial year 2011-12 by M/s R.N.Marwah & Co.
 3. Financial statements alongwith schedules and Tax audit report of M/s R.N.Marwah & Co. for the financial year 2011-12.

Accordingly, the decision on the conduct of the Respondent was kept reserved by the Board.

In compliance of above direction, the Respondent submitted the documents/ information vide his letter dated 10th February, 2021.

Thereafter, the Board at its meeting held on 11th February 2021, on the basis of the documents and submissions on record, arrived at its findings.

Submissions of Respondent:

6. The brief of the submissions of the Respondent is as under:-
- a. Mr. Ratan Kapoor of Irish India Trading Company introduced the Respondent to the client companies in April 2011. The Respondent travelled to Hyderabad on 5th April in morning and returned in evening itself. At the said meeting, the Respondent met the management of the client company in Hyderabad.
 - b. Based upon the conferences and meetings held, including the personal meeting in Hyderabad on 5th April, 2011; a proposal was submitted on 20th April, 2011 for FEMA advisory services. The Respondent submitted copy of correspondence prior to engagement (Ann. D1/D2)
 - c. The said fee proposed was negotiated and final engagement letter was executed on 04/05/2011 for a fee of Rs. 45 Lakh and Rs. 9 Lakh excluding OPE to Quinn Logistics India Private Limited and Quinn Lodgings India Private Limited signed by Mr. John (Sean) Ignatius Quinn, Director on behalf of the Client Companies and by the Respondent on behalf of the Respondent Firm.
 - d. The client shared various voluminous transaction documents (Ann. A5) and upon examination of such data spent substantial time and effort, the Respondent advised the client for filing of compounding application with the RBI after examination of the various outcomes thereof, which was filed by the client. The Respondent raised invoice number M/458A/2011-12 and M/459A/2011-12 both dated 02/11/2011 for the agreed fee as per engagement. Upon the failure of the client company to make payment of Respondent dues, despite various reminders, legal notice dated 17/01/2012 (Ann. G1/G2) was filed before Hon'ble Andhra Pradesh High Court at Hyderabad on 14/02/2012, wherein the registered office of the Company was located.
 - e. Another assignment was also awarded to Respondent Firm in terms of agreement dated 15/06/2011 for representation before Government authorities and accounts outsourcing. The said agreement was executed by Mr. Samson Arthur, General Manager on behalf of client companies. The work under the said agreement was rendered for 2 months and since the clients did not make any payments, the services were ended. The Respondent raised two invoices on 15/07/2011 and 16/08/2011 which remained unpaid. The Respondent filed a suit on 15/02/2012 before the Patiala House Court, Delhi as regard the amounts due under the said contract.
 - f. In the meantime two foreign companies viz. Quinn Logistics Sweden A.B. and Quinn Hotels Sweden A.B. claimed to be holding companies of both the Indian

Companies and several other foreign companies around 31, being subsidiaries of subsidiaries of an ultimate holding company, Quinn Investments Sweden A.B. through an intricate and complex set of share holding structure were declared insolvent by the Sweden District Court, Stockholm, Sweden vide their Orders dated 5th & 6th July, 2011 and appointed Complainant as the Bankruptcy Receiver, on admission of liabilities and failure by Quinn Investments Sweden A.B. to pay to the Anglo Irish Bank Corporation Limited, Ireland.

- g. The Hon'ble High Court of Andhra Pradesh at Hyderabad vide its Order dated 17/02/2012 ordered for winding up; appointed Official Liquidator for both the companies, on the admission of both the companies being unable to pay the liabilities, without any dispute with regard to appointment, services rendered and the bills raised.
- h. The enquiry under Disciplinary proceedings were not within the purview of ICAI Rules, while civil and criminal litigation was going on and the Respondent had not been indicted in any case.
- i. The Respondent further submitted the reason for withdrawal of proceedings before Court of Competent Jurisdiction as the inordinate delay in obtaining relief, uncertainty of recovery of dues, substantial legal costs incurred and anticipated prolonged future litigation. It was decided to end all the litigation on the matter pending before the Hon'ble Hyderabad Court and Patiala House Courts, Delhi pursuant to withdrawal letters issued to the lawyers concerned in March 2014. The Hon'ble Courts after consideration of petitions of the Respondent for withdrawal passed necessary Orders permitting the same. The Respondent further submitted bills in support of incurring substantial legal costs of over Rs. 16 Lakh for payment made to various lawyers.
- j. The Respondent submitted the event chronology with respect to appointment of Complainant as Bankruptcy Receiver in the matter before Hon'ble High Court of Hyderabad and referring to same submitted that all the engagements were prior to Bankruptcy Receiver coming into the picture.
- k. The Respondent further submitted copy of following documents:-
 - i. Financial Statements with schedules for the FY 2011-12 alongwith the Tax Audit Report for AY 2012-13 of M/s. R.N. Marwah & Co. (Ann. B)
 - ii. Client wise invoices included in the professional receipts on cash basis of accounting aggregating Rs. 3.28 crore during the FY 2011-12 of Respondent Firm (Ann. C)
 - iii. Client wise list of invoices raised during FY 2011-12 of Respondent Firm whether received or not (Ann. D)

Observations and findings of the Board:

7. The Board on consideration of the documents available on record and other submissions of the Respondent observed as under:-
- a. With regard to the charges alleged against the Respondent, the Board noted that the two separate agreements both dated 15th June, 2011 executed between Quinn Logistics India Pvt. Ltd./ Quinn Lodgings India Pvt. Ltd. on First Part and Respondent on Other part contained specific clause with respect to Responsibilities which mentions as under:-

Agreement between Quinn Logistics India Pvt. Ltd. and the Respondent

"3. RESPONSIBILITIES

- 3.1 Logistics undertakes to not take any action (whether at any shareholders meeting or at any directors meeting) or any preparatory step (whether by convening a shareholders meeting or by convening a directors meeting) to remove any Director unless and until the Beneficiary has provided his written consent for such removal.
- 3.2 Logistics undertake to not take any action (whether at any shareholders meeting or at any directors meeting) or any preparatory step (whether by convening a shareholders meeting or by convening a directors meeting) to amend any provision of its articles and association relating to the removal of any Director unless and until the Beneficiary has provided his written consent for such amendment.
- 3.3 Without prejudice to the generality of the foregoing, Logistics shall undertake all actions necessary to amend it's charter documents to incorporate the restrictions stated above."

Agreement between Quinn Lodgings India Pvt. Ltd. and the Respondent

"3. RESPONSIBILITIES

- 3.1 Lodgings undertakes to not take any action (whether at any shareholders meeting or at any directors meeting) or any preparatory step (whether by convening a shareholders meeting or by convening a directors meeting) to remove any Director unless and until the Beneficiary has provided his written consent for such removal.

3.2 Lodgings undertake to not take any action (whether at any shareholders meeting or at any directors meeting) or any preparatory step (whether by convening a shareholders meeting or by convening a directors meeting) to amend any provision of its articles and association relating to the removal of any Director unless and until the Beneficiary has provided his written consent for such amendment.

3.3 Without prejudice to the generality of the foregoing, Lodgings shall undertake all actions necessary to amend its charter documents to incorporate the restrictions stated above."

Upon consideration of said clauses, the Board observed that generally such conditions are not made part of service agreements in common business parlance and the same also shows that such conditions are not reasonable and contrary to business practice and entering into such an agreement itself raises suspicion/doubt on the genuineness of the said agreements.

- b. Further, on perusal of the details of bills for the period 01/04/2011 to 31/03/2012 and details of professional fee received during the FY 2011-12 submitted by the Respondent, it was noted as under:-

Date	Client No	Vch Type	Vch No.	Credit
15/07/2011	Q-2	BILL	M/167A/2011-12	800000.00
15/07/2011	Q-2	BILL	M/168A/2011-12	800000.00

16/08/2011	Q-2	BILL	M/266A/2011-12	800000.00
16/08/2011	Q-2	BILL	M/267A/2011-12	800000.00

02/11/2011	Q-2	BILL	M/458A/2011-12	4500000.00
02/11/2011	Q-2	BILL	M/459A/2011-12	900000.00

The said bills were issued to the said client as per the two Purported Services Agreements both dated 15/06/2011 executed between the parties for monthly payments of Rs. 8,00,000/- per month respectively and for two Letter of engagements both dated 04/05/2011 for FEMA Advisory Services for Rs. 45,00,000/- and Rs. 9,00,000/- respectively.

- c. The Board further noted that the said letter of engagements dated 04/05/2011 for FEMA Advisory Services contains a clause for "Payment and engagement terms" wherein at point 2 it is mentioned "The invoice for the aforesaid amount

shall be raised after six months from the date of the engagement and the amount payable within 30 days thereafter."

Considering the above details, it is observed that the said bills were much higher in value than the bills ordinarily issued by the Respondent Firm against other clients of the Respondent Firm during the relevant period. The Respondent during hearing dated 30th January, 2021 submitted that he was not sure about why the letter 'A' was inserted in the voucher numbers issued to the Companies and further the Accounts Department of the Respondent Firm follows their own process of issuing the invoices in serial nos. and there is no significance for A or B. Subsequently, the Respondent in written submissions stated that the invoice numbers are raised in serial order by the Accounts Department and to avoid confusion, invoice raised by the Bangalore office are raised with 'A' in the invoice number. The Board also observed that only specific bills had alphabet 'A' inserted and on perusal of the details of Invoices with 'A' issued during the F.Y. 2011-12, the Board observed that around 65 % of the billing was in respect of the said 2 companies only which were not received by it. Also, the Respondent firm adopted the cash basis of accounting. Accordingly, it is viewed that bills have been issued to clients with original number and doubt is raised that bills to the said 2 companies have been later inserted with alphabet 'A' purposely.

- d. The Board noted that the Respondent has instituted two separate proceedings:-
- i. Before Hon'ble High Court of Andhra Pradesh at Hyderabad for winding up of Companies and
 - ii. Before Hon'ble Patiala House Courts, Delhi in Suit No. 144/12 in case titled "M/s. RN Marwah & Company Vs. Quinn Logistics India Pvt. Ltd. & Ors." and Suit No. 145/12 in case titled "M/s. RN Marwah & Company Vs. Quinn Lodgings India Pvt. Ltd. & Ors." for recovery of amounts due alongwith injunction for obstructing the Complainant and other stakeholders to take control of assets of Companies.
- e. The Board further noted the dates and events of the matter as under:

Date	Event
04/05/2011	The Respondent firm entered into two separate agreements with the Quinn Lodgings India Private Limited and Quinn Logistics India Private Limited (Companies) for providing FEMA Advisory Services ("FEMA Advisory Agreements").

15/06/2011	The Respondent entered into two separate Purported Service Agreements (PSA) for providing services to the said client Companies.
15/07/2011, 16/08/2011 and 02/11/2011	Respondent raised the liability and issued the bills to the Companies for seeking payment for services offered
27/12/2011	The parent Company "Quinn Logistics Sweden AB (in bankruptcy)" through Complainant filed OS No. 19 of 2012 against Quinn Logistics India Pvt. Ltd. & Ors. and OS No. 20 of 2012 against Quinn Lodgings India Pvt. Ltd. & Ors. seeking permanent injunction under Order 39 Rule 1 & 2 of CPC to pass an ad-interim injunction order restraining the Respondents therein, their agents, servants or anybody acting through or under them including any directors of respective Companies (Quinn Logistics India Pvt. Ltd. or Quinn Lodgings India Pvt. Ltd.) before the Addl. District Judge, Ranga Reddy District, Hyderabad
05/01/2012	The Ld. Addl. District Judge, Ranga Reddy District, Hyderabad passed the necessary exparte ad-interim orders in favour of plaintiff "Quinn Logistics Sweden AB (in bankruptcy)"
17/01/2012	Issue of legal notices by counsel on instructions of Respondent under Section 433 & 434 of the Companies Act, 1956 for winding up of companies
15/02/2012	The Ld. ADJ at Patiala House Courts, Delhi in the respective suit no. 144/12 and suit no. 145/12 passed an exparte ad interim order in favour of plaintiff (Respondent herein) and against the defendants (i.e. respective Company and other stakeholder) restraining them from carrying out changes in the Articles of Association of the defendant no. 1 company, it's directors and composition of it's existing Board of Directors, alienating the assets of the defendant no.1 or creating third party interest.
17/02/2012	The Hon'ble High Court of Andhra Pradesh was pleased to order winding up of companies on the petition of Respondent and appointed official liquidator for both the Companies.
03/04/2013	The Ld. ADJ, Patiala House Courts, New Delhi vide its order dismissed the Suit No. CS 144/12 and CS 145/12 and passed directions for proceedings under Section 340 Cr.P.C. against the Plaintiff (Respondent herein) observing adverse remarks of non-appearance and not taking steps for service to defendants
14/05/2013	The Complainant filed Form I to initiate disciplinary proceedings before the Institute against the Respondent.

- f. From the above events it was observed that the Respondent in a pre-planned manner and within short span of time has approached two different forums and has not submitted proper facts before the said forums in order to create unnecessary complications for the Complainant and other stake holders of the said companies. Further, the Complainant has to initiate the extant disciplinary proceedings based on the said misconduct on the part of the Respondent.
- g. The Board further noted that CS 144/12 and CS 145/12 instituted by the Respondent was dismissed by Ld. ADJ, New Delhi vide Order dated 03/04/2012 only after giving several opportunities to the Respondent herein to appear and present his case. The Ld. Additional District Judge, New Delhi (ADJ) in the said order dated 03/04/2012 observed that *"Matter has been called out several times since morning. None has appeared on behalf of the plaintiff (Respondent herein). Perusal of file also shows that the plaintiff has not been appearing in the present matter since 08.11.2012. Further, that the plaintiff has also not been taking any steps for the service of defendants no. 2 to 4 [Mr. John (Sean) Ignatius Quinn (defendant no.2), Mr. John Dara O Reilly (defendant no.3) and Mr. Peter Quinn (defendant no.4) all being directors of M/s. Quinn Logistics India Pvt. Ltd.]. It appears that the plaintiff is not interested in pursuing the present case. The present case is, therefore, dismissed in default....."*. Thus, the Board observed that on one hand the Respondent initiated the proceedings (CS 144/12 and CS 145/12) for recovery of the amount from the respective Indian Company and on other hand he failed to appear before the Ld. Court and took the plea that the said suit was costing him a lot and therefore, he let go the said proceedings which seems a contrary stand of the Respondent as one cannot be expected to approbate and reprobate.
- h. The Board further noted that the Complainant company filed application before Ld. Additional District Judge, Patiala House Courts, New Delhi under Order 1 Rule 10 r/w Order 39 Rule 4 r/w Section 151 of the Code of Civil Procedure, 1908 and the Ld. Court vide Order dated 06/06/2012 was pleased to partly allow the said application and permitted the Complainant company to be impleaded as defendant number 5 in the said matter.
- i. The Board further noted that the Respondent has filed an application dated 14/07/2014 for withdrawal/ not pressing before the Ld. ADJ, Patiala House Courts, New Delhi in suit no. 144/2012 and suit no. 145/2012 under Order 9 Rule

4 and 9 read with Section 151 of the Code of Civil Procedure and accordingly, the said suits are not perused further by the Respondent. Thus, it seems that the Respondent has withdrawn the said suits only when the Complainant approached the Institute by filing Form I dated 14/05/2013 and disciplinary proceedings were initiated against him.

- j. The parent company Quinn Logistics Sweden AB instituted OS No. 19 of 2012 and OS No. 20 of 2012 to protect its assets and Indian subsidiary companies (Quinn Logistics India Pvt. Ltd. and Quinn Lodgings India Pvt. Ltd.). The parent company while seeking permanent injunction restraining the Indian subsidiary companies, their agents/ nominees acting through or under them from alienating any property of Company in any manner or creating third party rights or interests thereon. The parent company also sought injunction restraining the agents/ nominees or anybody through or under them from changing or taking any steps to change the share capital structure of Indian company in any manner. Thus, the parent company initiated the proceedings before the Hon'ble District Courts at Hyderabad restraining the defendant no. 2 to 4 therein from alienating/ creating third party rights in respect of any property of Indian Company and/ or also changing the composition of the shareholding pattern and/ or reconstituting the Board of directors of the Indian Company. The Board, in this regard, further observed that the above agreements executed by the Respondent with the respective Indian Company was to bypass the relief sought by the parent company under injunction suit O.S. No. 19 of 2012 and O.S. No. 20 of 2012. Further, the role of the Respondent came into picture only with the execution of said agreements dated 04/05/2011 and 15/06/2011.
 - k. The Board further noted that the said companies as per present status of MCA portal are "*Active Compliant*" and no such Orders for winding up was proceeded with which further negates the contentions raised by the Respondent.
8. Considering the above, the Board, viewed that the justification offered by the Respondent does not inspire confidence. The Board viewed that the Respondent being member of the Institute should work rationally in his professional endeavours and should not use his professional acumen to favour one client. Moreover, the Respondent should not get involved in legal paradigm between the client companies and other professionals to misuse his position. The Board further observed that the conduct of the Respondent in twisting the facts of the matter while trying to recover

the alleged dues from his clients is clearly unbecoming of a chartered accountant and such conduct clearly makes him liable for Other Misconduct falling within the meaning of Item (2) of Part IV of First Schedule for bringing disrepute to the profession.

9. Thus, having regard to the attendant circumstances, the evidence put forth during the proceedings and the submissions of the Respondent 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:

10. The Board of Discipline, in view of the above, is of the considered opinion 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: 11th February, 2021

प्रमाणित सत्य प्रतिलिपि / Certified true copy
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सहायक सचिव / Assistant Secretary
अनुशासनालय / Disciplinary Directorate
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