



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

PPR/P/341/2017-DD/328/INF/2017/BOD/491/2018

**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 Re:**

**CA. Sunil Kumar Agrawal (M. No. 075953), Raipur**

**[PPR/P/341/2017-DD/328/INF/2017/BOD/491/2018]**

**MEMBERS PRESENT:**

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

**Date of Final Hearing: 9<sup>th</sup> February, 2022**

1. The Board of Discipline vide Report dated 1<sup>st</sup> February, 2022 held that **CA. Sunil Kumar Agrawal (M. No. 075953)** 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. Sunil Kumar Agrawal** and communication dated 4<sup>th</sup> 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 9<sup>th</sup> February, 2022. **CA. Sunil Kumar Agrawal** vide email dated 6<sup>th</sup> February, 2022 made his written representation on the Findings of the Board.
3. **CA. Sunil Kumar Agrawal** appeared before the Board on 9<sup>th</sup> February, 2022 through video conferencing and made his oral representation thereat.
4. **CA. Sunil Kumar Agrawal** in his written representation dated 6<sup>th</sup> February 2021, inter-alia, stated as under:-
  - a. The Findings of the Board of Discipline are not acceptable to the Respondent as the same are beyond their jurisdiction.
  - b. The mechanism of the Disciplinary Proceedings is suspected to have been misused. An effort appears to be made to collect some evidences at the stage of proceedings before the Board of Discipline after commencing the hearing. Such evidences have even not been disclosed to the Respondent for his review and challenge, if any. The Board is expected to follow summary Disposal procedure and has only to take into account the documents prescribed in the relevant Rule 14(9).
  - c. There is no question of laundering the 'ill-gotten' money of Chhattisgarh Principal Secretary because it is not proved by any evidences that his ill gotten money has been laundered.

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- d. There is no jurisdiction to the Board of Discipline to proceed in the matter because the Prima Facie Opinion has been wrongly formed.
- e. Particularly when the Charge is under "Other Misconduct" and not under "Professional misconduct", it is not appropriate to initiate proceedings under the C. A. Act simultaneously along with cases in Other Courts. Unless the Respondent has been found guilty by the said Courts for having conducted the alleged actions/offences, the same cannot be said to have resulted into bringing in any disrepute to anybody. Therefore at this stage the proceedings need be kept in abeyance till the decisions from the relevant Courts.
- f. Proceedings held by the BOD are in violation of relevant Rules – There were adjournments on the part of Board of Discipline on the three Hearings 19/06/2019, 12/07/2019 and 23/07/2020, apparently to collect additional evidence, which is contrary to relevant Rule No. 14(8) which specifies that adjournments shall not be given more than once at any stage of the proceedings. Neither the Respondent has been informed about the directions given by the Board to the office to seek evidence to be collected by from the Government Authorities on 23rd July 2021, nor the collected evidence were disclosed to the Respondent. The Respondent has not been given copies of various evidences collected from Director of Enforcement vide their letter dated 20/02/2020. Hence the reliance on any such evidence is not proper and is unlawful and also it is against the principles of natural justice.
- g. Regarding the observation with respect to Epic Investwell (P) Ltd V/s CIT, Raipur Order dated 22/04/2016 by ITAT Raipur, the Respondent submitted that he has not been shown any such order as an evidence during the process of investigation. This is against the principles of natural justice. The name of this company has not been mentioned in the alleged newspaper report based on which this Information Case has been initiated. It relates to the matter of difference of opinion between the two tax authorities. He had stopped doing work from FY 2008-09.

5. The Board has carefully gone through the facts of the case and also the oral and written representation of **CA. Sunil Kumar Agrawal**.

6. As regard the submission of the Respondent that an effort appears to be made to collect some evidences at the stage of proceedings, the Board viewed that as per Rule 14 of the CA Rules 2007, the Board follows the Summary disposal procedure in dealing with the cases before it. Further, Sec 21C of the CA Act 1949 empowers the Board to summon and enforce the attendance of any person and examining him on oath, discovery and production of any document and receiving evidence on affidavit. The said power is exercised by the Board on a case to case depending upon the facts of the case. The Board also took into view the following observation made by the Apex Court in Union of India –vs- Orient Engg. & Commercial Co. Ltd. (1977 AIR 2445, 1978 SCR (1) 622) as under while coming to the said view:

*"It is not right that everyone who is included in the witness list is automatically summoned, but the true Rule is that if grounds are made out for summoning a witness, he will be called. The Court must realise that its process should be used sparingly and after careful deliberation if the arbitrator should be brought into the witness box."*

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7. The Board also observed that letter dated 20/02/2020 received from the Directorate of Enforcement containing the copy of documents i.e. FIR, Chargesheet, Investigation carried out by the Directorate of Enforcement, details of shell companies, status of Court Case were duly shared with the Respondent and the same was also acknowledged by the Respondent in his email dated 21/07/2021. With respect to the observations made by Hon'ble Income Tax Appellate Tribunal (ITAT), Raipur Bench, Raipur in its Order dated 22/04/2016, the Board observed that the Respondent himself represented the said shell companies before the Hon'ble ITAT, Raipur in the matter of M/s. Epic Investwell (P) Ltd. Vs. CIT, Raipur and thus, was privy to the said information.
8. The Board further viewed that no case can be kept in abeyance indefinitely as held by Hon'ble Apex Court in the matter of Shashi Bhusan Prasad Vs. Inspector General Central Industrial Security Force & Ors. in its judgment dated 01/08/2019:-

*"18. The exposition has been further affirmed by a three Judge Bench of this Court in Ajit Kumar Nag Vs. General Manager (P.J), Indian Oil Corporation Limited, Haldia and Others 4, this Court held as under: - "As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. 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 rule 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, on the other 4 2005(7) SCC 764 hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability". Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside." (Emphasis supplied)*

*19. We are in full agreement with the exposition of law laid down by this Court and it is fairly well settled that two proceedings criminal and departmental are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on an offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service Rules. 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. Even the rule 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 whereas in the departmental enquiry, penalty can be imposed on the delinquent on a finding recorded on the basis of 'preponderance of probability'. Acquittal by the Court of competent jurisdiction in a judicial proceeding does not ipso facto absolve the delinquent from the liability under the disciplinary jurisdiction of the authority. This what has been considered by the High Court in the impugned judgment in detail and needs no interference by this Court.*

*20. The judgment in M. Paul Anthony case (supra) on which the learned counsel for the appellant has placed reliance was a case where a question arose for consideration as to whether the departmental proceedings and proceedings in a criminal case on the basis of same sets of facts and evidence can be continued simultaneously and this Court answered in para 22 as under:- "The conclusions which are deducible from various decisions of this Court referred to above are:*

*(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.*

*(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.*

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*(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.*

*(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.*

*(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest."*

9. Further, as per the Findings of the Board as contained in its report, **CA. Sunil Kumar Agrawal** was arrested by CBI for allegedly laundering the 'ill-gotten' money of Mr. B.L. Agarwal, Chhatisgarh Principal Secretary. It is alleged that **CA. Sunil Kumar Agrawal** also opened 446 bank accounts in the name of various persons belonging to several villagers in Raipur with two branches of Union Bank of India Ramsagarpara and Pandri branch and also formed 13 shell companies for facilitating transfer of money from various sources of M/s Prime Ispat Ltd.

10. The Board examined the Respondent during the proceedings held on 30/07/2021 and observed that the Respondent was the auditor of M/s Prime Ispat Ltd. since inception of the company in 2004. He audited the accounts of the company till the F.Y. 2008-09 and subsequently resigned after the date of the Search on 4th Feb 2010. The Respondent was connected with Mr. Pawan Agarwal and Mr. Ashok Agarwal, the directors of M/s Prime Ispat Ltd. who were the brothers of Mr. B.L. Agarwal, Chhatisgarh Principal Secretary. The Respondent was the auditor of the alleged 13 Shell companies till 2009. The Respondent himself represented all the thirteen companies before the Hon'ble Income Tax Appellate Tribunal (ITAT). About 230 passbooks of villagers were seized from the office of the Respondent during the search proceedings held by the Income Tax Department during the year 2010. The Respondent stated that he used to keep the passbook of villagers for filing the Income Tax returns. He knew the 230 villagers through his brother Mr. Alok Agrawal who was residing at Village Kharora. His brother acted as an introducer in most of the said Bank accounts. M/s Prime Ispat Limited has approached the Ld. Settlement Commission and has also paid the taxes vide Settlement Order passed by Ld. Settlement Commission. The father of the Respondent was also one of the Directors in these 13 companies. His relatives were also directors in the said companies and he used to file their Income tax return. The Board further noted that around 13 companies were opened/operated by the Respondent for alleged money laundering of money of Chhattisgarh Principal Secretary. The Board upon perusal of MCA records of the 13 Companies under consideration, observed that all the companies were incorporated during the period 2004 to 2008, have registered office address as either of the office of the Respondent or at Village Kharora. It was further observed that status of 12 out of 13 Shell Companies were shown as "Strike off" and status of 1 Shell Company was shown as "Inactive".

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11. Upon perusal of the audited Financial Statements of M/s Prime Ispat Limited as downloaded from the ROC portal for the F.Y. 2008-09, the Board noted that under para 18 of Notes to Accounts, the Related Party Transactions of the Company were depicted. The same reflected an active involvement of relatives of Directors in the affairs of M/s Prime Ispat Limited during the Financial Year 2008-09 and more specifically, there were transactions of receipt of loan from them and repayment thereof. Further, Form 20B- Annual return for the F.Y. 2007-08 and 2008-09, Form 23AC and Form 23ACA- F.Y. 2008-09 filed with the ROC by the company had been certified by the Respondent in his capacity as a Chartered Accountant. Upon perusal of Balance Sheet and Schedule annexed to and forming part of Balance Sheet of M/s Alok Resources Private Limited as at 31/03/2009 as downloaded from the ROC portal, it was observed that the Company had 'No' Fixed Assets in its books, the Company had major source of funds as Share Application Money of Rs. 1,21,00,000/- as at 31/03/2009 (Rs. 1,01,00,000/- as at 31/03/2008) and corresponding to the said source, the Company had made an investment in the unquoted equity shares of M/s Prime Ispat Limited to the tune of Rs. 2,46,00,000/- as at 31/03/2009 (Rs. 2,26,00,000/- as at 31/03/2008). The total size of Balance Sheet was Rs. 2,47,00,000/- as at 31/03/2009 (Rs. 2,27,00,000/- as at 31/03/2008). The same shows that the Company had applied almost all its funds in M/s Prime Ispat Limited during the FY 2008-09. The company did not had either any profit/loss during the current F.Y. 2008-09 nor in the previous F.Y. 2007-08. The company also did neither purchase any inventory during the year nor sold any goods or services since its incorporation. The company had not started any commercial activity. The company did not had any employee. The same position continued till the F.Y. 2011-12 for which the Financial Statements were examined. Further, Form 20B- Annual return for the F.Y. 2007-08 and 2008-09, Form no.5 – Notice for increase in share capital, etc. e-filed by the company with the ROC on 26th June 2010 had been certified by the Respondent in his capacity as a Chartered Accountant. Similarly, upon perusal of Balance Sheet and Schedule annexed to and forming part of Balance Sheet of M/s EPIC Investwell Private Limited as at 31/03/2009 as downloaded from the ROC portal, it was observed that the Company had 'No' Fixed Assets in its books, the Company had major source of funds as Share Application Money of Rs. 17,15,000/- as at 31/03/2009 (Rs. 2,08,00,000/- as at 31/03/2008) and corresponding to the said source, the Company had made an investment in the unquoted equity shares of M/s Prime Ispat Limited to the tune of Rs. 2,08,00,000/- as at 31/03/2009 (Rs. 2,08,00,000/- as at 31/03/2008). The total size of Balance Sheet was Rs. 2,26,15,000/- as at 31/03/2009 (Rs. 2,09,00,000/- as at 31/03/2008). The same shows that the Company applied almost all its funds in M/s Prime Ispat Limited during the FY 2008-09. The company did not had either any profit/loss during the current F.Y. 2008-09 nor in the previous F.Y. 2007-08. The company also did neither purchase any inventory during the year nor sold any goods or services since its incorporation. The company had not started any commercial activity. The company did not had any employee. The same position continued till the F.Y. 2011-12 for which the Financial Statements were examined. Further, Form 2, Form 20B- Annual return for the F.Y. 2007-08 and 2008-09, Form 23AC – F.Y. 2007-08, Form – AOC4(F.Y.-2014-15), e-filed by the company with the ROC had been certified by the Respondent in

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his capacity as a Chartered Accountant. The Respondent was also the auditor of the company for the F.Y. 2007-08.

12. The Board also took into view consolidated Order dated 22nd April, 2016 passed by the Hon'ble Income Tax Appellate Tribunal, Raipur Bench, Raipur in the matter M/s. Epic Investwell (P) Ltd. Vs. CIT, Raipur [ITA Nos. 39 & 40/RPR/2014, ITA Nos. 41 to 43/RPR/2014, ITA Nos. 44 to 47/RPR/2014, ITA Nos. 48 to 51/RPR/2014, ITA Nos. 52 & 53/RPR/2014, ITA Nos. 54 to 56/RPR/2014, ITA Nos. 57 to 60/RPR/2014, ITA Nos. 61 to 64/RPR/2014, ITA Nos. 65 & 66/RPR/2014, ITA Nos. 67 & 68/RPR/2014, ITA Nos. 69 to 71/RPR/2014, ITA Nos. 72 to 75/RPR/2014, ITA Nos. 76 & 77/RPR/2014] wherein while dealing with the issue of Shell Companies opened and operated by Respondent, the Hon'ble ITAT observed as under:-

*"14.....The search & seizure action were conducted also at the office of CA. S.K.Agarwal, wherein 232 bank passbooks of different individual of Kharora and nearby villagers were found. All the bank passbooks pertain to only two Banks, i.e. Union Bank of India, Main Branch, Raipur and Union Bank of India, Pandri Branch, Raipur. It was also found that all these companies were having registered office either in the office of CA. S.K.Agarwal or at village Kharora. There were ample materials pointing out towards the fact that an amount of Rs. 48.48 crores in the benami name of individuals of village Kharora introduced as share application money/share capital in the above 13 shell companies have introduced while opening the bank account in the names of these companies, which were related to S.K.Agarwal, CA. "*

13. The Board also noted that Deputy Director (Int.), Directorate of Enforcement, Government of India vide letter dated 20/02/2020 submitted the copy of FIR, Charge Sheet, investigation carried out by the Directorate of Enforcement in the matter and details of shell companies to substantiate the charges alleged against the Respondent. The Board noted that the FIR No. 103/2017, PS: Pandri, Raipur, Chhattisgarh dated 11/04/2017 and the Charge Sheet filed in the said matter dated 26/07/2017 under Section 420, 467, 468 & 471 Indian Penal Code, 1860 establishes the role of Respondent. It was mentioned in the said Charge Sheet that the Respondent use to take PAN Card and photo of villagers to open bank accounts in their names. The Board further noted that the Deputy Director (Int.), Directorate of Enforcement, Government of India also brought on record Investigation carried out under the provisions of PMLA, 2002 wherein it was stated that based on the aforesaid FIR lodged against the Respondent, an ECIR no. 01/2017 was recorded by RPSZO on 12/04/2017. The list of 13 shell companies containing their addresses and directorship details was also produced on record. The Board also noted the Respondent brought on record an Affidavit dated 20th July 2018 to the effect that it was his third representation for retracting the said Statements as he had already submitted his retraction in the bail applications filed before the Honorable HC of Chhattisgarh, dated 03.10.2017 and 16.05.2018, that the Statements dated 07.08.2015 and 13.04.2017 were illegally/forcefully recorded by the Officers of ED by pressurizing him. In the said Affidavit, he further stated that the Income Tax Department pursuant to search on Prime Ispat Limited group including his Office premises on 04/02/2010 had forcefully and coercively recorded his statement on 04/02/2010



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and 05/02/2010 itself, which he has already retracted vide his affidavits dated 06/02/2010, 08/02/2010 and 21/07/2011 and 16/08/2011 and also before the concerned Assessing Officer who was assessing his case pursuant to search proceedings on 26/12/2011. However, the Board was of the view that apart from that there were ample evidences to show that the Respondent had used his professional knowledge and his professional association for undesirable purposes. The Board viewed that the direct/indirect role of the Respondent in opening the bank accounts in the name of various villagers of Kharora and forming 13 shell companies to channelize the unaccounted income through such shell companies and through book entries is clearly evident from the circumstantial and corroborative evidences. Thus, it has already been held that **CA. Sunil Kumar Agrawal** 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.


14. Upon consideration of the facts of the case, the consequent misconduct of **CA. Sunil Kumar Agrawal (M. No. 075953)** and keeping in view his oral and written representation before it, the Board decided to Remove the name of **CA. Sunil Kumar Agrawal (M. No. 075953)** from the Register of Members for a period of 1 (One) month 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: 11<sup>th</sup> February, 2022

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

  
विभागाध्यक्ष / Bhatnagar Nath Tiwari  
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, Shahdara, Delhi-110032



**BOARD OF DISCIPLINE**

**CONFIDENTIAL**

**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/P/341/2017-DD/328/INF/2017/BOD/491/2018]**

**CORAM:**

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

**(In Person)**

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

**(Through Video Conferencing)**

**In the matter of:**

**CA. Sunil Kumar Agrawal (M. No. 075953), Raipur in Re:**

**...Respondent**

**DATE OF FINAL HEARING**

**30<sup>th</sup> July, 2021**

**PLACE OF HEARING**

**New Delhi/ Through video conferencing**

**PARTIES PRESENT:**

**(Through Video Conferencing)**

**Respondent**

**: CA. Sunil Kumar Agrawal**

**Counsel for the Respondent**

**: CA. Shashikant Barve**

**FINDINGS:**

1. The brief of the case is as under:-
  - a. The Enforcement Directorate (ED) arrested the Respondent for allegedly laundering the 'ill-gotten' money of Chhattisgarh Principal Secretary.
  - b. The Respondent acted as key person who helped the Principal Secretary in laundering inappropriate money received by him through opening of 446 bank accounts in the name of various persons belonging to several villages in Raipur in the Union Bank of India, Ramsagarpara and Pandri Branch and by formation of 13 shell companies for facilitating transfer of money from these bank accounts to M/s Prime Ispat Limited by routing through such shell companies.
  - c. Thus, the Respondent had been instrumental in opening bank accounts in Union Bank of India, Ramsagarpara and Pandri Branch in Raipur districts.




- d. The Respondent formed 13 shell companies with the objective of laundering the illegal cash money belonging to Chhattisgarh Principal Secretary and Rs. 36.09 crores was invested as share capital money in M/s Prime Ispat Limited through these 13 shell companies.

Charge alleged:

2. The Charges alleged against the Respondent are as under:-
- a. As per news articles published in the 'The Hindu' dated 14<sup>th</sup> April, 2017, 'The Hindustan Times' and 'Business Standard' dated 13<sup>th</sup> April, 2017 the CBI arrested the Respondent for allegedly laundering the 'ill-gotten' money of Chhattisgarh Principal Secretary.
  - b. The Respondent opened 446 bank accounts in the name of various persons belonging to several villagers in Raipur with two branches of Union Bank of India Ramsagarpara and Pandri branch and also formed 13 shell companies for facilitating transfer of money from various sources of M/s Prime Ispat Ltd.

Proceedings held:

3. During the hearing held in the case on 29<sup>th</sup> April 2019 and thereafter on 12<sup>th</sup> June, 2019, the Respondent alongwith his Counsel was present before the Board and made detailed oral submissions on the Charges alleged against the Respondent. Considering the submissions and documents on record, the Board decided to call relevant documents from the concerned Authorities in the matter.
4. Thereafter, in response to the communication from the Directorate, the Office of Directorate of Enforcement vide letter dated 20<sup>th</sup> February, 2020, submitted the copy of FIR No. 103/17 registered by PS: Pandri, Raipur, Chhattisgarh under section 467 and 471 IPC; Chargesheet and investigation carried out by Directorate of Enforcement in the matter and the details of shell companies. It was further mentioned that the case against the Respondent is pending for arguments on Charge before the Court of Competent jurisdiction.
5. During the hearing held in the case on 23rd July 2021, the Respondent alongwith his Counsel was present before the Board 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 Respondent whether he would like to have a De -Novo enquiry or continue from the last proceedings to which he stated that he would like to continue from the last proceedings and his Counsel made his submissions before the Board. The Respondent was examined by the Board. Thereafter, the Board adjourned the hearing in the case with the direction to office to seek the following information:





- (a) Current status of the case no. ESIR/RPSZO/01/2017 from the Directorate of Enforcement together with the copy of the Orders passed therein, if any.
  - (b) Current status of the proceedings initiated against the Respondent in the alleged matter from the Income Tax Department together with the copy of the Orders passed therein, if any.
  - (c) Download the Financial Statements of the alleged 13 shell companies and M/s Prime Ispat Ltd. From the ROC website for the period under question and examine the same to further ascertain the involvement of the Respondent in the alleged matter.
6. During the hearing held in the case on 30<sup>th</sup> July 2021, the Respondent alongwith his Counsel was present before the Board through video conferencing who made his further submissions before the Board. Thereafter, the Respondent was examined by the Board. On consideration of the submissions and documents on record, the Board concluded the proceedings in the case.

**Brief submissions of the Respondent:**

7. The Respondent, in his defence, inter-alia submitted as under:-
- a. The Prima Facie Opinion is not in line with CA Rules, 2007 and has been wrongly formed under Clause (2) of Part IV of the First Schedule to the CA Act, 1949 and was formed ignoring the principles of Natural Justice.
  - b. The proceedings were not initiated by the Disciplinary Directorate based on an opinion formed by the Council because it seems that the proceedings were initiated on 24/04/2017 itself based on Newspaper cuttings dated 13<sup>th</sup> and 14<sup>th</sup> April, 2017 and the Director(Discipline) has thus not taken into account the basic requirement of formation of Opinion by the Council to proceed for charge as Other Misconduct under Clause (2) of Part IV of the First Schedule to the CA Act, 1949.
  - c. No opportunity was given to Respondent to submit Written Statement under Rule 14(3) (and earlier also under Rule 8(3)) and the Prima Facie Opinion formed on 25/04/2018 was sent to the Respondent on 26/02/2019. The Respondent was in judicial custody from 13/04/2017 to 23/05/2018 and could not have responded in time to the Notice dated 24/04/2017 or the additional time granted of 1 month and therefore the, Director( Discipline) has erred in forming a Prima Facie Opinion against the Respondent in the absence of a Written Statement from him and thus, without giving him an opportunity to defend.
  - d. The Director(Discipline) has not communicated as to who is the Complainant/ Informant whose letter has been referred in para 2 of the Prima Facie Opinion and whether proper compliances have been done in respect of the requirements of Rule 3(6), 5(1), 5(2), 5(3), 7(1), 7(2), 7(3), 9(1) and 8(5), of the CA (Procedur  of

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Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

- e. During the course of Search on 04/02/2010 and 05/02/2010, it was recorded that the cash deposits were first made in various bank accounts and from there the funds were transferred to subscription of shares of 13 shell companies. As against this, newspaper articles are published on 13/14<sup>th</sup> April, 2017 i.e. beyond 7 years from the search and therefore, the Directorate does not take into account that time limit of 7 years under Rule 12 of Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 was not considered as far as present information is concerned.
- f. There are no evidences to prove that Respondent opened 446 bank accounts or formed 13 shell companies. The Newspaper articles/ publications claimed have not been legally proved. So far as newspapers and journals are concerned the presumption can at best be only about their genuineness but not about the truth of their contents. The presumption of genuineness attached under Section 81 of the Indian Evidence Act, to a newspaper cannot be treated as proof of the facts reported therein, as a statement of a fact contained in a newspaper is merely hearsay and therefore inadmissible in evidence, in the absence of the maker of the statement appearing in Court and deposing to have perceived the fact.
- g. The Informant did not produce any evidence in support of the allegations except copies of some news articles and the Respondent is not expected to lead evidence in his defence. The Respondent further referred to decision of Hon'ble Bombay Court in the matter of Institute of Chartered ... Vs H.S. Ghia of Mumbai India decided on 11 August, 2004 wherein no evidence was led on behalf of the Complainant to prove the case against the Respondent and the Disciplinary proceedings were quashed by the Hon'ble Bombay High Court as *"when the Complainant failed to lead any evidence nor did he present himself before the Disciplinary Committee, we are afraid the Disciplinary Committee seriously erred in looking to the complaint and the annexures annexed therewith as gospel truth proving the charges. Even if the Respondent failed to produce some material called for by the Disciplinary Committee, that would not lead to the inference that the charges against the Respondent were proved. As a matter of fact the Respondent before the Disciplinary Committee drew the attention that the complainant was not appearing and he did not lead any evidence to substantiate the charges and that rendered the charges unproved, the Disciplinary Committee brushed aside the contention of the Respondent on unsustainable grounds that the Respondent did not submit any documentary evidence in support of his submission. Where was the necessity for the Respondent to produce the documentary evidence in support of his defence when the complainant did not choose to appear before the Disciplinary Committee nor did he lead any evidence to prove the charges."*

The Respondent further referred to the case of Radhey Shyam Bansal & Anil Kumar Aggarwal Vs. ICAI (Appeal No. 12/ICAI/2017 and 14/ICAI/2017) date of

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judgment/ Order 18/10/2018 wherein the Ld. Appellate Authority observed that "35. In the present Appeals, it is true that the Appellants have not denied their appearance in the sting operation but from the very beginning they are denying the contents and the manner in which it was presented to the Institute. The raw footage which was the basic evidence in these Appeals should have been made available to the Appellants and reasonable time should have been given to them to controvert the same. Admittedly, in both these Appeals, the raw footage of the video was given to them after the Board of Discipline had issued the Report of holding them guilty. It is also not understandable why the final Order was passed so hurriedly and more so in the case of Shri Bansal, whose father expired on 15<sup>th</sup> April, 2017 which is a very valid ground for giving him more time of defence. It is relevant to note here that after receipt of the raw footage, the ....."

- h. The Director(Discipline) in para 5 of the Prima Facie Opinion has said that he felt that no further documents are required to be called for and thus relied only on the newspaper articles. This indicates that the Complainant/ Informant has not made out his case as is normally expected in the proceedings.
- i. The para 6.3 of the Prima Facie Opinion states that it is based on only on the allegations mentioned in the newspaper articles and further states that looking to their seriousness, it would be difficult to exonerate the Respondent at the Prima Facie Opinion stage and the matters need to be enquired into further to establish the extent of involvement of the Respondent in the whole affairs.
- j. It is premature to initiate proceedings against the Respondent when the same matters which are the basis for offences alleged against him are tried by Other Courts and are to be decided by such Other Courts. This particularly is applicable in the present case where charge is certain actions bringing disrepute to the Profession or the Institute (Other Misconduct). The Respondent further referred to Article 20(2) and Article 20(3) of the Constitution of India in this regard. It is inappropriate to initiate proceedings under the CA Act simultaneously along with case in other Courts.
- k. The Respondent further submitted the factual position in the case as follows:-
  - i. The Respondent was in Judicial Custody for the substantial period from 13/04/2017 to 24/05/2018. He was granted Bail in the case under PMLA at the Special Court on 19/06/2017 itself but was granted Bail on 23/05/2018 in the case before Judicial Magistrate FC. The Prima Facie Opinion was therefore formed without a written statement from the Respondent.
  - ii. The Respondent came to know of some important developments after he was released on Bail. All the properties of Mr. B.L. Agrawal, IAS and Prime Ispat Limited which the ED had provisionally attached in April 2017, were released by the Adjudicating Authority, PMLA, New Delhi vide two Orders due to the properties not involved in money laundering. The Respondent also came to know that no charges have been framed so far against Mr. B.L. Agrawal in the cases filed against him by ED and by EOW/ACB. Further, the suspended IAS officer Mr. B.L. Agrawal was reinstated in the Government

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Services in April, 2018 (and from the date of retirement earlier given) by the Order of the Central Administrative Tribunal (CAT) wherein it quashed the Orders of Central and State Government on forceful retirement of Chhattisgarh cadre IAS officer Mr. B.L. Agrawal.

- iii. The Respondent was granted Bail in both the cases filed against him and no charges have so far been framed in these cases till date. The cases registered by ED are under Section 3 of PMLA at Special Court PMLA Raipur and under Section 420, 467, 468 and 471 IPC at Court of Judicial Magistrate First Class Raipur.
- iv. Certain cases were filed against Mr. B.L. Agrawal, IAS by ED and by EOW/ACB during the first quarter of year 2010 and at that time it was alleged that the cash deposits were first made in various bank accounts and from there, the funds were transferred to subscription of shares of 13 shell companies. As against this, the newspaper articles were published on 13<sup>th</sup>/14<sup>th</sup> April 2017 i.e. beyond 7 years from first quarter of 2010. Thus, the activities alleged by the Informant, if any on the part of the Respondent would get presumed naturally to have taken place, if at all so, before 2010, i.e. in a period much before the 7 years period.
- v. The arrests of the Respondent were unwarranted and that it is not correct to say that he was involved in laundering the 'ill-gotten' money of Mr. B.L. Agrawal, IAS, Chhattisgarh Principal Secretary.

**Observations and Findings of the Board of Discipline:**

The Board observed that the Respondent raised certain technical objections with respect to the admissibility of the documents/authority on the basis of which the instant 'Information' case has been initiated and decided to deal with the same before arriving at its findings on the conduct of the Respondent:

8. As regards the preliminary objection regarding initiation of the instant case on the basis of newspaper reports, the Board observed that the Honorable Appellate Authority, in its combined Order dated 5<sup>th</sup> September, 2012 passed in Appeal No.1 and 2 of 2012 (Satyam cases) held as under:

*46. The whole Disciplinary Directorate consisting of Director (Discipline) and employees working under him, Board of Discipline and Disciplinary Committee of the Institute are meant to take action in respect of professional misconduct of the Members. This professional misconduct may be brought to the notice of Director (Discipline) either by a complainant or the Director (Discipline) may receive information about the professional misconduct through any other source. Sources of information can be many, including a news report. News items appearing in print media, electronic media or internet media may be either truthful or may be altogether false. Director (Discipline) of the Institute cannot refuse to act on information about professional misconduct of a member, which comes to its notice through media on the ground that every media report is merely hearsay and therefore cannot be acted upon. The*

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*primary role of Director (Discipline) in such a case would be to find out the truthfulness of the information and once Director (Discipline) comes to conclusion that the information which came to it through media was truthful, it has a duty to act on such information. The Director (Discipline) can refuse to act on false information. However, if the information has substance and is not false information, then the Director (Discipline) has to act on such information. It is not necessary that there has to be an informant to invoke Section 21 and that the Director (Discipline) cannot suo moto take action after coming to know of a serious professional misconduct of a CA through news report or media. Clause (1) of part 4 of First Schedule provides that if a Member is held guilty by civil or criminal court for an offence which is punishable with imprisonment for a term not exceeding six months, the Member shall be deemed to be guilty of other misconduct. If a news item appears either in print media or in other media about a Chartered Accountant having been convicted by a court for an offence say of cheating, fraud, Rape, theft etc., it would be obligatory on the part of Director (Discipline) to find out truthfulness of such news item and thereafter issue notice to the Member and verify the facts from him. The Director (Discipline) has to send its prima facie opinion even in respect of information received through media to the Board of Discipline or the Disciplinary Committee as the case may be. The action on the basis of information includes and means the information received from any source, including media. In the present case, the information of the letter written by Mr. Raju to the Members of the Board of Satyam had appeared in almost all newspapers and all channels of television in India as well as in all important media of foreign country. It would be travesty of justice to say that Director (Discipline) should have kept its hands off because there was no informant in this case."*

Thus, the Board was of the view that the Professional Misconduct may be brought to the notice of Director (Discipline) either by a Complainant or the Director (Discipline) may receive information about it through any other source. The sources of information can be many, including a news report. News items appearing in print media, electronic media or internet media may be either truthful or may be altogether false. Director (Discipline) of the Institute cannot refuse to act on information about Professional Misconduct of a member, which comes to its notice through media merely on the ground that every media report is hearsay and therefore cannot be acted upon.

9. As regards the preliminary objection raised by the Respondent with regard to Rule 12 that the search was held on 04/02/2010 and 05/02/2010 whereas the newspaper articles was published on 13/04/2017 and 14/04/2017 and the extant information is more than seven years old and thus, the case is time barred, the Board clarified that Rule 12 is attracted in a situation / circumstance where on account of time lag, the Respondent faces any difficulty in securing proper evidence for his/her defence and it does not *ipso facto* render the Information/ Complaint as not maintainable. However, in the instant matter, the Respondent did not express any difficulty being faced by him in leading the evidence in his defence. Accordingly, the plea of the Respondent is not sustainable and the same seems to have been raised during the inquiry at a belated stage only to divert the attention of the Board from the merits of the case.

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10. As regards the plea of the Respondent regarding non-fulfillment of the requirement stipulated in Clause (2) of Part IV of the First Schedule, the Board referred to Para 15 of the Order dated 13th May, 2017 passed by the Hon'ble Appellate Authority in the matter of *Gyan Prakash Agarwal (Appeal No. 08/ICAI/2014)*, *Rajiv Maheshwari (Appeal No. 05/ICAI/2014)* and *Sameer Kumar Singh Vs. ICAI (Appeal No. 07/ICAI/2014)* wherein it is observed as under:

*"15. Based on the above and by taking note of the written submissions made on behalf of the Institute of Company Secretaries of India, the Institute of Cost Accountants of India and the Institute of Chartered Accountants of India containing the detailed Page 9 of 14 analysis of the issue in question, we are of the considered view that the proper and correct interpretation which can be given to Clause (2) of Part-IV of the First Schedule to the respective Acts, in the light of the principles laid down and having regard to the case laws of various courts and further considering the basic objects, reasons and purpose of the amendment brought in the statutes as quoted above is that, 'Prima Facie Opinion (PRIMA FACIE OPINION)' formed by the Director (Discipline) in all such complaints / information cases serves the purpose for proceeding further for taking disciplinary action against the errant members as in terms of the amended mechanism for conduct of cases, it is the Director (Discipline) who has to form the first Prima Facie Opinion for the disciplinary proceedings to be initiated. Therefore, the opinion of Council as is mentioned in the clause (2) of Part-IV of the First Schedule to the Act has to be given a purposive meaning and has to be read in consonance with the letter and scheme of the enactment".*

Hence, the issue had already been decided by the Hon'ble Appellate Authority, and therefore, there is no merit in the argument of the Respondent in this regard.

11. As regards the plea of the Respondent that the criminal proceedings on the same allegations are pending and charges against him were not framed, the Board viewed that Criminal proceedings are distinct from Disciplinary proceedings. The proceedings before the Board of Discipline are quasi-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*

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*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."*

Thus, the Board viewed that the plea raised by the Respondent that the extant case is pending before Court of Competent jurisdiction and charges against him were not framed cannot sustain. The issue that is to be examined by the Board is whether the conduct of the Respondent arising out of the circumstances as stated in the case records has brought disrepute to the profession and thus, amounting to 'Other Misconduct' as provided under the Chartered Accountants Act 1949.

12. As regards the submission of the Respondent that no Charges have been framed so far against Mr. B.L. Agarwal in the cases filed against him by ED/EOW/ACB and that he had also been reinstated in the Government services, the Board was of the view that in the instant case, the Board was concerned with the conduct of the Respondent as a Chartered Accountant and whether his alleged Acts have brought disrepute to the profession. Whether any action has been taken against the alleged Government official on Disciplinary grounds/in Criminal cases is not germane to the issue. Accordingly, the case was dealt with on its merits by the Board of Discipline, keeping in view, the submissions and other documents placed on record.
13. As, regards the charges alleged against the Respondent, the Board examined the Respondent during the proceedings held on 30/07/2021 and the brief of the said examination is as under:-
  - a. The Respondent was the auditor of M/s Prime Ispat Ltd. since inception of the company in 2004. He audited the accounts of the company till the F.Y. 2008-09 and subsequently resigned after the date of the Search on 4<sup>th</sup> Feb 2010. He was connected with Mr. Pawan Agarwal and Mr. Ashok Agarwal, the directors of M/s Prime Ispat Ltd. who were the brothers of Mr. B.L. Agarwal, Chhatisgarh Principal Secretary.
  - b. The Respondent was the auditor of the alleged 13 Shell companies till 2009.

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- c. It surfaced that the Respondent himself represented all the thirteen companies before the Hon'ble Income Tax Appellate Tribunal (ITAT).
- d. About 230 passbooks of villagers were seized from the office of the Respondent during the search proceedings held by the Income Tax Department during the year 2010. The Respondent stated that he used to keep the passbook of villagers for filing the Income Tax returns. He knew the 230 villagers through his brother Mr. Alok Agrawal who was residing at Village Kharora. His brother acted as an introducer in most of the said Bank accounts.
- e. The funds were invested in the share capital of the 13 Shell companies, the face value of the shares was Rs. 10/- and the premium was around Rs. 40/-.
- f. Mr. Alok Agrawal, brother of the Respondent introduced these villagers to the Bank and he was also one of the directors in these companies.
- g. The Respondent did not know the current position of these companies.
- h. M/s Prime Ispat Limited has approached the Ld. Settlement Commission and has also paid the taxes vide Settlement Order passed by Ld. Settlement Commission.
- i. The father of the Respondent was also one of the Directors in these 13 companies.
- j. His relatives were also directors in the said companies and he used to file their Income tax return.

14. The Board further noted that following 13 companies were opened/ operated by the Respondent for alleged money laundering of money of Chhattisgarh Principal Secretary:-

S. No	Name of Company	S. No	Name of Company
1.	ALOK RESOURCES PRIVATE LIMITED	8.	P.C. MINING PRIVATE LIMITED
2.	EPIC INVESTWELL PRIVATE LIMITED	9.	PARAM TRANSPORT PRIVATE LIMITED
3.	VIMAL RESOURCES PRIVATE LIMITED	10.	NATURAL ORES PRIVATE LIMITED
4.	VISHWANATH RESOURCES PRIVATE LIMITED	11.	UTSAV COAL SUPPLIERS PRIVATE LIMITED
5.	KAPIL FINVEST PRIVATE LIMITED	12.	ASHISH RESOURCES PRIVATE LIMITED
6.	RAMESH TRADEWING PRIVATE LIMITED	13.	ADEPT VENIYOG PRIVATE LIMITED
7.	VR RESOURCES PRIVATE LIMITED		

15. Upon perusal of MCA records of 13 Companies as listed above, it was observed that all the companies were incorporated during the period 2004 to 2008, have registered office address as either of the office of the Respondent or at Village Kharora. It was

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further observed that status of 12 out of 13 Shell Companies were shown as "Strike off" and status of 1 Shell Company was shown as "Inactive".

16. The Board further examined the Financial Statements of M/s Alok Resources Private Limited, M/s EPIC Investwell Private Limited and M/s Prime Ispat Limited for the Financial year 2008-09 as downloaded from the MCA portal to get the correct picture of the affairs of the Companies involved in the matter and to arrive at logical findings in the matter.
- 16.1 Upon perusal of the audited Financial Statements of M/s Prime Ispat Limited as downloaded from the ROC portal for the F.Y. 2008-09, the Board noted that under para 18 of Notes to Accounts, the Related Party Transactions of the Company were depicted. The same reflected an active involvement of relatives of Directors in the affairs of M/s Prime Ispat Limited during the Financial Year 2008-09 and more specifically, there were transactions of receipt of loan from them and repayment thereof. Further, Form 20B- Annual return for the F.Y. 2007-08 and 2008-09, Form 23AC and Form 23ACA- F.Y. 2008-09 filed with the ROC by the company had been certified by the Respondent in his capacity as a Chartered Accountant.
- 16.2 Upon perusal of Balance Sheet and Schedule annexed to and forming part of Balance Sheet of M/s Alok Resources Private Limited as at 31/03/2009 as downloaded from the ROC portal, it was observed that the Company had 'No' Fixed Assets in its books, the Company had major source of funds as Share Application Money of Rs. 1,21,00,000/- as at 31/03/2009 (Rs. 1,01,00,000/- as at 31/03/2008) and corresponding to the said source, the Company had made an investment in the unquoted equity shares of M/s Prime Ispat Limited to the tune of Rs. 2,46,00,000/- as at 31/03/2009 (Rs. 2,26,00,000/- as at 31/03/2008). The total size of Balance Sheet was Rs. 2,47,00,000/- as at 31/03/2009 (Rs. 2,27,00,000/- as at 31/03/2008). The same shows that the Company had applied almost all its funds in M/s Prime Ispat Limited during the FY 2008-09. The company did not had either any profit/loss during the current F.Y. 2008-09 nor in the previous F.Y. 2007-08. The company also did neither purchase any inventory during the year nor sold any goods or services since its incorporation. The company had not started any commercial activity. The company did not had any employee. The same position continued till the F.Y. 2011-12 for which the Financial Statements were examined. Further, Form 20B- Annual return for the F.Y. 2007-08 and 2008-09, Form no.5 – Notice for increase in share capital, etc. e-filed by the company with the ROC on 26<sup>th</sup> June 2010 had been certified by the Respondent in his capacity as a Chartered Accountant.
- 16.3 Similarly, upon perusal of Balance Sheet and Schedule annexed to and forming part of Balance Sheet of M/s EPIC Investwell Private Limited as at 31/03/2009 as downloaded from the ROC portal, it was observed that the Company had 'No' Fixed Assets in its books, the Company had major source of funds as Share Application

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Money of Rs. 17,15,000/- as at 31/03/2009 (Rs. 2,08,00,000/- as at 31/03/2008) and corresponding to the said source, the Company had made an investment in the unquoted equity shares of M/s Prime Ispat Limited to the tune of Rs. 2,08,00,000/- as at 31/03/2009 (Rs. 2,08,00,000/- as at 31/03/2008). The total size of Balance Sheet was Rs. 2,26,15,000/- as at 31/03/2009 (Rs. 2,09,00,000/- as at 31/03/2008). The same shows that the Company applied almost all its funds in M/s Prime Ispat Limited during the FY 2008-09. The company did not had either any profit/loss during the current F.Y. 2008-09 nor in the previous F.Y. 2007-08. The company also did neither purchase any inventory during the year nor sold any goods or services since its incorporation. The company had not started any commercial activity. The company did not had any employee. The same position continued till the F.Y. 2011-12 for which the Financial Statements were examined. Further, Form 2, Form 20B- Annual return for the F.Y. 2007-08 and 2008-09, Form 23AC – F.Y. 2007-08, Form – AOC4(F.Y.- 2014-15), e-filed by the company with the ROC had been certified by the Respondent in his capacity as a Chartered Accountant. The Respondent was also the auditor of the company for the F.Y. 2007-08.

17. The Board also took into view consolidated Order dated 22<sup>nd</sup> April, 2016 passed by the Hon'ble Income Tax Appellate Tribunal, Raipur Bench, Raipur in the matter M/s. Epic Investwell (P) Ltd. Vs. CIT, Raipur [ITA Nos. 39 & 40/RPR/2014, ITA Nos. 41 to 43/RPR/2014, ITA Nos. 44 to 47/RPR/2014, ITA Nos. 48 to 51/RPR/2014, ITA Nos. 52 & 53/RPR/2014, ITA Nos. 54 to 56/RPR/2014, ITA Nos. 57 to 60/RPR/2014, ITA Nos. 61 to 64/RPR/2014, ITA Nos. 65 & 66/RPR/2014, ITA Nos. 67 & 68/RPR/2014, ITA Nos. 69 to 71/RPR/2014, ITA Nos. 72 to 75/RPR/2014, ITA Nos. 76 & 77/RPR/2014] wherein while dealing with the issue of Shell Companies opened and operated by Respondent, the Hon'ble ITAT observed as under:-

*"14.....The search & seizure action were conducted also at the office of CA. S.K.Agarwal, wherein 232 bank passbooks of different individual of Kharora and nearby villagers were found. All the bank passbooks pertain to only two Banks, i.e. Union Bank of India, Main Branch, Raipur and Union Bank of India, Pandri Branch, Raipur. It was also found that all these companies were having registered office either in the office of CA. S.K.Agarwal or at village Kharora. There were ample materials pointing out towards the fact that an amount of Rs. 48.48 crores in the benami name of individuals of village Kharora introduced as share application money/share capital in the above 13 shell companies have introduced while opening the bank account in the names of these companies, which were related to S.K.Agarwal, CA. Hence, therefore, it is abundantly clear that the AO had all the reasons to examine the issue of raising share capital and share premium and he chose not to do the same. Hence, the assumptions of jurisdiction by CIT u/s.263, in our opinion, are fully in Order.*

*15..... The plain and simple facts of these cases are that the Assessment Orders were passed in the case of 13 shell companies pursuant to search and seizure operation where there were ample materials that these*

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*companies were shell companies formed to raise bogus share capital and share premium. The AO chose not to make any whisper regarding the capital raised by these companies and he completed the assessment u/s.143(3) of the Act at Nil income returned by these companies. The issues raised in this case by Id Counsel before us are the same as were raised before Id CIT. Id CIT in his Order has elaborately dealt with issues raised by Id Counsel for the assessee which has been reproduced hereinabove in the earlier part of the Order.*

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*19..... It is settled law that the companies are artificial juridical person and they have their own identity. If a chain of shell companies are formed to raise bogus share capital and share premium, then by no stretch of imagination, it can be argued that if the amount is treated as undisclosed income in case of one shell company, then in the case of other shell companies, no action shall be taken and they should be allowed to go scot free carrying bogus share capital raised to further the agenda of money laundering.*

*20. By that as it may, the issue in the present appeals relates to raising of bogus share capital by the 13 assessee companies for the purpose of money laundering. As there is no examination whatsoever by the AO, the action of Id CIT u/s.263 of the Act is fully justified. Accordingly, we uphold the Order of Id CIT."*

Accordingly, the Hon'ble ITAT has rightly upheld the Order of Ld. CIT and deliberated the issue of raising of bogus share capital by the 13 shell companies for the purpose of money laundering.

18. The Board also noted that Deputy Director (Int.), Directorate of Enforcement, Government of India vide letter dated 20/02/2020 submitted the copy of FIR, Charge Sheet, investigation carried out by the Directorate of Enforcement in the matter and details of shell companies to substantiate the charges alleged against the Respondent. The Board noted that the FIR No. 103/2017, PS: Pandri, Raipur, Chhattisgarh dated 11/04/2017 and the Charge Sheet filed in the said matter dated 26/07/2017 under Section 420, 467, 468 & 471 Indian Penal Code, 1860 establishes the role of Respondent. It was mentioned in the said Charge Sheet that the Respondent use to take PAN Card and photo of villagers to open bank accounts in their names. The Respondent has opened 446 bank accounts with Union Bank of India and operated the said accounts by misusing the said documents of the villagers. During the investigation, it surfaced that Respondent used the PAN Card, Aadhar Card, Ration Card, Marksheet, Voter ID Card and Photo of said villagers to open bank account in their name without their knowledge and used the said accounts for carrying out transactions in their names. The investigating agency has seized various bank related documents and also recorded Statement of various witnesses against the Respondent and submitted the said Charge Sheet before the Ld. Trial Court.

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19. The Board further noted that the Deputy Director (Int.), Directorate of Enforcement, Government of India has also brought on record Investigation carried out under the provisions of PMLA, 2002 wherein it was stated that based on the aforesaid FIR lodged against the Respondent, an ECIR no. 01/2017 was recorded by RPSZO on 12/04/2017. The Income Tax Department conducted the search at the office of the Respondent and recovered 230 pass books of gullible villagers, reflecting huge cash deposits, which were purportedly channelized as subscription of share in M/s. Prime Ispat Limited through the intermediaries (13 shell companies) formed, controlled and operated by the Respondent. The Respondent in his Statement recorded under Section 50 of PMLA, 2002 has inter alia admitted that he was instrumental in the opening of approximately 446 fake bank accounts in the names of innocent villagers of Kharora, Motimpurkala, Chingaria and Mandheipur by forging their signatures without their knowledge. Thus, Respondent has knowingly indulged in fraudulent and criminal activities of opening fake bank accounts by forging documents, formation and operation of shell companies to launder the tainted money of Sh. Babulal Agarwal and in lieu of this, the Respondent has received commission @ 0.5% of the total laundered money on commission and the same has been admitted by the Respondent in his statement. The list of 13 shell companies containing their addresses and directorship details was also produced on record.
20. The Board also noted the Respondent brought on record an Affidavit dated 20<sup>th</sup> July 2018 to the effect that it was his third representation for retracting the said Statements as he had already submitted his retraction in the bail applications filed before the Honorable HC of Chhatisgarh, dated 03.10.2017 and 16.05.2018, that the statements dated 07.08.2015 and 13.04.2017 were illegally/forcefully recorded by the Officers of ED by pressurizing him. In the said Affidavit, he further stated that the Income Tax Department pursuant to search on Prime Ispat Limited group including his Office premises on 04/02/2010 had forcefully and coercively recorded his statement on 04/02/2010 and 05/02/2010 itself, which he has already retracted vide his affidavits dated 06/02/2010, 08/02/2010 and 21/07/2011 and 16/08/2011 and also before the concerned Assessing Officer who was assessing his case pursuant to search proceedings on 26/12/2011. However, the Board was of the view that apart from that there were ample evidences to show that the Respondent had used his professional knowledge and his professional association for undesirable purposes.
21. Keeping in view the facts of the case, submissions and documents on record, the Board viewed that the direct/indirect role of the Respondent in opening the bank accounts in the name of various villagers of Kharora and forming 13 shell companies to channelize the unaccounted income through such shell companies and through book entries is clearly evident from the circumstantial and corroborative evidences. The Board further viewed that such an Act on the part of the Respondent has clearly brought disrepute to the Profession and the Institute and is unbecoming of a Chartered Accountant. Unless such Acts are sternly dealt with, under the provisions

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of the Act, it would also result in loss of faith in the integrity, character and competence of the Members of the Institute.

22. Thus, having regard to the attendant circumstances, the evidence put forth during the proceedings and the submissions on record, the Board is of the considered view that the Respondent is guilty of "Other Misconduct" falling within the meaning of Item (2) Part IV of the First Schedule to the Chartered Accountants Act 1949 read with Section 22 of the said Act.

**CONCLUSION:**

23. 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: 1<sup>st</sup> February, 2022**

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प्रमाणित सत्य प्रतिलिपि  
मुकेश कुमार मिश्रा / Mr. Mukesh Kumar Mittal  
सहायक सचिव / Assistant Secretary  
अनुशासन शाखा / Discipline Directorate  
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