



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

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

In the matter of:-

CA. Anil Kumar Aggarwal (M.No.93064)  
104, Neelkanth House  
S-524, School Block  
Shakarpur  
Delhi-110092

..... Respondent

[PPR-393/2016-DD/133/INF/2016/BOD/238/2017]

MEMBERS PRESENT:

CA. Sushil Kumar Goyal, Presiding Officer  
Mrs. Rani Nair (IRS, Retd.), Government Nominee  
CA. Durgesh Kumar Kabra, Member

1. That vide Report dated 30<sup>th</sup> January, 2020, the Board of Discipline was of the opinion that CA. Anil Kumar Aggarwal is guilty of "Other Misconduct" falling within the meaning of Clause (2) of Part-IV of the First Schedule of the Chartered Accountants Act, 1949 read with Section 22 of the said Act.

2. That an action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against CA. Anil Kumar Aggarwal and communication dated 4<sup>th</sup> February, 2020 was addressed to him thereby granting him an opportunity of being heard in person and/or to make written representation before the Board on 11<sup>th</sup> February, 2020.

3. That CA. Anil Kumar Aggarwal appeared personally before it and requested the Board to grant him further time to make his written representation and that he has also approached the Hon'ble Appellate Authority for the said purpose. The Board noted that the findings of the Board were duly served upon him on 4<sup>th</sup> February 2020 through email. The Respondent through the communication dated 4<sup>th</sup> February 2020 was asked to make his written representation before the Board, if any by 8<sup>th</sup> February 2020. The Respondent vide email dated 8<sup>th</sup> February 2020 sought time of atleast 10 days to file his written representation i.e. by 15<sup>th</sup> February 2020 on



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the ground of non-availability of his Counsel and that the time prescribed is very short as he effectively received the communication on 6<sup>th</sup> February 2020 as he was out of station to attend some marriage function. He was informed vide email dated 9<sup>th</sup> February 2020 that since the proceedings in the instant case are to be completed within specified time period in compliance with the Order of the Honorable Appellate Authority, he is allowed to file his written representation upto the time of hearing on 11<sup>th</sup> February 2020. The Board also noted that the Respondent vide email dated 11<sup>th</sup> February 2020 stated that an urgent application has been made before the Honorable Appellate Authority for reasonable time to file his written reply before the Board of Discipline in terms of the provisions of Rule 15(1) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 and till the disposal of the same, the matter be kept in abeyance by the Board and /or further time to submit the written reply in terms of the provisions of Rule 15(1) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 be allowed. On consideration of the same and also taking into cognizance provisions of Rule 15 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 which provides for providing an opportunity to the Respondent before passing an Order under section 21A(3) of the Chartered Accountants Act 1949, the Board was of the view that reasonable opportunity had already been provided to the Respondent. Further, the Board also noted that no Order/direction has been passed/given by the Honorable Appellate Authority on the application of the Respondent. Also, the Honorable Appellate Authority vide its Order dated 15<sup>th</sup> October 2019 had directed the Board to complete its entire proceedings within four months on priority. The same was also communicated to the Respondent and was asked to make his oral submissions before it. The Board noted that in his oral submissions also, he raised the same plea as in his email. Time and again, the Respondent was asked to make his oral representation, if any, on the findings of the Board. However, nothing on the same was submitted by him either orally or in written. The Board was of the view that CA. Anil Kumar Aggarwal by seeking further time was trying to play delay tactics since reasonable time had already been given to him for making his representation and thus, decided to proceed ahead for award of punishment to the Respondent in terms of the provisions of Section 21A(3) of the Chartered Accountants Act 1949 read with Rule 15 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

4. The Board has carefully gone through the facts of the case.

5. As per the findings of the Board, it has already been conclusively proved that CA. Anil Kumar Aggarwal is Guilty of 'Other Misconduct' falling within the meaning of Clause (2) of Part-IV of the First Schedule of the Chartered Accountants Act, 1949 read with Section 22 of the said Act.



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6. Upon consideration of the facts of the case and the consequent misconduct of CA. Anil Kumar Aggarwal (M.No.93064) and keeping in view his oral and written submissions before it, the Board decided to remove the name of CA. Anil Kumar Aggarwal (M.No.93064), from the Register of Members for a period of three (3) months and also imposed a fine of Rs. 1,00,000/- (Rupees One Lakh only) upon him, to be paid within 60 days of the receipt of the Order.

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Sd/-  
CA. SUSHIL KUMAR GOYAL  
(PRESIDING OFFICER)

Sd/-  
MRS. RANI NAIR (IRS, Retd.)  
(GOVERNMENT NOMINEE)

Sd/-  
CA. DURGESH K. KABRA  
(MEMBER)

DATED: 11<sup>th</sup> FEBRUARY, 2020  
PLACE: NEW DELHI

Certified Copy  
*[Signature]*  
Assistant Secretary  
Disciplinary Directorate  
The Institute of Chartered Accountants of India  
ICAI Bhawan, I.P. Marg, New Delhi-110 002

**CONFIDENTIAL**

**BOARD OF DISCIPLINE (BENCH I)**

**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/393/2016/DD/133/INF/2016/BOD/238/17]**

**CORAM:**

**CA. Sushil Kumar Goyal, Presiding Officer  
Mrs. Rani Nair (IRS, Retd.), Government Nominee  
CA. Durgesh Kumar Kabra, Member**

**In the matter of:**

**CA. Anil Kumar Aggarwal (M.No.093064),  
104, Neelkanth House,  
S 524, School Block,  
Shakarpur  
Delhi – 110 092**

**..... Respondent**

**DATE OF FINAL HEARING : 16<sup>th</sup> December, 2019**

**PLACE OF HEARING : New Delhi**

**PARTIES PRESENT:**

**Respondent : CA. Anil Kumar Aggarwal  
Counsel for Respondent : CA. Sandeep Manaktala**

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Brief Background of the case:

1. The genesis of the instant case dates back to 8<sup>th</sup> November 2016, when the Government of India made public announcement that Rs.500 and Rs.1000 currency notes then in circulation were no longer valid tender and the said announcement was followed by cash shortages and long queue outside the banks to exchange the discontinued currency notes with the legal tender issued by the RBI. During the said period, it was noted that various news channels/ media have telecasted that some bank officials and professionals are involved in illegal exchange of such old currency notes with legal tender currency notes by charging hefty commission thereby defeating the objective of the demonetisation drive of the Government of India.

FINDINGS:

(A) Charge Alleged:-

- 1.1 The Board noted that a sting operation was aired by "Aaj Tak" News Channel on 14<sup>th</sup> November, 2016, under the title 'Jugadu Mechanic Part-3'. In the aforesaid telecast, the Respondent was shown offering to convert black money into white money for a commission of 30%. It is therefore alleged that the aforesaid act of the Respondent brought disrepute to the profession of Chartered Accountants in general.
2. The Board noted that in the aforesaid case the (erstwhile) Board of Discipline after following the due process has held the Respondent Guilty of "Other Misconduct" falling within the meaning of Clause (2) of Part IV of First Schedule of the Chartered Accountants Act, 1949 read with Section 22 of the said Act. The (erstwhile) Board vide its Order dated 12<sup>th</sup> May, 2016, ordered that the name of Respondent be removed from the Register of Members for a period of three months and also imposed a fine of Rupees one lakh.
- 2.1 Thereafter, the Respondent filed an appeal before the Appellate Authority and vide its Order dated 18<sup>th</sup> October, 2018 the Appellate Authority remanded back the matter

to the Board of Discipline to decide the matter afresh within 6 months after giving an opportunity to the Appellant in the light of the observations made by the Appellate Authority.

Since the matter could not be disposed off within the time stipulated by the Appellate Authority as per its Order dated 18<sup>th</sup> October, 2018, an application was filed before the Hon'ble Appellate Authority seeking extension of time to dispose off the case.

The Hon'ble Appellate Authority vide its Order dated 15<sup>th</sup> October, 2019 granted 4 months' time to complete the entire proceedings on priority.

**(B) Proceedings held:**

3. Thereafter, in compliance with the Order of the Hon'ble Appellate Authority, the Board at its meeting held on 4<sup>th</sup> November, 2019 reheard the matter de-novo due to change in its composition and to comply with the observations of the Appellate Authority. The Board also noted the preliminary submissions dated 4<sup>th</sup> November, 2019 filed before it by the Respondent. The Respondent together with his authorised representative participated in the proceedings and they were given fair and reasonable opportunity as per Rules in accordance with the principle of Natural Justice and in compliance with the Order dated 18<sup>th</sup> October, 2018 of the Appellate Authority. As regards the request of the Respondent regarding summoning of the witnesses, the Board asked the Respondent to provide relevancy of the witnesses with reference to the charges.

3.1 Thereafter, the Board at its meeting held on 25<sup>th</sup> November, 2019 noted that the Respondent alongwith his Counsel was present before it and referred to the written submissions dated 19<sup>th</sup> November, 2019 filed before it. The matter was part heard and adjourned to consider the submissions made by the Respondent and the Respondent was asked to file submissions, if any within 7 days specifically as regard

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the bearing of the judgement of the Hon'ble SC *in Shafhi Mohammad v. State of*

*Himachal Pradesh*, on the subject of the admissibility of the electronic evidence and the decision of the Hon'ble Appellate Authority as regards the admissibility of 'Information' given in the case of 'Satyam' to their case.

The Board while perusing the submissions of the Respondent made vide letter dated 19<sup>th</sup> November 2019 noted that the Respondent requested to summon the Editor, Reporter of the 'Aaj Tak' Channel that aired the program, Director (Discipline) and other Officers of the Disciplinary Directorate of ICAI and also provided the justification for calling the same.

- 3.2 Keeping in view the aforesaid request of the Respondent, summons were issued under Section 21C of the Chartered Accountants Act, 1949 to 'Aaj Tak' News Channel to depute responsible officer who is conversant with the facts of the case to appear before the Board of Discipline.

As regards the issue of calling the Director (Discipline) and the other Officers of the Disciplinary Directorate of ICAI as witness, the Board was of the view that the instant case has been treated as 'Information' on the basis of the aired version telecast on 14<sup>th</sup> November, 2016 on 'Aaj Tak' Channel which is germane to the issue at hand and the documents and other material in the said context have been annexed to the Prima Facie Opinion and the relevance of oral examination of these officers is not satisfactorily explained or established. 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*

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*sparingly and after careful deliberation if the arbitrator should be brought into the witness box."*

Further, it is clarified that no documents is relied upon unless a copy of the same is given to the Respondent and he is given an opportunity to explain the charges against him.

3.3 Thereafter, the Board at its meeting held on 16<sup>th</sup> December, 2019 noted that the Respondent along with his Counsel was present before it wherein the Respondent filed submissions dated 16<sup>th</sup> December, 2019. On this, the Respondent's attention was drawn to the notice dated 29<sup>th</sup> November, 2019 issued in respect of hearing before the Board of Discipline wherein he was asked to make submissions till 6<sup>th</sup> December 2019. He was asked to file a condonation application in this respect. Mr. Md. Hizbullah, Principal Correspondent from 'Aaj Tak' News Channel was examined as a witness. The witness confirmed that the raw footage of the aforesaid sting operation was submitted by 'Aaj Tak' Channel to the Institute of Chartered Accountants of India and the same has not been modified in any manner. The Respondent pointed out that before summoning any person as witness, advance intimation should have been given to the Respondent so that he could come prepared for cross examination. The Respondent was informed that on consideration of his request made vide letter dated 19<sup>th</sup> November, 2019 only, the witness was called for examination. The Counsel for the Respondent cross examined the witness and asked various questions regarding the conversation which took place between the Respondent and the Reporter. From the examination and cross examination of the witness from the 'Aaj Tak' Channel, the Board noted that there is no dispute regarding the authenticity of the tape. The raw

footage/unedited footage was given to the Respondent. It is not denied that the



Respondent was appearing in the footage and claiming as to how he can exchange demonetized currency notes with legal tender for a commission. The credibility of the witness and his statement cannot be disputed.

Thus, the hearing in the instant matter was concluded and the decision was kept reserved subject to receipt of any written submissions from the Respondent.

4. Thereafter, the Board at its meeting held on 6<sup>th</sup> January, 2020 noted that the Respondent vide his letter dated 4<sup>th</sup> November, 2019, 19<sup>th</sup> November, 2019, 16<sup>th</sup> December, 2019 and 18<sup>th</sup> December, 2019 made his written submissions. The Respondent vide an undated letter received on 18<sup>th</sup> December, 2019 made request for condonation of the delay for filing his written submission on 16<sup>th</sup> December, 2019. Keeping in view the principle of natural justice, the Board took into view the submissions made by the Respondent vide his letter dated 16<sup>th</sup> December, 2019 together with other submissions and documents on record while arriving at its findings.

(C) Brief of the Respondent's submissions:

5. The Respondent vide his letter dated 4<sup>th</sup> November, 2019, inter-alia, submitted as under:-

5.1 The contents of CD (alleged sting operation) are not being admitted since the same is the resultant effect of allurements, entrapment, doctored, fabricated and instigating the Respondent. The Respondent is unable to recognize his voice after playing the CD.

5.2 The Respondent was not furnished copy of the aired version along with e-mail dated 15<sup>th</sup> / 24<sup>th</sup> November, 2016. The Director (Discipline) has asked for aired version of the telecast done on 14<sup>th</sup> November, 2016, which construes that till writing the letter, the Director (Discipline) has acted without any documentary and/or soft form evidence and they have not examined either the raw CD or aired version while

treating the matter as 'Information' case. The Respondent requested for full video (raw footage) vide letter dated 29th December, 2016 It construes that Director (Discipline) was not in possession and / or examined the raw footage and was working on aired version that too which he has received at a later stage after treating the matter as 'Information'.

5.3 The Prima Facie opinion (PFO) suffers from the following deficiencies:-

5.3.1 The Director (Discipline) while arriving at a prima facie opinion had shifted the entire burden upon the Respondent that he did not initiate any action against the alleged sting operation, if at all he were not at fault is basically against the criminal jurisprudence in as much as an accused is presumed to be innocent unless proved guilty beyond reasonable ground. However, the Director (Discipline) failed to adhere to the said basic principles of criminal jurisprudence and arrived at motivated, mala fide, biased opinion against the Respondent. Thus, the impugned opinion is liable to be rejected.

5.3.2 The Prima Facie Opinion is devoid of presumption of innocence. The golden rule that runs through the web of civilised criminal jurisprudence is that an accused is presumed to be innocent unless he is found guilty of the charged offence as held in **V. D. Jhingan Vs. State of Uttar Pradesh AIR 1966 SC 1762.**

5.3.3 The Director (Discipline) failed to consider the law settled by the Hon'ble Supreme Court of India on sting operations vide the following judgments, and the observations made therein, which are reproduced herein below:

a. Judgment of Hon'ble Supreme Court in Alagaapuram R. Mohanraj v. Tamil Nadu Legislative Assembly reported as [(2016) 6 SCC 82]:

*"41. The principles of natural justice require that the petitioners ought to have been granted an opportunity to see the video recording. Perhaps they might have had an*

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opportunity to explain why the video recording does not contain any evidence / material for recommending action against all or some of them or to explain that the video recording should have been interpreted differently."

b. Judgment of Hon'ble Supreme Court in Rajat Prasad v. CBI reported as [(2014) 6 SCC 495]:

"10. ....Being essentially a deceptive operation, though designed to nab a criminal, a sting operation raises certain moral and ethical questions. The victim who is otherwise innocent, is lured into committing a crime on the assurance of absolute secrecy and confidentiality of the circumstances raising the potential question as to how such a victim can be held responsible for the crime which he would not have committed, but for the enticement"

c. Court On Its Own Motion v. State reported at [146 (2008) DLT 429]

"18. Giving inducement to a person to commit an offence, which he is otherwise not likely and inclined to commit, so as to make the same part of the sting operation is deplorable and must be deprecated by all concerned including the media. Sting operations showing acts and facts as they are truly and actually happening may be necessary in public interest and as a tool for justice, but a hidden camera cannot be allowed to depict something which is not true, correct and is not happening but has happened because of inducement by entrapping a person."

5.4 Present proceedings are quasi criminal proceeding as held by the Hon'ble Supreme Court in the following case H.V. Panchaksharappa v. K.G. Eshwar, AIR (2000) SC 3344 as follows: ".....a charge of professional misconduct is in the nature of a quasi-criminal charge. Such a charge requires to be proved in the manner of proving a criminal charge and the nature of proof required to prove it, is that beyond a reasonable doubt...."

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- 5.5 Reference is drawn to the ICAI press release-clarification on sting operation carried out by 'Aaj Tak' News Channel (E) - (15-11-2016), where in the Respondent was pronounced guilty before hearing, the press clip stated "The ICAI will launch Disciplinary proceedings against the erring members and will impose penalty by following due process as per the Disciplinary provisions of the Chartered Accountants Act, 1949 and the Rules framed thereunder". This proves without any doubt that Respondent was pronounced guilty by ICAI before completing procedure of hearing.
- 5.6 The Director (Discipline) failed to admit that the CD of the alleged sting operation is electronic evidence within the meaning of Section 65 of the Indian Evidence Act, 1872 thus, the procedure of Section 65B of Indian Evidence Act, 1872 Section 45A of Indian Evidence Act, 1872 read with section 79A of Information Technology Act should have been followed and in order to check the veracity of the alleged information / Complaint the Director (Discipline) was obliged and duty bound to verify each and every content of said electronic information by applying the legal principles so laid down even by the Hon'ble Supreme Court of India in Appeal No. 4028 / 2012 "Anwar P.V. Vs. P.K. Basheer & Ors.", vide Judgment dated 18.09.2014 wherein Hon'ble Supreme Court of India declined to rely upon any electronic evidence without duly supported by a certificate under Section 65B which admittedly is missing in the case in hand and further, no enquiry in order to find out the truthfulness of the alleged sting operation was ever undertaken by the Director (Discipline).
- 5.7 In point no 1 of Prima Facie Operation it has been mentioned it was brought to the attention of this Directorate by C.A Deep Jain vide his email dated 14th November, 2016. The Director (Discipline) relied on the aired video clip, which purportedly have

been given by C.A Deep Jain, whereas the Director (Discipline) should have relied upon the raw CD, which was taken / asked for after the Respondent has asked for and comparing the same with aired video clip taken from 'Aaj Tak' Channel, which was ultimately received from the 'Aaj Tak' Channel vide their letter dated 19<sup>th</sup> January, 2017 and was handed over to the Respondent vide letter dated 01<sup>st</sup> February, 2017. In Para no 2 of Prima Facie Opinion it is stated that on an examination of the content of the above video clip, it was decided to treat the same as 'Information' within the meaning of Rule 7 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules 2007. Hence it was accepted by Director (Discipline) that information came into their knowledge through CA. Deep Jain. Hence investigation was not initiated on the basis of telecast on television but on the basis of information provided by CA. Deep Jain.

5.8 The Director (Discipline) suo moto acted as a Complainant as well as Judge while forming the said opinion. The Director (Discipline) suo moto issued a notice which he had no powers to initiate as per Rule 7 of Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and conduct of cases) Rules, 2007.

5.9 For the first time, the Director (Discipline) had mentioned the name of the informant Shri Deep Jain, however, no copy of the complaint was ever communicated, supplied and/or placed on record to the best of the knowledge of the Respondent and in fact whether the said complaint had followed the procedure laid down in Rule 7 and/or 3 or not is totally absent in the entire prima-facie opinion (PFO). Since no compliance of Rule 7(1), 7(2) , 7(3) and Rule 9 was made, hence, a fabricated story was made by Director (Discipline) that investigation was initiated suo moto to cover

up the non-compliance of Rule framed which was compulsory to follow before initiating investigation.

- 5.10 The Director (Discipline) did not even bother to examine either the Complainant or the alleged reporter who allegedly recorded the said sting operation.
- 5.11 The alleged raw footage as submitted by the Director (Discipline) is not a raw footage, without certificate of authentication as most of the content of alleged raw footage has been rejected/ disputed by the Respondent. The primary evidence in this case is the Mobile Phone and SD Card through which the recording was done by the Imposter, which was never placed either before Director (Discipline) or the Board of Discipline.
- 5.12 The Respondent was not furnished copy of video clip based upon which his reply was sought, which was against the Principle of Natural Justice.
- 5.13 The Director (Discipline) failed to observe conspiracy angle in the whole issue. The Respondent as well as CA. R.S. Bansal are both related to each other. The alleged interview (sting operation by vested interest by hiring the services of imposter) was pre-planned, not spontaneous and random. The imposter was specifically planted to conduct the sting operation. The Director (Discipline) failed to draw inference why only these two Chartered Accountants have been sting operated cannot be unintentional as can be seen from raw footage.
- 5.14 In the present matter the Director (Discipline) did not summon any witness to verify the veracity of the contents but the witness was summoned by Board of Discipline as their own witness exceeding their own powers as given in section 21C of the Chartered Accountants Act, 1949 (as amended).
- 5.15 The Respondent pointed out the grounds on which R.K. Anand Versus Registrar

Delhi High Court in Appeal No 1393 of 2008 reported in 2009, in SCC 106, relied

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upon by ICAI before Hon'ble Appellate Authority case is different from his case and also stated that the following conditions for admissibility of a tape recorded statement be satisfied which has not been done in the instant case:

- a. The voice of the speaker must be duly identified by the maker of the record or by other who recognise his voice. Where the voice has been denied by the maker it will require very strict proof to determine whether or not it was really the voice of the speaker.
  - b. The accuracy of the tape-recorded statement has to be proved by the maker of the record by satisfactory evidence-direct or circumstantial.
  - c. Every possibility of tampering with or erasure of a part of a tape recorded statement must be ruled out otherwise it may render the said statement out of context and, therefore, inadmissible.
  - d. The statement must be relevant according to the rules of Evidence Act.
  - e. The recorded cassette must be carefully sealed and kept in a safe or official custody.
  - f. The voice of the speaker should be clearly audible and not lost or distorted by other sounds or disturbances.
- The Hon'ble Board of Discipline failed to appreciate that the doctrine of mensrea, though a salient feature of the Indian criminal justice system, finds expression in different statutory provisions requiring proof of either intention or knowledge on the part of the accused.

5.16 The present case needs to be disposed-off in light of **RAJAT PRASAD Vs CBI in CRIMINAL APPEAL NO. 747 OF 2010** delivered on 24th April, 2014.

6. Further, the Respondent vide his letter dated 16<sup>th</sup> December, 2019 inter-alia

stated as hereunder:

- (a) He reiterated his objections raised on non-fulfilment of requirement as stipulated in Clause 2 of Part IV of First schedule.

There has been opinion of the Appellate Authority in case of Rajiv Sharma –vs- the Institute of Chartered Accountants of India and Gyan Prakash Agarwal vs ICAI appeal no. 08/ICAI/2014, Rajiv Maheshwari -vs- ICAI appeal no. 05/ICAI/2014, Sarneer Kumar Singh -vs- ICAI appeal no. 07/ICAI/2014 that due to changes in Chartered Accountants Act, 1949 in year 2006 power of the ICAI council was vested in Director (Discipline) to investigate the matter of misconduct.

In Para no 16 of the Order it is stated:-

*"However, further, we do agree with the submission made on behalf of the Institute of Cost Accountants of India that the use of the words "in the Opinion of the Council" as appearing in Clause (2) of Part IV of the First Schedule to the respective Act are causing hardships and interpretational issues. In this regard all the three Institutions may move for an amendment and in such case the legislature may take an appropriate action for amending these six words or deletion thereof from the statute, as an abundant caution."*

However there has been no amendment neither done so far nor proposed by the Council of ICAI in its 386<sup>th</sup> (adjourned) Meeting held on 5<sup>th</sup> and 6<sup>th</sup> November, 2019. No changes have been proposed inspite of aforesaid Court decision whereas other changes have been incorporated due to various other Court decisions.

- (b) As regard the treatment of the present case as 'Information' case as settled in Satyam matter, the Respondent referred to the Para 46 of the Order of the Appellate Authority in Appeal No. 1/ICAI/2012 and AppealNo.2/ICAI/2012 as quoted hereunder:

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"The 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. 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."

In the present case no such verification was done by the Director (Discipline).

(c) Submission as regards the bearing of the judgement of the Hon'ble SC in Shafhi Mohammad v. State of Himachal Pradesh, on the subject of the admissibility of the electronic evidence : The Respondent referred to the judgement of the Honorable Supreme Court in the case of Anvar PV -vs- PK Basheer wherein it was held that the requirement of giving an electronic certificate under Section 65B pertaining to any electronic evidence or electronic record is mandatory for treating such an evidence as admissible in law.

7. Subsequent to the conclusion of the hearing, the Respondent vide letter 18<sup>th</sup> December, 2019 made an application for further hearing and to lead evidence in support of defence and cross examination of the witness/reporter submitted as under:

- (a) The Respondent completely/vehemently denied that witness called by the Board is the same person who has come to meet him.
- (b) The Hon'ble Board of Discipline/ Hon'ble Director (Discipline) never intimated about the summoning and attendance of the witness on 16.12.2019.

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- (c) The Respondent and his Counsel were never allowed to cross examine the alleged person.
- (d) In the said hearing, the Respondent wanted to raise various points but was not allowed.
- (e) The said aired video is edited, doctored one and is a result of conspiracy against the Respondent and manipulated one.
- (f) It is just and necessary that before taking the said doctored video as part of evidence against the Respondent, the Original video along with recorder be procured and be sent to the expert opinion to verify the authenticity of the said video being unedited, original and uncut, as directed by Hon'ble Appellate Authority in para 37 of its Order dated 18.10.2018.
- (g) As far as the issue of admissibility of the sting operation is concerned, the Hon'ble Supreme Court has prescribed many safeguard before accepting the same as evidence. The most important is that the veracity of the evidence must be established.
- (h) The Respondent further submitted that he wants to give his defence in writing and further wants to lead evidence in support of his defence. But, was denied.
- (i) The original, unedited and uncut video alongwith recorder was never produced before the Hon'ble Board of Discipline before concurrence with the Director (Discipline) on prima facie opinion formed. The same resulted in denial of opportunity to the Respondent against whom serious allegations have been leveled and further denial of opportunity to be able to rebut the allegations and presumptions against the Respondent that as a consequence of which, the Respondent has been deprived of the right of natural justice to be granted a fair hearing.

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- (j) In the hearing held on 25<sup>th</sup> November, 2019, there was no Order or direction for the evidence of prosecution witness on next date. However some persons were called as surprise witness on 16<sup>th</sup> December, 2019 without any pre information to the Respondent which is against principle of natural justice.
- (k) The Respondent was forced under coercion to cross examine the surprise witness in the pretext of that no further opportunity would be available to cross examine.
- (l) The Hon'ble Board also allowed two more persons to assist witness who came alongwith witness. No oath was taken from the persons who came alongwith the witness but were allowed to speak during the course of proceedings. They were suggesting answers to the witness. Hence, witness was not giving independent answers but influenced by other two persons came alongwith him.
- (m) Further, the Board was seeking opinion from other two persons came alongwith the witness which is the gross violation of the procedure of hearing.
- (n) The Board was questioning during cross examination of the witness which is not expected from a neutral body.
- (o) When Respondent wanted to ask some relevant question like:
- (i) When it was asked to how he came to know about the fact that Respondent is indulging in mal practice
- He refused to answer being secret source
- This question was asked to reveal the fact that he had no prior knowledge about any malpractice done by Respondent but he was transplanted to entrap the Respondent.
- (ii) Whether content and voice in aired video and raw video is same.

The witness said yes

Whereas in aired video voice of anchor was mixed.

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The Presiding Officer categorically stated that the Respondent/ Respondent's Counsel should raise issues related to CD only, but was denied to raise issues which could have unearth the conspiracy, allurement and entrapment.

(p) The Presiding Officer was working in tandem with witness, never allowed the Respondent to ask the questions directly as he directed the Respondent to raise the questions to Presiding Officer and if he will deem fit then only the question shall be put to witness and all questions were overruled. Hence, it is not a cross examination of the witness.

(q) The Hon'ble Board further closed the cross examination and did not allow further question. A request was made to recall the witness. In view of the above facts and circumstances and conduct of the bench it shows that the bench was biased against the Respondent since first hearing and Respondent has great apprehension that the Respondent would not get the justice from this bench. In view thereof, it is prayed that the matter of the Respondent may kindly be transferred to some other Board of Discipline bench so that justice is imparted.

(D) Observations and findings of the Board:

8. The instant case has been treated as 'Information' in terms of the provisions of Rule 7 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 on the basis of the aired version which was telecast on 14<sup>th</sup> November, 2016 on 'Aaj Tak' Channel. Further, letter dated 10<sup>th</sup> January, 2017 addressed to the India Today group was to submit any further evidence. The India Today group vide letter dated 19<sup>th</sup> January, 2017 provided copy of the CD containing the telecast made and the English script of the same which was also provided to the Respondent vide letter dated 1<sup>st</sup> February, 2017.

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9. Further, as regards the objection raised by the Respondent regarding the basis for treating the instant matter as 'Information' against the Respondent, the Board perused the decision of the Hon'ble Appellate Authority in the matter of P. Siva Prasad versus ICAI (Appeal No. 1/ICAI/2012) and Chintapatla Ravindernath -Vs- ICAI (Appeal No. 2/ICAI/2012), which provides as under:-

*".....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 mis-conduct of a CA through news report or media..... 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."*  
(emphasis added).

10. The Board also noted that the said decision of the Hon'ble Appellate Authority has not been challenged and no Order has been passed against it till date. In view of the above, it is clear that the Director (Discipline) can initiate action on the basis of information received from any source including media. Thus, the preliminary objection of the Respondent is not maintainable.

11. The Board is of the view that the disciplinary proceedings are distinct from criminal proceedings in the context that in criminal proceedings the offence as defined in the Penal Code has to be proved beyond reasonable doubt whereas in disciplinary proceedings, the misconduct can be proved by preponderance of probabilities having regard to the conduct of the Respondent. While coming to the said view, the Board took into consideration the decision of the Hon'ble Supreme Court in the matter of "Ajit Kumar Nag -vs- General

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Manager (PJ) Indian Oil Corporation Limited-AIR 2005 SC 4217 wherein the Hon'ble Apex Court held as under :-

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

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

*"In departmental proceedings, factors prevailing in the mind of the disciplinary authority may be many, such as enforcement of discipline 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."*

12. The Board noted that in this case, the news channel conducted the sting operation which unearthed as to how the demonetisation program of the Government which was introduced in public interest and in the interest of the economy was rendered ineffective by the Respondent as a professional Chartered Accountant. There is no dispute with regard to the person appearing on the TV as the Respondent on the visuals. Both in the aired version and also in the unedited version as played out at the time of hearing, the image is of the

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Respondent wherein he was seen offering to convert banned currency into legal tender by charging a fees/commission. The Board was of the view that in the current disciplinary proceedings, they are not establishing a criminal conspiracy under Section 120-B of the IPC as in a criminal trial but whether the Respondent has committed an act of misconduct as defined under the Chartered Accountants Act 1949. The Chartered Accountants, as professionals, are expected to act in the best interest of the nation. It does not behove of a responsible Chartered Accountants to indulge in activities which are against public interest or against the economic policy of the Government and defeat the purpose of the demonetisation scheme introduced by the Government by unlawful means which are not open to a Chartered Accountant in practice by an offer to convert the illegal tender into legal tender by charging commission. The exposure on TV has brought disrepute not only to the Respondent but to the entire profession of Chartered Accountants in general and lowers their image in the eyes of the public.

13. It is neither a criminal trial nor a quasi-criminal proceeding, having regard to civil penalties for a professional misconduct which can be visited with the civil consequences as laid out in the Act. Therefore, the question of mens rea does not arise. Further, the strict rules of Evidence Act/Criminal Procedure Code are not applicable to the proceedings of this nature which are subject to fair opportunity in compliance with the rules of natural justice. Charges of this nature for a misconduct are not to be proved beyond reasonable doubt as in a criminal trial.

The following principles emerge from the judgement of the Bombay High Court in **SEBI vs. Cabot International Capital Corporation 2005) 123 Comp. Cases 841 (Bom).**

*"(Mens rea is an essential or sine qua non for criminal offence.*

*Strait jacket formula of mens rea cannot be blindly followed in each and every case.*

*Scheme of particular statute may be diluted in a given case.*

If, from the scheme, object and words used in the statute, it appears that the proceedings for imposition of the penalty are adjudicatory in nature, in contradistinction to criminal or quasi criminal proceedings, the determination is of the breach of the civil obligation by the offender. The word "penalty" by itself will not be determinative to conclude the nature of proceedings being criminal or quasi-criminal. The relevant considerations being the nature of the functions being discharged by the authority and the determination of the liability of the contravener and the delinquency.

*Mens rea is not essential element for imposing penalty for breach of civil obligations or liabilities.*

*There can be two distinct liabilities, civil and criminal under the same Act.*

*(Para 52) The SEBI Act and the Regulations are intended to regulate the Security Market and related aspects, the imposition of penalty, in the given facts and circumstances of the case, cannot be tested on the ground of "no mens rea no penalty". For breaches of provisions of SEBI Act and Regulations, according to us, which are civil in nature, mens rea is not essential. On particular facts and circumstances of the case, proper exercise or judicial discretion is a must, but not on a foundation that mens rea is a essential to impose penalty in each and every breach of provisions of the SEBI Act."*

Further, in SEBI vs. Shriram Mutual Fund, vide Order dated 23/05/2006, the Hon'ble Supreme Court has observed as under:-

*"The Tribunal has erroneously relied on the judgement in the case of Hindustan Steel Ltd. Vs. State of Orissa, AIR 1970 SC 253 which pertained to criminal/quasi-criminal proceeding. That Section 25 of the Orissa Sales Tax Act which was in question in the said case imposed a punishment of imprisonment up to six months*



*and fine for the offences under the Act. The said case has no application in the present case which relates to imposition of civil liabilities under the SEBI Act and Regulations and is not a criminal/quasi-criminal proceeding."*

The aforesaid observation applies with equal force to the present proceedings for a misconduct under the Chartered Accountants Act, 1949 in as much as it is not a Criminal/Quasi-Criminal proceedings since the scope of enquiry is limited to a misconduct of a professional Chartered Accountants under the provisions of Chartered Accountants Act, 1949 which is a Civil obligation and results in removal from membership, etc.

14. Further, as regards the contention of the Respondent as pointed out at para 5.5 above, the Board perused the press release which stated *"ICAI will launch Disciplinary proceedings against the erring members and will impose penalty by following due process as per the Disciplinary provisions of the Chartered Accountants Act, 1949 and the Rules framed thereunder"* (emphasis provided) and viewed that this has exactly been done in the case of the Respondent and the Respondent is merely trying to mislead the Board by stating so.

15. Further, as regards the contention of the Respondent as pointed out at para 5.6 above, the Board is of the view that the Respondent that the electronic record like the video in the Sting Operation should be proved in accordance with Section 65B of the Indian Evidence Act, 1872 to the effect that a certificate was required in terms of the said provision from a person occupying a responsible position in relation to operation of the relevant device. He relied on the judgement of the Supreme Court in *Anvar PV v/s. P.K. Basheer (2014) 10 SCC 473* to content that electronic evidence by way of secondary evidence shall not be admitted unless the requirements of Section 65B of the Indian Evidence Act, 1872 is satisfied.

Section 65B in so far as is relevant is stated below:

1. *Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.*

2. ....

3. ....

4. *In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,-*

(a) *identifying the electronic record containing the statement and describing the manner in which it was produced;*

(b) *giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;*

(c) *dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,*

*and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it."*

The Board pointed out that in view of Section 65B(4) of the Indian Evidence Act 1872 such certificate is not mandatory and referred to the decision of the Supreme Court in **Shafhi Mohammad -vs- State of Himachal Pradesh (2018) 2 SCC 801** in which after referring to **Anvar PV -vs- PK Basheer** case, the Judges of the Bench have distinguished the decision and in Part 29 of the judgement, it was observed that the requirement of certificate under Section 65-B(4) of the Indian Evidence Act, 1872 is not always mandatory. The Board also noted that the decision in **Shafhi Mohammad v/s State of Himachal Pradesh** has been referred to a larger Bench on 26.07.2019 in CA numbers 20825-20826 of 2017. The issue in **Shafhi Mohammad v/s State of Himachal Pradesh** case was whether videography of the scene of crime or scene of recovery during investigation should be necessary to inspire confidence in the evidence collected.

In the instant case in contradistinction to a criminal trial, the Board is concerned with as to whether the Respondent has committed an act of misconduct under the provisions of the Chartered Accountants Act, 1949 which, if proved would result in civil consequences in the form of penalty under the Chartered Accountants Act, 1949.

The Board is of the view that the strict Rules under the Indian Evidence Act, 1872 or Information Technology Act are not applicable in the disciplinary proceedings under the Chartered Accountants Act, 1949 and it would be sufficient if placing together the facts, attendant circumstances and the evidence towards the preponderance of probabilities of the delinquent committing a misconduct, is established. The Hon'ble Andhra Pradesh High Court in the case of **The Institute of Chartered Accountants of India -vs- Shri Mukesh Garg, Chartered Accountants** on 26 September, 2016 provided as under:

*"One of the contentions urged by Sri Ashok Anand Kumar, learned counsel for the Respondent, is that no evidence was recorded following the rules of evidence but,*

*based on admission of the Respondent, a finding was recorded. Undoubtedly, there is*

no specific procedure prescribed to be followed by the Disciplinary Committee to record its finding. The strict rules of evidence, under the Indian Evidence Act, and the elaborate procedure prescribed under the Code of Civil Procedure or the Criminal Procedure Code, are not applicable to proceedings before the Disciplinary Committee of the Institute except for a few provisions of the Code of Civil Procedure as stipulated under Section 21C of the Act. There is nothing in the Act, or in the Regulations, which disables the Committee from evolving its own procedure in conducting an enquiry into the misconduct alleged to have been committed by a member of the Institute.

.....  
**In NOIDA Entrepreneur Association v. NOIDA & Ors.; JT 2007 (2) SC 620, the Apex Court has expressed as under:**

**"The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position."**

16. The Hon'ble Supreme Court in the case of 'Shafhi Mohammad -Vs- The State Of Himachal Pradesh' [Special Leave Petition (CRL.) No.2302 of 2017] dated 30.01.2018 held as under:-

**"(10) Accordingly, we clarify the legal position on the subject on the admissibility of the electronic evidence, especially by a party who is not in possession of device from which the document is produced, such party cannot be required to produce certificate under Section 65B(4) of the Evidence Act."**

17. Considering the above, the Board is of the view that evidence in the form of video aired on the 'Aaj Tak' TV Channel cannot be dismissed on any technicality and the Board of Discipline in a civil proceedings of this nature can consider the same as the authenticity of

the CD and the 'aired version' of the telecast was confirmed by the authorised representative of the 'Aaj Tak' News Channel by deposing before the Board of Discipline at the time of hearing. This witness was also subject to the questioning by the Respondent. The unedited version of the tape was supplied to the Respondent. Nothing has come out in the questioning of the witness by the Respondent to disbelieve the version as aired by the 'Aaj Tak' News Channel. Thus, this evidence cannot be discarded for want of the certificate under Section 65B (4) of the Indian Evidence Act, 1872 because the ultimate object is to see whether there was any act of other misconduct of civil nature on the part of the Respondent and not any offence under IPC. Therefore, no certificate of authenticity was required to be obtained in the instant matter to check the veracity of the contents of the CD as claimed by the Respondent.

18. The Board also perused the letter dated 1<sup>st</sup> March, 2017 by NBSA (News Broadcasting Standards Authority) addressed to Ministry of Information and Broadcasting with a copy to 'Aaj Tak' Channel amongst others stating that there is no violation of any Standards or guidelines in the broadcast.

19. The Board further noted that the claim of the Respondent that the Board never intimated about the summoning of the witness from the 'Aaj Tak' News Channel on the date of hearing is not maintainable. It was the Respondent who vide his letter dated 4<sup>th</sup> November, 2019/19<sup>th</sup> November, 2019 requested the Board of Discipline that certain witnesses were required to be called including from the 'Aaj Tak' News Channel. Thus, taking a plea of not being aware regarding the attendance of witnesses/ready to cross examine the witness is not acceptable and is seen that the same is only a dilatory tactics to delay the conclusion of the current disciplinary proceedings so that he may again approach the Hon'ble Appellate authority for quashing the matter on the ground of time barred proceedings.

20. As regards the submission of the Respondent that he was not allowed to put all questions to the witness, the Board is of the view that there is no improper procedure adopted. If a question is irrelevant, then the Board of Discipline is well within its right to disallow such questions to control the proceedings and this cannot be said to be bias on its part. It is the duty of the Board to control the proceedings and if in the process certain irrelevant questions were disallowed, it cannot be said that the Board was acting in a malafide manner.

21. In this connection, it is relevant to note the following judgments:

- a) **Anand Bazar Patrika Vs. workmen 19632 LLJ 429, 433 (SC):New Egerton Woolen Mills Punjab Govt. Gazette V dated 5<sup>th</sup> June, 1964, page no: 1243 (IT)**
- b) **Rajmiya Spinning & Weaving & Manufacturing Company Ltd. Gujarat Gazette dated 1/10/1964, page no: 3080 (IC)**

Wherein it was held that when the questions are irrelevant, it is the duty of the Enquiry Officer to disallow them. The relevance of the questions has to be decided by the Enquiry Officer and even if he takes a wrong decision and thereby disallows relevant questions, it would not necessarily make the enquiry unfair or improper unless it is shown that the Enquiry Officer was acting in a malafide manner.

22. The Board also noted that the Hon'ble Orissa High Court in the matter of **Chunilal Rathore vs Presiding officer Income Tax Tribunal (1975) (30 FLR 267)** held as under:

*"When some questions were disallowed but it was not shown that it materiality affected proceedings it cannot be said to be restrictive."*

23. Further, regarding the claim of the Respondent that the said interview by 'Aaj Tak' was a conspiracy / entrapment against him, the Board noted that a letter dated 21.04.2017 was received from one Mr. Puneet Jain of TV Today Network referring therein response letter dated 01.03.2017 of the News Broadcasting Standards Authority (NBSA) that there

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was no violation of any Standard or Guidelines in the said broadcast and therefore decided that no action was called for on the complaint made by Mr. Divyang Adhvaryu against 'Aaj Tak' regarding telecasting a programme on 14.11.2016 on demonetisation. There is no material on record to suggest that the 'Aaj Tak' News Channel had conspired specifically against the Respondent. In the aftermath of the demonetisation, the channel was airing programme on a matter of public importance and in the process showed the wrong doings of some professionals which brought disrepute to the profession. The Board was also of the view that the reporter on behalf of the 'Aaj Tak' News Channel had not done the said 'sting operation' for any personal interest, but, for public cause. The Board noted that the raw footage was duly played in the meeting of the Board of Discipline and the Respondent was given adequate opportunity to repudiate the same. The authorised representative of the 'Aaj Tak' news channel has given oral evidence also in support of the authenticity of the tape and sting operation. He was subjected to questioning by the Respondent. Thus, the Respondent was given a fair and reasonable opportunity in accordance with the principles of natural justice.

24. As regards the objection of the Respondent regarding non- fulfilment of the requirement stipulated in Clause (2) of Part IV of the First Schedule, the Board relies on para 17 and 18 of the Order dated 18<sup>th</sup> October, 2018 passed by the Hon'ble Appellate Authority in the instant matter as under:

*"17. It is pertinent to note here that this Authority has already dealt with and decided this issue in the Appeals earlier namely 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) and has held 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 (PFO)' 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.

25. The Board was of the view that the only issue for consideration before the Board is whether the Respondent appeared on the news channel/aired version in the context of demonetisation and claimed to exchange demonetized currency with legal tender for commission which brought disrepute to the entire profession? There is no dispute as regards the appearance of the Respondent, as aired and the claims made thereto. The claim of the Respondent that it was because of allurement/entrapment/enticement is without any basis. The unedited tape was provided to the Respondent. The aired version is in the public domain. The witness from the 'Aaj Tak' news channel has given evidence and confirmed the authenticity of the tape. He was questioned by the Respondent and nothing



concrete was brought out in such questioning by the Respondent. The witness from the 'Aaj Tak' news channel explained that on the top portion of the video there was a counter numbered as 1 to 9 which proves that the continuity of the video was not broken. Thus, it is clear that if the Respondent was there in first two minutes of the video clip of the unedited version as admitted by him, his presence in the rest of the video clip of the unedited version is also established. No documents or evidence was relied upon without giving a copy of the same to the Respondent. The Respondent was given a fair and reasonable opportunity to explain the circumstances appearing against him.

26. The Board further noted the extract of the transcript of the CD provided by the 'AAJ TAK' news channel as follows:

*.....*  
*This is Anil Aggarwal. He is a chartered accountant by profession. He has an office in Delhi's Laxmi Nagar. On Aaj Tak's secret camera, he's openly speaking the language of the jugaad mechanics of black money and claiming to exchange the garbage of old notes for a commission of 30 percent.*

*Anil Aggarwal, Chartered Accountant: In the current situation, if any one wants to have their cash converted, they'll have to lose around 30 percent. Reporter: Okay. It means I lose Rs. 30,000 per Rs. 1 lakh.*

*AA: And suppose you bought some property for the same amount and then the price of the property fell.*

*VO: You heard chartered accountant Anil Aggarwal quoting his commission for the consumption of invalid notes in the underground market. And he's explaining it in simple terms.*

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Reporter: Then, let's know the process. We'll do something by this evening, tonight or by tomorrow. AA: The process goes like this: as and when I get an okay signal, we'd let you know. We will deliver that payment to him.

Reporter: You mean, I have to make the payment right now?

AA: Yes. I will get a cheque for you in exchange.

Reporter: Hand-to-hand? After deducting your 30 percent commission?

AA: We'll get the cheque for you.

Reporter: Full amount or after deducting 30 percent?

AA: Whatever cheque you'll get, you'll get it after deducting 30 percent.

Reporter: Okay.

AA: After that brother you can present that cheque to the bank any time.

Reporter: How will I explain this cheque to income tax authorities if I deposit it in the account?

AA: From there, he'd give you something in some form. Or if you can wait for one or two months, you'll get your cash payment.

Reporter: In new banknotes?

VO: Speaking about fairness in the unfair business, chartered accountant Anil Aggarwal guaranteed the work would be done soon

Reporter: If I get it right now, are you sure then that the work will be done?

AA: Yes, it will be done 100 percent. I have had a call made to someone in front of you to ask what's being done for exchanging cash with cash. I did it in front of you, right? If it was available, I would have got your work done tomorrow itself. But I am still trying to get your work done first.

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VO: Chartered accountants responsible for reforming the country's economic system are themselves engaged ingenious ways to boost black money in the economic system.

.....

From the above, it is coming out clearly that the Respondent was discussing with the reporter the manner of converting black money into white money with a charge of around 30 per cent as his commission.

27. The Board also noted that in the appeal filed by the Respondent before the Hon'ble Appellate Authority, he had denied the contents of the video telecast and claimed that they were manipulated, but he never disputed his presence in the video conversation. However, in the hearing held on 25<sup>th</sup> November, 2019 before the Board, the Respondent stated that he may or may not be there in the video and in the hearing held on 16<sup>th</sup> December, 2019 the Respondent confirmed that in first two minutes of the video clip he was present and thereafter he may or may not be there. He also stated that he is unable to recognize his voice after playing the CD. The Board clearly noted that different stands have been taken by the Respondent at different forums and time, which seems to be contrary to each other, and the same poses question on the reliability of the submissions made by the Respondent and the Respondent is trying to mislead the Board by disputing his presence in the footage.

28. The Board also noted that no case for defamation is filed by the Respondent against the 'Aaj Tak' channel till date despite alleging that the contents of CD are a result of allurements, entrapment, doctored and fabricated.

29. The Board, on having viewed the raw footage of the sting operation played in the presence of the Respondent/his authorised representative observed that the Respondent himself during the initial part of his discussion with the Reporter has asked the reporter to

give the reference so that he can discuss the matter. This makes the intent and objective of the Respondent clear.

30. From the evidence on record as per the video footage, the Respondent was offering to exchange the demonetised currency notes into legal tender for commission. This shows that he was dealing in those nefarious and illegal activities against the public interest and state policy on economic interests. Such an act of the Respondent is clearly unbecoming of a Chartered Accountant and caused a huge reputational loss to this noble profession. The society at large and the economy is to suffer if such an act of omission or commission by the Respondent is viewed leniently.

31. Having regard to the attendant circumstances, the evidence put forth by the Director (Discipline) including the witness on behalf of the 'Aaj Tak' News channel who was subject to questioning by the Respondent, the Board is of the considered view that the Respondent has committed an act of 'Other Misconduct' in terms of Clause (2) of Part IV of the First Schedule and brought disrepute to the profession.

32. The Board also observed that the subsequent to the Order passed by the Hon'ble Appellate Authority, the matter has been heard by it on 04<sup>th</sup> November, 2019, 25<sup>th</sup> November, 2019 and 16<sup>th</sup> December, 2019, and also cross examination of the witness was allowed to him. The Board in compliance with the Order of the Hon'ble Appellate Authority dated 18<sup>th</sup> October, 2018 has given due and just opportunity to the Respondent and his conduct has been duly examined in the light of the submissions and documents on record and thus, the request of the Respondent for further hearing and to lead evidence in support of defence and cross examination of the witness/reporter made vide letter dated 18<sup>th</sup> December, 2019 cannot be accepted at this belated stage after closure of evidence and conclusion of the proceedings. No case is made out or any justifiable reason has been satisfactorily explained by the Respondent in his request letter dated 18<sup>th</sup> December, 2019

for further hearing in the matter which is already heard and concluded and the Respondent had actively participated in such proceedings.

33. The Board was also of the view that despite being given ample opportunities to defend himself, the Respondent on conclusion of the proceedings vide letter dated 18<sup>th</sup> December, 2019 has made a wild, vague and sweeping allegation that the Board of Discipline is biased and requested that the matter of the Respondent may be transferred to some other Board of Discipline bench which is highly objectionable as the Board of Discipline is constituted under the Statute and follows an unbiased approach having regard to the due process of law in all cases before it.

**CONCLUSION:**

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

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Sd/-  
CA. SUSHIL KUMAR GOYAL  
(PRESIDING OFFICER)

Sd/-  
MRS. RANI NAIR (IRS, Retd.)  
(GOVERNMENT NOMINEE)

Sd/-  
CA. DURGESH KUMAR KABRA  
(MEMBER)

DATE: 30<sup>th</sup> JANUARY, 2020

PLACE: NEW DELHI

Certified Copy  
*[Signature]*  
Assistant Secretary  
Disciplinary Director  
The Institute of Chartered Accountants of India  
ICAI Bhawan, I.P. Marg, New Delhi - 110 002