



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

PR/189/17/DD/248/2017/BOD/597/2021

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

[PR/189/17/DD/248/2017/BOD/597/2021]

In the matter of:

**Sh. Vikram Singh Chopra,
415, Bentinck Chambers,
37A, Bentinck Street,
Kolkata-700069**

.....Complainant

-Vs-

**CA. Raj Singh Chopra (Membership No. 054996)
37A, Bentinck Street,
415, Bentinck Chambers,
Kolkata - 700069**

.....Respondent

MEMBERS PRESENT:

**CA. Prasanna Kumar D., Presiding Officer (physically at ICAI Bhawan, I P Marg, New Delhi)
Ms. Dolly Chakrabarty (IAAS, Retd.), Government Nominee (through video conferencing)
CA. (Dr.) Raj Chawla, Member (through video conferencing)**

Date of Hearing: 24th May, 2022 (physical/ through video conferencing)

1. The Board of Discipline vide its Report dated 1st February 2022 held that CA. Raj Singh Chopra is Guilty of Professional Misconduct falling within the meaning of Item (11) of Part I of First Schedule to the Chartered Accountants Act 1949 on account of the following observations:

(a) In case of alleged companies, the Financial Statements were signed by the directors of the Companies including the Respondent. But the Respondent failed to submit any evidence / document on record that the Financial Statements were signed by him only as the Director Simplicitor and by the other signing director as the Managing Director of the Companies.



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
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PR/189/17/DD/248/2017/BOD/597/2021

- (b) The role and powers entrusted to the Respondent being the director of the Companies by the Articles of Association, was far away from the role of Director Simplificator.
- (c) The Respondent being the director of the Companies was entrusted with the various duties and powers relating to day to day affairs of the Companies. The Respondent was also entitled to other remunerations along with the sitting fees under the Articles of Association of some of the Companies.
- (d) On perusal of the copy of the Partnership Deed dated 4th April 2004 of M/s Shreya Shipping Services wherein the Respondent was one of the partners, the Board observed that all the partners of the firm were allowed to operate the bank account of the firm jointly or severally as decided and normally all the partners of the firm will devote their time and attention to the day to day affairs and business of the firm as working partners. From the copy of partnership deeds of both M/s M L Chopra & Co. and M/s Freya Shipping Services, it was noted that the Respondent was sharing the profit @ 15% in M/s M L Chopra & Co. and 20% in M/s Freya Shipping Services.
- (e) Vide email dated 18/09/2018, the Council granted permission to the Respondent to act as sleeping partner in M/s Freya Shipping Services Private Limited beside the practice of profession of accountancy. However, the allegations pertained to the period 2009 to 2017. The involvement of the Respondent in managerial day to day functions of the alleged 13 companies/ firms is not permitted by the Council as such and prior approval of the Council of the Institute is prerequisite before engaging into other occupation. Thus, the Board viewed that the role of the Respondent in the alleged companies clearly exceeded beyond that of the Director Simplificator and he ought to have sought the prior permission of the Council before engaging himself in any business or occupation other than profession of Chartered Accountant.
2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against CA. Raj Singh Chopra and communication dated 17th May 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 24th May 2022.
3. The Respondent was not present before the Board despite the due service of the notice of hearing for award of punishment. The Respondent had sent an e-mail dated 22nd May 2022 stating that he has filed a writ petition before the Hon'ble Calcutta High Court

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THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
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PR/189/17/DD/248/2017/BOD/597/2021

against the Order dated 1st February 2022 of the Board of Discipline which is currently in the running list and requested for postponement of the hearing till Hon'ble Court takes up the case as the issues are the same. He also requested to treat the grounds in the said writ petition as his representation on the Findings of the Board. The Board took into view the provisions of Rule 15(1) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 which provides as under:

" On arriving at a Finding under sub-rule (9) of Rule 14 that the respondent is guilty of professional or other misconduct, the Board of Discipline shall give the respondent an opportunity to be heard before passing any Order under sub-section (3) of section 21A of the Act: Provided that if the respondent does not appear before the Board of Discipline at the time directed to do so when given such an opportunity to be heard, the Board of Discipline shall presume that he has nothing more to represent before it and shall pass Orders under sub-section (3) of section 21A of the Act."

Since the written representation of the Respondent on the Findings of the Board was on record and the Honorable High Court of Calcutta had not granted any stay on the continuity of the disciplinary proceedings, the Board did not accede to the request of the Respondent and decided to consider his case for award of punishment.

4. The Board noted that CA. Raj Singh Chopra , inter-alia, raised the following grounds in his writ petition which he requested to treat as his representation on the Findings of the Board:
- The fact that the Respondent is appointed as Non-Executive Director in the minutes of the meetings as disclosed in the hearing, was completely ignored by the Board of Discipline.
 - The fact of signing of the financial statements and other forms by the Respondent in the capacity of a Director Simplicitor as part of routine discharge of statutory obligations, was not appreciated by the Board of Discipline, despite showing authorities to such effect.
 - It was deliberately ignored that in multiple MGT-7 annexed, in Section "A" dealing with Composition of Directors, the Directors are stated as "Non-Executive" directors except for one Company where there is one Executive Director, which is not the Respondent.
 - The Director(Discipline) has failed to consider that in Section X of MGT-7-remuneration of Directors and Key Managerial Personnel is shown as "NIL", which also proves that the Respondent was not drawing remuneration, save and except the sitting fee of the board meetings.

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THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
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PR/189/17/DD/248/2017/BOD/597/2021

- (e) The Director's Report in Attachment-P of the Financial Statements submitted by the Complainant, which requires remuneration of directors and key managerial personnel, states, "Not Applicable".
- (f) In Freyaship Services Private Limited, the Directors' Report does not reflect the name of the Respondent in the list of Directors and Key Managerial Personnel to whom remuneration was paid.
- (g) The Board of Discipline failed to appreciate that the Respondent had never received any remuneration from any companies as Director *Simplicitor*, other than the Director's sitting fees for attending Board Meetings and Interest on Loan as would be evident from the Form 26 AS.
- (h) The Board of Discipline has erred in holding that the Respondent has failed to submit any evidence/document on record that the financial statements were signed by him only as a Director of the Companies. Onus is on the Complainant to show that the statements were not signed by the Respondent as Director *Simplicitor*. The Respondent had duly made all the necessary disclosures of which he was in possession of, and even from the documents produced by the complainant, *inter-alia*, Part-VIII (A) of Form MGT-7, where the Respondent has been shown as a Non-Executive Director and in Part-VIII (B) (i) is shown as Director and not Key Managerial Person.
- (i) The Board of Discipline failed to appreciate that even under Section 2(54) of the Companies Act, 2013, "managing director is defined and as per the Explanation provided thereunder, "the power to do administrative acts of a routine nature when so authorized by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to be included within the substantial powers of management."
- (j) The Board of Discipline failed to construe that as per the "Provisions Relating to Director *Simplicitor*/ Independent Director vis-à-vis Members in Practice as provided by the Ethical Standards Board of the Institute of Chartered Accountants of India, the same quotes the provisions applicable for Director *Simplicitor* as mentioned in Volume-II of Code of Ethics, 2020 and lays down FAQs on Director *Simplicitor*/ Independent Director, which clearly highlight the fact that even a Director *Simplicitor* could sign the financial statements.
- (k) The Director (Discipline) failed to consider the following:
- (i) Pursuant to disability of Late Mohan Lal Chopra, his share in the partnership firms were allocated between his two grandsons namely Raj Singh Chopra and Vikram Singh Chopra.
 - (ii) The issue of distribution of wealth and retirement of Late Mohan Lal Chopra from the partnership firm and bequeathing his share to grandsons arose due to his disability-loss of eye sight and other health problems.
 - (iii) Mr. Jagat Singh Chopra was appointed as the constituted attorney of Mohan Lal Chopra and with such power Jagat Singh Chopra could execute documents by putting his signatures wherever required.

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THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
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PR/189/17/DD/248/2017/BOD/597/2021

- (iv) The salary payment as mentioned in the partnership deed/ and in the accounts for year ending March 2009 and 2010 was an allocation of the wealth of the family in the name of Salary and Profits. The same is also evident from the fact that salary as quantified in the Partnership Deed is in proportion to the share of profits of the partners. The Clause in partnership deed as to salary to the Respondent was incorporated by omission, which was rectified when it came to the notice of the Respondent as would be evident from the Complaint itself which shows that the Respondent had no salary from the said two partnership firm on and after April 1, 2010.
- (l) The finding of the Director(Discipline) that "the Respondent has submitted copy of ITR acknowledgment for certain years however, nothing is clearly coming out of them in absence of complete ITRs and computation sheets", is clearly erroneous as it is evident from the Arbitration Consent Award dated 22.1.2016 and the steps of execution signed by all members of Chopra Family including Mr. Vikram Singh Chopra and Mr. Jagat Singh Chopra, wherein it is clearly stated that all Respondent's personal documents and documents of his wife and children and the Companies which were allocated to him, were in the possession of Mr. Jagat Singh Chopra, my father.
- (m) The Board of Discipline erred in concluding that the Respondent was the managing director or whole-time director or Key Managerial Person in High Value Securities Private Limited. Although the company has only 2 directors and both are practicing Chartered Accountants, none of the directors is a managing director or a whole-time director or key managerial person of such company. The Company belonged to the Chopra Family and run and managed by the head of such family namely Jagat Singh Chopra along with the staff and professionals.
- (n) The Board of Discipline ought to have considered that in the private investment companies of Chopra Family, which were looked after by the family and the staff of operation companies, no salary was paid.
- (o) The hearing before the two-member Board on January 3, 2022 suffers from quorum non judice as it ought to have been heard in continuity by the three-member Board as on December 29, 2021.
- (p) The Board of Discipline failed to appreciate that the said complaint was motivated and done only to harass and tarnish the reputation of the Respondent in view of the fact that the Respondent had won an award against the complainant and his father in respect of their family dispute.
- (q) The Board of Discipline failed to appreciate the decision cited by the Respondent being AIR 2000 SC 3344 in the case of H.V. Panchaksharappa vs. K.G. Eshwar that a charge of professional misconduct is in the nature of a quasi-criminal charge, which requires to be proved beyond reasonable doubt. The Board of Discipline failed to appreciate the decision in Yogeshwari Kumari vs. The Institute of Chartered Accountants of India & Anr. reported in [2010] 160 Comp Cas 11 (Delhi) wherein Clause 11 was considered by the Hon'ble Delhi High Court.

Biss



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
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PR/189/17/DD/248/2017/BOD/597/2021

5. The Board has carefully gone through the facts of the case along with the written representation of the Respondent. The Board was of the view that the submissions made by the Respondent in his written representation were basically a re-iteration of the submissions made during the course of hearing which had been duly considered by the Board while arriving at its Findings. The Board also viewed that the strict Rules of Evidence are not applicable to disciplinary proceedings while examining the conduct of the members. The scope of inquiry by the Board of Discipline and that of the Criminal / Civil Court are on a separate footing and the procedure to be followed for enquiry by the BOD/DC is specifically given in the CA Act 1949 and the Rules framed thereunder. The Board also took into view the following Order passed by the Hon'ble Andhra High Court in the case of The Institute of Chartered ... vs Shri Mukesh Gang, Chartered ... on 26 September, 2016:

"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 21 (C) 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.

*.....
The Disciplinary Committee has been conferred the power to enquire into the matter. In causing such an enquiry, the provisions of the CPC are applicable only to the limited extent specified in Section 21 (8) of the Act i.e. summoning and enforcing the attendance of any person and examining him on oath; the discovery and production of any document; and receiving evidence on affidavit. While the Disciplinary Committee is required to follow the procedure prescribed under Section 21 (8) of the Act, it cannot exercise the powers of a Civil Court.*

After considering the entire material on record, we are satisfied that the Disciplinary Committee, and the Council, have not violated any of the Regulations, more particularly Regulation 16 (2) and (5) thereof. Therefore, this point is held against the respondent and in favour of the petitioner."

Further, Section 21C of the Chartered Accountants Act 1949 specifically provides that for the purposes of an inquiry under the provisions of this Act, the Authority, the Disciplinary Committee, Board of Discipline and the Director (Discipline) shall have the same powers as are vested in a **Civil Court(emphasis provided)** under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters namely:—

Biss



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- (a) summoning and enforcing the attendance of any person and examining him on oath;
(b) the discovery and production of any document; and
(c) receiving evidence on affidavit.

Although, Section 21C of the Chartered Accountants Act 1949 is with respect to specific requirements, however, it is clear that the intent of the legislature was to equate the disciplinary proceedings with civil proceedings and thus, the disciplinary proceedings are akin to civil proceedings.

6. Thus, upon consideration of the facts and circumstances of the case, material on record and keeping in view the written representation of CA. Raj Singh Chopra before it, the Board decided to Reprimand CA. Raj Singh Chopra (Membership No. 054996) 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)

Sd/-
Ms. Dolly Chakrabarty (IAAS, retd.)
(Government Nominee)

Sd/-
CA. (Dr.) Raj Chawla
(Member)

DATE: 24th June, 2022

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


बिषा नाथ तिवारी / Bishwa Nath Thant
कार्यकारी अधिकारी / Executive Officer
अनुशासनान्तरक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shaheedra, Delhi-110032

CONFIDENTIAL

BOARD OF DISCIPLINE

Constituted under Section 21A of the Chartered Accountants Act 1949

Findings under Rule 14(9) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007

File No. : PR-189/2017-DD/248/2017/BOD/597/2021

CORAM:

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

**(Attended Physically)
(Through Video
Conferencing)**

In the matter of:

**Sh. Vikram Singh Chopra, Kolkata
415, Bentinck Chambers,
37A, Bentinck Street,
Kolkata-700069**

.....Complainant

-Vs-

**CA. Raj Singh Chopra (Membership No. 054996)
37A, Bentinck Street,
415, Bentinck Chambers,
Kolkata - 700069**

.....Respondent

DATE OF FINAL HEARING : 3rd January, 2022

PLACE OF HEARING : New Delhi/ Through video conferencing

PARTIES PRESENT: (Through video conferencing)

**Counsel for the Complainant : CA. A. P. Singh
Respondent : CA. Raj Singh Chopra
Counsel for the Respondent : CA. Ashish Makhija alongwith his
assistant Ms. Richa Singh**

Findings:

Charge alleged:


1. The Respondent was engaged in other business activities and was also engaged as Director in various body corporates without requisite permission of ICAI. The Respondent signed the Directors' report, Financial Statements and various other forms of the body corporates which shows that he was engaged in the business operations of those companies. The Complainant submitted the name of following

companies and alleged that various documents in those companies were signed by the Respondent:-

S No.	Name of Entity	S No.	Name of Entity
1.	M/s Hare Krishna Properties Pvt Ltd.	2.	M/s Rachit Vanijya Pvt Ltd.
3.	M/s Freya Shipping Agencies Pvt Ltd.	4.	M/s FreyaShip Services Pvt Ltd.
5.	M/s M L Chopra Shipping Pvt Ltd.	6.	M/s Freya Shipping Services Pvt Ltd.
7.	M/s Freya Ship Logistics Pvt Ltd.	8.	M/s New Wave Digicom Pvt Ltd
9.	M/s High Value Securities Pvt Ltd	10.	M/s Arpita Financial Services Pvt Ltd.
11.	M/s Sigma Services Pvt Ltd	12.	M/s M L Chopra & Co.
13.	M/s Freya Shipping Services		

2. The Respondent was practicing in a CA firm along with his partner namely CA. Rajesh Kumar Chandak. The Respondent, who was also brother of the Complainant, was thoroughly involved in his family business with him and his father. There were certain conflicts within the family of Complainant and the Respondent, which needed arbitration. Three arbitrators were appointed by the parties concerned wherein CA. Rajesh Kumar Chandak was one of the arbitrators and since CA. Rajesh Kumar Chandak was the arbitrator in the family settlement of the Respondent, so he was aware of the fact of business engagement of the Respondent. Despite this knowledge, both the Respondent and CA. Rajesh Kumar Chandak continued to remain in partnership with each other and thus gave false declarations and information to ICAI and brought disrepute to the profession and contravened the provision contained in the regulations and guidelines issued by ICAI.

The Director (Discipline) in his Prima Facie Opinion dated 29th October, 2020 held the Respondent Prima Facie Guilty in respect of the Charge specified at para 1 above and the Board of Discipline concurred with the said Opinion of the Director (Discipline) holding the Respondent Prima Facie Guilty of 'Professional Misconduct' falling within the meaning of Item (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949. Accordingly, the Respondent had been examined in respect of the said Charge during inquiry.

The Board also noted that the Complainant has filed another complaint against one of the partner of the Respondent Firm, CA. Rajesh Kumar Chandak and the said case is dealt with separately in case reference no. PR-188/2017/DD/247/2017/BOD/582/2020. 

Brief of Proceedings held:

3. At the time of hearing held in the case on 29th December, 2021, the Complainant and the Respondent alongwith their respective Counsels were present before the Board through video conferencing. They confirmed that they have read and understood the contents of the modalities and protocols of e-hearing and follow them. The Complainant and the Respondent were put on oath. The charges alleged against the Respondent were taken as read with the consent of parties present. On being asked by the Board as to whether the Respondent pleaded guilty in respect of the charges alleged against him, he replied in negative. Thereafter, the Counsel for the Complainant and the Respondent made their respective detailed oral submissions before the Board. The Respondent was examined by the Board. To counter the submissions of the Counsel for the Respondent, the Counsel for the Complainant needed some time and requested for adjournment of the hearing as he had to catch the flight. Looking into the request of the Counsel for the Complainant, the Board decided to adjourn the hearing in the case with the direction to the Respondent to provide the signatory details of the companies under question.

4. Thereafter, at the hearing held in the case on 3rd January, 2022, the Counsel for the Complainant and the Respondent alongwith his Counsel were present before the Board through video conferencing. Further to the hearing held in the case on 29th December 2021, the Counsel for the Complainant made his detailed oral submissions before the Board. The Counsel for the Respondent also made his submissions before the Board. On consideration of the documents and submissions on record, the Board decided to conclude the proceedings in the case.

After the conclusion of hearing in the case, the Respondent has filed further submissions dated 14th January, 2022 before the Board and the same were also considered by the Board while arriving at its Findings in the case.

Brief submissions of the Respondent:

5. The Board noted that the Respondent, in his defence, inter-alia, submitted as under:-

- a. The Respondent referred to Section 134(1) of the Companies Act, 2013 and submitted that on careful reading of said Section, it can be concluded that Financial Statements should be signed by Managing Director, if any and wherever they are appointed, would itself make the allegations void.
- b. In practice, majority private companies do not have Managing Director or Whole Time Director or Key Managerial Person or CFO or CEO or CS. The requirement of KMP is for those companies which have a capital of Rs.10 Crore or more. Thus, appointing KMP is not applicable in the Companies under question.
- c. The Respondent further referred to e-form MGT-7 and submitted that Complainant has intentionally, despite having understanding of the said Form, has attempted to misrepresent and suppress the facts. It appears that he was held Prima Facie Guilty without analyzing the instances referred to by the Complainant and understanding the requirements of details to be given in Form MGT-7.

- d. The Respondent further referred to Form AOC-4 signed by him, being annual compliance in absence of other signatories at that point of time. Annual compliance cannot be termed under day to day affairs. The Respondent further referred to Section R100.3 of Code of Ethics (Revised 2019) in this regard.
- e. Nothing is mentioned in any of the Financial Statements as to any remuneration paid to Respondent, which itself is an evidence that Respondent has not received any remuneration.
- f. The Respondent further referred to Form 26AS for the years submitted by him and supported his defense that receipt of fees for attending Board Meeting itself is evidence that Respondent was a Director Simplicitor.
- g. Referring to the complete ITRs and computation sheets, the Respondent submitted that IT returns of the family was being filed and controlled by his father Mr. Jagat Singh Chopra and he did not have the same.
- h. Referring to the AOA of various companies, the Respondent submitted various defences being standard format of AOA and content of MOA and AOA does not define the function of the Director Simplicitor.
- i. Regarding salary received from M/s M L Chopra & Co. and M/s Freya Shipping Services for certain years, the salary paid to Respondent was in the nature of maintenance allowance out of the profits of the family business as provided hereunder:
 - i. Share in partnership firm was the result of distribution of business interest of Late Mohan Lal Chopra among the two grandsons.
 - ii. Salary as quantified in the partnership deed is in proportion to the share of profits of the partners evidencing that the nature of salary was not related to the respective activities or involvement of partners in the business. It was purely distribution of profits / wealth of family business.
 - iii. Clause in partnership deed as to salary to Respondent was incorporated by omission without his knowledge which was rectified when it came to notice of the Respondent and the Respondent has no salary income from the said two partnership firm on or after 01/04/2010.
 - iv. Both the partnership firms are non-functional since FY 2012-13. However, dissolution is pending due to litigation at various Forums.
 - v. Undue weightage is being given on the error & omission done 15 years ago, which have been rectified in 2010.
- j. Referring to para 9.4.9 and 9.4.10 of the PFO, the Respondent submitted that in MGT-7 for Rachit Vanijya P Ltd, Highvalue Securities P Ltd and Sigma Services P Ltd for the year ended 31st March 2016, the name of the Respondent was mentioned as "Director and Key Managerial Personnel". The said observation is incorrect. The Respondent reiterated that Complainant having complete knowledge of MGT 7, have deliberately overlooked the same and attempted to misguide the Disciplinary Directorate.
- k. The Respondent also submitted copy of minutes of Board of Directors meeting of few companies wherein he was appointed as simple Non-Executive Director. ML

- l. Further, as in practice, the Respondent has already obtained permission from the Institute for being a Director in M/s Freya Shipping Services P Ltd and for receipt of Royalty from the Company which operates business assigned to the Company pursuant to part division of the family business.
- m. The Respondent also submitted various documents including minutes of the meeting of Board of Directors of various companies, e-Forms etc.
- n. The complaint is barred by laches and delay – the complaint contains allegations relating to 2004 onwards and the present complaint has been filed in 2017. The genuineness of the Complaint is under grave doubt in as much as the Complainant was aware of all these facts since 2004 and did not choose to file the complaint till 2017. It also goes on to demonstrate that the present complaint is mischievous and has been filed merely to harass the Respondent.
- o. The Complainant has no locus standi to file the present complaint in relation to the companies in which the Respondent is the director and has not rendered any professional services to the Complainant. Such a practice of filing frivolous complaints with no locus are to be discouraged by the Institute of Chartered Accountants of India. The Respondent has been in practice as a Chartered Accountant for 32 years and no complaint was ever filed against him except by the Complainant herein and that too after passing of the Family Award to which the Respondent, is also a Party.
- p. A Chartered Accountant is entitled to become a director of a company for which no permission of the Institute of Chartered Accountant of India (ICAI) is required. The only restriction is that the Chartered Accountant cannot hold the position as a Managing Director or Wholetime Director of any company. A further restriction is for a Chartered Accountant from becoming a director of a company if he or any of his partners in a Chartered Accountant Firm are the auditors of such a company. The Council of the ICAI considered the question of permitting members in practice to become a director, Managing Director, full time/executive director and referred to Para 2.14.1.11 (iv) on Page 86-87 of Code of Ethics Vol-II (Revised 2020). Further, the ICAI requires obtaining of the specific and prior approval of the council in case a member of the Institute in practice is being appointed to the office of the Managing Director or a whole-time director of a body corporate. This is clearly stated in Appendix No. (9) attached to The Chartered Accountant's Regulations, 1988 (CA Regulations).
- q. The Chartered Accountants in practice are permitted to become a director of the company, besides being permitted to be named as director, promoter, promoter/director or subscriber to the Memorandum and Articles of Association of any company. The only bar is to become a Managing Director or Wholetime director of a company. The other condition that must be fulfilled is that the Member in practice who is a director, promoter, promoter/director or subscriber should not receive any remuneration except for attending meetings of the Board of directors or any of its committees of which he is a member. In the present case, the Respondent was a Director Simplicitor in a few companies and was neither a Managing Director nor a Whole-time director of any such company. It is also pertinent

to state that the Respondent did not receive any remuneration from any of these companies except sitting fees for attending the Board/Committee meetings.

- r. The Respondent further referred to the judgment of Division Bench Hon'ble Delhi High Court in Yogeshwari Kumari vs The Institute of Chartered Accountants of India & Anr, [2010]160 CompCas11(Delhi) dated 13.09.2010 LPA 455 of 2010, wherein Clause (11) was considered by the Hon'ble Delhi High Court and it was held as under:

"9. On a perusal of Clause (11), it is quite vivid that the RespondentNo.2 was not a whole-time director of LSPH; he was not engaged in any business or occupation and, therefore, the First part of the Clause does not get attracted to his case. As far as the proviso is concerned, a Chartered Accountant is not disentitled from becoming a director of a company. The only rider is that he should not be interested in such company as an auditor. The terms which have been laid emphasis upon and correctly so are "such company" and the RespondentNo.2 is not the auditor of LSPH. He is the auditor of LPHM which is a separate corporate entity. Regard being had to the concept of different juris entity and keeping in view the concept of disqualification which has to be strictly construed, we are of the considered opinion that the analysis made by the learned Single Judge is absolutely impeccable."

- s. Mere signatures on the Director's Report, Financial Statements and other forms do not change the status of the Respondent as Director Simplicitor. Though the Respondent has signed Financial Statements, Directors' report in pursuance of the provisions of Companies Act, 2013, yet it cannot be construed that the Respondent was engaged in managing the affairs of such companies. By affixing his signatures as per the statutory provisions, the Respondent was primarily complying with the statutory provisions. Signing of the Forms, Financial Statements and Directors' report is a ministerial act which tags along with the position of a Director. It does not tantamount to the Respondent managing the affairs of the company. This was done by the Respondent merely to make annual mandatory compliances. It may also be noted that there is a difference between annual compliances as per the legal requirement and carrying on day to day business operations. Under no circumstances, annual compliances of law can be considered as carrying on day to day business operations.
- t. The Respondent further referred to Para 100.3 of Code of Ethics Volume I (Revise 2019) and submitted that as one of the directors of the company, the Respondent was under an obligation to ensure compliance with the provisions of the Companies Act, 2013. Merely complying with the provisions of the Companies Act cannot be considered as managing the operations of the company. It is a regular practice in the companies to get the signatures of the Directors including independent directors on the Financial Statements, Directors Report and other documents. Mere signing of such statutory papers or other documents which are signed in terms of

the authority given by the Board of Directors does not amount to managing the company.

- u. The personal documents and records including the income tax returns are not in possession of the Respondent. It has been the stand and grievance of the Respondent all along that his family members, in particular, his father and his brother have, in their possession, all his personal records. The Respondent is not on talking terms with his father and brother. The Board of Discipline has the power to direct the Complainant to produce records of the Respondent in their possession. In fact, selective documents have been attached with the complaint merely to prejudice the Board of Discipline.
- v. The Director (Discipline) has erred by relying upon several clauses of the Articles of Association of M/s Freyaship Services Pvt Ltd, M/s M L Chopra Shipping Pvt Ltd, M/s Freya Shipping Services Pvt Ltd, M/s Freyaship Logistics Pvt Ltd, M/s High Value Securities Pvt Ltd and M/s Sigma Services Pvt Ltd.
- w. The Respondent was not key managerial personnel of any of the companies mentioned in the complaint.
- x. The Respondent was a signatory to bank Accounts of some of the Companies by virtue of his interest in the family wealth. In one bank account with Axis Bank in the name of Freya Shipping Agencies P Ltd, where the Respondent was not a signatory, the Complainant and his father withdrew 12 lacs approximately. Being not a signatory to the Bank accounts of the entities of the family could have resulted in blocking access of the Respondent from the family wealth and giving opportunity to other family members to mis-appropriate the family wealth, as has happened in M/s Freya Shipping Agencies P Ltd. This misappropriation of funds is a part of case filed in Honorable High Court at Calcutta.
- y. The Respondent was inducted as a partner in M/s M L Chopra & Co. and M/s Freya Shipping Services pursuant to the deed of Partnership dated 14.04.2004 on account of retirement of his grandfather namely Sri Mohan Lal Chopra. On retirement of Mohan Lal Chopra, grandfather of the Respondent from the partnership Firm, his share was divided into 3 parts amongst Jagat Singh Chopra (5%) (Father of Respondent), Vikram Singh Chopra (15%) (Complainant and brother of Respondent) and Raj Singh Chopra (15%) (Respondent). It was a case of natural devolvment without any act on the part of the Respondent.
- z. The Complainant has relied upon 'Add on services' Form in respect of M/s Freya Shipping Services, wherein it has been shown that the Respondent has signed this particular Form. The reliance placed by the Complainant on this Form to show that the Respondent enjoyed substantial powers of the management is highly misplaced as it is a matter of common knowledge that this Form only pertains to add on services namely internet banking of the bank account of the Partnership, which is required to be signed by all the partners as per the bank's policy regardless of the fact whether such a partner is a fulltime partner or a sleeping partner.

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- aa. The signatures of the Respondent on Agency agreement are forged - the alleged agreement was on a plain paper and not on a stamp paper. The fact of the forged signatures is apparent if the signatures of the Respondent on this document are compared with the actual signatures of the Respondent.
- ab. Salary from partnership firm - the Respondent became a partner upon the retirement of his grandfather and by virtue of such retirement, the Respondent was inducted as the partner in the partnership firm namely M L Chopra & Co. It was stated during the hearing that though the amount received by the Respondent had the nomenclature of salary but in fact, it was in the nature of distribution of the profit of two partners. The partnership was a part of the family business and they were being run and managed by his father and the complainant and the Respondent had no role to play in this partnership firm.
- ac. Carrying on family business in the companies - As regards carrying on the trading of the sarees, it is pertinent to state that such a transaction was carried out in almost all companies belonging to Chopra family including the companies in which the Respondent was a director. These transactions were carried out without the knowledge of the Respondent by the father of the Respondent, Mr. Jagat Singh Chopra who was responsible for managing the affairs for such companies as head of Chopra family. It may also be noted that no salary was paid in private investment companies of Chopra family as they were being looked after by the family and staff of operational companies within the same group as it happens in the group companies generally. It is a matter of record that even the companies in which the Complainant and his father are the only directors, the same process has been followed and no salary has been paid to any staff in these companies also.
- ad. No vesting of ownership - By virtue of note in the Financial Statements of M/s Freyaship Services P Ltd. For FY 2016-17 (attached by the Complainant), it was meant that the company had been vested in Raj Singh Chopra due to family settlement and only Share of Chopra Family was vested with Raj Singh Chopra as per Family settlement.
- ae. The Disciplinary enquiry cases relating to professional misconduct are quasi criminal in nature in as much as member of the profession can have penal consequences which affects his right to practice the profession as also his honour.

Submissions of the Complainant:

6. The Board noted that the Counsel for the Complainant stated before the Board during the hearing that the involvement of the Respondent was in 11 Private Ltd. Companies and two partnership firms. Out of these 11 companies, there are 2 companies having 4 Directors, 4 companies having 3 Directors and 5 companies

having 2 Directors. There are certain companies in which no salary payment is there to any employee. He also pointed out the Director's Report of a few private companies wherein it was categorically stated that the Respondent was one of the directors of the company and the company did not had any Key Managerial person other than them. From the various documents brought on record, it is evident that he is signing cheques, contracts on behalf of the firm, he is representing before the Income Tax Authorities, he is signing estimated and projected figures and then he says that he is not involved in the administration of that particular firm/company which is totally not maintainable. There is no document evidence to prove that the share in business was gifted to the Respondent.

Observations and Findings of the Board:

7. The Board, upon overall examination of the facts of the case, submissions and documents on record observed as under:-

7.1 At the outset, the Board noted that after the conclusion of the hearing on 3rd January 2022, the Counsel of the Respondent made a passing observation that at the time of last hearing held in the case on 29th December, 2021, the three member bench heard his case whereas today, it was heard by a two member bench. In this regard, the Board observed that Rule 13(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 provides as under:
"The quorum for any meeting of the Board of Discipline shall be two members."

Further, there had been no change in the composition of the Board. Thus, the Board held that it had been validly constituted and was well within its powers to conduct and conclude the Disciplinary proceedings. The Board also observed that adequate opportunities were provided to both the parties to the case to represent their case and raising of such plea on the conclusion of the proceedings by the Respondent seemed to be an effort to divert the attention of the Board from the merits of the case.

7.2 As regards the plea of the Respondent that the extant complaint is not barred by principle of laches and delay, the Board held that Rule 12 of CA Rules 2007 is attracted in a situation/circumstances 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 complaint / information as not maintainable. However, in the instant matter, the Respondent has not expressed any difficulty to lead evidence. Therefore, this plea of the Respondent is not sustainable.

7.3 As regards the plea that the Complainant has no locus standi to file the complaint in relation to the companies in which the Respondent is the director and has not rendered any professional services to the Complainant, the Board observed that in the instant case, it is the conduct of the Respondent that has to be examined based on the documents and submissions on record and the

Director(Discipline) is duly empowered to investigate any complaint/ information received against any Member of the Institute in terms of the provisions of the Chartered Accountants Act, 1949 read with CA Rules, 2007. The locus standi of the Complainant is not germane to the examination of the conduct of the Respondent.

- 7.4 The Board further opined that proceedings before it 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 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 of 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 is not sustainable. Accordingly, the case was dealt with on its merits by the Board of Discipline, keeping in view, the submissions and documents on record.

8. As regards the charge that the Respondent was engaged in any business or occupation other than the profession of Chartered Accountant unless permitted by the Council, the Board observed that the intent behind having the restrain provided under Item (11) of part I of the First Schedule as stated hereunder has been expressly provided in the Code Of Ethics:

"The objective is to restrain members from carrying on any other business in conjunction with the profession of accountancy and combining such work with any business which is not in keeping with the dignity of the profession. Another reason for the introduction of such prohibition is that a Chartered Accountant, if permitted to enter into all kinds of business, would be able to advertise for his other business and thereby secure an unfair advantage in his professional practice."

The Board, thereafter, took into view Regulation 190A of Chartered Accountants Regulations, 1988, which deals with the provision for Chartered Accountants in practice not to engage in any other business or occupation, and the same reads as below:

"A Chartered Accountant in practice shall not engage in any business or occupation other than the profession of accountancy, except with the permission granted in accordance with a resolution of the Council".

The permissible categories of engagements approved by the Council under Regulation 190A, are available in Appendix No. 9 to the Chartered Accountants Regulations, 1988. Further, a member in practice shall be permitted to be a Director (Director Simplicitor), Promoter/Promoter Director, Subscriber to the Memorandum and Articles of Association of any company including a Board Managed Company. Further, the expression 'Director Simplicitor' shall be used for an ordinary/simple Director, who fulfills the following conditions :

- (a) he is required to attend the Board meetings only.(emphasis provided)**
- (b) He will not be paid any remuneration except the sitting fees for attending the Board meetings; and**
- (c) He will be devoting his time for the company only to attend Board meetings and not for any other purpose. (emphasis provided)**

A Member in practice is permitted generally to be a Director Simplicitor in any Company including a Board-Managed Company and as such he is not required to obtain any specific permission of the Council in this behalf irrespective of whether he and/or his relatives hold substantial interest in that Company. Further, there is no bar for a member to be a Promoter/Signatory to the Memorandum and Articles of Association of any Company. There is also no bar for such a promoter/signatory to be a Director Simplicitor of that Company irrespective of whether the objects of the Company include areas which fall within the scope of the profession of Chartered Accountancy. Therefore, members are not required to obtain specific permission of the Council in such cases.

9. The Board noted that the Complainant has submitted the copy of 'Director Master Data' downloaded from MCA portal wherein it is shown that the Respondent having the DIN – 00062410, is the Director in various companies. Further, on perusal of the copies of various documents / evidences in relation to alleged companies, *AL*

brought on record by the Complainant it is noted that the following documents were signed by the Respondent as its Director:

- i. Copy of Directors' report of 'Hare Krishna Properties Pvt Ltd' for the year ended on 31st March 2016 wherein he was also disclosed as Key Managerial Personnel of the Company.
- ii. Copy of Financial Statements of 'Hare Krishna Properties Pvt Ltd' for the year ended on 31st March 2016.
- iii. Copy of Directors' report of 'Rachit Vanijya Pvt Ltd' for the year ended on 31st March 2016.
- iv. Copy of Financial Statements of 'Rachit Vanijya Pvt Ltd' for the year ended on 31st March 2016.
- v. Copy of Form AOC-4 in relation to 'High Value Securities Pvt Ltd' (digitally signed) for the F.Y. 2015-16.
- vi. Copy of Financial Statements of 'High Value Securities Pvt Ltd' for the year ended on 31st March 2016.
- vii. Copy of Directors' report of 'High Value Securities Pvt Ltd' for the year ended on 31st March 2016.
- viii. Copy of Directors' report of 'Sigma Services Pvt Ltd' for the year ended on 31st March 2016 was signed by the Respondent. The said report also includes the name of the Respondent as 'Director and Key managerial Personnel'.
- ix. Copy of Financial Statements of 'Sigma Services Pvt Ltd' for the year ended on 31st March 2016.
- x. Copy of Form MGT-7 in relation to 'Sigma Services Pvt Ltd' (digitally signed) for the F.Y. 2015-16 with the Respondent's email id as the id of the company.
- xi. Copy of Form AOC-4 in relation to 'Sigma Services Pvt Ltd' (digitally signed) for the F.Y. 2015-16.
- xii. Copy of Directors' report of M/s 'Freyaship Services Pvt Ltd' for the year ended on 31st March 2016.
- xiii. Copy of Financial Statements of M/s 'Freyaship Services Pvt Ltd' for the year ended on 31st March 2016.
- xiv. Copy of Directors' report of 'Freya Shipping Agencies Pvt Ltd' for the year ended on 31st March 2016.
- xv. Copy of Financial Statements of 'Freya Shipping Agencies Pvt Ltd' for the year ended on 31st March 2016.

9.1 From the above documents, the Board noted that the Respondent has signed various documents including Directors' report and Financial Statements of aforesaid companies being the Director of those companies. It is also noted that the Respondent in his defence state that he was only appointed as Director Simplicitor in the alleged companies and he was neither a Managing Director nor Whole time director in any of the Companies. Further, he had never received any remuneration from any of the Companies as mentioned in the Complaint for the post of Director Simplicitor. The Respondent also mentioned that the documents referred to in the Complaint, having his signatures, might have been signed by him in the absence of other signatories

and on request of Managing persons. In this regard, the Board noted that Section 134(1), (6) and (7) of Companies Act, 2013 reads as under:

134. Financial statement, Board's report, etc

(1) The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board at least by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be Managing Director and the Chief Executive Officer, if he is a director in the company, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of a One Person Company, only by one director, for submission to the auditor for his report thereon (*emphasis added*).

....
(6) The Board's report and any annexures thereto under sub-section (3) shall be signed by its chairperson of the company if he is authorised by the Board and where he is not so authorised, shall be signed by at least two directors, one of whom shall be a Managing Director, or by the director where there is one director.

(7) A signed copy of every financial statement, including consolidated financial statement, if any, shall be issued, circulated or published along with a copy each of—

- (a) any notes annexed to or forming part of such financial statement;
- (b) the auditor's report; and
- (c) the Board's report referred to in sub-section (3).

9.2 From the above, the Board noted that in case of company having more than one director, the financial statement shall be signed by:

- Chairperson of the Company (if authorised by the board of directors) or
- Two Directors (out of which one shall be Managing Director) and
- Chief Executive Officer / Company Secretary / Chief Financial Officer (if they are appointed in the Company)

However, as noted above, in case of alleged companies, the Financial Statements were signed by the directors of the Companies including the Respondent. But the Respondent has failed to submit any evidence / document on record that the Financial Statements were signed by him only as the Director Simplicitor and by the other signing director as the Managing Director of the Companies.

9.3 The Board further noted that there were no salary payments in the company M/s Hare Krishna Properties Pvt. Ltd. as per the audited Financial Statements of the company for the F.Y. 2015-16. Further, the Director's Report for the company specifically provided as under:

"Directors & Key Managerial Personnel

During the year, Mr. Sumit Kumar Khetan, Mr Rajesh Kumar Chandak and Mr. Raj Singh Chopra were the Directors of the Company. There was no

appointment or resignation of directors or key managerial personnel during the year and the company does not have any key managerial person other than present directors.”

Similarly, there were no salary payments in the company M/s HighValue Securities Pvt. Ltd. as per the audited Financial Statements of the company for the F.Y. 2015-16. Also, the Director's Report for the company for the F.Y. 2015-16 specifically provided as under:

Directors & Key Managerial Personnel

During the year, Mr Rajesh Kumar Chandak and Mr. Raj Singh Chopra were the Directors of the Company. There was no appointment or resignation of directors or key managerial personnel during the year and the company does not have any key managerial person other than present directors.

Also, there were no salary payments in the company M/s Sigma Services Pvt Ltd., Freya Shipping Services Pvt Ltd as per the audited Financial Statements of the company for the F.Y. 2015-16.

Thus, the Board observed that the role of the Respondent in the aforesaid companies was clearly beyond that of the Director Simplificitor.

- 9.4 From the copy of Form 26AS for the various financial / assessment years submitted by the Respondent the Board noted that tax had been deducted at Source under Sections 194A and 194J of the Income Tax Act 1961 by the alleged Companies before making payment to the Respondent in different years, the details of which are mentioned as under:

S. No.	Assessment Years	Name of the Company which deducted the tax at source	Total Payment made (Rs.)	Total Tax deducted at Source (Rs.)
1	AY 2009-10	Freya Shipping Services	23,474/-	2,419/-
2	AY 2010-11	Freya Shipping Services	31,660/-	3,166/-
		M L Chopra & Co.	6,370/-	637/-
3	AY 2011-12	Freya Shipping Services	108,000/-	10,800/-
4	AY 2012-13	Freya Shipping Services	101,918/-	10,192/-
5	AY 2013-14	Freya Shipping Services	17,870/-	1,787/-
		Freyaship Services Pvt Ltd	153,781/-	15,378/-
		M L Chopra Shipping Pvt Ltd	8,975/-	897/-
6	AY 2014-15	Freyaship Services Pvt Ltd	211,184/-	21,119/-

		M L Chopra Shipping Pvt Ltd	12,000/-	1,200/-
7	AY 2015-16	Freyaship Services Pvt Ltd	266,958/-	26,696/-
		M L Chopra Shipping Pvt Ltd	12,000/-	1,200/-
		Hare Krishna Properties Pvt Ltd	25,299/-	2,530/-
8	AY 2016-17	Freyaship Services Pvt Ltd	300,410/-	30,042/-
		M L Chopra Shipping Pvt Ltd	12,000/-	1,200/-
		Hare Krishna Properties Pvt Ltd	42,830/-	4,283/-
9	AY 2017-18	Freyaship Services Pvt Ltd	248,630/-	24,863/-
		M L Chopra Shipping Pvt Ltd	12,000/-	1,201/-
		Hare Krishna Properties Pvt Ltd	67,124/-	6,712/-
		Freya Shipping Services Pvt Ltd	262,898/-	26,291/-

9.5 Thus, from the copy of Form 26AS submitted by the Respondent, the Board noted that the Respondent had received various incomes from some of the alleged Companies.

The Board also perused the various provisions of the Articles of Association of such companies in relation to the role and powers of the directors of the Companies. From the copy of Articles of Association of M/s Freyaship Services Pvt Ltd, M/s M L Chopra Shipping Pvt Ltd, M/s Freya Shipping Services Pvt Ltd, M/s Freyaship Logistics Pvt Ltd, M/s High Value Securities Pvt Ltd. and M/s Sigma Services Pvt Ltd, the Board observed that the Respondent was appointed as their first director along with other directors. Further, the relevant paragraphs of the Articles of Association of M/s Hare Krishna Properties Pvt Ltd, M/s Rachit Vanijya Pvt Ltd, M/s Freya Shipping Agencies Pvt Ltd., M/s Freyaship Services Pvt Ltd, M/s M L Chopra Shipping Pvt Ltd., M/s High Value Securities Pvt Ltd and M/s Arpita Financial Services Pvt Ltd. read as under:

"14. The Board of Directors may meet together for the despatch of the business or may adjourn or otherwise regulate their meeting in such manner as they think fair subject to the provisions of Section 285 of the companies Act, 1956. Each director may receive out of the funds of the Company the sitting fee for each and every meeting attended by him as may be decided by the Board and further sums as the Company

in General Meeting may from time to time determine. **The Directors will also receive out of the funds of the company such sum per month as remuneration** as will be decided by the Board of Directors subject however, to the rectification of the members in the Annual General Meeting held immediately after such fixation or any change or any change in the amount of remuneration payable. **(emphasis added)**

15. Subject to the provisions of the Act, **the control of the Company shall be vested in the Board of Directors and the business of the company shall be managed by the Board of Directors** who in addition to the powers of the authorities by these presents or otherwise expressly confirmed upon them, may be exercised or done by the company. The Board of Directors, if they like, may enter into a contract with any person or business expert to advise them in any or all matters on such terms and conditions and for such period as may be determined by the Board of Directors for the benefit of the Company. **(emphasis added)**

16. The powers and responsibilities of the Directors of the Company shall be as in the Companies Act, 1956 and the table 'A' thereof excepting so far as they stand modified by the provisions of the Articles.

17. **The Director shall have the powers, jointly and severally, of engagement and dismissal of the staff and of general direction and of management and superintendence of the business of the company with full powers to do all acts, matters and things deemed necessary, proper and expedient for carrying on the business of the company with full powers to do all acts, matters and things deemed necessary, proper and expedient for carrying on the business of the company** and to make and to draw, accept, endorse and negotiate on behalf of the company in General Meeting. All such powers of the directors shall be subject to Supervision and control of the Boards, which may entrust powers of specific nature to a particular director or employee of the company. **(emphasis added)**

18.(a) **To purchase or otherwise acquire for the company and property rights or privileges** which the company as authority to acquire **at such price and on such terms and conditions as they think fit** and to sell let, lease, exchange or otherwise dispose of absolutely or conditionally any part of the property, privileges and undertaking of the company upon such terms and conditions and for such consideration as they may think fit. **(emphasis added)**

(b) Subject to the provisions of the Act, **to invest and deal with any money of the company**, not immediately required for the purpose thereof upon such securities, shares (not being shares in thins company) deposits or loans in such manner as they think fit and from time to time vary or realise such investment. **(emphasis added)**

19. *The Board of Directors may from time to time raise or borrow any sums of money for and on behalf of the company from the members or other persons, companies or banks or they may themselves advance money to the company on such terms and conditions as may be approved by the Board of Directors. (emphasis added)*

20. *The Board of Directors may from time to time secure the payment of such money in such manner and upon such terms and conditions in all respects as they think fit and in particular by issue of debentures or bonds of the Company or by mortgaging or charging of all or any part of the Company's property and of the uncalled capital for the time being. (emphasis added)*

21. *Subject to the provisions of the Companies Act, any debentures, bonds or other securities may be issued at discount, premium of otherwise and with special privileges as to the redemption surrender, drawing and otherwise as the Board thinks fit. (emphasis added)*

22. *The Board shall cause proper books of accounts to be kept in accordance with section 209 of the Company Act, 1956. (emphasis added) "*

9.6 From the above points in the Articles of Association of the aforesaid Companies, the Board noted that role and powers entrusted to the Respondent being the director of the Companies by the Articles of Association, was far away from the role of Director Simplicitor. The Respondent being the director of the Companies was entrusted with the various duties and powers relating to day to day affairs of the Companies. The Respondent was also entitled to other remunerations along with the sitting fees under the Articles of Association of the Companies.

Further, from the copy of Partnership Deeds dated 04th April 2004 of M/s M L Chopra & Co. and M/s Freya Shipping Services on record, the Board noted that the Respondent was the partner of both partnership firms and was sharing the profits of the firms and was also receiving the salary from both firms.

9.7 The Board further noted that the Complainant submitted the copy of Financial Statements, computation sheet and ITRs of both M/s M L Chopra & Co and M/s Freya Shipping Services for certain years. From the copy of such documents, it was noted that the salary was paid to the Respondent in M/s M L Chopra & Co. from FY 2004-05 to 2009-10. The audited Financial Statements of M/s M L Chopra & Co from the FYs 2006-07 to 2009-10 have also been signed by the Respondent as the Partner of the partnership firm. It is further noted that the ITRs of M/s M L Chopra & Co for the AYs 2008-09 and 2009-10 have also been signed by the Respondent as the Partner of the

partnership firm. In case of M/s Freya Shipping Services, it is noted that its audited Financial Statements for the FYs 2004-05, 2007-08, 2008-09 and 2009-10 have been signed by the Respondent as the Partner of the firm. It is also noted that the salary along with share of profits, were also paid to the Respondent in M/s Freya Shipping Services during FYs 2006-07, 2007-08, 2008-09 and 2009-10. Further, on perusal of the copy of the Partnership Deed dated 4th April 2004 of M/s Shreya Shipping Services wherein the Respondent was one of the partners, the Board observed that all the partners of the firm were allowed to operate the bank account of the firm jointly or severally as decided and normally all the partners of the firm will devote their time and attention to the day to day affairs and business of the firm as working partners. Further, from the copy of partnership deeds of both M/s M L Chopra & Co. and M/s Freya Shipping Services, it is noted that the Respondent was sharing the profit @ 15% in M/s M L Chopra & Co. and 20% in M/s Freya Shipping Services.

9.8 From the above points, the Board noted that the Respondent being the director of the Companies was entrusted with the various duties and powers relating to day to day affairs of the Companies. Further, the Respondent was also entitled to and receiving remunerations and other incomes from the various alleged Companies and partnership firms.

10. As regards the plea that the Respondent is Director Simplicitor and only involved in annual compliances as per Companies Act, the Board observed as under:-

- a. As per Companies Act, private limited companies are opened and operated by atleast two directors.
- b. As per submissions of the Respondent, both the directors in the alleged private limited companies were non-executive Independent Directors and none amongst them were involved in the executive functions of those companies.
- c. The concept of independent directors was evolved to regulate the public limited and listed companies as the stake of general public and stakeholders in those companies were generally at inherent risk. There is no such requirement for private limited companies.

The Board examined the Respondent in this respect that how the said companies were being run by non-executive directors when there is none who holds managerial position and also sought explanation/ clarifications with respect to employee details employed with such alleged companies, how the day to day operations were carried out, the exact details of operations of said companies and mode of execution of banking operations of said companies. However, the Board observed that the Respondent was unable to provide any justifiable clarifications/ explanations with respect to the same.

11. The Board further noted that the Respondent brought on record an email dated 18/09/2018 wherein the Council granted permission to the Respondent to act as sleeping partner in M/s Freya Shipping Services Private Limited beside the

practice of profession of accountancy. The Board perused the Member records maintained by the Institute and observed that Council has given permission to the Respondent since January, 2018 however the allegations pertain to the period 2009 to 2017. The Board further noted that the extant complaint was filed on 19/06/2017 and the said permission was sought by the Respondent only in the year 2018. Upon perusal of same, the Board observed that the involvement of the Respondent in managerial day to day functions of the alleged 13 companies/ firms is not permitted by the Council as such and prior approval of the Council of the Institute is prerequisite before engaging into other occupation. Thus, the Respondent is conclusively held liable for said violation.

12. Upon overall examination of the facts of the case, the Board noted that the Complainant was brother of the Respondent and the extant complaint was filed as a result of dispute/ difference which arose during arbitration proceedings amongst the family members of the Respondent, but the said plea taken by the Respondent does not hold merit as the extant proceedings are initiated to examine the conduct of the Respondent based on the overall facts and documents placed on record.

13. Considering the attendant circumstances, the evidence put forth during the proceedings and the submissions on record, the Board, viewed that it is conclusively proved that the role of the Respondent in the alleged companies clearly exceeded beyond that of the Director Simplicitor and he ought to have sought the prior permission of the Council before engaging himself in any business or occupation other than profession of Chartered Accountant. Accordingly, the Respondent is held Guilty in respect of the Charge alleged.

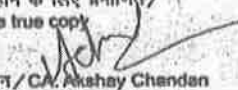
CONCLUSION:

14. The Board of Discipline, in view of the above, is of the considered view that the Respondent is **Guilty** of Professional Misconduct falling within the meaning of Item (11) of Part I of First Schedule to the Chartered Accountants Act 1949.

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

DATE: 1st February, 2022

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


सीए. अशय चंद्रन / CA. Anshay Chandra
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, साहयरा,
ICAI Bhowan, Vishwas Nagar, Sahayra,