



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

[PPR/NP/37/20/DD/30/INF/2020/BOD/595/2021]

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

In the matter of:

**In Re: CA. Sunil Kumar Goyal (M. No. 518242)
Panchkula**

.....Respondent

[PPR/NP/37/20/DD/30/INF/2020/BOD/595/2021]

MEMBERS PRESENT (physically at ICAI Bhawan, Indraprastha Marg, New Delhi):

**CA. Prasanna Kumar D., (Presiding Officer)
Ms. Dolly Chakrabarty (IAAS, Retd.), (Government Nominee)
CA. (Dr.) Raj Chawla, (Member)**

Date of Final Hearing: 22nd April, 2022

1. The Board of Discipline vide Report dated 11th February, 2022 held that CA. Sunil Kumar Goyal is Guilty of Professional Misconduct falling within the meaning of Items (6) and (7) of Part I of First Schedule to the Chartered Accountants Act, 1949.
2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against CA. Sunil Kumar Goyal and communication dated 08th April, 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 22nd April, 2022. CA. Sunil Kumar Goyal made his written representation dated 16th April, 2022 on the Findings of the Board.
3. CA. Sunil Kumar Goyal was physically present before the Board on 22nd April, 2022 and made his oral representation thereat requesting the Board to take a lenient view in the case.
4. CA. Sunil Kumar Goyal in his written representation dated 16th April, 2022, inter-alia, stated as under:
 - 4.1 The Respondent reiterated the submissions dated 06th September, 2021 and 20th December, 2021.
 - 4.2 The contention in the final finding of the Hon'ble Board of Discipline in para 6 is misplaced as the Board of Discipline has placed heavy reliance on case laws namely Ajit Kumar NAG Vs General manager (PJ) Indian Oil Corporation Limited AIR 2005 SC 4217 and Capt M.Paul Antony –Vs Bharat Gold Mines Limited AIR 1999 SC 1416 and considered the present case as civil in nature and decided case



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

[PPR/NP/37/20/DD/30/INF/2020/BOD/595/2021]

on the basis of preponderance of probability and completely ignored the justice by mentioning in para no 11 and 13 that present proceeding is not a criminal proceeding whereas present proceeding 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 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....*"

It is now the settled law that a charge of corrupt practice is substantially akin to a criminal charge. A two- Judge Bench of this Court while dealing with the said issue in Razik Ram v. Jaswant Singh Chouhan and others[5], held

"15. ...*The same evidence which may be sufficient to regard a fact as proved in a civil suit, may be considered insufficient for a conviction in a criminal action. While in the former, a mere preponderance of probability may constitute an adequate basis of decision, in the latter a far higher degree of assurance and judicial certitude is requisite for a conviction. The same is largely true about proof of a charge of corrupt practice, which cannot be established by mere balance of probabilities, and, if, after giving due consideration and effect to the totality of the evidence and circumstances of the case, the mind of the Court is left rocking with reasonable doubt — not being the doubt of a timid, fickle or vacillating mind — as to the veracity of the charge, it must hold the same as not proved.*" The same view was followed by this Court P.C. Thomas v. P.M. Ismail and others [6], wherein it was held as follows:

"42. *As regards the decision of this Court in Razik Ram and other decisions on the issue, relied upon on behalf of the appellant, there is no quarrel with the legal position that the charge of corrupt practice is to be equated with criminal charge and the proof required in support thereof would be as in a criminal charge and not preponderance of probabilities, as in a civil action but proof "beyond reasonable doubt". It is well settled that if after balancing the evidence adduced there still remains little doubt in proving the charge, its benefit must go to the returned candidate.*"

In the case of Prahlad Saran Gupta Vs. Bar Council of India and Another, this Court observed that when the matter relates to a charge of professional misconduct which is quasi -criminal in nature, it requires proof beyond reasonable doubt.



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

IPPR/NP/37/20/DD/30/INF/2020/BOD/595/2021

Bhandari v. Advocates Committee 1956 3 All ER 742 , is also a case concerning the professional misconduct .In proof of held that it is the duty of the professional domestic tribunal investigating the allegation to apply a high standard of proof and not to condemn on a mere balance of probabilities. In Glynn vs. Keele University 1971 2 All ER 89 Ch D, relied on by Sri Salve , the question arose whether failure to give an opportunity to the students before the suspension is violative of the principles of natural justice

DELHI HIGH COURT COUNCIL OF THE INSTITUTE OF ... VS DEEPAK JAIN & ANR. ON 4 AUGUST, 2016 -Quasi criminal proceeding - *It is urged that the Council fell into error in holding that the burden of proving innocence was placed on the, which is contrary to established canons of procedure. It is also argued that the charges alleged against the Respondent were not proved beyond reasonable doubt. Being quasi criminal proceedings the result of which can severely affect the professional reputation of a chartered accountant, the higher burden of proof was required. Here reliance is placed on H.V. Panchaksharappa v K.G. Eshwar, AIR 2000 SC 3344 and Council of The Institute of Chartered Accountants of India vs. C.H. Padliya and Another, 1977 MPLJ 722.*

While disciplinary proceedings may not be in the nature of court proceedings, yet when a professional, such as a chartered accountant is arrayed for misconduct which has quasi criminal overtones, the Council has to be circumspect; some modicum of objective evidence - both documentary and oral (and not only the say of the complainant - possibly the relative bank records and relevant statement of bank officers, too have to be considered) evidence is necessary.

That the charges against a chartered accountant are to be proved with convincing materials and the nature of the proceeding is quasi criminal. They also highlight that the onus of establishing and proving the acts or omissions alleged against the charged professional is upon those who allege such acts or omissions.

The cumulative picture which emerges is that the Council appears to have acted with haste and great dispatch. While its zeal to complete proceedings is understandable, one is reminded of an aphorism "Swift justice demands more than just swiftness"

Both the case laws of Hon'ble Supreme Courts quoted by the Hon'ble Board of Discipline are related with departmental enquiry which are administrative in nature and does not apply in this case as the said case was of a delinquency by the



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

[PPR/NP/37/20/DD/30/INF/2020/BOD/595/2021]

employee but all the case laws quoted by the Respondent are related with Professional Misconduct.

5. The Board has carefully gone through the facts of the case alongwith the oral and written representation of the Respondent.

6. As per the Findings of the Board as contained in its report, the case against CA. Sunil Kumar Goyal was that an advertisement was circulated on 'WhatsApp' social media platform wherein he was shown offering his services free of cost in the areas of Accounts/ Tax/ Returns GST/ Audit/ New Carriers in the prevalent Covid-19 pandemic situation to derive benefits by promoting his practice. The said WhatsApp message was printed on pamphlet and circulated through WhatsApp containing address of the Respondent along with his contact details. "Sunil Goyal, Chartered Accountant Team 100" was mentioned in the said pamphlet which clearly indicated that the Respondent is trying to show himself superior to others by mentioning the phrase Team 100 with an intention to solicit new clients through advertisement. It is also not permissible for a member to address letters or circulars to persons who are likely to require services of a Chartered Accountant since it would tantamount to advertisement. The Board also took into view the ICAI Guidelines No. 1-CA(7)/ Council Guidelines/01/2008, dated 14th May, 2008 – Guidelines for Advertisement for the Members in practice wherein under Clause 4(ii) categorically states that "*The write-up should not claim superiority over any other Member(s)/Firm(s).*" Further, Clause 4(x) states that "*The write-up should not contain any information about achievements/award or any other position held.*" Thus, the Board viewed that the use of such words/ expression tantamount to violation of said other conditions prescribed under Guidelines for advertisements for members in practice. Further, the Board was of the following view:

- (a) The submissions made by the Respondent vide communication dated 06th September, 2021 and 20th December, 2021 have already been considered by the Board while arriving at its Findings.
- (b) The question considered by the Board is that of 'Other Misconduct' that is whether the alleged act of the Respondent has brought disrepute to the Profession or the Institute. 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 Chartered Accountants 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 ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)

[PPR/NP/37/20/DD/30/INF/2020/BOD/595/2021]

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.”

The Board also noted that 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:—

- (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.



Handwritten mark.



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

PPR/NP/37/20/DD/30/INF/2020/BOD/595/2021

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. Thus, it has already been held that CA. Sunil Kumar Goyal is Guilty of Professional Misconduct falling within the meaning of Items (6) and (7) of Part I of First Schedule to the Chartered Accountants Act, 1949.

8. Upon consideration of the facts of the case, the consequent misconduct of CA. Sunil Kumar Goyal and keeping in view his oral and written representation before it, the Board decided to Reprimand CA. Sunil Kumar Goyal (M. No. 518242).

Sd/-
CA. Prasanna Kumar D.
(Presiding Officer)

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

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

DATE: 10TH June, 2022

प्रमाणित सत्य प्रतिलिपि / Certified true copy

मुकेश कुमार मिश्रा / Mukesh Kumar Mittal
सहायक सचिव / Assistant Secretary
अनुशासन शास्त्रिक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

CONFIDENTIAL

BOARD OF DISCIPLINE
Constituted under Section 21A of the Chartered Accountants Act 1949

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

File No. : [PPR/NP/37/20/DD/30/INF/2020/BOD/595/2021]

CORAM:

CA. Prasanna Kumar D., Presiding Officer(In Person)
Mrs. Rani Nair (IRS, Retd.), Government Nominee (through Video Conferencing)

In Re: CA. Sunil Kumar Goyal (M. No. 518242)Respondent
Panchkula

DATE OF FINAL HEARING : 13th December, 2021
PLACE OF HEARING : New Delhi

PARTIES PRESENT(physically):

Respondent : CA. Sunil Kumar Goyal
Counsel for the Respondent : CA. Sandeep Manaktala

FINDINGS:

Charge Alleged:

1. The Respondent had circulated a pamphlet containing his name on WhatsApp wherein he was shown offering the public at large his services in the areas of Accounts/Tax/Return/GST/Audit/New Carriers and said circulated message allegedly tantamount to solicitation of professional work through advertisement.

Brief of Proceedings held:

2. During the hearing held on 13th December, 2021, the Respondent alongwith his Counsel were present before the Board. The Respondent was put on oath. Thereafter, the charges alleged against the Respondent were taken as read with his consent. On being asked by the Board as to whether the Respondent pleaded guilty in respect of the charges alleged against him, he replied in negative and his Counsel made his detailed oral submissions on the charges alleged against the Respondent. The Respondent was examined by the Board. The Respondent also requested the Board to grant him certain time to submit some more documents in his defence. On consideration of the documents and submissions on record, the Board decided not to give any further opportunity of personal hearing to the Respondent and concluded the proceedings in the case with a direction to the Respondent to submit the further documents, if any, in his defence within a period of 7 days. Thus, the decision on the

conduct of the Respondent was kept reserved by the Board.

Thereafter, the Respondent vide letter dated 20th December 2021 submitted his further submissions. The Board, keeping in view the submissions and documents on record, at its meeting held on 11th February 2022 decided on the conduct of the Respondent.

Brief submissions of the Respondent:

3. The Respondent in his written submissions, inter-alia, submitted as under:-
 - a. The impugned prima Facie Opinion dated 06th April, 2021 sent by letter dated 27th July, 2021 and received on 2nd August, 2021 whereby which Director(Discipline) had formed an opinion against the Respondent itself suffers from serious latches, the Director (Discipline) was legally bound to follow the Rules so notified vide Notification dated 27/02/2007, whereby which Director (Discipline) could form the basis of the initiating the disciplinary proceedings against the professional like the Respondent.
 - b. From the alleged pamphlet, no case is made out, portraying a distorted and incorrect picture of the facts of the case and in turn mislead the Director(Discipline), leading to an undue, irretrievable loss to the Respondent. The alleged pamphlet a non-verifiable evidence is void ab initio and should have been dismissed at the very threshold.
 - c. This act on the part of Director(Discipline) clearly violates the procedure laid down in the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct of Cases) Rules, 2007. The matter was treated as Information Case with incomplete information and the allegations could not be substantiated, within the meaning of Rule 7 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct of Cases) Rules,2007, thus, the basic latches of the initiation of this case against the Respondent is non-availability of any information and complaint in a manner so prescribed under Rule 7(1) goes to the root of the matter which vitiates the entire process.
 - d. The Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 are binding upon the Director Discipline in view of Section 21(4) of the Chartered Accountants Act, 1949 as amended in 2006.
 - e. The proceedings in respect of any information case should have been dealt with in accordance with the procedure laid down in the Rules and in this case, non-compliance with Rule 7(2) to correspondence with the informer whether he (Sic. the Informant) likes to file formal complaint was made, no such procedure has been followed by the Director (Discipline) before dealing with the information/ complaint. Further, the Director(Discipline) has not considered these points before forming his PFO or in the PFO itself.
 - f. The Director (Discipline) did not even bother to examine the Complainant who was treated as informant in this matter goes to the root of the matter in as much as depicts that no serious effort was made towards finding out the truthfulness of the allegations which is mandatory on the part of Director Discipline in view of Rule 9 of Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 and Section 21(2) of the CA Act which cast a duty on

- Director(Discipline) to form PFO after following the procedure provided in Rules 2007 as per Section 21 (4) of the CA Act.
- g. Even if the Respondent did not produce some material evidence to defend himself, that would not lead to the inference that the charges against him were proved.
 - h. In the case of V Shubash Vs DD, ICSI in appeal No 6/ICSI/2001, it was held that If the Institute had received information, it should have been sent to the Director (Discipline) in the form of a complaint. The Rule 7 (1) requires that any written information containing the allegation against the member received in person, by post or courier, by the Directorate which is not in Form-I under sub rule 3(1) shall be treated information received under section 21 of the Act and shall be dealt in accordance with provisions of these rule.
 - i. The show cause notice was issued in gross violation of the Rule 7(1) and Rule 7(2) without justifying the satisfaction of the basic requirement of Rule 7 (1) and Rule 7 (2).
 - j. The information was treated serious misconduct in the first instances before compliance of Rule 8 and even clause of misconduct was specified in the notice without compliance of Rule 9, completing the investigation and without any authentic documents in hands of Director(Discipline) at the time of issuing the notice. Hence notice was issued without application of mind and was without actual examination of information in hand in complete violation of Rule 8 and 9.
 - k. The Respondent further referred following case laws to support his defence:-
 - i. The Hon'ble Delhi High Court in case titled Shri Dinesh Gupta vs Shri Vishal Chandra Gupta & Anr. on 20th December, 2012 held that the role of Director (Discipline) is merely inquisitorial i.e. whether the complaint is to be closed or to be further investigated.
 - ii. A Division Bench of this Court in R.K. Sharma vs. Institute of Chartered Accountants of India 44 (1991) DLT 298 held that ICAI is only required to form a prima facie opinion whether a member is guilty of professional misconduct or not.
 - iii. The Supreme Court in Competition Commission of India Vs. Steel Authority of India Ltd. (2010) 10 SCC 744 carved out a distinction between inquisitorial and adjudicatory functions.
 - iv. In the case of ITO, 1 Ward, District VI, Calcutta and others vs. Lakhmani Mewal Das (1976) 103 ITR 437, 448 (SC) it was held that the powers of Assessing Officer to reopen assessment, though wide, are not full and plenary.
 - v. In the case of ITA No. 3534/Del/2014 [Assessment Year: 2007-08] Munni Devi Date of order: 15-09-2016 it was held that the proceedings initiated are based on surmises, conjectures and suspicion and therefore, the same are without jurisdiction.
 - l. The Director (Discipline) has failed to form PFO without providing reasonable opportunity and necessary documents to the Respondent and had not furnished copy of the documents received from the informant.
 - m. The Respondent strongly denies the contents of the alleged pamphlet and places it on record that the Respondent has no knowledge, role in the creation, drafting and circulation of the pamphlet. The Respondent came to know about the alleged pamphlet only through letter/e-mail dated 01st

August, 2021 from the office of the Director (Discipline), Disciplinary Directorate of the ICAI.

- n. On the contents of the letter dated 22nd November 2020, it is submitted that after receiving the information letter dated 23rd October 2020, the Respondent was shocked and dismayed over the allegation leveled against the Respondent over an alleged WhatsApp message as annexed on Page No A-3 of the Prima Facie Opinion. The Respondent after receiving the notice from the Disciplinary Directorate regarding the alleged WhatsApp message as annexed on Page No A-3 tried to reason out the source of the message as this message was not initiated, published, printed or circulated by the Respondent. Secondly, the reply dated 22nd November 2020 was ill-advised, ill-prepared and filed in haste without reasons and justifications without understanding the implications for the mistake/ fault not committed by the Respondent. The Respondent was facing turbulent atmosphere in his personal life and was also having intense pressure of professional commitments.
- o. The Director (Discipline) failed to take cognizance of the fact that the alleged Whatsapp message is full of flaws:-
- i. The Director (Discipline) did not seek any further document from the Informant.
 - ii. The alleged pamphlet have drafted to defame, mislead and put the Respondent in bad light, this important fact have been ignored by the Director Discipline.
 - iii. The Director (Discipline) has failed to take the note that there is no verifiable evidence against the Respondent that Respondent initiated, drafted and circulated the alleged pamphlet.
 - iv. The Director (Discipline) failed to take into consideration that the present proceeding are quasi criminal in nature since related with professional misconduct and is not civil in nature or not related with departmental proceeding. The highest standard of proof which must be met in a Disciplinary Proceedings is that of beyond reasonable doubt. This means that the Ld. Director Discipline has no doubt of the Respondent guilt.
 - v. The Director (Discipline) failed to take into consideration the contents of the message in the alleged pamphlet, where the Respondent having qualified in the year 2010 knowingly the provisions of the Chartered Accountants Act, 1949 (as amended) and Code of Ethics shall indulge in such kind of acts and omissions
 - vi. The Director (Discipline) failed to verify the facts/ contents of the alleged pamphlet i.e. address, telephone number (land line) etc. are wrong secondly the contents of the alleged pamphlet having being drafted by the alleged Informant, is nothing but a plot to entrap the Respondent to fulfil his malafide intentions and nefarious design.
 - vii. The Respondent fails to understand that on the basis of an alleged pamphlet which is not an verifiable source of evidence have been relied upon by the Director (Discipline).
- p. The Director (Discipline) have treated this matter as information case based upon unverifiable pamphlet, in the present case where no person was shown as Informant which clearly violates the procedure laid down in the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct of Cases) Rules, 2007 as per Rule 7(3) which

clearly states that an anonymous information received by the Directorate will not be entertained by the Directorate. The matter was treated as Information Case within the meaning of Rule 7 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct of Cases) Rules, 2007, the then Director Discipline misled the Hon'ble Board of Discipline as this is not an Information Case and thus make the complaint defective and cannot be proceeded further. The present complaint is not in proper format prescribed by Disciplinary Directorate of ICAI which renders the complaint to be rejected on the same ground.

- q. The prima facie opinion dated 06th April 2021 is silent on the compliances of Rule 7(1), 7(2) and 7(3) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct of Cases) Rules, 2007.
- r. The Hon'ble Board of Discipline will appreciate that the reproduction of only an alleged pamphlet is greatly prone to the risk of misplacing the whole context in which certain words or statements were being made. Only if the whole transcript of the alleged call is read comprehensively, can it be clear that such conversation is happening in the context of events that had been happening around the Respondent in the various cases of search and seizure. Therefore the Director (Discipline) failed to appreciate such circumstances and framed an erroneous PFO replete with factual inadequacies, which was overlooked by Hon'ble Board of Discipline while giving concurrence to the Prima Facie Opinion.
- s. The Respondent in view of submissions humbly states that Prima Facie Opinion dated 6th April 2021 is incapable of being read as disclosing any cause of action on the basis of any known canon of interpretation of documents – whether a rule of reasonable construction or any other construction.

4. The Respondent in his further submissions dated 20/12/2021 submitted as under:-

- a. The reply dated 18th August, 2020 and 22nd November, 2020 was ill-advised, ill-prepared and filed in haste without reasons and justifications. The same were filed without understanding the implications for the mistake/ fault not committed by the Respondent.
- b. The alleged WhatsApp message was not initiated, sent, published, printed or circulated by the Respondent.
- c. The Respondent was suffering from kidney ailment since February, 2020 and underwent operation for the same on 26th April, 2021.

Observations of the Board:

The Board observed that the Respondent raised certain technical objections with respect to the initiation of the instant case and decided to deal with the same before arriving at its Findings on the conduct of the Respondent:

5. As regards, the preliminary objection of the Respondent that the procedure provided under the CA Rules, 2007 was not properly followed by the Director (Discipline) and the case was initiated on the basis of non-verifiable evidence, the

Board took into view the provisions of Section 21(2) and Sec 22 of the Chartered Accountants Act, 1949 wherein it is provided respectively as under:-

Sec 21(2) -*"On receipt of any information or complaint alongwith the prescribed fee, the Director (Discipline) shall arrive at a prima facie opinion on the occurrence of the alleged misconduct."*

Section 22 of the Chartered Accountants Act, 1949:-

"Professional or Other Misconduct defined

For the purposes of this Act, the expression "professional or other misconduct" shall be deemed to include any act or omission provided in any of the Schedules, but nothing in this Section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of Section 21 to inquire into the conduct of any member of the Institute under any other circumstances."

The Board viewed that the extant disciplinary action against the Respondent was initiated on the basis of information received by the Examination Department of the Institute and after issue of proper formal correspondences. Also, due procedure had been followed while treating the case as 'Information' against the Respondent. Accordingly, the plea raised by the Respondent is not sustainable.

6. 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.

7. The Board noted that the case against the Respondent was that an advertisement was circulated on 'WhatsApp' social media platform wherein he was shown offering his services free of cost in the areas of Accounts/ Tax/ Returns GST/ Audit/ New Carriers in the prevalent Covid-19 pandemic situation to derive benefits by promoting his practice.

8. The Board upon perusal of said advertisement/ pamphlet circulated via WhatsApp, noted that following words/ expressions were used by the Respondent:-

**"GOOD NEWS GOOD NEWS GOOD NEWS
FREE FREE FREE**

**ALL THE BUSINESSMEN AND SHOPKEEPER BROTHERS IN INDIA ARE
HEREBY INFORMED THAT IN CASE OF ANY WORK RELATED PROBLEM,
LACK OF CAPITAL, MENTAL TROUBLE LIKE DOUBT, ILLUSION, FEAR,
DISTRESS, ETC. WHICH WAS SPREAD DUE TO PREVAILING COVID-19
CORONA TIME AROUND THE WORLD, WE AS RESIDENT OF INDIA ,
OUR SUNIL GOYAL, CHARTERED ACCOUNTANT TEAM 100, FOR THE
BENEFIT OF ALL FROM OUR BODY, HEART AND MONEY WOULD LIKE
TO EXTEND OUR SERVICE, DEVOTION AND COOPERATION TO ALL
FREE OF COST ON EVERY TUESDAY EVENING FROM 4PM TO 6PM BY
OFFERING FREE ADVICE AND ASSISTANCE IN THE FIELD OF
ACCOUNTS/ TAX/ RETURN/ GST/ AUDIT AND NEW CARRIER.**

NOTE: SORROW IS RELIEVED NOT BY MONEY BUT BY COOPERATION"

**CONTACT ADDRESS: CA SUNIL GOYAL
#1543/60, KRISHNA MARKET, NEAR LUCKY TAILOR, MANIMAJRA,
CHANDIGARH-160101
CONTACT NO. 9417785703, 0172-5016703"**

*Translated in English for better understanding of the case

9. The Board observed that the said WhatsApp message was printed on pamphlet and circulated through WhatsApp containing address of the Respondent along with his contact details. The Board further observed that "Sunil Goyal, Chartered Accountant Team 100" was mentioned in the said pamphlet which clearly indicates that the Respondent is trying to show himself superior to others by mentioning the phrase Team 100 with an intention to solicit new clients through advertisement. It is clearly appearing that the details of Respondent, Chartered Accountant Team 100 is nothing but an attempt of publicity to attract the new clients. It is also not permissible for a member to address letters or circulars to persons who are likely to require services of a Chartered Accountant since it would tantamount to advertisement. Professional work can only be obtained by a member gradually

building confidence in his ability and integrity. A public advertisement is likely to lead to an impression that the professional person is over-anxious to win confidence which however will have the opposite effect. The satisfaction of clients would be the best advertisement which would lead to other clients. An advertisement is not a key to success in the profession. It is the quality of service which attracts and retains the clients.

10. The Board also noted that during the hearing Respondent stated that he had filed the written statement dated 22/11/2020 without weighing the implications of said submissions properly and pleaded that no cognizance be taken upon the reply dated 18th August, 2020 and 22nd November, 2020. By examining the Respondent, the Board noted that the Respondent took contrary stand in his written statement vis-a-vis during the hearing. On one hand the Respondent admitted that he himself shared the said WhatsApp message with his client and on the other hand he took the stand that the reply dated 18th August 2020 and 22nd November 2020 was ill-advised, ill-prepared and filed in haste without reasons and justifications and that he had no role in the circulation of the message. On further examination of the Respondent, the Board observed that the said advertisement/ pamphlet circulated through WhatsApp contained the contact details i.e. landline and mobile number which belonged to the Respondent and the address is that of his parents' house. The Board also noted that despite his express denial during the hearing of not being associated with the issue of the pamphlet, the Respondent did not take any action to identify as to who had misused his name in the pamphlet.

11. The Board also took into view the ICAI Guidelines No. 1-CA(7)/ Council Guidelines/01/2008, dated 14th May, 2008 – Guidelines for Advertisement for the Members in practice wherein under Clause 4(ii) categorically states that "*The write-up should not claim superiority over any other Member(s)/Firm(s).*" Further, Clause 4(x) states that "*The write-up should not contain any information about achievements/award or any other position held.*"

Considering the above, the Board viewed that the use of such words/ expression tantamount to violation of said other conditions prescribed under Guidelines for advertisements for members in practice.

The Board further observed that the defences raised by the Respondent in his written submissions and at the time of hearing cannot sustain as the advertisement for attracting clients by the professionals are strictly prohibited by the Institute to regulate the conduct of members and is mandatory and binding in nature and his association with the issue of the said pamphlet cannot be denied. Accordingly, the Board viewed that Respondent is Guilty of Professional Misconduct falling within the meaning of Item (6) and (7) of Part I of First Schedule for engaging himself in creation and circulation of pamphlet containing words "*SUNIL GOYAL, Chartered Accountant Team 100*" and for advertising his professional attainments or services on social media platform.

CONCLUSION:

12. 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 Items (6) and (7) of Part I of First Schedule to the Chartered Accountants Act 1949.

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

DATE: 11th February, 2022

Jyotika
प्रमाणित सत्य प्रतिलिपि / Certified true copy

सीए. ज्योतिका ग्रोवर / CA. Jyotika Grover
सहायक सचिव / Assistant Secretary
अनुशासनिक विभाग / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shaadra, Delhi-110032