



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

[PPR/P/412/2017-DD/190/INF/2018/BOD/580/2020]

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.

[PPR/P/412/2017-DD/190/INF/2018/BOD/580/2020]

In the matter of:

CA. Girish Bherumal Gundesha (M. No. 042885), Pune in Re:Respondent

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 (physical/through video conferencing)

1. The Board of Discipline vide Report dated 11th February, 2022 held that **CA. Girish Bherumal Gundesha** is Guilty of 'Other Misconduct' falling within the meaning of Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act on account of the following observations:
 - (a) The Respondent in his statement on Oath dated 30/12/2016 recorded under Section 131 of the Income Tax Act, 1961 stated that he knew Sh. Satyen Gethani, Partner of M/s. Ishanya Motors LLP (Ishanya Hyundai Showroom) as he was his client and he used to do auditing and taxation work for M/s. Ishanya Motors LLP. He further stated that he also knew Sh. Radhakishan Nirmal and Sh. Sagar Kadam as they were the employees of Sh. Satyam Gethani and they use to visit his office. He further affirmed that he himself use to handle all the individuals, firms and companies of Sh. Satyen Gethani. He further admitted on Oath that Sh. Kailash Chandan was also his client and was in business of real estate brokerage and insurance agent. Sh. Kailash Chandan was very close friend of Sh. Praveen Gupta. Sh. Praveen Gupta was related to Puranchand & Sons and also belongs to Mantra Group.
 - (b) In the statement of Sh. Satyen Gethani dated 14/12/2016 recorded under Section 133A of the Income Tax Act, 1961 photocopy of page seized from Mr. Annachatre regarding exchange of cash of M/s. Worldwide Oilfields Machine Pvt. Ltd. and other concerns was shown to Sh. Satyen Gethani and it was asked from him to explain the said page. Sh. Satyen Gethani, in response thereto, stated that the amount and date mentioned in front of paid to builder were routed through him. He has not received full amount of commission of 25% mentioned on the said page. Sh. Satyen Gethani retained



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commission from 3% to 14.5% and remaining commission was retained by six different people to whom he had handed over old currency and received the new currency.

- (c) Apart from the Statement of the Respondent recorded before the Informant Department which he subsequently retracted, there were ample evidences to show that the he had used his professional knowledge and his professional association for undesirable purposes. The Respondent himself accepted that he introduced Shri Kailash Chandan with Shri Satyen Gethani and they directly got in touch with each other for managing the exchange of old currency notes with the new currency notes and subsequently the payment and the commission was directly handled by them. The Respondent was fully aware and conscious of the fact that the purpose of introducing the two parties was to culminate the transaction between them for exchange of old currency notes with the new currency notes which is an illegal activity. Also, the denial of the Respondent was limited to his role with regard to accepting any commission for the transaction that happened between the parties in question.
- (d) During the hearing of the case on 20th December 2021, the Counsel of the Respondent contended that the cash transactions of about Rs. 40-50 Lakhs were taken note of by the Respondent on behalf of his clients who were involved in real estate transactions during the demonetisation period and the same was not illegal. The Respondent was the auditor of the alleged persons and was complicit in handling cash beyond permissible limits under Income Tax Act 1961 but to defeat demonetisation by exchanging old cash into new currency notes in violation of Government Policy is certainly unbecoming of a Chartered Accountant.
- (e) The Respondent failed to provide any evidence on record to prove that he was not involved in the said offence of exchanging of old high denomination banned notes into new legal tender currencies and charging hefty commission for the said exchange of banned currency notes.
2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against **CA. Girish Bherumal Gundesha** 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. Girish Bherumal Gundesha made his written representation dated 16th April, 2022 on the Findings of the Board.
3. **CA. Girish Bherumal Gundesha** was present before the Board through video conferencing and made his oral representation thereat requesting to take a lenient view in the case.
4. **CA. Girish Bherumal Gundesha** in his written representation dated 16th April, 2022, inter-alia, stated hereunder:



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- i. The findings of the Board of Discipline are not acceptable in view of the following important points:
 - a. The proceedings are wrongly based on the assumptions that the exchange of old currency notes with the new currency notes prior to 31st December 2016 is an illegal activity and the legal opinion in that respect has not been appreciated.
 - b. An issue of jurisdiction of the Board of Discipline has been wrongly decided based on some remarks in some other cases before the Appellate Authority by ignoring that each of the Complaint/ Information under section 21 of the CA Act has to be decided on its own merit. Proceedings are not maintainable due to non-compliance of the basic requirement of Clause (2) of Part IV of the First Schedule about Opinion of the Council not having been formed – no proof is given for having brought any disrepute.
 - c. It does not take into consideration that case is not maintainable due to non-compliance of Rule 8(1). Rule (11) clarifies the applicable Rules and hence time limit of 60 days has to be observed even after following process of Rule 7.
 - d. Violation of Rule 14 (6) of the relevant Rules 2007: The Prima Facie Opinion is formed on 15.07.2020 but has been forwarded to Respondent on 25th January 2021 and the hearing is fixed on 29th January 2021. The reason for abnormal delay has not been explained properly.
 - e. The contents of Items 7 to 11 of the Findings of the Board are wrong and not acceptable to the Respondent.
 - f. There was a change in the composition of BOD with effect from 12.02.2022. The Findings in the present case are signed on 11.02.2022 only by one Member and not by 2 members. As per the website of Directorate, there was no meeting of BOD on 11.02.2022.
- ii. Change in composition of BOD (u/s 21A) requiring a fresh consideration of the matter because unless the severity of the offence is known, it is considered to be difficult to award appropriate punishment. A changed current Board of Discipline needs to grant an opportunity to the Respondent and his authorized Representative to present the case again before deciding the severity of the guilt and award punishment.
- iii. The BOD has not taken into account the status of cases particularly that the case by CBI was already closed by Order dated 27.06.2019. The Respondent has not been held guilty. The case by E.D. is pending for closure based on the Order of CBI. The Income Tax authorities have not initiated any proceedings in the matter even after 5 years after the Search.

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- iv. Statement of different persons were taken at different points of time and by that time there was knowledge about exchange of notes having taken place and the Respondent's name is being unnecessarily involved in the matter by the other parties.
- v. Wrong findings have been drawn by ignoring the factual situations (Item no. 7/8/9 of the Findings of the BOD). These are not supported by evidence and such conclusions are not acceptable to the Respondent. The Respondent has clarified his limited role. The content of items 7,8 and 9 are not acceptable to the extent they indicate any wrong doing. The answers given by the Respondent to most of the Questions indicate his limited role and his involvement in any alleged activities. The findings of item no. 9 are wrong as he has not helped in the generation of black money as alleged and he has not dealt in the banned notes post demonetization.
- vi. The extracts of the statements used in respect of Mr. Satyen Gathani and Mr. Sagar Kadam are unreliable because they have given contradictory statement elsewhere in the same matter.
- vii. The Board has not appreciated that the Respondent is not required to provide evidence towards his innocence and the Complainant has to prove his case by producing appropriate evidences to prove the allegations.
- viii. Item 11 and 12 of the Findings is a wrong conclusion in Law on the Facts (in spite of giving the Legal Opinion – and explaining the factual situation) as per the Legal opinion, the Respondent has explained clearly with relevant Legislative Provisions, that the exchange of demonetized notes, which were not a legal tender, with the valid currency cannot be an illegal activity. Even a person, who is a facilitator for such an exchange transaction between 2 individuals, cannot be considered as an Offender. The seller cannot refuse from accepting bank which are legal tender. It has been wrongly concluded in item 6.1 BOD that none other than the specified agencies were authorized by the Government to act as facilitator to the said exchange of currency notes. It is to be noted that nothing prevented the seller from accepting anything other than legal tender and issue a valid discharge of debts till 31.12.2016.
- ix. In view of the above submissions, the Respondent requested that he may not be awarded any major punishment because he has been unnecessarily involved in this matter and his role was only limited i.e. introducing one friend to another when both the friends had become clients carrying on real estate activity and particularly without knowing the type of their likely transactions directly among themselves.

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5. The Board has carefully gone through the facts of the case along with the oral and written representation of the Respondent. On consideration of the representation of the Respondent, the Board was of the following view:

- (a) The issues raised by the Respondent at para 4- (i)(a) to i(d) above have already been considered by the Board while arriving at its Findings and thus, do not merit reconsideration.
- (b) The meeting of the Board was duly convened on 11th February 2022 wherein the members of the Board were duly present and the Findings in the instant case had been signed by the Presiding Officer on behalf of the Board as per the unanimous decision of the Board.
- (c) Further, the Chartered Accountants Act, 1949 ('Act') and Chartered Accountants (Procedure of Investigations of Professional and other Misconduct of Cases) Rules, 2007 ('Misconduct Rules') for the investigation and conduct of cases of Professional and other Misconduct envisage two stages of proceedings before the Board of Discipline. The first stage is the determination of guilt and the second stage is to pass punishment order. The purpose of the first stage is to consider the submissions and evidence to determine whether a member is guilty of any professional or other misconduct. Once the guilt has been established, the second stage is to determine punishment for the same. In the second stage, the purpose is to consider the severity of the misconduct and to take into consideration any mitigating circumstances so as to accord corresponding punishment. It is to be noted that at the punishment stage, the Board of Discipline does not re-hear the matter as the guilt has already been established vide its findings/report. Thus, the plea of the Respondent for fresh consideration of the case is not acceptable.
- (d) The proceedings before the Board of Discipline are quasi-judicial in nature where the misconduct can be proved by preponderance of probabilities having regard to the conduct of the Respondent which is distinct from Criminal proceedings where the misconduct has to be proved beyond reasonable doubt. The issue that has been examined by the Board is whether the conduct of the Respondent arising out of the circumstances as stated in the case records has brought disrepute to the profession and thus, amounting to 'Other Misconduct' as provided under the Chartered Accountants Act 1949. Thus, since the decision of the CBI/ED or other adjudicating authorities is based on different parameters, it does not largely affect the decision of the Board.

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6. Thus, upon consideration of the facts and circumstances of the case, material on record and keeping in view the oral and written representation of CA. Girish Bherumal Gundesha before it, the Board decided to remove the name of CA. Girish Bherumal Gundesha (M.No.042885) from the Register of Members for a period of 3 (three) months and also imposed a fine of Rs.1,00,000/- (Rs. One Lakh only) upon him payable within a period of 60 days from the date of the receipt of the Order.

Sd/-

CA. Prasanna Kumar D.
(Presiding Officer)

Sd/-

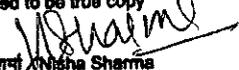
Ms. Dolly Chakrabarty (IAAS, rettd.)
(Government Nominee)

Sd/-

CA. (Dr.) Raj Chawla
(Member)

DATE: 10th June, 2022

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


निशा शर्मा / Nisha Sharma
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
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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/P/412/2017-DD/190/INF/2018/BOD/580/2020]

CORAM:

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

In the matter of:

CA. Girish Bherumal Gundesha (M. No. 042885), Pune in Re:

DATE OF FINAL HEARING : 20th December, 2021
PLACE OF HEARING : New Delhi/ Through video conferencing

PARTIES PRESENT (Through Video Conferencing):

Respondent : CA. Girish Bherumal Gundesha
Counsel for the Respondent : CA. Shashikant Barve

Findings:

Brief Background of the Case:

1. The brief background of the case is as under:-
 - a. During the course of Search action conducted by the Income Tax Department, Pune in the case of Worldwide Oilfield Machines Pvt. Ltd. and other concerns on 14/12/2016, new legal tender currency notes of Rs. 10.79 Crore was seized.
 - b. In this connection, statements of Shri Satyen Gethani and his two employees namely Shri Radhakrishan Nirmal and Shri Sagar Kadam were recorded on oath wherein they stated that the Respondent helped them in exchanging of old high denomination banned notes into new legal tender currencies notes.
 - c. The Respondent was the Chartered Accountant of Sh. Satyen Gethani and Sh. Kailash Chandan. Both the clients used to inform the Respondent on daily basis about the exchange of currency note transactions in order to intimate the memo of transactions.

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- d. The Respondent in his statement on Oath dated 30/12/2016 recorded under Section 131 of the Income Tax Act, 1961 stated that he knew Sh. Satyen Gethani, Partner of M/s. Ishanya Motors LLP (Ishanya Hyundai Showroom) as he was his client and he use to do auditing and taxation work for M/s. Ishanya Motors LLP. The Respondent further stated that he also knew Sh. Radhakishan Nirmal and Sh. Sagar Kadam as they were the employees of Sh. Satyam Gethani and they use to visit his office.
- e. The Respondent further affirmed that he himself use to handle all the individuals, firms and companies of Sh. Satyen Gethani.
- f. The Respondent further admitted on Oath that Sh. Kailash Chandan was also his client and was in business of real estate brokerage and insurance agent. Sh. Kailash Chandan was very close friend of Sh. Praveen Gupta. Sh. Praveen Gupta was related to Puranchand & Sons and also belongs to Mantra Group.
- g. In the statement of Sh. Satyen Gethani dated 14/12/2016 recorded under Section 133A of the Income Tax Act, 1961 photocopy of page seized from Mr. Annachatre regarding exchange of cash of M/s. Worldwide Oilfields Machine Pvt. Ltd. and other concerns was shown to Sh. Satyen Gethani and it was asked from him to explain the said page. Sh. Satyen Gethani, in response thereto, stated that the amount and date mentioned in front of paid to builder were routed through him. He has not received full amount of commission of 25% mentioned on the said page. Sh. Satyen Gethani has retained commission from 3% to 14.5% and remaining commission was retained by six different people to whom he has handed over old currency and received the new currency.

Charge alleged:

2. The Charge alleged against the Respondent is that he was identified as facilitator in exchanging Old High Denomination Banned Notes (OHDBN) into New Legal Tender Currencies during the course of Search in the case of Worldwide Oilfield Machines Pvt. Ltd. and other concerns on 14/12/2016 as per the communication received from the Directorate of Income Tax(Investigation).

Brief of Proceedings held:

3. During the hearing held on 20th December 2021, the Respondent alongwith his Counsel 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. Thereafter, the Respondent was put on oath. 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.

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On consideration of the documents and submissions on record, the Board concluded the proceedings in the case with a stipulation that if the Respondent wishes to submit any other information/documents in his defence, he may do so within a week.

4. Thereafter, the Respondent did not submit any further documents/submissions. Therefore, keeping in view the submissions and documents on record, the Board at its meeting held on 11th February 2022 decided on the conduct of the Respondent.

Brief of the Submissions of the Respondent

5. The Respondent in his written submissions dated 15/12/2021, inter-alia, stated as under:-
- a. The proceedings are wrongly based on the assumption that the exchange of old currency notes with the new currency notes, prior to 31st December 2016 is an illegal activity. The Respondent in this regard submitted a legal opinion to support his claim.
 - b. The proceedings are not maintainable under Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 due to non-compliance of the basic requirement about opinion of the Council not having been formed.
 - c. The time limit for initiating the proceedings as per Rule 8 (1) of CA Rules, 2007 is not followed and the notice was defective.
 - d. The Prima facie opinion was sent to the Respondent after 7 months of forming the same. The same is in violation of Rule 14(6) of the CA Rules, 2007.
 - e. Other basic principles as regards the inquiry/ evidence not followed:-
 - i. The complainant has to make out his case along with the documents/ proofs in order to prove charges raised against the Respondent.
 - ii. Informant has submitted only photocopies of certain extracts from the statements of few persons taken by the Income Tax Authorities and the same cannot be accepted as evidence in absence of those persons having been called to confirm their statements and opportunities being given to the Respondent to cross examine them.
 - iii. The PFO takes into account only certain extracts from the statement of the Respondent as recorded by the Income Tax Authorities during the course of survey under Section 131 of the Income Tax Act, 1961. Such statement under Income Tax Act cannot be used in any other proceedings like the current proceedings under CA Act against the Respondent. The Respondent submitted legal opinion in this regard to support his claim.
 - iv. Statement of the Respondent as recorded under Income Tax Act search cannot be used against Respondent. The Respondent stated that the same is in violation of Article 20(3) of the Constitution of India.

Observations of the Board:

6. The Board observed that the allegations raised against the Respondent pertain to demonetisation period i.e. 8th November, 2016 to 30th December, 2016 and during the said period a step towards curbing black money was initiated by the Government of India by withdrawing legal tender of existing Rs. 500/- and Rs. 1000/- Bank Currency Notes. The Board also noted that certain preliminary objections were raised by the Respondent in his written submissions and accordingly, the same were dealt with before arriving at the Findings on the conduct of the Respondent:-

6.1 As regards the preliminary objection that the proceedings are wrongly based on the assumption that the exchange of old currency notes with the new currency notes, prior to 31/12/2016 is an illegal activity, the Board took into view Notification No. RBI/2016-17/112 DCM (Plg) No.1226/10.27.00/2016-17 dated November 08, 2016 issued by the Reserve Bank of India wherein at Annexure-2 it was stated as under:-

"2. SBN held by a person other than a bank or Government Treasury may be exchanged at the 19 Issue Offices of the Reserve Bank of India and all branches of public sector banks, private sector banks, foreign banks, Regional Rural Banks, Urban Cooperative Banks and State Cooperative banks only upto and including December 30, 2016, on tender of the SBN subject to the following conditions:

(a) SBN of aggregate value upto ` 4000 only held by a person can be exchanged by him/her at any bank branch or Issue Office of Reserve Bank of India for any other denomination of Banknotes, provided a Requisition Slip as per format prescribed in Annex-5 is presented with proof of identity (as indicated in Annex-5), along with the High Denomination Banknotes.

(b) Where the aggregate value of the SBN tendered exceeds ` 4000, the equivalent value will be credited to the account of the tenderer maintained with the bank where the High Denomination Banknotes are tendered. The limit of ` 4000/- for exchanging SBN at bank branches or at Issue Offices of Reserve Bank of India will be reviewed after 15 days.

(c) There will be not be any limit on the quantity or value of SBN to be credited to the account of the tenderer, maintained with the bank where the SBN are tendered.

(d) The equivalent value of the SBN tendered can be credited to an account maintained by the tenderer at any bank in accordance with standard banking procedure and on production of valid proof of Identity.

(e) The equivalent value of the SBN tendered can be credited to a third party account provided specific authorization therefor accorded by the said account holder is presented to the bank, following standard banking procedure and on production of valid proof of Identity of the person actually tendering.

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(f) In accounts where compliance with extant Know Your Customer (KYC) norms is not complete, a maximum value of ` 50,000/- of SBN can be deposited.

(g) Cash Withdrawal from a bank account over the counter will be restricted to ` 10,000/- subject to an overall limit of ` 20,000/- in a week for the first fortnight.

(h) There will be no restriction on the use of any non-cash method of operating the account which will include cheques, demand drafts, credit/debit cards, mobile wallets and electronic fund transfer mechanisms.

(i) Withdrawal from ATMs would be restricted to ` 2,000/- per day per card up to November 18, 2016. The limit will be raised to ` 4,000/- per day per card from November 19, 2016 onwards. All ATMs will dispense ` 100 and/or ` 50 denomination Banknotes only until further instructions from RBI.

(j) For those who are unable to exchange their SBN on or before December 30, 2016, an opportunity will be given to them to do so at specified offices of the RBI until a later date, along with necessary documentation as may be specified by the Reserve Bank of India."

On consideration of said notification issued by the Reserve Bank of India (RBI), the Board observed that Specified Bank Notes (SBN) held by any person other than bank or Government Treasury may be exchanged at the 19 Issue Offices of the Reserve Bank of India and all branches of public sector banks, private sector banks, foreign banks, Regional Rural Banks, Urban Cooperative Banks and State Cooperative banks only upto and including December 30, 2016, on tender of the SBN and none other than the said specified agencies were authorised by the Government to act as facilitator to the said exchange of currency notes.

The Government of India through wide circulation of said notification by use of press, social media and other platforms for dissemination of information informed the Public at large the mode of exchange of such specified bank notes.

Keeping in view the facts of the case, the Board viewed that the plea of the Respondent that the said exchange of old currency notes with new legal tender currency notes through the professionals is not an illegal activity is not tenable as none other than the specified agencies were authorised by the Government to act as facilitator to the said exchange of currency notes.

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

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

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

- 6.3 As regards the plea of the Respondent that time limit for initiating the proceedings were not followed, the Board viewed that in terms of Rule 8(1) r/w Rule 11, a copy of the complaint or information shall be forwarded to the Respondent within 60 days of its receipt. The Rules have charted out a detailed disciplinary process and provide that on receipt, the complaint shall be acknowledged in the first instance and a scrutiny shall be carried out; in case any defects are found, they shall be removed. A Complaint gets registered only upon rectification of defects. Thus, it is evident from the Rules that registration of complaint/Information case is a pre-requisite for forwarding the copy of complaint/information to the Respondent member/firm. Further, 60 days' time limit has to be computed from the date of registration of the Complaint/Information and not otherwise as alleged. Since the Information letter in the instant case had been issued to the Respondent within 60 days of registration, the Board viewed that the plea raised by the Respondent is not sustainable.
- 6.4 As regards the plea of the Respondent that Prima Facie Opinion formed was on 15/07/2020 but has been forwarded to the Respondent on 25/01/2021 and the hearing in the case was fixed on 29/01/2021 i.e. after seven months of forming the same, the Board took into view the provisions of Rule 14 (6) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 which provides as under:-

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"The Presiding Officer of the Board of Discipline shall fix a date, hour and place of hearing, which shall not ordinarily be later than 45 days from the date of receipt of prima facie opinion....."

The Board noted that the Prima Facie Opinion in the instant case was considered by the Board at its meeting held on 14th October 2020 and the decision of the Board on the said Prima Facie Opinion together with the date of hearing as 29th January 2021 was communicated to the Respondent vide letter dated 25th January 2021. The hearing on the said date and thereafter on 8th February 2021 had been adjourned at the request of the Respondent. Subsequently, the case was fixed for hearing on 20th December 2021. The Board noted that despite disruptions posed by COVID, due compliance with the applicable Rules was made.

The Board was also of the view that the timelines prescribed in the CA Rules are with an intention to expedite and ensure timely completion of the Disciplinary proceedings and it is not the intent of legislation to render any complaint/ information defunct/ invalid merely on the ground of procedural time lag, if any occurred. Accordingly, the request of the Respondent to shelve the proceedings on the ground of timelines defined under the CA Rules 2007 is not maintainable.

- 6.5 As regards the plea of the Respondent that the basic principles of inquiry/ evidence were not followed, the Board viewed that the proceedings before the Board of Discipline are quasi-judicial in nature where the misconduct can be proved by preponderance of probabilities having regard to the conduct of the Respondent which is distinct from Criminal proceedings where the misconduct has to be proved beyond reasonable doubt. While coming to the said view, the Board took into consideration the decision of the Hon'ble Supreme Court in the matter of "Ajit Kumar Nag –vs- General Manager (PJ) Indian Oil Corporation Limited-AIR 2005 SC 4217 wherein the Hon'ble Apex Court held as under :-

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

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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 strict Rules of Evidence may not necessarily be considered while examining the conduct of the Respondent as the question to be considered before 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 Board held that as per Rule 14 (1) of the CA Rules 2007, the Board follows the Summary disposal procedure in dealing with the cases before it. Further, Section 21C of the Chartered Accountants Act, 1949 empowers the Board to summon and enforce the attendance of any person and examining him on oath, discovery and production of any documents and receiving evidence on Affidavit. The said power is exercised by the Board on a case to case depending upon the facts of the case. The Board also took into view the following observation made by the Apex Court in Union of India -vs- Orient Engg. & Commercial Co. Ltd. (1977 AIR 2445, 1978 SCR (1) 622) as under while coming to the said view :

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

The documentary evidences on the basis of which case has been initiated against the Respondent and which have been relied upon while forming the Prima Facie Opinion have been duly shared with the Respondent.

Thus, the Board did not accept the plea of the Respondent to enable him to examine all the witnesses who deposed before the Informant Department against him and allow him to wait to submit his defence till the copy of said Statements were made available to him. Accordingly, the case was dealt with on its merits by the Board of Discipline, keeping in view the submissions and documents on record.

7. As regard the charge of facilitation in exchanging old high denomination banned notes with new legal tender currencies, the Board noted as under:-
 - 7.1 During the examination of the Respondent dated 30/12/2016 on Oath under Section 131 of the Income Tax Act, 1961 recorded by Dy. Director of Income Tax (Inv), Unit 2 (IV), Pune, the Board noted that the Respondent himself provided the details of alleged transactions and how the same were routed. The Board further noted that the Respondent was aware of transactions being CA of both Shri Satyen Gethani and Shri Kailash Chand and the said deposition is reproduced as under:-

Ans

"Q.9 During the course of survey action under section 133A of the Income-tax Act, 1961, a statement of Shri Satyen Gethani was recorded on oath on 14/12/2016. Please go through the statement. The relevant portion to you of his answer to question no. 35 is reproduced as under:

2) On 03.12.2016,

Out of remaining 57 lakhs, Rs.45 lakhs cash was exchanged by Girish Gundesha in the same manner as discussed above.

3) On 05.12.2016,

a) The cash of Rs. 90 Lakhs was exchanged by Girish Gundesha through his person in the same manner as discussed above. Nirmal came back with the cash of Rs.73,80,000/- in new currency after deducting their commission.

5) On 07.12.16,

d) The cash of Rs. 1 Cr was converted by Shri Girish Gundesha through some person in the manner told by me in above para.

6) On 08.12.16,

b) Girish Gundesha sent his person to my house and he took away cash of Rs. 70 Lakhs in old currency notes. He came back with new currency notes amounting to Rs.58,80,000 to my house.

7) On 09.12.16,

a) Out of this total amount, cash of Rs. 80 Lakhs was collected by person sent by Girish Gundesha. That person came back with new currency notes after around 1-2 hours after deducting commission."

Please state whether this is true.

Ans. On going through the above statement of Shri Satyen Gethani, it appears that his statement is inconsistent and repetitive in nature and as mentioned earlier in my answer to questions above, I have stated that I or my staff were not involved directly or indirectly in the above transactions executed by Shri Satyen Gethani and also I was not in town on 08/12/2016 and 09/12/2016. Therefore, the statement of Shri Satyen Gethani is not correct. Also, I do not know residence of Shri Satyen Gethani nor have I ever visited his residence.

Q.10 Do you know Shri Radhakishan Nirmal & Shri Sagar Kadam?

Ans. I am aware that they are employees and Shri Satyam Gethani and they do visit my office for Satyen Gethani's work as I handle all the individuals, firms & companies of Shri Satyen Gethani.

Q11. A statement of Shri Radhakishan Nirmal was recorded under section 131 of the Income-tax Act, 1961 on 20/12/2016. The relevant portion of his statement is reproduced as under:

Ans

On 02.12.2016 I was at the site office of Fossil Fiesta site at Dhankawadi when I got a call from Shri Satyen Gethani at around 4 pm. He called me to office. He handed over me a bag and told me it contains money and asked me to take the same to Shri Girish Gundesha at market yard. He also asked me to take money from Girish Gundesha and come back to office. He also informed Shri Girish Gundesha that I shall be coming near the "round building" inside gate no. 9 of market yard with the cash. I met Shri Gundesha at the said place around 5:30 pm. He took the bag from me went away and came back in approximately half an hour. He handed over me the same back and told me it contains money. Then Shri Gundesha called Shri Satyen Gethani and told him that he had handed over the money to me. Then I immediately came back to Ishanyo Hyundai office at Balaji Nagar and handed over the bag to Shri Satyen sir in his cabin on the first floor.

Please go through above statement and offer your comment.

Ans. The above statement is totally incorrect and I have not visited market yard on 2.12.2016.

Q.12 A statement of Shri Radhakishan Nirmal was recorded under section 131 of the Income-tax Act, 1961 on 20/12/2016. The relevant portion of his statement is reproduced as under:

On 03.12.2016, at around 12:30 pm Shri Satyen Gethani gave one bag each to me and Sagar Kadam and asked to go to Shri Girish Gundesha in market Yard, At Market Yard Shri Gundesha took me to some shop behind round building and took the bags with money. After about half an hour he gave us back the bags with new currency notes. Then we came back to Ishanya Hyundai office at Balaji Nagar and handed over the bags to Shri Satyen Sir.

On 05.12.2016 Shri Satyen Gethani again gave us (I and Sagar Kadam) one bag each and asked to meet Shri Gundesha at the same shop I met him on 03.12.2016. Again Shri Girish Gundesha took the money and gave us back new currency notes. We took the bags back to Shri Satyen Gethani at his house behind Mount Carmel School in Lullanagar.

On 06.12.2016 again Shri Satyen Gethani gave us (I and Sagar Kadam) one bag each and asked us to meet Shri Gundesha at the same shop I met him on 03.12.2016 & 05.12.2016. Again Shri Girish Gundesha took the money and gave us back new currency notes. We took the bag back to Shri Satyen Gethani at his house behind Mount Carmel School in Lullanagar.

On 07.12.2016, also we met Shri Girish Gundesha, Shri Dinesh Mehta Shri Rahul Ranka and Shri Suresh Oswal and exchanged money at the same places as we did on 06.12.2016 and gave money back to Shri Satyen Gethani at his residence at Lulla Nagar.

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On 10.12.2016 also I exchanged money with Shri Girish Gundesha at the same place and returned the bag back to Shri Satyen Gethani at his showroom.

Please offer your comments on the above sequence of incident.

Ans. This is totally incorrect.

Q.13 A statement of Shri Sagar Kadam was recorded under section 131 of the Income-tax Act, 1961 on 15/12/2016. The relevant portion of his statement is reproduced as under:

Q.6 Please furnish all the details about the other work done by you.

Ans. First time on 3/12/2016 around 3:30 to 4:00 PM at Ishanya Motors LLP, at 15/5, Opposite Shankar Maharaj Math, Pune Satara Road, Pune, Satyen Gethani sir gave me a bag full of old currency notes of Rs. 500 & 1000 and asked me to go to Market Yard and to give the money to Girish Gundesha. I went to Market Yard, Pune at Gate No. 9 on Bullet having no. MH12LM240 and called from my mobile no. 9665743665 to Girish Gundesha on mobile on 9822007650. Thereafter, he came and took bag from me and asked me to wait. I waited there for 30-40 minutes. After that he came and gave me a bag and said that in that bag there is money. I saw the bag and found currency notes of Rs. 100 & 2000. I didn't count notes. I came back to this office and gave that bag to Gethani Sir.

On 9.12.2016, Gethani sir called me around 10:30 AM and asked me to reach at his home at Padma Vilas Enclave, Row House no.5, Wanwadi, Pune. I reached there around 11:30 AM Mr. Dhananjay, Mr. Mayur and Mr. Amol, employee of Mangesh Annachattre were present there. They gave me a bag full of old currency notes of Rs. 500 & 1000. After sometime Mr. Kailash (Girish Gundesha's person) came there and gave me a bag having currency notes of Rs. 100 & 2000, which I seen. Subsequently, I gave that bag having currency notes of Rs. 100 & 2000, to Mr. Dhananjay. After that they started counting those notes on note counting machine. After counting they went and came back after lunch around 2:00 PM with old currency notes of Rs. 50,00,000/-

Ans. The statement of Sagar is not correct and also I have not handled any bag or exchange any currency myself personally.

Q.14 Do you want to say that statement of Shri Satyen Gethani, Radhakishan Nirmal and Sagar Kadam under oath under section 131 the IT Act, 1961 is lie.

Ans. The statement given by them are not fully correct and more particularly I have not visited on 2.12.2016 to Market Yard.

On 3rd of December Satyen Gethani asked the address of the market yard party where his person has to be sent. I confirmed with Kailash Chandan who directed to send them to Praveen Gupta of Puranchand & son's godown. Accordingly Satyen's men exchanged with Praveen Gupta there and there as

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answered by Satyen Gethani in answer to question no.35 b and also clarified in his recorded statement that that person handed over the new currency after deducting that person's commission.

Q.15 Who are Mr. Kalish Chandan and Praveen Gupta.

Ans. Kailash Chandan is my client who is into real estate brokerage and insurance agent and very close friend of Praveen Gupta. Praveen Gupta is related to Puranchand & Sons and also belongs to Mantra Group.

Q.16 What is your role in the exchange done on 2 & 3rd December.

Ans. I have no role to play on 2nd of December and on 3rd of December I have introduced Satyen Gethani to Kailash Chandan through whom all the transactions were routed.

Q.17 What do you want to say about the currency exchange took place on 5/12/2016, 6/12/2016, 7/12/2016, 8/12/2016, 9/12/2016 & 10/12/2016.

Ans. I wish to state that I was not in town from 7am of 8.12.2016 as it was my wedding anniversary and I along with my wife had gone to Mahableshwar in my own Car stayed overnight and returned to Pune on 9.12.2016 evening. As far as the other dates are concerned that is on 5th, 6th and 7th Kailash was handling the transactions directly with Praveen Gupta and others. He also informed me later that he himself along with Praveen Gupta visited Satyen Gethani's residence on 9.12.2016 and later to Gethani's Showroom. Since both were my clients that is Satyen and Kailash, they used to inform me telephonically about their transactions. On 10th of December, no transactions had taken place between them. I can say this because Satyen used to call me at the end of the day for keeping the memo of transactions as I was his CA.

....."

7.2 During the further examination of the Respondent dated 03/01/2017 on Oath under Section 131 of the Income Tax Act, 1961 recorded by Dy. Director of Income Tax (Inv), Unit 2 (IV), Pune, the Board noted that the Respondent himself admitted his role as facilitator to the alleged transaction and the said deposition is reproduced as under:-

"Q.3 Shri Girish Gundesha, you are requested to go through Satyen Gethani's reply above and offer your comments.

Ans. As mentioned by Shri Satyen Gethani that I was point of contact between his employees and Kailash Chandan and his clients which I have replied in my answer to question no. 14 and the amount was exchanged at Kailash's client's place at Market yard. Further, the amount mentioned on various dates in question no. 6 is incorrect and as mentioned the exchange of money had taken place at Kailash Chandan's client's office after deducting their commission. My role was as a facilitator between these two parties and I confirm that I have not received any commission from Satyen Gethani nor from Kailash Chandan.

Ans

Q.4 Shri Girish Gundesha, please elaborate what was your role as a facilitator?

Ans. As mentioned earlier on 03/12/2016, I introduced Shri Satyen Gethani's employees to Kailash Chandan's client Shri Praveen Gupta of M/s Puranichand & Sons at market yard. Praveen Gupta or any of the other clients of Shri Kailash Chandan have no business relation with me or not even known to me prior to this. On 03/12/2016, since Kailash was in Lonavala he requested me to personally show the address of Market Yard and oblige. Since both Satyen Gethani and Shri Kailash Chandan were known to me, I did not mind in showing the address of Shri Praveen Gupta's godown at Market Yard as directed by Shri Chandan as I also did not know the address. On 07/12/2016, Satyen Gethani informed me telephonically that his person was coming and I informed Kailash Chandan. I didn't go there they themselves exchanged. Amount was around 55 Lakhs. On 08/12/2016, there was no transaction. On 09/12/2016, Satyen informed that they have exchanged Rs. 1 Cr. On 10/12/2016, there was no transaction. On 13/12/2016, they have informed that 80 Lakhs was transacted."

The Respondent in his defence further stated that he has submitted Retraction of recorded statement on 03/01/2017 in the matter of Satyen Gethani vide his letter dated 27/03/2019 addressed to the Office of the Deputy Director of Income Tax (Investigation), Unit – II (2), Pune.

Upon perusal of the said Retraction letter dated 27/03/2019, the Board viewed that the extant case was initiated vide information letter dated 24th October, 2018. At the stage of Rule 8(5) of CA Rules 2007, additional information was sought from the Respondent with respect to retraction statement, if any filed by him with the Informant Department vide Institute's letter dated 13th March 2019. Considering the said facts on record, the Board viewed that the said plea is only an after thought. Accordingly, the said plea of the Respondent is not sustainable.

The Board noted that the Informant Department has duly placed on record extract of relevant Statement of witnesses recorded under the provisions of the Income Tax Act, 1961 i.e. statement of Sh. Radhakrishnan Nirmal, Sh. Kailash Chandan and Sh. Satyen Gethani and the said depositions of witnesses were on Oath duly recorded before the concerned Officials of Informant Department. After considering the same and overall facts of the case, the Board was of the view that apart from the Statement of the Respondent recorded before the Informant Department which he subsequently retracted, there were ample evidences to show that the Respondent had used his professional knowledge and his professional association for undesirable purposes.

8. The Board noted that the Respondent himself accepted in his Written Submissions that he introduced Shri Kailash Chandan with Shri Satyen Gethani and they directly got in touch with each other for managing the exchange of old currency notes with the new currency notes and subsequently the payment and the commission was directly handled by them. The Board is of the considered view that the Respondent was fully aware and conscious of

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the fact that the purpose of introducing the two parties was to culminate the transaction between them for exchange of old currency notes with the new currency notes which is an illegal activity. It is also observed that denial of the Respondent is limited to his role with regard to accepting any commission for the transaction that happened between the parties in question, but, nonetheless, the Respondent has clearly admitted in his Statement on oath in answer to question 17 that he being the Chartered accountant of the parties, they were keeping him fully informed of the transactions between them. Further Mr. Shri Kailash Chandan and Shri Satyen Gethani both clients of the Respondent in their respective Statements before the Informant Department have stated that the Respondent was helping them in exchanging the old currency note in new ones on commission basis.

9. The Board further viewed that during the hearing of the case on 20th December, 2021, the Counsel of the Respondent contended that the cash transactions of about Rs. 40-50 Lakhs were taken note of by the Respondent on behalf of his clients who were involved in real estate transactions during the demonetisation period and the same was not illegal. The facts revealed during the said hearing are as under:-
- a. There were two parties one is Kailash Chandan and another one is Satyan Ghetani. Both were the friends of the Respondent and later on they became the audit clients.
 - b. Sh. Satyan Ghetani is a builder and developer and also has various car agencies. Sh. Kailash Chandan is involved in real estate broking activities and he also conducts the insurance activities. So both are involved in real estate activities and there is a mention of third party from whom they have said that they have exchanged the money, Sh. Praveen Gupta, he is also involved with Mantra Group that is the real estate activity.
 - c. Sh. Kailash Chandan requested the Respondent that he should introduce him to Sh. Satyan Ghetani and he agreed but he was not aware of what type of transaction they want to enter into because both were in the real estate activities.
 - d. The Presiding Officer asked the Counsel of the Respondent to explain whether the said cash transactions were related to business transactions, on this query it was stated: "*the note has been taken by him because his clients were in the real estate builder developer or even the broking of real estate, some transactions they informed him only just to keep a note of that. The details would be given at the time of finalisation.*"
 - e. The Board, after analysing the facts of the case, viewed that on one hand, the Respondent was knowingly making record of cash transactions of Rs 40-50 lakhs and helping in the generation of black money which in itself is an offence and on the other hand, the Chartered Accountants were not one of the exempted category who could deal in banned notes post demonetisation.
10. The Board further viewed that the Respondent as a Chartered Accountant was aware that demonetisation was introduced to curb black money in the economy. He was the auditor of the alleged persons and was complicit in handling cash beyond permissible limits under Income Tax Act 1961 but to

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defeat demonetisation by exchanging old cash into new currency notes in violation of Government Policy is certainly unbecoming of a Chartered Accountant. The Board further observed that the Respondent has failed to provide any evidence on record to prove that he was not involved in the said offence of exchanging of old high denomination banned notes into new legal tender currencies and charging hefty commission for the said exchange of banned currency notes.

11. The Board was also of the view that the Respondent should know about the Government policies with respect to the withdrawal of legal tender of old currency notes with newly issued currency notes and should not become a facilitator for the activities prohibited by law. Such an action on the part of the Respondent is clearly unbecoming of a Chartered Accountant. Accordingly, the Respondent is held Guilty in respect of the Charge alleged.

CONCLUSION:

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

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

DATE: 11th February, 2022

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

[Signature]

अरुण कुमार / Arun Kumar
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
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