



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

PR-50/17-DD/108/17-BOD/455/2017

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

[PR-50/17-DD/108/17-BOD/455/2017]

**In the matter of:**

**Shri Prabhu Dayal Kodwani**  
Flat No. 605, Building No. 4B,  
Oshiwara Blossom Coop HSG Soc. Ltd.,  
Patliputra Nagar, Link Road,  
Oshiwara, Jogeshwari (W),  
**Mumbai-400102**

**...Complainant**

**Versus**

**CA. Vinay Khemchand Gupta (M.No.030747)**  
AT No. 223, Oshiwara Shantivan CHS Ltd.,  
New Link Road  
Andheri (W)  
**Mumbai- 400053**

**...Respondent**

**MEMBERS PRESENT :**

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

**Date of Hearing: 24<sup>th</sup> May, 2022**(Physical/ Video Conferencing)

1. The Board of Discipline vide its Report dated 11<sup>th</sup> February 2022 held that CA. Vinay Khemchand Gupta 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) As per Assessment Order dated 29/12/2016, the Respondent was authorised representative of Mrs. Mysha Israr Ahmed Qureshi and attended the Income Tax case from time to time and submitted the details as called for. An addition of Income to the tune of Rs. 18,42,255.00 was made in the ITR on account of unexplained cash, whereby it was coming out that there is tax demand upon Mrs. Karuna (daughter of the Complainant).

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- (b) As per the Charge Sheet filed before the Hon'ble Special Judge for Greater Mumbai at Mumbai in case FIR No. RC BA1/2016/A0039 dated 30/12/2016 under Section 120B Indian Penal Code and Sections 7, 12 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, the Respondent was caught red handed and was charged for the offence of conspiracy and his name was mentioned in Column 11 as (A-2). The tainted amount of Rs. 50,000/- was recovered from the table of Respondent which he stated to be his professional fees.
- (c) The contention of receipt of professional fee raised by the Respondent seems to be unacceptable and contradictory as the amount of professional fees to be charged for attending scrutiny proceedings for one Assessment Year can be either Rs. 50,000/- or Rs. 10,000/- and the mode of receipt can be either cash or cheque. The Board viewed that the Respondent was trying to be tactful before it by manipulating the facts and covering up the bribe amount in the garb of professional fee without any document/ evidence to corroborate such submission.
- (d) Offering gratification to a Public servant in return to perform Public function is a serious offence and in the instant case, the Respondent himself became a facilitator to the said Act.
2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against CA. Vinay Khemchand Gupta and communication dated 17<sup>th</sup> May, 2022 was addressed to him thereby granting him an opportunity of being heard in person and/or to make written representation before the Board on 24<sup>th</sup> May, 2022.
3. CA. Vinay Khemchand Gupta was present before the Board on 24<sup>th</sup> May, 2022 through video conferencing alongwith his Counsel CA. Shailendra Singh as he had difficulty in hearing on account of an operation for sinus and thus, requested the Board to allow his Counsel to make submissions on his behalf. Looking into the health condition of the Respondent, the Board acceded to his request. Thereafter, the Counsel for the Respondent made his oral representation before the Board. He reiterated the submissions which were made earlier by the Respondent before the Board at the time of enquiry. He further requested the Board to take a lenient view in the matter as the Respondent had an unblemished career of around 39 years.
4. The Board has carefully gone through the facts of the case along with the oral representation of the Respondent.



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5. Thus, upon consideration of the facts and circumstances of the case, material on record and keeping in view the oral representation of CA. Vinay Khemchand Gupta before it, the Board decided to remove the name of CA. Vinay Khemchand Gupta (M.No.030747) from the Register of Members for a period of 01 (one) month and also imposed a Fine of Rs.50,000/- (Rs. Fifty Thousand only) upon him payable within a period of 60 days from the date of the receipt of the Order.

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

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

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

DATE: 24<sup>th</sup> June, 2022

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

*M. Gupta*  
मीनू गुप्ता / Meenu Gupta  
कार्यकारी अधिकारी / Executive Officer  
अनुशासनात्मक विदेशालय / Disciplinary Directorate  
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया  
The Institute of Chartered Accountants of India  
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032  
ICAI Bhawan, Vishwas Nagar, Shahdara, Delhi-110032

CONFIDENTIAL**BOARD OF DISCIPLINE****Constituted under Section 21A of the Chartered Accountants Act 1949****Findings under Rule 14(9) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007****File No. : PR-50/17-DD/108/17-BOD/455/2017****CORAM:****CA. Prasanna Kumar D., Presiding Officer (in person)  
Smt. Rani Nair, (IRS, Retd.), Government Nominee (through video conferencing)****In the matter of:****Shri Prabhu Dayal Kodwani  
Flat No. 605, Building No. 4B,  
Oshiwara Blossom Coop HSG Soc. Ltd.,  
Patliputra Nagar, Link Road,  
Oshiwara, Jogeshwari (W),  
Mumbai-400102****...Complainant****Versus****CA. Vinay K.Gupta (M.No.030747)  
AT No. 223, Oshiwara Shantivan CHS Ltd.,  
New Link Road  
Andheri (W)  
Mumbai- 400053****...Respondent****DATE OF FINAL HEARING : 10<sup>th</sup> January, 2022  
PLACE OF FINAL HEARING : New Delhi / through video  
conferencing****PARTIES PRESENT:****Respondent : CA. Vinay Khemchand Gupta  
Counsel for the Respondent : Sh. Shailendra Singh, Advocate****FINDINGS:****Brief of the Case:**

1. Ms. Karuna Kodwani alias Mysha Israr Ahmed Qureshi, is the daughter of the Complainant and a noted nutritionist and yoga expert by profession. The Complainant alleged that the Respondent along with Mr. Navin Kumar (IT Officer) of Piramal Chambers, Mumbai has aided and abetted to cheat and conspire against Ms. Karuna Kodwani. The Respondent warned the Complainant's daughter that her Income Tax Return has come under scrutiny and the only way to settle it, is through bribe of Rs.

10,00,000/- to Mr. Navin Kumar (IT Officer) or face the Order amounting to penalty of Rs. 1.81 crores. However, Ms. Karuna Kodwani filed a complaint with CBI on 29th December, 2016, wherein the CBI started investigation and confirmed that demand was made on 30th December, 2016. After confirmation, it laid a trap with the help of Complainant. After recording the demand, an initial payment of Rs. 50,000/- was made as a first instalment. The bribe was demanded as on 27.12.2016 and 29.12.2016, wherein the Complainant appeared personally and found the Respondent asking him to pay the bribe amount to the IT Officer for extending favour and ignoring certain facts in Income Tax Return. The Respondent was caught red-handed by CBI on 30.12.2016 while accepting bribe money of Rs. 50,000/- as initial payment. Both the Respondent and Mr. Navin Kumar (IT Officer) were remanded for three days and were in judicial custody till 31.01.2017.

**Charge Alleged:**

2. The Respondent aided and abetted alongwith Mr. Navin Kumar, Income Tax Officer, Mumbai and cheated/conspired against Ms. Karuna Kodwani alias Mysha Israr Ahmad Qureshi and demanded bribe of Rs. 10 lakhs for settling Income Tax assessment of Ms. Qureshi. The Respondent was caught red-handed by the CBI on 30.12.2016 while accepting bribe of Rs. 50,000.00 as initial payment and was arrested. Thereafter, he was under remand for 3 days. Thus, the allegation against the Respondent is that he was blackmailing the Complainant's daughter and further demanding an amount of Rs. 10,00,000/- for getting her Income Tax case settled.

**Brief of Proceedings held:**

3. During the hearing held on 29<sup>th</sup> December 2021, the Complainant was present before the Board through video conferencing, was put on oath, he confirmed that he has read and understood the contents of the modalities and protocols of e-hearing and follow them. The Board also noted that although the Counsel for the Respondent was there in the waiting room at the scheduled time of hearing but, was not available at the time when the case was taken up for hearing. Thereafter, the Board questioned the Complainant as to the difference in the signature in Form 'I' at the place of verification and the place of signature. The Complainant clarified that at the place of signature, her daughter had signed and at the place of verification, he had signed as he had attended the Income Tax scrutiny case of his daughter on her behalf. It was clarified to him that at both the places in Form 'I', the signature of the Complainant has to be there. Thus, the Board asked the Complainant to submit an affidavit to the effect that the complaint had been filed by him only. The Complainant made his further submissions before the Board. The Board also noted that at the time of last hearing held in the case on 20th December 2021, the Board had directed the parties to the case to provide the following which had been submitted by them:

**The Respondent:**

1. Copy of the Discharge Application filed before the CBI Court alongwith the copy of the Orders passed therein, if any.

**The Complainant:**

1. Provide the transcript of whatsapp message received from CA. Vinay Khem Chand Gupta.

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During the hearing held on 10<sup>th</sup> January 2022, the Respondent alongwith his Counsel was present before the Board through video conferencing. However, the Complainant was not present. Since the submissions of the Complainant were already on record as he was available at the time of last hearing held in the case on 29th December 2021, the Board decided to proceed ahead with the hearing in the case. Thereafter, the Counsel for the Respondent made his submissions before the Board. On consideration of the documents and submissions on record, the Board concluded the proceedings in the case with the direction to the office to provide a copy of the Notes of hearing held in the case to the Complainant to provide his comments thereon, if any within 2 days of the receipt of the same. Accordingly, the decision on the conduct of the Respondent was kept reserved by the Board. The Board noted that subsequent thereto, no comments of the Complainant had been received. Thus, on consideration of the documents and submissions on record, the Board at its meeting held on 11th February 2022 decided on the conduct of the Respondent.

**Brief Submissions of the Respondent:**

4. The Respondent in his defence, inter-alia, stated as under:-
- a. The covering letter No DP BAI 2017/3795 dated 29.09.2017 alleged to have been written by Superintendent of Police CBI ACB Mumbai on the basis of which Institute has sent to Respondent the above-mentioned letter does not mention his name, hence there is no information against Respondent as per the letter.
  - b. The Final Report Form attached does not bear any signature of the Authority who has made the report. The so called information should be treated as anonymous as it was not signed by the concerned Authority and hence it falls under para 7(3) of Chapter 11, the Gazette of India which states an anonymous information received by the Directorate will not be entertained by the Directorate.
  - c. The information can only be authenticated when the opinion of the Chemistry/ Physics Division of CFSL is received and confirms the Findings. This report is awaited.
  - d. The Expert Opinion for the WhatsApp on the mobile phones (awaited) from CFSL Hyderabad hence information cannot be authenticated.
  - e. Expert Opinion (GEQD) on the specimen signature/ hand writing of the Respondent is awaited, hence, information cannot be authenticated.  
Therefore for the said reasons, as the report sent to ICAI against the Respondent does not bear his name and is not signed by any Authority it falls within the purview of as anonymous. Also, certain reports stated above are awaited which are important to move ahead in the case, till such time these opinions and defects are not removed the so-called information should be treated as cooked up story based on which it will be unfair of the Institute to seek Respondent's clarification.
  - f. The Respondent has filed Discharge application in the Sessions Court against the FIR filed, the outcome of which is pending.
  - g. The Complainant is a habitual Complainant having high connection in Income Tax Department and CBI. In the scrutiny assessment of the assessee the Income Tax Returns for the previous year was filed by the daughter of the Complainant who insisted on meeting the Income Tax Officer to browbeat him into accepting the returns filed by Complainant on behalf of the Assessee, even

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when that return was invalid due to non-submission of the acknowledgement for that year. The Respondent have been made a scape goat in the said matter and he has been used by the Complainant to target the ITO (Income Tax Officer). The reasons which will point out that there was a conspiracy to frame the Respondent with malicious intentions are as under:-

- i. The Complainant met the Income Tax Officer directly on 27<sup>th</sup>, 29<sup>th</sup> and 30<sup>th</sup> December 2016. On 27<sup>th</sup> December 2016, the submission on behalf of the assessee was given to the Income Tax Officer by the Complainant himself and was told to accept the submissions in toto and not to raise any demand for which the Complainant offered gratification to do things as per his desire.
  - ii. On 29<sup>th</sup> December 2016 when the Complainant met the ITO he was informed about the assessment being finalised and the outcome is demand. This was not acceptable to the Complainant who once again tried to influence the Officer both financially and using his contacts in the Department to get the work done, this was again rejected by the Officer tactfully. The Complainant was now aware that he had lost the battle and hence used his contact in the CBI to lodge a complaint at around 8.00pm (which can be verified from his call records). In the meantime the ITO uploaded the Assessment Order on 29<sup>th</sup> December, 2016.
  - iii. On 30<sup>th</sup> December 2016 the Complainant once again visited the Income Tax Officer and as per instructions of the CBI. He tried to create false evidence against the officer and the Respondent, in which once again he was unsuccessful.
  - iv. On 30<sup>th</sup> December, 2016 around 7.30 the Complainant came to Respondent's office to pay Respondent's fees of Rs. 50000/- as no fees was paid to the Respondent by the assessee. It can be seen from Respondent's bank statements that there is no fee received by Respondent from him. Further there are no payment receipts submitted by the Complainant to the CBI. There is nothing on record, material collected by the CBI and documents annexed to the Chargesheet to show that he had paid Respondent any fee. The Respondent had also stated in his bail application about the fact that Rs. 50,000/- was paid to him as a fee. Despite this defence taken by Respondent and the Chargesheet being filed at a later stage, the Complainant could not produce any receipt of payment of fee made to Respondent. It can be seen that in the disguise of paying Respondent's fee he was wrongfully made a scapegoat by the Complainant in the said matter. It was a planning to get even with the ITO for not toeing to the line of the Complainant and also his daughters in-laws' and their associates, the Respondent being one of them.
- h. In the alleged whatsapp message supposed to have been sent from Respondent's mobile on 22<sup>nd</sup> December 2016, the Complainant has not made any complaint to the CBI on 22<sup>nd</sup> December, 2016 itself or the very next day. The Complainant has also not changed the Chartered Accountant and continued with the services of the Respondent.
- i. It is the Complainant's own case that he went to the ITO and spoke to him for the bribe amount. Nowhere in his written complaint to the CBI the Complainant has mentioned that the ITO had directed the Complainant to make the payments of alleged bribe to the Respondent. In the absence of such Statement it is crystal clear that Respondent was nowhere in the picture and he was made a scapegoat to seek vengeance against the ITO.

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- j. It is pertinent to note as to why a complaint was made on 29<sup>th</sup> December, 2016 evening, when the Complainant was aware of the outcome of the scrutiny. It is only after the ITO closed the hearing and was passing an Order that the Complainant left his office and filed a written Complaint on 29<sup>th</sup> December, 2016. Thereafter the FIR was registered on 30<sup>th</sup> December 2016 in the evening.
- k. Once the Assessment Order is uploaded on the Income Tax portal, it cannot be changed, it can only be rectified u/s 154. The records of the said matter can be verified and can be seen that when the offers of bribe from the Complainant failed to distract the ITO from performing his duties the Complainant to seek vengeance filed a false Complaint.
- l. The Respondent has no criminal antecedents and no complaints except the present one. The conduct of the Respondent can be seen that in 39 years of his career no such complaint was filed against him.
- m. In para 1 of the complaint, the name of the Complainant is Prabhu Dayal Kodwani while on page C-4, the person who has signed the Form I and the person who has verified the Form are different, hence, the Form I is defective and not valid and no proceedings can be conducted on defective complaints. The legal notice sent by the advocate DK Melani of the Complainant is not signed and hence should be treated as defective notice on which no action should be taken.
- n. The complaint made with CBI on 29/12/2016 was made by the father of the Ms. Karuna Kodwani and not by Ms. Karuna Kodwani.
- o. Mr. Iqbal Ahmed Qureshi whose professional work was handled by the Respondent requested the Respondent to do the work of Ms. Mysha Israr Ahmed Qureshi and it was not the Complainant who had engaged the Respondent directly. In page C-2 para 2 of the complaint, it was claimed that she had engaged Respondent which is false.
- p. The Complainant Mysha Israr Ahmed Qureshi has claimed that he has asked her to pay illegal gratification to the tune of Rs. 10 Lacs to one Mr. Navin Kumar for settling Income Tax assessment and has also submitted a WhatsApp message alleged to have been sent by the Respondent to Iqbal Ahmed Qureshi, while the Complainant claimed that he had informed that the office is asking for bribe, no where she is able to prove that Respondent has asked her to pay. The claim is in contradiction to itself.
- q. The Respondent further highlighted various discrepancies in the complaint filed with CBI, complaint filed with ICAI, prima facie opinion and the Income Tax Proceedings and concluded that complaint filed with ICAI is false.
- r. The Respondent was officially appointed to attend the Income Tax scrutiny of Mysha Israr Ahmed Qureshi and was attending the proceedings on all days. It was confirmed as per the noting in the Assessment Order passed by the ITO on 29/12/2016. Further, as per complaint filed with CBI by the Complainant on 29/12/2016, ITO demanded money. But the fact is that the Complainant offered bribe to the Officer when it became evident that the Officer is going to add an

amount on which tax will become payable, as Respondent was present in his official capacity, he was compelled to witness the offer made by the Complainant, hence, the Respondent has disclosed this in para 3 of his written statement.

**Observations of the Board:**

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

5.1 As regard the plea of the Respondent that since the report sent to ICAI against the Respondent does not bear his name and is not signed by any Authority it falls within the purview of anonymous, the Board noted that the instant case had been initiated against the Respondent on the basis of a formal complaint filed in Form 'I'. The Board further noted that a letter of allegation was also received by the Disciplinary Directorate from Shri S Jaikumar, Superintendent of Police, Central Bureau of Investigation, Anti-Corruption Branch, Bandra-Kurla Complex, Bandra (East), Mumbai case reference number DISC/MISC/5/2017 against the Respondent on the same subject matter which was also clubbed with the extant case in terms of Rule 5 (4)(b) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 and the parties to the case were informed accordingly. Thus, the plea of the Respondent that the said information is anonymous is not sustainable.

5.2 As regard the plea of the Respondent that certain reports in the matter which are important to move ahead in the case before CBI are awaited, the Board opined that Criminal proceedings are distinct from Disciplinary proceedings. The proceedings before the Board of Discipline are quasi-judicial in nature where the misconduct can be proved by preponderance of probabilities having regard to the conduct of the Respondent which is distinct from Criminal proceedings where the misconduct has to be proved beyond reasonable doubt. While coming to the said view, the Board took into consideration the decision of the Hon'ble Supreme Court in the matter of "Ajit Kumar Nag -vs- General Manager (PJ) Indian Oil Corporation Limited-AIR 2005 SC 4217 wherein the Hon'ble Apex Court held as under :-

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

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*"In Departmental proceedings, factors prevailing in the mind of the Disciplinary authority may be many, such as enforcement of discipline or to investigate level of integrity of delinquent or other staff. The standard of proof required in those proceedings is also different from that required in a criminal case. While in Departmental proceedings, the standard of proof is one of preponderance of probabilities, in a criminal case, the Charge has to be proved by the prosecution beyond reasonable doubt."*

Thus, the Board viewed that the plea raised by the Respondent is not sustainable as both the proceedings are separate and distinct. The issue that is to be examined by the Board is whether the conduct of the Respondent arising out of the circumstances as stated in the case records has brought disrepute to the profession and thus, amounting to 'Other Misconduct' as provided under the Chartered Accountants Act 1949.

- 5.3 As regard the plea of the Respondent that the present complaint was defective, the Board during the hearing held on 29<sup>th</sup> December 2021 questioned the Complainant as to the difference in the signature in Form 'I' at the place of verification and the place of signature. The Complainant clarified that at the place of signature, her daughter had signed and at the place of verification, he had signed as he had attended the Income Tax scrutiny case of his daughter on her behalf. It was clarified to him that at both the places in Form 'I', the signature of the Complainant has to be there.

The Board viewed that the Complainant himself confirmed before it that the Form I bears the signatures of both the Complainant and his daughter Ms. Karuna Kodwani. The Board was of the view that although it was desirable for the Complainant to have submitted an Affidavit confirming that the complaint had been filed by him only, however, the said non-compliance cannot rule over the substance of the extant proceedings. While coming to the said view, the Board took into view the following observations of the Hon'ble Apex Court in S.Amarjit Singh Kalra (Dead) By ... vs Pramod Gupta (Dead) in Appeal (civil) 1027-1028 of 1992 in the Order passed on 17 December, 2002:

*"Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice."*

Also, on a careful examination of the procedure for dealing with the complaints as provided under the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Board was of the view that the Legislature never intended the failure to comply with the procedural requirements to be fatal to the proceedings. Thus, if the defect is not noticed by the Director(Discipline), but, is noticed at a subsequent stage, the same will not automatically vitiate the proceedings.

The Board further viewed that the copy of Form 'I' was provided to the Respondent at the Prima Facie stage itself, but, he chose not to object to the same at that stage and objected to the same only when the case was referred for enquiry. The Board, thus, held that the plea of the Respondent was not

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maintainable. Accordingly, the case was dealt with on its merits by the Board, keeping in view, the submissions and documents placed on record.

6. As regard the charge alleged against the Respondent that he aided and abetted alongwith Mr. Navin Kumar (Income Tax Officer) of Piramal Chambers, Lalbaug, Mumbai and cheated and conspired against Karuna Kodwani alias Mysha Israr Ahmad Qureshi and has demanded Rs. 10 Lac for settling Income Tax assessment of Ms. Karuna Kodwani, the Board noted that the Complainant brought on record following documents to support his claim:

- a. Copy of complaint filed by the Complainant with Superintendent of Police, CBI, ACB, Mumbai dated 29.12.2016.
- b. Noting of the bail dated 03.01.2017 and newspaper cuttings
- c. Chat between the Respondent and Mr. Iqbal Ahmad Qureshi (Brother in law of Complainant's Daughter)

The Board further noted that the Respondent submitted the following documents to support his claim:

- a. Notice of Demand under Section 156 of the Income Tax Act, 1961 amounting to Rs. 7,07,260/- for the Financial Year 2014-2015 (to be paid within 30 days) (dated 29.12.2016)
- b. A notice dated 28.08.2015 issued for CASS u/s 143(2) Computer Assisted Scrutiny Selection.
- c. Assessment Order dated 29.12.2016 (the return of Income for the year 2014-2015 was filed on 29.12.2015 declaring the total Income at Rs. 4,29,260/-)

7. The Board noted that as per Assessment Order dated 29/12/2016, it is evident that the Respondent was authorised representative of Mrs. Mysha Israr Ahmed Qureshi and attended the Income Tax case from time to time and submitted the details as called for. Further, it is also noted that an addition of Income Rs. 18,42,255.00 was made in the ITR on account of unexplained cash, whereby it is coming out that there is tax demand upon Mrs. Karuna (daughter of the Complainant).

8. The Board further noted that as per newspaper cutting dated 04/01/2017 "on 29/12/2016, CBI received a written complaint for Shri Prabhu (Complainant herein) wherein it is alleged that ITO Navin Kumar demanded an illegal gratification of Rs. 10 lakhs to show undue favour and settle the IT returns assessment of his daughter Karuna. Further, it is also alleged that around 10 days ago, their CA. Vinay Kumar Gupta first communicated the demand to wife of Mr. Prabhu. According to him, the CA had warned them that since Karuna's ITR had come under scrutiny, if the bribe is not paid the officer would specifically raise un-necessary queries and pass an order for Rs. 1.81 crores. The officer then personally reiterated this demand when they met him on December, 27 and 29 in the presence of their CA. Following the complaint, the ACB started its investigation and confirmed that the demand had been made. On December, 30, it laid a trap with Prabhu's help and also verified the ITO had asked Prabhu to handover an initial payment of Rs. 50,000.00 to the CA. at his office. Later, following their arrest after being caught re-handed, the duo was presented in Court and sent to judicial custody till January, 13".

9. The Board also perused the copy of the Charge Sheet filed before the Hon'ble Special Judge for Greater Mumbai at Mumbai in case FIR No. RC BA1/2016/A0039 dated 30/12/2016 under Section 120B Indian Penal Code and Sections 7, 12 and

13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 produced on record by Shri S Jaikumar, Superintendent of Police, Central Bureau of Investigation and noted that the Investigating Officer in the said Charge Sheet observed as under:-

2. That Shri Naveen Kumar, while working as Income Tax Officer, 24(2)(5), Income Tax Office, Piramal Chamber, Lalbaug, Parel, Mumbai, demanded a bribe of Rs. 10 lakh on 29.12.2016 to ignore all the disputed cash deposits and discrepancy noticed with regard to the sale consideration of a property, etc and to settle the matter. On showing unwillingness to pay said demand of Rs. 10 lakhs, the accused Shri Naveen Kumar, ITO had demanded a bribe of Rs. 5 Lakhs by stating that he would accept all the queries raised, except that with regard to the cash deposits in her account for showing favour in the scrutiny and assessment of ITR of the daughter of complainant Shri Prabhu Dayal Kodwani for the Assessment Year 2014-15 by way of reducing the tax liability and waiving the penalty.

4. That the complaint was verified in the presence of independent witnesses by sending the complainant Shri Prabhu Dayal Kodwani. Shri Prabhu Dayal Kodwani alongwith his wife Ms. Geeta Kodwani and Shri Vinay K. Gupta, CA went to the office of Shri Naveen Kumar, ITO-24(2)(5), Piramal Chamber, Lalbaug, Parel, Mumbai on 30.12.2016. During the meeting Shri Prabhu Dayal Kodwani, complainant discussed with Shri Naveen Kumar, ITO about the tax liability. Shri Naveen Kumar, ITO, told Shri Prabhu Dayal Kodwani that he would do the best possible in giving them the maximum relief possible. During the conversation the complainant states that it is not possible to withdraw more than Rs. 50,000/- from their account during a week. To this Shri Naveen Kumar replies "whatever" while replying the ITO had simultaneously gestured to handover the Rs. 50,000/- as the first installment to Shri Vinay K. Gupta, CA by pointing towards him.

7. That, the Complainant Shri Prabhu Dayal Kodwani had handed over the bribe amount of Rs. 50,000/- to Shri Vinay K. Gupta, CA on the instructions of Shri Naveen Kumar, ITO.

8. That, the Complainant Shri Prabhu Dayal Kodwani informed Shri Vinay K. Gupta, CA that he has brought the amount of Rs. 50,000/- and told Shri Vinay K. Gupta, CA to inform Shri Naveen Kumar, ITO about the bribe amount.

9. That after delivery of the bribe amount to Shri Vinay K. Gupta on behalf of Shri Naveen Kumar, ITO, the predecided signal was given by the Complainant Shri Prabhu Dayal Kodwani. Immediately, the CBI team and panch witnesses rushed and entered the office of Shri Vinay K. Gupta, CA.

10. That Shri Vinay K. Gupta, CA when confronted for having demanded and accepted the bribe amount on behalf of Shri Naveen Kumar, ITO from Shri Prabhu Dayal Kodwani, Complainant became speechless and nervous. The tainted amount of Rs. 50,000/- was recovered from the table of Shri Vinay K. Gupta, CA. The conversation held between the

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Complainant, his wife Ms. Geeta Kodwani and Shri Vinay K. Gupta, CA was recorded in a micro SD card with the help of Digital Voice Recorder.

11. That the hand wash of Shri Vinay K. Gupta, CA, in the solution of sodium carbonate was taken during which both the hands wash turned into pink colour. That the exhibits have been sent to CFSL, New Delhi for chemical examination. The report is awaited.

12. The recorded conversation has been transcribed. The transcription of the recorded conversation clearly shows that the Complainant Shri Prabhu Dayal Kodwani had handed over the bribe amount of Rs. 50,000/- to Shri Vinay K. Gupta, CA on the instructions of Shri Naveen Kumar, ITO from the Complainant. The tainted money was counted by Shri Vinay K. Gupta after accepting the same. He was found telling the Complainant that the entire amount is there, however something appears to be applied on the currency notes. Shri Vinay K. Gupta, CA also asks about the remaining amount. Shri Prabhu Dayal Kodwani replies that it will be done. Ms. Geeta Kodwani supplements by saying that it will be done in instalment. The voice of the Complainant, his wife Ms. Geeta Kodwani and Shri Vinay K. Gupta, CA in the recorded conversation have been identified by witnesses.

13. that during the investigation it has come in evidence that shri Vinay K. Gupta on 22.12.2016, after visiting office of Shri Naveen Kumar, ITO had sent a 'Whatsapp' message to Iqbal Ahmed Qureshi (Brother of the husband of Ms. Mysha Lsrar Ahmad Qureshi @ Karuna Kodwani daughter of Complainant). The text of the message is as under:-

"Met the officer today he is willing to ignore everything except the opening balance I cash ledger amounting to 42 lakhs this amt also he would have accepted but returns for 2013-14 are not filed where in the balance would be reflected, he is willing to consider the opp balance of 23 lakhs which is reflected in 2012-13, hence he will add 1850000/- to the income and tax it. the option before us is to let him add and we go into appeal before the commissioner (a) the advantage will be that we will have to fight only on one point and all our past entries will become genuine for this he has quoted a price of 10L. if this is not acceptable to us he will add 1 crore 81 lakhs which he appearing in the AIR report generated by the dept plus other expenses which he feels are not genuine we have the option of going into appeal against this addition also. Please let me know the course of action to be taken. I have sent you the detail because this could not be explained over the phone..."

It clearly shows that a demand of Rs. 10 lakhs was quoted and that if the same was not acceptable he will have to add Rs. 1.81 crores as appearing in the AIR for computing the tax liability. It revealed that Shri Vinay K. Gupta, CA met Shri Naveen Kumar, ITO on 22.12.2016 at about 14:30 hrs and the said message appears to be sent on the same day to Iqbal Ahmed Qureshi at about 1911hrs."

14/

Upon perusal of the Charge Sheet, the Board observed that the Respondent was caught red handed and was charged for the offence of conspiracy and his name was mentioned in Column 11 as (A-2).

10. The Board also noted that the Respondent vide email dated 12/01/2022 submitted the copy of Order passed in his matter titled Vinay Gupta Vs. CBI ACB, Mumbai (RC BA1/2016/A0039) (CBI.Spl. No.54/2017) dated 20/01/2020 wherein Hon'ble CBI Special Judge, City Civil & Sessions Court, Gr. Bombay while dealing with the Discharge application observed as under:-

*"12. In view of the above discussion, the arguments advanced by learned Advocate for the accused in defence in support of the grounds raised in discharge application that the accused no.2, being Chartered Accountant, only charged his professional fees of Rs.50,000/-, and that it was not as a bribe resulting from any conspiracy between both the accused, cannot be considered at this stage of discharge application. There is sufficient material on record showing grounds to proceed to frame Charge against the accused. Accordingly, the application is being rejected, and the following Order is passed:*

*Order*

*Application (Exhibit-07) is hereby rejected."*

11. The Board further noted that the Complainant vide email dated 29/12/2021 submitted the screen shot of WhatsApp communication with the Respondent wherein it was mentioned as under:

*"No papers and explanation yet received from you regarding scrutiny. Hence unable to attend which may lead to case being decided exparty. Please also send a cheque of 10000/ towards fees for scrutiny case...Thanks"*

12. As regard the submission of the Respondent that the payment made to him by the Complainant was towards professional fees for attending scrutiny proceedings, the Board observed the following facts as under:-

- a. The Respondent submitted that on 30<sup>th</sup> December, 2016 around 7.30 pm, the Complainant came to Respondent's office to pay Respondent's fees of Rs. 50000/- as no fees was paid to the Respondent by the assessee.
- b. It can be seen from Respondent's bank statements that there is no fee received by Respondent from him. Further there are no payment receipts submitted by the Complainant to the CBI. There is nothing on record, material collected by the CBI and documents annexed to the Chargesheet to show that he had paid Respondent any fee.
- c. The Complainant submitted a screenshot of WhatsApp communication sent by the Respondent to the Complainant wherein he stated that he was unable to attend the case and sought professional fee of Rs. 10,000/- by way of cheque for scrutiny case.

The Board on perusal of the same viewed that the role of the Respondent was specifically mentioned in the Charge Sheet wherein it was stated that the said tainted amount of Rs. 50,000/- was recovered from the table of Respondent which he stated to be his professional fees. The Board viewed that the said contention of receipt of professional fee raised by the Respondent seems to be unacceptable and contradictory as the amount of professional fees to be charged for attending scrutiny

proceedings for one Assessment Year can be either Rs. 50,000/- or Rs. 10,000/- and the mode of receipt can be either cash or cheque.

The Board viewed that the Respondent was trying to be tactful before it by manipulating the facts and covering up the bribe amount in the garb of professional fee without any document/ evidence to corroborate such submission. Moreover, the said recovery of Rs. 50,000/- by the investigating agency (CBI) was in cash and the Respondent was caught by the CBI red handed by laying trap. Accordingly, the Board viewed that the said plea of the Respondent is not sustainable.

13. The Board examined the daughter of the Complainant during the hearing held on 20<sup>th</sup> December 2021 on the point of Assessment proceedings initiated against her wherein she stated that there was wrong entry of Rs. 1.80 Crores in her bank account due to punching of the same transaction thrice by the officials of concerned bank. The Income Tax Scrutiny proceedings were initiated due to said bank statement error. The Respondent approached her in order to gain benefits out of said error entry. As regard clarification as to status of final assessment, addition made or appeal to be filed, the daughter of the Complainant stated that she is clear and not a defaulter. The Board also examined the Complainant at the time of hearing held on 29<sup>th</sup> December 2021 who corroborated the version of her daughter and the complaint filed by him on her behalf and also stated as under:-

- a. The Respondent was engaged by him to resolve the issue of Assessment proceedings on behalf of his daughter. The Respondent deliberately did this act. The Respondent has managed with the Income Tax Officers and whatever money they got were shared between them. There was only two-three points, the Complainant withdrew Rs. 30 lakhs from the bank for purchasing a flat, for some days, he kept the money in his house and thereafter got it deposited in the bank.
- b. The Respondent was saying that whatever money the Complainant had withdrawn from the bank had to deposit it again with the Bank. The Respondent has unnecessarily started saying all the things that ITO told that this is a Rs. 60 lakhs case and he will impose the penalty of Rs. 1.80 crores.

The Board also perused the copy of the Assessment Order dated 29<sup>th</sup> December 2016 passed in respect of the Complainant's daughter for the F.Y. 2013-14 wherein she was represented by the Respondent and there was an addition of Rs. 18,42,255/- to her income on account of unexplained cash credit. The concerned Income Tax Officer also observed as under:

*"5.2 It is seen from the table above the assessee has an opening cash balance of Rs. 23,77,305/-. The assessee has not filed any return of income for the AY 2013-14 as per the ITD system of the department. Therefore the closing cash balance for the AY 2012-13 is taken as the opening balance for working out the peak in the AY 2014-15. From the working it is seen that the assessee is maintaining cash balance consistently, by depositing cash from announced source in to the bank account. Further as stated hereinabove the assessee has not filed any explanation to show cause notice issued on this issue, hence the source of cash deposit remained unexplained. Therefore peak cash balance worked as above amounting to Rs.18,42,255/- (Rs.42,19,560/- Rs.23,77,305/-) is added to the total income of the assessee as unexplained cash credit*

*u/s. 68 of the Income Tax Act. Penalty proceedings u/s 271(1)(c) of the IT Act are initiated separately for furnishing inaccurate particulars of total income."*

The said details were also correlated with the whatsapp conversation on 22<sup>nd</sup> December 2016 allegedly sent by the Respondent to the brother-in-law of the Complainant's daughter as stated hereunder:

*"Met the officer today he is willing to ignore everything except the opening balance / cash ledger amounting to 42 lakhs this amt also he would have accepted but returns for 2013-14 are not filed where in the balance would be reflected, he is willing to consider the opp balance of 23 lakhs which is reflected in 2012-13, hence he will add 1850000/- to the income and tax it. the option before us is to let him add and we go into appeal before the commissioner (a) the advantage will be that we will have to fight only on one point and all our past entries will become genuine for this he has quoted a price of 10L. if this is not acceptable to us he will add 1 crore 81 lakhs which he appearing in the AIR report generated by the dept plus other expenses which he feels are not genuine we have the option of going into appeal against this addition also. Please let me know the course of action to be taken. I have sent you the detail because this could not be explained over the phone"*

The Board also correlated the same with para 2 of the Charge Sheet wherein the Respondent was also one of the accused and it was stated as under:

*"That Shri Naveen Kumar, while working as Income Tax Officer, 24(2)(5), Income Tax Office, Piramal Chamber, Lalbaug, Parel, Mumbai, demanded a bribe of Rs. 10 lakh on 29.12.2016 to ignore all the disputed cash deposits and discrepancy noticed with regard to the sale consideration of a property, etc and to settle the matter. On showing unwillingness to pay said demand of Rs. 10 lakhs, the accused Shri Naveen Kumar, ITO had demanded a bribe of Rs. 5 Lakhs by stating that he would accept all the queries raised, except that with regard to the cash deposits in her account for showing favour in the scrutiny and assessment of ITR of the daughter of complainant Shri Prabhu Dayal Kodwani for the Assessment Year 2014-15 by way of reducing the tax liability and waiving the penalty.(emphasis added)."*

Thus, the Board viewed that the involvement of the Respondent in the explained circumstances cannot ruled out.

14. The Board, considering the documents and submissions on record, observed that offering gratification to a Public servant in return to perform Public function is a serious offence and in the instant case, the Respondent himself became a facilitator to the said Act. Being a Member of the Institute, the Respondent was expected to adopt the highest Standards of ethical behavior which he failed to do in the instant case. The Board was also of the view that instead of advising his client to follow Rules, the Respondent himself indulged in the activities prohibited by law and thereby has certainly brought disrepute to the entire Profession. Accordingly, the Respondent is held Guilty in respect of the charge alleged.

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**CONCLUSION:**

15. Thus, in conclusion, in the considered opinion of the Board, the Respondent 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.

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

Date: 11<sup>th</sup> February, 2022

सही प्रतिलिपि होने का लिए प्रमाणित  
Certified to be true copy

मेनु गुप्ता / Meenu Gupta  
कार्यकारी अधिकारी / Executive Officer  
अनुशासनसमक विभाग / Disciplinary Directorate  
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया  
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