

**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/055/16/DD/209/INF/2018/BOD/528/2019]**

**CORAM(present in person):**

**CA. Prasanna Kumar, Presiding Officer**

**Ms. Dolly Chakrabarty, Govt. Nominee**

**In the matter of:**

**CA. Sanjay Bhandari (M.No.028112),  
Chennai.**

**..... Respondent**

**DATE OF FINAL HEARING : 6<sup>th</sup> January, 2023**  
**PLACE OF FINAL HEARING : New Delhi / through video conferencing**

**PARTIES PRESENT: (Through Video Conferencing)**

**COUNSEL FOR THE RESPONDENT : CA. A. P. Singh**

**BACKGROUND OF CASE:**

1. A letter dated 16<sup>th</sup> February, 2016 along with annexures was received from Dr. Atul Fulzele, Head of Branch, Central Bureau of Investigation(CBI), Anti-Corruption Branch, Mumbai (hereinafter referred to the "Informant") containing allegations against CA. Sanjay Bhandari (M.No.028112), Chennai (hereinafter referred to as the Respondent).The Informant registered PE 01(A)/2015 dt. 25.03.2015 against Shri Suresh Jandhyala, formerly DGIT(Inv.), Mumbai and three others to enquire into the following allegations:

1.1 Shri Suresh Jandhyala (SO-1) while being posted as the DGIT(Inv.), Mumbai during the year 2014 had abused his official position and instructed his subordinate officials to expedite the investigation being carried out by his Department against M/s Nina Concrete Systems Pvt.

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Ltd(NCSPL), Mumbai( a company owned by Shri Mehul Parikh) with a view to favour the said party and thereby committed misconduct.

- 1.2 The Investigation wing of the Income Tax Department, Mumbai, headed by Shri Suresh Jandhyala, DGIT(Inv.), carried out a Survey u/s 133(A) of the Income Tax Act at the office of M/s NCSPL, Mumbai, on 29/9/14 and 30/9/14. During the survey proceedings, it was,inter-alia, found that the company had received huge income which was unexplained and believed to be arranged through bogus accommodation entry providers.
- 1.3 Furthermore, during the last week of November 2014 Late CA. Devendra Mehta, Mumbai had accepted an amount of Rs. 25 lakhs (collected on two occasions) for influencing Shri Suresh Jandhyala, DGIT(Inv.), Mumbai at the behest of the Respondent and to get matter against M/s NCSPL closed. During the first week of December 2014 Shri Suresh Jandhyala finally directed Shri Chandrajit Singh, Addl. DIT to expedite the report against M/s NCSPL forthwith. Accordingly, Shri Chandrajit Singh had directed Dr. Vivek Upadhyay, DDIT to wind up the Survey Report with the available material, as desired by Shri Suresh Jandhyala, DGIT(Inv.), Mumbai. During the Survey proceedings, the survey team found that the company (NCSPL) had indeed received capital and share premium of Rs. 23 crore and had been issuing its shares to 26 bogus entities at a very high premium of around Rs. 440/- to Rs. 500/- per share.
- 1.4 Investigation disclosed that during the period from November,2014 to December,2014, the suspects namely Shri Suresh Jandhyala, DGIT, Shri Mehul Parikh, MD, M/s NCSPL, the Respondent and Late CA. Devendra Mehta had been allegedly discussing about the survey proceedings carried out by the O/o DGIT(Inv.), Mumbai in their telephonic conversations in an indirect way. The said telephonic conversations between the suspects point towards their complexity in instructing the DDIT to expedite the survey Report with the available information before 15.12.2014. It also points towards the fact that as negotiated by Respondent, an amount of Rs. 25 lakhs was allegedly paid by Shri Mehul Parikh, MD of M/s NCSPL to CA. Devendra Mehta, at his residence at Mumbai. It was also gathered that file of M/s NCSPL had been moving in Department as desired by the suspects Respondent, Shri Mehul Parikh and Late CA. Devendra Mehta.

**CHARGE ALLEGED:**

- 2.1 It has been alleged that the Respondent had indulged in telephonic conversation with Shri Mehul Parikh, MD of M/s NCSPL which had been surveyed by Income Tax Department for alleged tax evasion during the period November 2014, promising help using his clout with the Income Tax Department.

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- 2.2 He had indulged in telephonic conversation about the survey matter with Shri Suresh Jandhyala, DGIT(Inv.), Mumbai and allegedly met the latter at his residence at Hyderabad on 23.11.2014 in this regard.
- 2.3 He had contacted Shri. Mehul Parikh, MD, M/s NCSPL and asked him to arrange money to be paid to the DGIT (inv.) for settling the survey matter during the relevant period.
- 2.4 He had contacted Late CA. Devendra Mehta asking him to receive an amount of Rs. 12.5 lakhs from Smt. Hetal Parikh (another director of M/s NCSPL) on 29/11/2014 and an amount of Rs. 12.5 lakhs on 08.12.2014 for closing the matter.

The Board at its meeting held on 12th October 2019 considered the Prima Facie Opinion dated 13<sup>th</sup> September 2019 formed by the Director Discipline. On consideration of the same, the Board was of the view that looking into the gravity of the charges alleged against the Respondent, the matter needs to be examined further to cull out the role of the Respondent in the matter and thus, did not agree with the Prima Facie Opinion of the Director(Discipline) that the Respondent is NOT GUILTY of Other Misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule read with Section 22 of the Chartered Accountants Act, 1949 and decided to proceed under Chapter IV of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

**BRIEF OF PROCEEDINGS HELD:**

- 3.1. At the time of hearing held in the case on 19<sup>th</sup> January 2021 wherein the Counsel for the Respondent was present before the Board, the Board on consideration of the submissions of the Respondent decided to adjourn the hearing in the case with the direction to the office to seek further information from the Informant Department/Income Tax Department in the case to substantiate the allegations alleged against the Respondent and thereafter share the same with the Respondent for his comments thereon, if any.
- 3.2. Thereafter, at the time of hearing held in the case on 7<sup>th</sup> July, 2022 wherein the Counsel for the Respondent was present before the Board, since there was a change in the composition of the Board since the last hearing, the Board gave an option to the Respondent as to whether he would like to have a De -Novo enquiry or continue from the last proceedings to which the Counsel for the Respondent stated that they would like to continue from the last proceedings. Thereafter, the Counsel for the Respondent made his detailed submissions before the Board.

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Upon consideration of the submissions and documents on record, the Board adjourned the hearing in the case with the following direction to the office:

1. To seek the following from CBI:
  - (a) Copy of the complete Charge Sheet including its annexures filed before the competent Court along with the current status of the case and copy of the Orders passed therein, if any.
  - (b) Whether any forensic voice examination of the telephonic conversation had been carried out? If yes, the copy of the report thereof.
  - (c) Specific evidence in respect of the allegations alleged against the Respondent as referred to in earlier communication dated 22nd September 2021.
  
2. To call the following as witness:
  - (a) Shri. Mehul Parikh, Managing Director, M/s. Nina Concrete Systems Pvt. Ltd., Mumbai.
  - (b) Smt. Hetal Parikh, M/s. Nina Concrete Systems Pvt. Ltd., Mumbai.
  - (c) Officials from CBI who had investigated the case/or are conversant with the facts of the case.

3.3 Thereafter, at the time of hearing held in the case on 26<sup>th</sup> December, 2022, the Board noted that neither any CBI official was present as a witness before it nor the information sought at the time of last hearing was provided. The Board noted that Shri. Mehul Parikh, Managing Director, M/s. Nina Concrete Systems Pvt. Ltd., Mumbai and Smt. Hetal Parikh, Director, M/s. Nina Concrete Systems Pvt. Ltd., Mumbai were present before it as a witness through video conferencing and were put on Oath. The Board posed certain questions to both the witnesses which were answered by them. Thereafter, the Counsel for the Respondent cross-examined the said witnesses and then, they were discharged by the Board.

Upon consideration of the submissions and documents on record the Board adjourned the hearing in the case to 6th January 2023 with the following direction to:

The Office:

1. To share the deposition of the witness(es) with the CBI for their comments thereon, if any.
2. To send a reminder letter to CBI to provide the information/documents details sought from them earlier.

3.4 Subsequently, at the time of hearing held in the case on 6<sup>th</sup> January, 2023 wherein the Counsel for the Respondent was present before the Board through video conferencing, the Board noted that the CBI vide email dated 5th January 2023 provided their reply

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which was shared with the Respondent also. However, none of the CBI Officials appeared as a witness before it. Thereafter, the Counsel for the Respondent made his submissions before the Board. Upon consideration of the submissions and documents on record, the Board concluded the hearing in the case.

**BRIEF SUBMISSIONS OF THE RESPONDENT:**

4. The Respondent in his defence, inter-alia, submitted as under:
  - 4.1 The allegations made by the informant are totally false and baseless.
  - 4.2 No material has been placed before the Respondent other than the information memoranda. Despite several reminders no material based on which such inferences are drawn is made available. The principles of natural justice so demand that the person who makes the allegations substantiates it with undisputable material.
  - 4.3 The Director Discipline has held the "Respondent Not Guilty". The Board of Discipline has gone ahead to proceed with the matter "*In Order to cull out the role of the Respondent in the matter*".
  - 4.4 The proceeding is being initiated to conduct a roving enquiry and is fishing for evidence which is not otherwise available. This being so, the Respondent failed to understand as to why the proceedings are being initiated against him.
  - 4.5 All the allegations so made, and presumptions are not based on facts.
  - 4.6 In the absence of any material of whatsoever nature that was relied upon, it is not possible for him to respond to the same.
  - 4.7 The informant and his Department did not respond to the communications from the Disciplinary Directorate and did not file a complaint against the Respondent.
  - 4.8 The Disciplinary Directorate required the Department to provide copies of the transcripts (both written and audio) of the telephonic conversations between the parties, as referred in the SCN; and further required that a copy of the statement of the Respondent and/or any other person proving the guilt of the Respondent be filed with the Disciplinary Directorate.
  - 4.9 In accordance with Rule 8, the Disciplinary Directorate was under an obligation to provide the details of the information relating to allegations for professional misconduct to the Respondent within 60 days of having received the same. But, in the instant case the said information was provided after a gap of around 34 months. This inquiry could not have been initiated in the first place for reasons for being time barred, and continuation of these proceedings are in derogation of the law of the land.
  - 4.10 The proceedings of the Board in which the Respondent was held guilty, is void ab initio as per Section 21B Rule 13 and 16. As per the copy of minutes of hearing sent to the Respondent, it is indisputed that two benches of the Board of Discipline existed as per the documents and information obtained from the ICAI website. This fact was also

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included in the 70<sup>th</sup> Annual Report of ICAI. Further, the documents received by the Respondent recently clearly states that the instant matter was heard by Bench I of the Board of Discipline, thereby proving that more than one Bench had existed at the relevant time. Since the statute does not allow more than one Bench of the Board of Discipline, the actions of either of the Benches would be bad in law.

#### **OBSERVATIONS OF THE BOARD:**

- 5.1. The Board noted that it has been alleged that the Respondent had indulged in telephonic conversation with Shri Mehul Parikh, MD of M/s NCSPL which had been surveyed by Income Tax Department for alleged tax evasion during the period November 2014, promising help using his clout with the Income Tax Department. He indulged in telephonic conversation about the survey matter with Shri Suresh Jandhyala, DGIT(Inv.), Mumbai and allegedly met the latter at his residence at Hyderabad on 23.11.2014 in this regard. He contacted Shri Mehul Parikh, MD, M/s NCSPL and asked him to arrange money to be paid to the DGIT (inv.) for settling the survey matter during the relevant period. He contacted Late CA. Devendra Mehta asking him to receive an amount of Rs. 12.5 lakhs from Smt. Hetal Parikh (another director of M/s NCSPL) on 29/11/2014 and an amount of Rs. 12.5 lakhs on 08.12.2014 for closing the matter.
- 5.2. The Board noted that the Respondent raised certain objection with respect to the constitution of the two benches of the Board, admissibility of 'Information' etc. and decided to deal with the same before arriving at its Findings in respect of the conduct of the Respondent.
  - 5.2.1 As regard the objection of the Respondent as to the constitution of two Benches of the Board is concerned, the Board viewed that two Benches of the Board of Discipline were constituted with an avowed object to accelerate the disposal of disciplinary cases and the administrative Ministry i.e. Ministry of Corporate Affairs had also nominated the members as required under Section 21A (1)(b) to the Board of Discipline. On a conjoint reading of the provisions of the General Clauses Act, 1897 (which explicitly states that the words in singular shall include the plural, and vice versa) with the provisions of the Section 21A (1) of the Chartered Accountants Act, 1949(as amended) it is clear that the Council is empowered to constitute more than one Board of Discipline. The Benches so constituted carried out its functions inter-alia by conducting hearings and awarding punishments in disciplinary cases falling within their respective jurisdictions during the relevant period. Besides, the Respondent failed to place any material to show that the constitution of two benches caused any prejudice to him. Thus, the challenge made by the Respondent as to the constitution of more than one Board of Discipline is not bonafide. Also, the Board of Discipline was of the view that it is not the appropriate forum to challenge the constitution of its two Benches.

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5.2.2 As regard 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 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 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.

5.3 Thereafter, as regard the charge alleged against the Respondent, the Board noted that the Informant Department to substantiate the charge alleged against the Respondent provided a copy of the Self-Contained Note. The Informant Department was also requested to provide the following:

- a) Copy of the complete Charge Sheet including its annexures filed before the competent Court along with the current status of the case and copy of the Orders passed therein, if any.
- b) Whether any forensic voice examination of the telephonic conversation had been carried out? If yes, the copy of the report thereof.
- c) Specific evidences in respect of the allegations alleged against the Respondent as referred to in earlier communication dated 22<sup>nd</sup> September 2021.

The Informant Department vide communication dated 05/01/2022 informed as under:  
*"i. With regard to a), it is informed that Chargesheet in this case has not been filed.  
ii. With regard to b) and c), we have already sent reply to your office vide our letter no. PE BA1/2015/A0001/CBI/ACB/Mumbai dated 07.10.2021 (copy enclosed). It is pertinent to mention here that CBI had already shared with your Department, the outcome of the said enquiry vide CBI SCN dated 16.02.2016."*

5.4 The Board further took into view the following deposition of the witnesses (Ms. Hetal Parikh and Mr. Mehul Parikh) before it during the hearing held in the case on 26<sup>th</sup> December 2022:

- a) There was a Survey by the Income Tax Department in the case of the company M/s Naina Concrete System Pvt. Ltd. in 2014.

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- b) Both the witnesses were the directors of the company in 2014 when the survey took place and handled whatever queries were raised.
- c) The Respondent was not involved in that survey proceeding at all and he did not represent the company.
- d) There was a separate CA who was their regular CA and the firm's name was B. Kothari and Co. who were representing the company. There were three or four partners in the said firm who were participating in the discussions.
- e) There was no formal association with the Respondent.
- f) No money was handed over to any Chartered Accountant for any relief. Transactions were with Chartered Accountants. But, not with particular to this case.
- g) The witnesses were called by the CBI during the course of investigation around 4 to 5 years ago. They were verbally informed at that time by the Investigating Authority that they have completed their investigation. There is no written communication to the effect that the investigation has been concluded/ closed.
- h) CBI last contacted them in 2017 or 2018.
- i) There was no question of bribery and no Statement was given before CBI as regard bribing the officials.
- j) There was telephonic conversation with the Respondent on various general topics as the Respondent had approached them with his company profile for financial services and general consultancy services which he rendered.
- k) They came into contact with the Respondent in some social event almost 7 to 8 years ago through some acquaintance and this was long before the survey also. At that time may be the Respondent had sent them some company profile for the general financial services like as a CA or as a financial advisor or as a professional.

5.5 In view of the above, the Board noted that no direct or circumstantial evidence has been brought on record by the Informant Department to substantiate the charge levelled against the Respondent. Furthermore, the witnesses also expressly denied the association of the Respondent in the present matter. Hence, on account of lack of any

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evidence to substantiate the charge levelled against the Respondent, the Board held the Respondent not guilty in the instant case.

**CONCLUSION:**

6. Thus, in conclusion, in the considered opinion of the Board, the Respondent is **NOT 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 said Act. Accordingly, the Board passed Order for closure of the case in terms of Rule 15(2) of the Chartered Accountants (Procedure of Investigations of Professionals and Other Misconduct and Conduct of Cases) Rules, 2007.

Sd/-

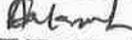
CA. Prasanna Kumar D.  
(Presiding Officer)

Sd/-

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

DATE: 10-02-2023

सही प्रतिलिपि होने के लिए प्रमाणित /  
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अरुण कुमार / Arun Kumar  
कार्यकारी अधिकारी / Executive Officer  
अनुशासनात्मक निदेशालय / Disciplinary Directorate  
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया  
The Institute of Chartered Accountants of India  
आई.सी.ए.आई. भवन, विश्वास नगर, शाहदरा, दिल्ली-110032  
ICAI Bhawan, Vishwas Nagar, Shahdara, Delhi-110032