

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/18/2017/DD/14/INF/2019/BOD/627/2022]**

**CORAM (present in person):**

**CA. Rajendra Kumar P, Presiding Officer**

**Ms. Dolly Chakrabarty (IAAS, ret'd.), Government Nominee**

**In the matter of CA. Krishan Kumar Khadaria (M. No. 083935), Mumbai in Re:**

**DATE OF FINAL HEARING : 2<sup>nd</sup> November 2023**

**PARTIES PRESENT (in Person):**

**Respondent : CA. Krishan Kumar Khadaria**

**FINDINGS:**

**BRIEF BACKGROUND OF THE CASE:**

1.1 The Informant Department filed the extant case against the Respondent on the basis of survey proceedings conducted on 29<sup>th</sup> September 2014 u/s 133A of the Income Tax Act, 1961 in respect of M/s. Sethia Infrastructure Pvt. Ltd. (hereinafter referred to as the "Company"). Shri Basantraj Sethia, Director of the said Company, in his statement recorded under Section 131 of the said Act voluntarily disclosed an amount of share premium of Rs. 9.76 Crores as unaccounted income introduced in the form of Share Capital at high share premium through the following 15 alleged shell companies in Financial Year 2009-10:-

S No.	Name of Company	S No.	Name of Company
1.	M/s. Slogan Infotech Pvt. Ltd.	2.	M/s. Gawarja Merchants Pvt. Ltd.
3.	M/s. Seawoods Hospitality & Reality Pvt. Ltd.	4.	M/s. Mumbadevi Finance & Investment Co. Pvt. Ltd.

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5.	M/s. Sukaniya Properties Pvt. Ltd.	6.	M/s. Omega Vincom Trading Pvt. Ltd.
7.	M/s. Pranjal Trading Company Pvt. Ltd.	8.	M/s. Varadvinayak Properties Pvt. Ltd.
9.	M/s. Attribute Shares & Securities Pvt. Ltd.	10.	M/s. Better Homes Buildcon Pvt. Ltd.
11.	M/s. BKG Software Pvt. Ltd.	12.	M/s. Golden Meadows Export Pvt. Ltd.
13.	M/s. Intime Reality Pvt. Ltd.	14.	M/s. Nouveau Cotspin Pvt. Ltd.
15.	M/s. Replica Tracom Pvt. Ltd.		

1.2 Shri Basantraj Sethia, in his statement, was unable to explain the discrepancy of introduction of share capital of Rs. 10.76 Crores at high share premium of Rs. 90 per share and later buyback at face value of Rs. 10 per share within 40 to 100 days of issue of shares. There was no valuation of shares done at any point of time. In his statement, he further stated that these shell companies were introduced and operated by the Respondent. Even on 31<sup>st</sup> March 2012, many same and other companies again subscribed for shares of M/s. Sethia Infrastructure Pvt. Ltd. despite heavy losses incurred by the company. In Respondent's statement recorded by the Department u/s 131 of the said Act on 23<sup>rd</sup> October 2015, the Respondent was also unable to satisfactorily explain the reason for investment at high premium, subsequent sale at face value and again investment at high premium. The investing Companies did not even bother to obtain physical possession of the shares subscribed.

**CHARGE ALLEGED:**

Against the aforesaid background, it is alleged against the Respondent as under:

2. There were non-genuine transactions, and the entire sequence of events was created with the involvement of the Respondent to bring unaccounted income generated back into the books of M/s. Sethia Infrastructure Pvt. Ltd. and as on date of the allegation,

Respondent was managing/ controlling 21 companies out of which 9 companies had invested in M/s. Sethia Infrastructure Pvt. Ltd. The Respondent was apparently running an entry giving operation through shell companies.

**BRIEF OF PROCEEDINGS HELD:**

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S.no.	Date of Hearing(s)	Status of Hearing(s)
1.	29 <sup>th</sup> March 2023	Adjourned at the request of the Respondent.
2.	23 <sup>rd</sup> May 2023	Part-heard and adjourned with the direction to summon Shri Basant Raj Sethia, Director, M/s Sethia Infrastructure Pvt. Ltd. as a witness to depose before the Board at the next date of hearing.
3.	31 <sup>st</sup> August, 2023	Part-heard and adjourned with the direction to summon Shri Basant Raj Sethia, Director, M/s Sethia Infrastructure Pvt. Ltd. as a witness to depose before the Board at the next date of hearing.
4.	2 <sup>nd</sup> November, 2023	Heard and concluded.

**BRIEF SUBMISSIONS OF THE RESPONDENT:**

4. The Respondent in his defence, inter-alia, stated as under:

4.1 The above proceeding was initiated based on letter received from the DDIT (Inv.), Unit-4(2), Mumbai that in the survey action u/s 133A of the IT Act, 1961 on one M/s Sethia Infrastructure (P) Ltd., it was found that 15 companies which were under Respondent's control, have invested in equity capital of the said company at a hefty premium and Shri Basant Raj Sethia, director of the said Sethia Infrastructure (P) Ltd. was not able to explain the basis of issuing shares at such a huge premium in the statement recorded u/s 131 of the IT Act, 1961. The Respondent also was not able to explain rationale for investments made by his group companies in the said company at a high premium and based on the

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said statements and based on some other extraneous findings arising out of the said survey, allegation was made that Respondent was engaged in operating shell companies.

- 4.2 In the Written Statement filed by the Respondent on 06.06.2019, he raised a preliminary objection on the ground that the information received by the Institute on 28.02.2017 was sent to him 14.05.2019 i.e. after elapse of more than two years though the same was required to be sent to him within sixty days of receipt of the information as required under Rule 8(1) r/w Rule 11 of the above Rules and the word used is 'Shall' meaning thereby that the requirement is obligatory and not discretionary. Therefore, the proceedings initiated, were in violation of the provisions of the CA Act and Rules in this regard. The Director (Discipline), however, in forming the prima facie view rejected the said objection on the ground that the intent of the said Rule is to ensure timely and expeditious completion of disciplinary proceedings and it is not the intent of legislation to render the 'Information' defunct merely on the ground of procedural time lag. In the said Written Statement, the above proceedings were also objected on the ground that the same is time barred in terms of Rule 12 of the said Rules in as much as the information of alleged misconduct committed is in respect of a period which is more than seven years old. The Director (Discipline) however rejected the said objection on the ground that the said Rule ipso facto does not render the information as not maintainable and the same gets attracted when on account of time lag the member faces any difficulty in securing proper evidence for his defense while in the instant case Respondent have not expressed any difficulty in leading evidence for his defense. The Director(Discipline) did not appreciate that in reply to various questions in the statement recorded on oath by the DDIT (Inv) which is relied upon by the Director(Discipline) in forming the prima facie view, the Respondent time and again answered that 'I do not recall the circumstances'. The answers were so given as the enquiry was made by the DDIT (Inv) in respect of events which took place some five years back which he could not recollect due to efflux of time. This clearly implies that there was difficulty in providing proper evidence not only at the time of statement recorded by the DDIT (Inv) on 23.10.2015 but also at the time of responding to the Director's letter dt. 14.05.2019. It is, therefore, incorrect for the Director(Discipline) to say that Respondent has not expressed any difficulty in leading evidence in his defense. In support of the proposition that Rule 12 puts a bar of limitation

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to entertain 'Information' in respect of allegation of misconduct committed more than seven years ago, the Respondent relied on the decision of the Delhi High Court in the case of Wholesale Trading Services (P) Ltd. Vs. ICAI & Ors. reported in 2019 SCC Online Del 9543 dt. 11.09.2019.

4.3 Based on the above inference, the Director(Discipline) formed a view that the Respondent is guilty of Other Misconduct falling within the meaning of Item (2) of Part IV of the First Schedule to the CA Act, 1949. In doing so, the Director(Discipline) did not appreciate the following:-

- i. Both Mr. Sethia and/or the Respondent submitted that investment in equity of Sethia Infrastructure (P) Ltd. was made by Respondent's group of companies based on future prospects of the said company, the planning of public issue, the projects on hand, reputation of the Sethia group etc. and that there was no statutory requirement under any law at that point of time for any valuation report for issue of share at a premium. It is the prerogative of the Board of Directors of the company issuing the shares to decide the premium amount and the investments were made and disposed of as a willing buyer and willing seller. One cannot sit in the chair of the issuer company and the investor to decide the premium amount and the rationale for making investment at a premium.
- ii. It is difficult to expect from any investor to remember how the share certificates were received in respect of investments made some seven years back. In any event, the discrepancy with regard to answers given in the statement recorded u/s 131 of the IT Act, 1961 was duly explained in the Written Statements filed earlier.
- iii. The investments were not made based on financials of the company but were made based on future prospects and projects in hand, future planning of IPO, reputation of the Sethia group etc.
- iv. It is but natural for the investor companies to have common registered address in as much as the same were under common control. The Company Master Data disclosing the said companies as active is downloaded from the website of the Ministry of Corporate Affairs who governs the companies and, therefore, cannot be doubted.

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- v. Merely because the Respondent has incurred loss in a scrip, the law does not prohibit him for making further investments in the same scrip.
- 4.4 The Director(Discipline) in drawing the adverse inference did not appreciate that neither he nor the Informant brought any material on record let alone any cogent material in support of the allegation that his companies are shell companies which were used to channelize unaccounted income. Statements relied upon without any corroborative material cannot lead to any adverse inference. Even the Informant, when enquired by the Director(Discipline) whether he wants to file complaint in Form 'I' and whether any cash transactions of his companies were found during investigation has not responded to the said enquiries. This inaction of the Informant itself was sufficient enough to have inspired confidence in the Director(Discipline) about genuineness of the transaction. In any event, nothing adverse arises out of the statements so relied upon. Merely because some bad investments were made do not give rise to belief that the investments so made were accommodation in nature. Simply because the Respondent is a CA by qualification does not mean that all his investments will bear fruit and if incurred a loss, the same will bring disrepute to the profession. The fact remains that his group companies made investments in the equity of Sethia Infrastructure (P) Ltd. through proper banking channels and merely because the said companies incurred loss in the said investment cannot be a ground to hold that they were shell companies more so when the MCA/ROC who governs the same has also not given any such nomenclature.

OBSERVATIONS OF THE BOARD:

- 5.1 As regard the charge alleged, the Board noted that the instant case had been primarily based on the Statement on Oath of Shri Basant Raj Sethia, Director of the Company dated 29<sup>th</sup> September 2014 and dated 30<sup>th</sup> September, 2014 recorded during the Survey proceedings under Section 133A of the Income Tax Act, 1961 by the Informant Department. The relevant part of the said statements are as under:-

**Statement dated 29.09.2014.**

*"Q. 15. As you are the director of the above-mentioned group companies and they have taken a lot of share premium money by issuing shares at*

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premium. Please state the norms as provided by the Companies Act, 1956 and your compliance for the same.

**Ans.** I am not in position to answer this question.

**Q. 19.** Do you know these companies personally?

**Ans.** I don't know these companies personally. I got introduced these companies through Mr. Kishan Khadaria (Respondent).

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**Q.22.** Why did he (Respondent) invest in your company (M/s. Sethia Infrastructure Pvt. Ltd.) at such high premium as it has been observed from your financials that there is no activity going on since its formation?

**Ans.** I wanted to bring an IPO in the market, since company had better prospects. Further I had acquired land in Thane and Paanchalkar to start new projects, but unfortunately projects could not be started due to some Government policies.

**Q.29.** Please furnish the basis for arriving at share premium of Rs. 90. Which method has been followed for valuation of shares? Kindly furnish share valuation certificate duly certified by Chartered Accountant in support.

**Ans.** I am not in possession of any such kind of valuation report as there was no valuation done at the time of issue of shares.

**Q.32.** It has been observed from share application form that both form and its acknowledgement are lying in your premises only. Why it should not be interpreted that these application forms have been created to facilitate a sham transaction?

**Ans.** By technical fault, they have remained with us since F.Y. 2009-10.

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**Q.33.** *It has been observed that this technical fault has uniformly occurred in case of all share applicants except your group companies and individual. Kindly explain this lacunae.*

**Ans.** *Yes, I admit that this lacunae has happened from our side."*

5.2 The Board further noted that the Informant Department brought on record Statement on Oath of the Respondent dated 23<sup>rd</sup> October, 2015 and the relevant part of the said Statement is as under:-

**Statement dated 23.10.2015.**

**“Q.9** *Please state how did you come to know about M/s. Sethia Infrastructure Pvt. Ltd. and how did you meet the Directors/ Promoters of M/s. Sethia Infrastructure Pvt. Ltd.*

**Ans.** *I am Chartered Accountant and a regular investor in private and public limited companies through my various companies. I know Shri Akshay Kothari and Shri Basanraj Sethia both promoter/ director of M/s. Sethia Infrastructure Pvt. Ltd. for more than 10 years as a business contact.*

**Q.10** *You have invested in M/s. Sethia Infrastructure Pvt. Ltd. on 02.02.2010 and 31.03.2010 through your companies by subscribing shares at a premium of Rs. 90/- per share having face value of Rs. 10/-. Please explain how you arrived at the premium of Rs. 90/- per share. Whether you had obtained any valuation report of shares of M/s. Sethia Infrastructure Pvt. Ltd. before making the investment? If not, why not.*

**Ans.** *M/s. Sethia Infrastructure Pvt. Ltd. was a fast growing company having multiple projects in hand and out of which heavy profits were expected which could have resulted in high growth of value of its equity shares as well as I expected heavy return on my investment. To my memory no valuation was done for premium of Rs. 90/- per share. However, for a private limited company charging of premium is a promoter's choice and when all the shares are subscribed at the same price, it doesn't affect to the value of any shareholder.*

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**Q.12** *When did you get the physical possession of the Shares of M/s. Sethia Infrastructure Pvt. Ltd.*

**Ans.** *Within a few days after the allotment of shares I got the physical possession through hand delivery."*

5.3 Considering the relevance of the deposition of Shri Basant Raj Sethia, Director, M/s Sethia Infrastructure Pvt. Ltd. for the purpose of corroboration of the charge alleged against the Respondent, Summon was issued to him to appear as a witness before the Board. However, he did not appear as a witness before the Board despite the due service of the Summon and several opportunities given to him.

5.4 The Board also noted that at the Prima Facie stage, the following documents were sought from the Informant Department, however, no reply was received:

- (a) Copy of duly audited financial statement of M/s. Sethia Infrastructure (P) Ltd. for financial year 2009-10, 2010-11 & 2011-12.
- (b) Copy of Investigation report highlighting allegations as alleged in the report against the Respondent.
- (c) Whether any amount of cash transactions of 15 group companies i.e. (1) M/s. Slogan Infotech Pvt. Ltd. (2) M/s. Gawarja Merchants Private Ltd. (3) M/s. Seawoods Hospitality & Reality Pvt. Ltd. (4) M/s. Mumbadevi Finance & Investment Co. Pvt. Ltd. (5) M/s. Sukaniya Properties Pvt. Ltd. (6) M/s. Omega Vincom Trading Pvt. Ltd. (7) M/s. Pranjal Trading Company Pvt. Ltd. (8) M/s. Varadvinayak Properties Pvt. Ltd. (9) M/s. Attribute Shares & Securities Pvt. Ltd. (10) M/s. Better Homes Bulldcon Pvt. Ltd. (11) M/s. BKG Software Pvt. Ltd. (12) M/s. Golden Meadows Export Pvt. Ltd. (13) M/s. Intime Reality Pvt. Ltd. (14) M/s. Nouveau Cotspin Pvt. Ltd. (15) M/s. Replica Tracom Pvt. Ltd. are found during investigation and if yes then please provide documentary evidence to substantiate the same.

5.5 Thus, on a combined reading of the documents and submissions on record, the Board viewed that primarily on the basis of the Statement on Oath of one of the Directors of

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the Company and his own Statement, charges had been alleged against the Respondent. However, there was neither any corroborative nor conclusive evidence on record to substantiate the charge alleged against the Respondent. Further, decision to make investments are based on various factors which differ from individual to individual and is thus, a subjective attribute and no adverse inference can be drawn in the absence of conclusive evidence to prove that the same was done with a malafide intent. Hence, the Board was constrained to hold the Respondent **NOT GUILTY** in respect of the charge alleged.

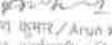
**CONCLUSION:**

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 the said Act. Accordingly, the Board passed Order for closure of the case in terms of the provisions of Rule 15 (2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

- Sd/-  
CA. Rajendra Kumar P  
(Presiding Officer)

Sd/-  
Ms. Dolly Chakrabarty (IAAS, ret'd.)  
(Government Nominee)

DATE: 11-01-2024

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The Institute of Chartered Accountants of India  
अनुपालन विभाग, इलाहाबाद, उत्तर प्रदेश, दिल्ली-110032  
ICAI Bhawan, Vishwa Nagar, Shaheed, Delhi-110032