

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/188/16-DD/215/2016/BOD/395/2017]

CORAM: (Present in Person)

CA. Rajendra Kumar P, Presiding Officer

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

In the matter of:

Sh. S. Vellaipandi,

Superintendent of Police,

Central Bureau of Investigation, Anti-Corruption Branch,

No. 26, Haddows Road,

CHENNAI – 600 006.

.....Complainant

-vs-

CA. Sanjay Bhandari (M. No. 028112)

S. H. Bhandari & Co.

Bhandari Towers, No.824,

EVR Periyar Road, Kilpauk,

Chennai 600010.

.....Respondent

DATE OF FINAL HEARING

: 28th July 2023

PARTIES PRESENT:

Representative of the Complainant Department: Mr. Anupam Chauhan

DSP, CBI (through vc)

Counsel for the Respondent

: CA. A.P. Singh (in person)

Shri Kumarpal R. Chopra, Advocate (vc)

FINDINGS:

CHARGE ALLEGED:

1. The Respondent along with CA. Shreyans Bhandari, had criminally conspired with Shri Hitesh P. Kawad, Managing Director, M/s. SPR & RG Constructions and Sh. Sallong Yaden,



Joint Commissioner, Income Tax, Company Range VI, Chennai in the matter pertaining to covering up of huge undisclosed investments unearthed during Survey conducted by Income Tax Department on 11.12.2014 in M/s. SPR Group of Companies. In furtherance of the said conspiracy, the Respondent and CA. Shreyans Bhandari, in order to finalize the assessment with minimum penalty and fine, acted as middlemen and requested Sh. Sallong Yaden, Joint Commissioner, Income Tax for a favorable report for which a bribe of Rs. 8 lacs was arranged by the Respondent and CA. Shreyans Bhandari and thereafter, handed over by CA. Shreyans Bhandari.

BRIEF OF PROCEEDINGS HELD:

2.

S.No.	Date of Hearing(s)	Status/Direction(s) given by the Board, if any	Compliance of the direction(s) given by the Board
1.	24 th April, 2018	Adjourned at the request of the Complainant.	-----
2.	25 th April, 2019	Adjourned at the request of the Respondent.	-----
3.	22 nd October, 2019	Part heard and adjourned to provide a final opportunity to the Respondent to defend his case.	-----
4.	9 th January, 2021	Adjourned due to non-appearance of the Complainant Department and on the request of the Respondent.	-----
5.	10 th June, 2022	Adjourned at the request of Respondent.	-----
6.	24 th June, 2022	Adjourned at the request of Respondent.	-----
7.	7 th July, 2022	Part heard and adjourned with the following direction(s): 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	No response received from the Complainant Department.

		<p>case and copy of the Orders passed therein, if any.</p> <p>(b) Specific comment on the denial of the telephonic conversation between the Income Tax official and the Respondent.</p> <p>(c) Whether any forensic voice examination of the telephonic conversation had been carried out? If yes, the copy of the report thereof.</p> <p>2. To link the telephonic conversation with the Charge Sheet .</p> <p>3. To call the following as witness:</p> <p>(a) Shri Hitesh P. Kawad, Managing Director, M/s. SPR & RG Constructions Pvt. Ltd., Chennai</p> <p>(b) Officers of the Indian Overseas Bank</p> <p>(c) Officials from CBI who had investigated the case.</p> <p>The Board also directed to send a specific letter to the higher authorities in the Complainant Department informing that despite having the case listed for hearing on several occasions, none of the officials of the Department appeared before the Board(except once) to substantiate the case and also requesting that the appearance is ensured in the upcoming hearing(s).</p>	
8.	26th December, 2022	Part heard and adjourned with the following direction to: The Office:	The Complainant Department in compliance of the directions given by

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		<p>1. Share all the documents related to the Case with the Complainant Department.</p> <p>2. To link the telephonic conversation with the Charge Sheet .</p> <p>3. To summon the following as witness:</p> <p>(a) Shri Hitesh P. Kawad, Managing Director, M/s. SPR & RG Constructions Pvt. Ltd., Chennai</p> <p>(b) Officers of the Indian Overseas Bank</p> <p>(c) Officials from CBI who had investigated the case.</p> <p>Complainant Department:</p> <p>(a) To provide the 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.</p> <p>(b) Specific comment on the denial of the telephonic conversation between the Income Tax official and the Respondent.</p> <p>(c) Whether any forensic voice examination of the telephonic conversation had been carried out? If yes, a copy of the report thereof.</p>	the Board submitted their response.
9.	19 th April, 2023	Adjourned at the request of the Respondent.	-----
10.	15 th June, 2023	Part heard and adjourned with the following direction to: The Office:	

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		<p>1. To summon the following as witness to depose before the Board:</p> <p>(a) Shri Hitesh P. Kawad, Managing Director, M/s. SPR & RG Constructions Pvt. Ltd., Chennai</p> <p>(b) Shri Sallong Yaden, Joint Commissioner of Income Tax, Chennai</p> <p>(c) Shri K. Prabhu, Inspector of Police, CBI, ACB, Chennai</p>	
11.	28 th July, 2023	<p>None of the witnesses summoned were present despite the due delivery of the Summon. The Board noted that an email dated 25th July 2023 had been received from Shri Hitesh P. Kawad, Managing Director, M/s. SPR & RG Constructions Pvt. Ltd., Chennai stating that due to medical reason, he would not be able to make his physical presence before the Board and requested to arrange for the rescheduled hearing in any audio-visual mode/telephonic mode. Since such a request to postpone/reschedule the hearing on medical grounds without any proof of the same had been received from the said witness at the time of last hearing also, the option to appear through video conferencing was provided to him through email dated 26th July 2023. However, he was not present at the time of hearing through video conferencing also. Thus, the Board decided to proceed ahead with the hearing</p>	

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		in the case. The representative of the Complainant Department and the Counsel for the Respondent made their respective submissions before the Board. The case was heard and concluded.	
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BRIEF SUBMISSIONS OF THE RESPONDENT:

3.The Respondent in his defence, inter-alia, stated as hereunder:

3.1 The Director(Discipline) in his Prima Facie Opinion has held the Respondent Guilty of "Other Misconduct falling within the meaning of Clause 2 of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with Sec 22 of the said Act, without giving any opportunity of being heard.

3.2 The prima facie opinion given by Director(Discipline) has failed to consider the substantive legal defence and objections taken by the Respondent in various letters. Notwithstanding the said fact the Director(Discipline) has based his prima facie opinion on the basis of the averments made in the Charge Sheet by extracting and reproducing certain portions of the Charge Sheet filed by Complainant which is totally contrary to the materials and the documents filed by the Complainant.

3.3 The statements of the witnesses recorded U/s. 161 of Cr.p.C is neither substantive nor conclusive proof of matter. It cannot be used as evidence either before Court or before any other forum. It can only be used to contradict witnesses as provided U/s. 145 of Indian Evidence Act.

3.4 The Director(Discipline) relied upon the following portion of the Charge Sheet which states as under:

" on 09.01. 2015 Shri Shreyans Bhandari had sought permission from his father Sanjay Bhandari to meet Shri Yaden as he was called by Shri Yaden. Shri Sanjay Bhandari has stated that Shri Yaden is calling only for bribe amount and instructed Sanjay Bhandari to meet Shalong Yaden...."

It is relevant to note the fact that, neither the statement of the witnesses recorded by the CBI during the course of investigation, nor the alleged transcripts of the telephonic conversation illegally recorded speaks about the above extracted facts which are reflected in the Charge Sheet as stated above.

3.5 The Director(Discipline) formed his opinion based upon untested, unsigned and uncorroborated statements of the witnesses in the absence of the materials upon which the Charge Sheet is constructed. The Charge Sheet is prepared to show the Respondent as accused based on imagination in the absence of any iota of materials/evidence.

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3.6 Neither the statements of the witnesses nor the alleged transcripts of the conversation allegedly between the accused in the Charge Sheet disclose that there was a request from the Respondent to Shallong Yaden for minimum penalty and favorable report and that there was either offer or demand for bribe directly or indirectly.

3.7 The Respondent disputed and questioned the authenticity of the so called intercepted telephonic conversations, as even, as per the statements of the witnesses recorded by the investigative officer the witnesses have failed to recognize the voices of all the persons who were in conversation and the same is inadmissible as evidence in Law. Even assuming but not conceding, those so-called recorded conversations do not suggest that there was offer or demand for money for seeking any favour.

3.8 The allegations are yet to be proved in Court of law. But for filing of charges in the Court, no Charges have been framed as yet. The disciplinary proceedings initiated be dropped or atleast be kept in abeyance till the matter reaches its finality in the Courts of Law.

3.9 The Complaint in Form I makes no specific allegation against the Respondent for which a complaint under Section 21 of the Act could be made.

3.10 All matters of Professional Misconduct against members of the Institute are required to be inquired and investigated in compliance with the contents of Chapter V of the Chartered Accountants Act and the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. The Respondent drew attention to Section 21A of the Chartered Accountants Act, 1949 and Section 21B of the Chartered Accountants Act, 1949. Section 21A of Chartered Accountants Act, 1949. The Section specifically mentions that the Council "shall" constitute "a" Board of Discipline, which means that the Council shall only constitute one Board of Discipline. Having two Board of Discipline at any given point of time, becomes invalid, unconstitutional and goes outside of the purview of what is envisaged in the law prescribed under Section 21A of the Chartered Accountants Act, 1949. Similar provision has been inserted with regards to Section 21B Disciplinary Committee, here the proviso in the Section 218 specifically provides that more Disciplinary Committees can be constituted by the Council. However, no such specific proviso has been given under Section 21A. If at all the law makers would have intended to have more than one Board of Discipline, the same would have been included in the Act itself. This clearly shows that the constitution of more than one Board of Discipline is ultra-vires the provisions of the Chartered Accountants Act, 1949. In Financial Year 2018-2019, the Institute of Chartered Accountants of India had two Boards of Discipline which is illegal and unconstitutional. Two Boards were existing at the time when this PFO was forwarded to him. Constitution of two Boards is beyond the powers conferred by law, and the acts/decisions of any of those Boards would be beyond jurisdiction and ultra vires the law.

OBSERVATIONS OF THE BOARD:

On perusal of the documents and submissions on record, the Board observed that the Respondent raised certain technical objections with regard to the admissibility of the case and decided to deal with them before arriving at its Findings.

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4.1 As regard the objection of the Respondent that specific clause of the misconduct had not been defined by the Complainant, the Board was of the view that it is trite that a Complainant is required as per law to state the allegations which are to form a factual foundation for an Adjudicating Authority to exercise jurisdiction and even if an incorrect provision of law/no clauses is mentioned by the Complainant in FORM I, that alone cannot be a ground to dismiss a complaint if otherwise the Authority has the jurisdiction to entertain the complaint.

Further, though the provision of Rule 3 is couched in a "mandatory form" by use of words such as "shall" and appear to be mandating a procedure that must be necessarily followed. However, mere use of language which suggest or purports to suggest a "mandate" may not alone be sufficient to regard a procedural rule to be mandatory to the extent that its non-compliance could vitiate the entire proceeding.

While coming to the said view the Board took into view the following observations of the Hon'ble Supreme Court in the matter of Uday Shankar Triyar v. Ram Kalewar Prasad Singh and Anr. (Reported in AIR 2006 SC 269) as under:

"Non-compliance with any procedural requirement relating to a pleading, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates. Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use."

Thus, non-mentioning of clauses can at the highest be treated as "technical defect." Infact, the procedure to be adopted in case of defective complaint is that the defect, if pointed out, and not cured by the complainant, it is incumbent upon the Director (Discipline) to form a prima facie opinion of no case and recommend its closure. However, the Board of Discipline is vested with discretion to ignore the recommendation, if it deems fit, and proceed further with the matter.

The onus to formulate a prima facie opinion as to the misconduct rests with the Director (Discipline) and therefore, premised on the pleadings filed which contains the allegations and documents placed on record, it is the Director (Discipline) which has to first formulate a prima facie opinion on the alleged misconduct.

Therefore, notwithstanding the assertions as to the particular clause of misconduct by a Complainant, the Director (Discipline) shall, after perusing the material available, conclude as to existence or otherwise of the misconduct alleged. This is also apparent from the provisions of various sub clauses of Rule 9(2)(a) of the Misconduct Rules, 2007, which require the Director(Discipline) to place the matter before the Board of Discipline, if the misconduct alleged falls within the First Schedule and before the Disciplinary Committee, if the alleged misconduct falls within the Second Schedule or both under the

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First and Second Schedule. This also supports the view that the sifting of the allegations to identify the clauses of misconduct is to be performed by the Disciplinary Directorate. This issue can also be addressed from the perspective of the status of the complainant. The requisite provision in the statute or under the Rules does not prescribe as to who can file a complaint under the provisions of the Act alleging misconduct by a member. Therefore, the Complainant can be a statutory authority, a member of the Institute who is well versed with the provisions of the Act or even a member of public who may not be familiar with the provisions of the Act. In such a scenario, to give a pedantic interpretation to the provisions of the Act and the Rules making it incumbent on a Complainant to specify clauses of misconduct would be denying the remedy otherwise available under the statute.

If the allegations stated in the complaint do not fall within any specified clauses of professional misconduct, the same may however be a case of "other misconduct" and the ICAI would be within jurisdiction to proceed further on the allegations. Therefore, non-mentioning of clauses pertaining to "misconduct" does not in any manner vitiate the proceedings.

- 4.2 As regards the plea of the Respondent that the criminal proceedings on the same allegations are pending and charges against him were not framed, the Board viewed 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:-

"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

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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 that the extant case is pending before Court of Competent jurisdiction and charges against him were not framed cannot sustain. 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.

- 4.3 As far as the objection of the Respondent as to 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. Also, the Board of Discipline was of the view that it is not the appropriate forum to challenge the constitution of its two Benches.
- 4.4 As regard the charge alleged that the Respondent along his son CA. Shreyansh Bhandari had criminally conspired with Shri Hitesh P. Kawad, Managing Director, M/s. SPR & RG Constructions i.e. the Company and Sh. SallongYaden, Joint Commissioner, Income Tax, Company Range VI, Chennai in the matter pertaining to covering up of huge undisclosed investments unearthed during Survey conducted by Income Tax Department on 11.12.2014 in M/s. SPR Group of Companies and in furtherance of the said criminal conspiracy, the Respondent had arranged a sum of Rs. 8 lakh to Sh. SallongYaden as bribe for a favorable report, the Board noted that the Complainant Department brought on record the following evidences:
- (a) Copy of the intercepted telephonic conversations between the Respondent, Shri Shreyans Bhandari, Sh. Hitesh P. Kawad and Shri Sallong Yaden
 - (b) Copy of the Preliminary Survey Report of the Deputy Commissioner of Income Tax
 - (c) Copy of the Surprise Check Proceeding of CBI dated 10.01.2015.
 - (d) Copy of the Statements filed by the CBI before the Hon'ble Principal Judge for CBI cases, Chennai.

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(e) Copy of the Charge-sheet filed before Principal Special Judge for CBI case, Chennai wherein the name of the Respondent as an accused was also appearing as evident from the copy of the Final report given under Section 173(2) of Cr. P.C.

4.5 The Board observed that the issue under consideration before it was whether the Respondent had any alleged involvement alongwith CA. Shreyansh Bhandari in arranging and handing over alleged bribe of Rs. 8 lakh to Shri. Sallong Yaden and thus, had brought disrepute to the profession by commission of the said act. To examine the conduct of the Respondent in the said perspective, the Board considered it essential to examine the following witness(es):

(a) Shri Hitesh P. Kawad, Managing Director, M/s. SPR & RG Constructions Pvt. Ltd., Chennai

(b) Officers of the Indian Overseas Bank

(c) Officials from CBI who had investigated the case.

(d) Shri Sallong Yaden, Joint Commissioner of Income Tax, Chennai

(e) Shri K. Prabhu, Inspector of Police, CBI, ACB, Chennai

The Board noted that Shri K. Prabhu, Shri Hitesh Kawad and Shri Shalon Yaden chose not to depose before the Board despite the due service of the Summon upon them.

The Board noted that the following four witnesses i.e. witness no. 1 and 2 who were two out of the four CBI Officials and witness no. 3 and 4 who were an independent witness to the surprise check conducted by the CBI officials on 10th January 2015 were present for deposition before it during the hearing held on 15th June 2023:

- a) Witness no. 1: Sh. A. Ramalingam, Police Constable, CBI
- b) witness no. 2: Sh. S. Srinivasan, Police Constable, CBI
- c) witness no. 3: Shri Kannan Alias Raja, Manager, Indian Overseas Bank
- d) witness no. 4 : Shri M Ram Kumar, Manager, Indian Overseas Bank

The Board posed certain questions to the said witnesses which were answered by them. The Board provided an opportunity to the Respondent to cross-examine the said witnesses which was exercised by him. The Board also provided the representative of the Complainant Department the opportunity to cross-examine the said witnesses who chose not to cross-examine the said witnesses. Thus, the said witnesses were discharged by the Board.

A comparative of the deposition of the said witness(es) was done and it was noted as under:

S.No.	Name of the witness	Deposition before CBI	Deposition before the Board	Deposition on cross examination by the Counsel

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				for the Respondent
1.	Shri K. Ramalingam	No deposition before CBI	<p><i>"Mr. Bhandari came in white coloured car. Inspector Prabhu, Mr. Kannan, two witnesses, myself and Shri Srinivasan and Joint Secretary Income Tax were present. They intercepted at the gate of the guest house. His proceedings and statements were being recorded. They recovered total Rs. 8 lakhs cash and Rs. 15000 cash. Total 8 people were there inside the room."</i></p>	----
2.	Shri S. Srinivasan	No deposition before CBI	<p><i>"I was there when the particular incidence happened. I am in good state of mind and I remember the things. On that particular day, they were waiting outside. After one hour a car entered. A gentleman got down and he was having a bag in his hand. He went inside the guest house and when he came out, the bag was not there in his hand. The team incepted him and asked him who are you? They introduced themselves and he also introduced him."</i></p>	The Officer Mr. Salong Yadein spoke in English as well as in Tamil.

			<p><i>They asked him where is the bag? He said that the bag was handed over to one person named as Salon Yadein and my father asked me to handover the bag to that person. The gentleman took the team inside to the person's quarters. He rang the bell, the person opened the door. They introduced themselves as person from CBI. CBI asked him to show the bag which is lying what is there? The persons were sweating profusely and after a few minutes he said that there is a cash inside the bag. The cash was taken out and they told that this is the money."</i></p>	
3.	<p>Shri Kannan Alias Raja, Manager, Indian Overseas Bank</p>	<p>Statement recorded on 17th January 2015: "At about 12.45 hrs, one spectacled person later ascertained as Shri. Shreyans Bhandari wearing black pant and light blue full sleeves shirt came in a Maruthi Ertiga Car bearing No. TN 01 AR 8779 and parked the same in front of the aforesaid guest house. He took out one Black and Orange</p>	<p><i>"We were waiting in a house outside where we were waiting for some instructions. After that we entered house and inside that two persons who were CBI officials were there. That room is like a bedroom where two persons were there. At that time, we have seen a bundle of amount.</i></p>	<p>He appeared as a witness before the Income Tax Department last year in connection with the said matter. He did not remember the exact date on which the incident happened. He deposed that it happened 7-8 years ago.</p>

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		<p>coloured Manyavar Polythene bag from the Car and went into the guest house. After a few minutes, he came out of the guest house without the abovesaid polythene bag. At this juncture, the CBI team intervened Shri. Shreyans Bhandari at the entrance of the guest house, revealed their identity and asked about the purpose of his visit and the whereabouts of the Black polythene bag which he was carried into the guest house. He stated that he had come to the guest house to meet shri. Sallong Yaden, JCIT, Chennai who was staying at Room No. G-6 of the Guest House. He also stated that he had brought Rs. 8 lakhs in the Black Polythene bag and handed it over to Shri. Sallong Yaden as instructed by his father Shri. Sanjay Bhandari for covering up of huge undisclosed investments unearthed during search conducted at the premises of M/s SPR & RG Constructions at Porur, Chennai and to finalise the</p>	<p>He entered along with the team. After that the money was there. Then officials started checking the rooms and officials checked all lockers. A colleague was sitting there and was watching the inspection. After that we were asked to count the money. Then some amount was seized. We were told to sign the inventories and that we have signed. These things were going on."</p>	<p>On the date of the raid his Statement was recorded and he did not remember recording any other Statement before CBI. "At what point of time, the people were there, I am not sure. But two people were there. Officials of CBI were there. But when and who were present, I am not sure."</p>
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		<p>assessment with minimum penalty. He also stated that Shri. Sallong Yaden had demanded Rs. 8 lakhs and asked to hand it over to him on the afternoon of 10.01.2015 at his place of stay in the aforesaid guest house and accordingly, he had come to the guest house and handed over the alleged Bribe amount of Rs. 8 lakhs to Shri. Sallong Yaden.</p> <p>Shri. Shreyans Bhandari led and identified the room No. G-6 where he handed over the alleged bribe amount of Rs. 8 lakhs to Shri. Sallong Yaden. I and Ramkumar accompanied the CBI team along with Bhandari. Upon entering into the room, Shri. Shreyans Bhandari identified Shri. Sallong Yaden and also the Black and Orange coloured Manyavar Polythene Bag containing Rs. 8 lakhs kept on the teapoy adjacent to the bed, which he had handed over to Shri. Sallong Yaden."</p>		
4.	Shri M Ram Kumar, Manager, Indian	Statement recorded on 17 th January 2015:	"We were waiting on that day with CBI about one hour near one lodge. One	"Morning when I reached office. They asked me

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Overseas Bank	<p>"At about 12.45 hrs, one spectacled person later ascertained as Shri. Shreyans Bhandari wearing black pant and light blue full sleeves shirt came in a Maruthi Ertiga Car bearing No. TN 01 AR 8779 and parked the same in front of the aforesaid guest house. He took out one Black and Orange coloured Manyavar Polythene bag from the Car and went into the guest house. After a few minutes, he came out of the guest house without the abovesaid polythene bag. At this juncture, the CBI team intervened Shri. Shreyans Bhandari at the entrance of the guest house, revealed their identity and asked about the purpose of his visit and the whereabouts of the Black polythene bag which he was carried into the guest house. He stated that he had come to the guest house to meet shri. Sallong Yaden, JCIT, Chennai who was staying at Room No. G-6 of the Guest House. He also stated that he had brought Rs. 8 lakhs in the Black Polythene bag and</p>	<p>person came and went inside. Immediately we were taken to that lodge. When we went there, CBI Inspector was there. He introduced that he is the Income Tax Commissioner and one more person was there the Concurrent Auditor. He said that this is the money the concurrent auditor has given the money as bribe to the Commissioner. After that they seized some laptop and other belongings from the Commissioner and then they enquired from each of them. Commissioner said that he got that money as loan for personal use and concurrent auditor has said that since he is starting of his career, he just requested for forgiveness. That is what I remember sir. Till evening we were there. After that, they arrested the Commissioner. That is what I remember."</p>	<p>to come to CBI office. They did not tell what are the issues. After reaching CBI office, they told me that they are going for a case as a witness. They did not inform me where we are going and for what case we were going. The auditor ,Commissioner Sir and CBI Inspector were already there inside the room." He did not remember the exact date on which the incident happened. After the incident on 10.1.2015, the CBI did not record his other Statement. Two months back, he went to Income Tax office in this particular case. He appeared as a witness in two other cases also.</p>
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		<p>handed it over to Shri. Sallong Yaden as instructed by his father Shri. Sanjay Bhandari for covering up of huge undisclosed investments unearthed during search conducted at the premises of M/s SPR & RG Constructions at Porur, Chennai and to finalise the assessment with minimum penalty. He also stated that Shri. Sallong Yaden had demanded Rs. 8 lakhs and asked to hand it over to him on the after noon of 10.01.2015 at his place of stay in the aforesaid guest house and accordingly, he had come to the guest house and handed over the alleged Bribe amount of Rs. 8 lakhs to Shri. Sallong Yaden.</p> <p>Shri. Shreyans Bhandari led and identified the room No. G-6 where he handed over the alleged bribe amount of Rs. 8 lakhs to Shri. Sallong Yaden. I and Ramkumar accompanied the CBI team along with Bhandari. Upon entering into the room, Shri. Shreyans</p>		
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		<i>Bhandari identified Shri. Sallong Yaden and also the Black and Orange coloured Manyavar Polythene Bag containing Rs. 8 lakhs kept on the teapoy adjacent to the bed, which he had handed over to Shri. Sallong Yaden."</i>		
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4.6 On a careful study of the deposition by the said witness(es), the Board observed that the first two witnesses namely Shri K. Ramalingam and Shri S. Srinivasan had deposed only before the Board and not before CBI. Also, the two statements recorded by the CBI of the two Bank Officials were exactly the same. A clear distinction could be made between both the statements of the Bank Officials wherein before the CBI they stated that they had caught the son of the Respondent outside the house when he was coming out and on the other hand before the Board they deposed as having seen the son of the Respondent inside the house when they directly entered the house. The witness no. 4 referred the Respondent/his son as the concurrent auditor in his deposition before it. The Board also noted the Counsel for the Respondent confirmed during the hearing that the Respondent had never been the concurrent auditor of that Bank or of any of those companies or any of the companies which are related to this particular case and the said fact was not countered by the authorized representative of the Complainant Department. Thus, the Board noted that the Statements of the Bank Officials were not consistent due to which much credibility could not be afforded to them.

4.7 The Board also noted that the forensic voice examination of the intercepted conversation between the Respondent, Shri Shreyans Bhandari, Sh. Hitesh P. Kawad and Shri Sallong Yaden was not done till date. In the criminal proceedings wherein the Respondent was one of the accused, although the Charge Sheet before the Competent Court had been filed, Charges had not been framed till date.

4.8 Having heard all the parties and also the CBI's representative as well as the representative of the Respondent, the Board observed that the witnesses who deposed before the Board gave their version which was quite different from what the CBI, as the Complainant Department had represented. Further, the Complainant Department i.e. the CBI also chose not to cross-examine the witnesses on whose Statement their case was made out. The Complainant Department could not bring on record any conclusive /corroborative evidence to prove the charge alleged against the Respondent that the Respondent and

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CA. Shreyans Bhandari, in order to finalize the assessment with minimum penalty and fine, acted as middlemen and requested Sh. Sallong Yaden, Joint Commissioner, Income Tax for a favourable report for which a bribe of Rs. 8 lacs was arranged by the Respondent and CA. Shreyans Bhandari and thereafter, handed over by CA. Shreyans Bhandari.

Hence, in view of this scenario and representations made by both the parties, since the Complainant Department was not able to prove conclusively the charge alleged against the Respondent that he acted as a middlemen in the arrangement and handing of the alleged bribe of Rs. 8 lacs to the Income Tax Official for a favourable report for his client, the Board decided to hold the Respondent Not Guilty in respect of the charge alleged.

CONCLUSION:

5. 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, retd.)

(Government Nominee)

DATE: 23-01-2024

सही प्रतिलिपि होने के लिए प्रमाणित

Certified to be true copy



अरुण कुमार / Arun Kumar

वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer

अनुशासनान्वयक निदेशालय / Disciplinary Directorate

इन्स्टिट्यूट ऑफ चार्टर्डेड एकाउंटेंट्स ऑफ इंडिया

The Institute of Chartered Accountants of India

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