

CONFIDENTIAL

File No. PR-130/2016-DD/153/2016

BEFORE THE BOARD OF DISCIPLINE

Constituted under Section 21A of the Chartered Accountants Act, 1949

PRIMA FACIE OPINION

In the matter of:

Shri. Snehlal Bansilal Thakkar

E-605/606, Agrawal Residency,

Shankar lane,

Kandivali (West)

MUMBAI-400067

...Complainant

Versus

CA. Kishor Ramji Gala (M No. 048752)

M/s K Gala & Associates (FRN 114864W)

12-B, Singapuri Building, 1st Floor, 609

J S S Road, Marine Lines,

MUMBAI - 400002

...Respondent

DISCIPLINARY DIRECTORATE

The Institute of Chartered Accountants of India

ICAI Bhawan, PO Box No. 7100, Indraprastha Marg,

New Delhi - 110002.

1. Mr. Snehlal Bansilal Thakkar, Mumbai (hereinafter referred to as the "Complainant") has filed complaint in Form 'I' dated 19th May, 2016 (C-1 to C-128) against CA. Kishor Ramji Gala (M No. 048752) of M/s. K Gala & Associates (FRN No. 114864W), Mumbai (hereinafter referred to as the "Respondent" and "Respondent Firm" respectively).

2. In accordance with the provisions of clause (a) of sub-rule (1) of Rule 8 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, a copy of the complaint in Form 'I' was forwarded to the Respondent vide Directorate's letter dated 29th June, 2016 (W-1) asking him to file his Written Statement.

3. The Respondent filed his Written Statement dated 29th August, 2016 (W-5 to W-8) alongwith enclosures (W-9 to W-25).

4. In accordance with the provisions of Rule 8(4) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, a copy of the Written Statement was forwarded to the Complainant vide Directorate's letter dated 09th January, 2017 (R-1) asking him to file his Rejoinder.

5. The Complainant filed his Rejoinder dated 13th February, 2017 (R-3 to R-11) along with enclosures (R-12 to R-139).

6. On completion of the prescribed stages as laid down in the Rules, the Complaint along-with Written Statement and Rejoinder were considered in terms of Rule 8(5) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of

Cases) Rules, 2007. On consideration, it was felt that following additional documents are required to be called for from the parties to the complaint.

From the Complainant:-

- 1.) Copy of alleged bogus and fabricated documents filed with Maratha Sahakari Bank Ltd., City Co-op Bank Ltd. and Income Tax Department purportedly signed by the Respondent.
- 2.) Supporting documents/evidences in support of allegation given in complaint Form I under the heading example 4 & 5 showing the involvement of the Respondent in the said matters.
- 3.) Audited Financial Statements of M/s Maverick Investment Solutions Pvt. Ltd. for the year ending 31.03.2010 and 31.03.2011.
- 4.) Audited Financial Statements of M/s Samayak Multitrade Pvt. Ltd. for the year ending 31.03.2010 and 31.03.2011.
- 5.) Specific documents in support of your queries no. 6,7,9 and 10 as given in complaint Form I.

From the Respondent:-

- 6.) Copy of documents filed with Maratha Sahakari Bank Ltd., City Co-op Bank Ltd. And Income Tax Department purportedly signed by the Respondent.
- 7.) Audited Financial Statements of M/s Maverick Investment Solutions Pvt. Ltd. for the year ending 31.03.2010 and 31.03.2011.
- 8.) Audited Financial Statements of M/s Samayak Multitrade Pvt. Ltd. for the year ending 31.03.2010 and 31.03.2011.

7. The Directorate vide letter dated 23rd June, 2017 requested the Respondent (D-1) and the Complainant (D-2) respectively to submit the above stated documents followed by reminder dated 14th August, 2017 (D-3, D-4) to both the parties.

8. The Respondent vide his letter dated 16th November, 2017 (D-5 to D-23) submitted certain documents, however, no response was received from the Complainant.

9. On perusal of the papers on record, i.e. the Complaint, Written Statement, Rejoinder and additional submissions of the Respondent as above, it is observed as under:-

9.1 In the instant case, the Complainant stated that he was the Director of RML Multitrade Pvt. Ltd. (hereinafter referred to as the 'Company') which was formed by him along with Mr. Kumar Raichand Madan with the primary objective of trading in shares. However, instead of carrying out share trading activities, such Company was involved in money laundering activities, about which the Complainant got aware in October, 2015 only. The Respondent was the statutory auditor of the Company for the financial years 2010-11 & 2011-12. As per the Complainant, the said money laundering activities were being carried out by said Mr. Kumar Raichand Madan in connivance with the Respondent. The Complainant further stated that thereafter he came to know about his fake resignation from the Directorship of the Company and in his place, brother of Mr. Kumar Raichand Madan was appointed as new Director in the Company (C11-C17).



9.2 The Complainant in his first allegation stated that the family members of Mr. Kumar Raichand Madan were doing business of Money laundering with the help of the Respondent. The Complainant also alleged that all the financial data submitted to Registrar of Companies with regard to the Company for the financial years 2010-11 & 2011-12 was fake and fabricated. It has been further alleged that the loans figures shown in the balance sheet of the Company are nothing but black money amount as the share capital of the Company was Rs 1 lac only and the Company was dealing in crores of rupees as loan.

9.3 The Respondent in his defence, has submitted that the entire thrust of allegations is regarding the misdeeds of Mr. Kumar Raichand Madan, business partner of the Complainant. The Complainant has not pointed out single discrepancy in the accounts audited by the Respondent. The Respondent further submitted that the books of accounts have been audited by him in accordance of the principles of auditing as issued by ICAI. The Respondent also submitted that his role is to ensure about the transaction only, if any doubt or suspicion is figured, he is not responsible for any misdeed committed by the management. Regarding the money laundering business of Mr. Kumar Rai Chand Madan, the Respondent has stated that the Complainant and Mr. Madan were co-director/ business Director in the Company. The Respondent also contended that he was the auditor only up to 31st March, 2013 and therefore not aware of any subsequent events about which the Complainant is making allegations. It was also submitted that the Respondent has never handled ROC matters for the Company. The Respondent also

submitted that the allegation raised by the Complainant regarding the money laundering business is patently baseless as no evidence has been submitted in that regard.

- 9.4 It is seen that the Complainant has submitted Form 23AC and Form 23ACA for the year ending 31st March, 2011 and 31st March 2012 filed with ROC by the Company (C-18 to C-76) which as per him contained his fake signatures on the financial statements (C-36, C-59). The Respondent in his defence stated that the Complainant had himself signed the balance sheet of the Company as approved/adopted by their board of directors. Further, as regards uploading of the same on ROC website, he was not involved with Secretarial matters of the Company. In this regard, it is observed that the above submission of the Respondent seems to be acceptable, as the said forms have been uploaded with the digital signatures of the Company Secretary (C-54, C-76) and not with that of the Respondent. As regards forgery of the signature of the Complainant on the financial statements for the year ending 31st March, 2011 and 31st March, 2012 (C-36, C-59), the Complainant has not come up with any concrete evidence such as the report of handwriting expert etc. to establish that his signatures were forged. Moreover, since an auditor is not related to the day-to-day management of the Company, he is not required to check the genuineness of those documents or suspect any forgery unless and until there is any suspicious incident warranting him to doubt the veracity of the documents or signatures of any partner. Accordingly, in the absence of any specific evidence, the allegation of forgery of the signatures of the Complainant, being one of the Director of the Company has nothing to do with the role of the



Respondent as statutory auditor of the Company and he is thus, prima facie not guilty on the same.

- 9.5 The Complainant has further alleged that Mr. Kumar Raichand Madan has taken loan from the Maratha Sahakari bank Ltd. and the documents relating to loan are totally bogus and all figures are fabricated to fulfil the requirement of bank norms. The Complainant has brought on record a letter dated 04th August, 2014 (C115-C117) issued to the borrowers by the Maratha Sahkari Bank Ltd. wherein the name of said Mr. K.R. Madan is appearing as Guarantor. As per the Complainant, the Respondent has duly signed & certified all the documents in capacity of the statutory auditor of the Company. The Respondent, in his defence has submitted that Mr. Kumar Raichand Madan is not a director of the Company under consideration. The Respondent further stated that he has not certified any document for the purpose of procurement of loan from the bank, as wrongly alleged by the Complainant. In this regard, it is pertinent to mention that the Complainant too in his rejoinder (R-7) vide point no. 9 has admitted that this charge is not applicable on the Respondent. Thus, no professional misconduct is made out against the Respondent on this allegation.
- 9.6 The Complainant in his next allegation has stated that Mr. Madan has also taken a loan from Citi Co. Operative Bank Ltd., wherein also the documents on the basis of which, loan was sanctioned were bogus and fabricated in nature. The Complainant alleged that these documents have been certified by the Respondent merely to fulfil the requirements of bank norms. It has also been stated Mr. Madan has also defaulted in repayment of such bank loan and the

bank has held property of the Complainant as he was the surety in that loan obtained by Mr. Madan. The Complainant also argued that the figures as submitted in the ROC records is not at all matching with the returns filed with the Income Tax Department.

9.7 The Respondent, in this regard, has submitted that he was neither aware nor concerned with the default of Mr. Madan with any Bank. It has also been submitted that the Respondent has not filed any income tax return nor certified any documents for loan purposes. In this regard, it is viewed that the Complainant while raising his allegation has not submitted any documents to prove the difference in the figures of the ROC records and income tax returns as alleged. He has also failed to provide the alleged loan documents certified by the Respondent. It is seen that in respect of this allegation also, the Complainant in his rejoinder vide point no. 11 (R-7) stated the same is not applicable on the Respondent. Thus, no professional misconduct is evident on the part of the Respondent on this allegation.

9.8 It is further observed that vide example no. 3 to 5 (C-3 to C-4) of his complaint, the Complainant has raised the issue of giving heavy loans to individuals by the Companies audited by the Respondent in order to facilitate money laundering activities. The said allegations and the response of the Respondent on the same are given as under:-

9.8.1 A Company namely Precious Realities & Investment Private Limited in the year 2010 has given loan to Mr. Vyomesh Trivedi, who is one of the accused of a scandal of Rs. 824 crore scam of

Shree Asthvinayak Cinevision Limited. The Complainant further stated that in the above case, summons have also been issued to Mr. Madan. The Complainant further stated that a legal case against Kakka Family has been withdrawn where claim was of Rs. 2,10,00,000/- and the Company has not shown these entries in their books of accounts (C-3). The Respondent, in this regard, has admitted that he was the statutory auditor of this Company namely M/s Precious Realities & Investments Private Limited for the financial years 2010-11 & 2011-12 (C88-C96) & (C98-C114). It was also submitted by him that being a statutory auditor, he is in no way responsible for any default committed by the borrowers of this Company. It is seen that Mr. K.R. Madan is the Director in the said Company. Also the Respondent has filed Income Tax Return of the aforesaid Company for these two financial years. (C84-C87) & (C-97). The Respondent further submitted that there was no such case against Precious Realities & Investment Private Limited as alleged by the Complainant. It is seen that the Complainant along with his Rejoinder has brought on record copies of certain FIR (R-93 to R-97), however, the same are in vernacular language.

9.8.2 The Complainant further alleged that one of the Companies namely Maverick Investment Solutions Private Limited had advanced loans to various persons in the year 2010 (C-4) which were used in the scam of Shree Asthvinayak Cinevision Pvt. Ltd. The Complainant had enclosed the ledger accounts of all those parties (C-117 to C-120). The Respondent in his defence stated that transactions mentioned by the Complainant pertained to the period of 2010 whereas he had conducted the audit up to 31.03.2009. In this regard, it is observed that the Respondent had

signed the balance sheet of the Company for the year ending 31.03.2010 (D-7 to D-14) whereas the transactions reflected in the ledger enclosed by the Complainant as above (C-117 to C-120) pertained after the date of 31.03.2010.

9.8.3 The Complainant further stated that another Company, M/s Samyak Multitrade Private Limited had also given amounts to various persons in 2010 as loan (C-4). The Complainant also attached copies of ledger accounts of such persons to whom the loans were granted by the Company (C-121 to C-122). The Complainant further stated that the aforesaid Company was registered for trading of commodities but the fact was that such companies have not done a single rupee transaction of trading but has deposited & issued money as friendly loan. The Complainant has further alleged that Mr. Madan has involved himself in various other entities in the similar manner as mentioned above. The Complainant lastly alleged that due to wrong practise of the Respondent, Mr. Madan has easily run the racket of money laundering business.

9.8.4 The Respondent in his defence has stated that these were the loans and advances given by the Company in the ordinary course of business. The business is conducted by the Board of Directors and not by the Respondent as wrongly assumed by the Complainant. The Respondent further stated that there is no element of any alleged professional misconduct in the audit of this Company.

9.9 In this regard, it is observed that from all the above instances quoted by the Complainant, his main allegation is the Respondent's involvement in money laundering activities of Mr. K.R. Madan and his Companies, some of which were audited by the Respondent. It is seen that the said K.R. Madan is the Director of many Companies (C-77 to C-79) including the Companies namely M/s Precious Realities & Investment Pvt. Ltd., Maverick Investments Solutions Pvt. Ltd, Samayak Multitrade Private Limited which were audited by the Respondent. Since, the Complainant had alleged that these Companies have advanced loans to individuals in huge amounts to accumulate black money as discussed in paras 9.8.1 to 9.8.4 above, the role of the Respondent in relation to the same is requires to be investigated further in view of the following reasons:-

9.9.1 The Complainant in his complaint had contended that the Company namely M/s RML Multitrade Pvt. Ltd. is having Share Capital of Rs. 1 Lacs whereas the loans taken & given by it is in crores of rupees which indicates that the loans figures are of black money. In this regard, upon perusal of Balance Sheet of the Company as on 31st March, 2011, it is observed that the issued share capital of the Company is Rs. 1,00,000/- (C-36) and the Loans and Liabilities of the Company are Rs. 4.42 Crores (C-37). It is seen that the Respondent should have offered his specific explanation on this issue raised by the Complainant which unfortunately he has failed to do.

9.9.2 Further, it is seen that the Complainant in Form I has raised certain issues in the form of queries such as whether a Private Limited

Company can give loan to any individuals, the Company has not made any documentation with any individuals for loan, the Company is not having any information regarding these clients and no balance confirmation has been done with these parties etc. (C-5). It is observed that although, these points have been answered by the Respondent (W-21 to W-22) stating that he had verified the relevant information, however, considering the nature of allegation being cast, it is observed that the Respondent had failed to offer his strong and due clarification on the same. It is seen that the Respondent though had merely denied the allegations but he had failed to put forth his line of defence in a strong manner. The Complainant in his Rejoinder vide para 16 has again merely raised this issue stating that "kindly provide such documents and not just explanation".

9.9.3 Further, it may be noted that the Respondent, in his defence, has not brought on record any specific document. Also the statement of the Respondent that Mr. Madan and his family members may be managing 40 to 50 business concerns in some capacity or the other and the Respondent was handling the audits of only 5 or 7 of the concerns, that too, only for a period of two or three years shows ambiguous reply on the part of the Respondent while submitting his response. The Complainant in his rejoinder also raised this issue stating that why the Respondent is not sure about the no. Of Companies audited by him and had not produced the relevant documents.

9.9.4 The Complainant vide para 8 of his Rejoinder (R-7) mentioned that the Respondent signed the financial statements of M/s Precious



Realities & Investments Pvt. Ltd. for A.Y. 2012-13 as uploaded on MCA website which do not contain the signatures of the Directors (R-40). In his regard, it is observed that the Balance Sheet of the aforesaid Company as at 31st March, 2012 (R-40) contained the signatures of the Respondent only along with his seal but the same has not been signed by any of the Directors of the Company. Accordingly, this issue raises a doubt on the allegation that the Respondent was acting in collusion with Mr. K.R. Madan as no prudent professional could have signed the financial statements before the same are signed by the Management of the Company (R-40).

9.9.5 It is further observed that the Complainant had filed a police complaint dated 11th July, 2016 (R-34) against the Respondent and others which indicates that he had initiated proceedings before Mumbai Police against the Respondent for money laundering activities and others.

9.9.6 The Complainant also alleged that the Company, M/s RML Multitrade Pvt. Ltd. made a loss of Rs. 2,65,17,392/- in shares (R-25), which is not reflecting anywhere in the books of accounts. The same also needs to be examined further. Also as per Dena Bank stock broking statement for the year 2010-11 (R26-R30), it appears that the withdrawals are higher in comparison to the deposits resulting in net loss from share trading business.

9.10 It needs to be stated that from the documents on record and the allegations of the Complainant, he is emphasising on the activities/ conduct of one Mr. K.R. Madan and his family members whereby



the focus in the entire complaint and rejoinder seems to be more on the misdeed of said Ms. K.R. Madan. However, as discussed under paras 9.9.1 to 9.9.5 above, the involvement of the Respondent in the affairs cannot be ruled out at this prima facie stage. Accordingly, the matter needs to be investigated further to examine the conduct and involvement of the Respondent in the allegations of connivance with Ms. K.R. Madan in his money laundering activities.

10. In summation, taking an overall view of the facts and circumstances of the case and in terms of reasonings as above, I am of the prima facie opinion that the Respondent is **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 Section 22 of the said Act.

DATE: 19th MAY, 2018
PLACE: NEW DELHI



Sd/-
(C.S. RAVI)
DIRECTOR (DISCIPLINE)

Certified True Copy



Mukesh Kumar Mittal
Assistant Secretary
Disciplinary Directorate
The Institute of Chartered Accountants of India
ICAI Bhawan, I.P. Marg, New Delhi-110 002



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Ref. No. PR/130/2016-DD/153/2016/BOD/438/2018

✓ **Shri Snehlal Bansilal Thakkar**

E-605/606, Agrawal Residency,
Shankar Lane,
Kandivali (West)

MUMBAI – 400 067

15 JAN 2016

Dear Sir,

Sub: In the matter of complaint made by you against CA. Kishor Ramji Gala, M/s. K Gala & Associates, Chartered Accountants, Mumbai, under Section 21 of the Chartered Accountants Act, 1949.

I have been directed to inform you that your Complaint, Written Statement of the Respondent, your Rejoinder and additional documents alongwith the prima facie opinion formed by the Director (Discipline) under Rule 9(1) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules 2007, were considered by the Board of Discipline. The Board on consideration of the same, concurred with the reasons given against the allegation(s) and thus, **agreed** with the prima facie opinion of the Director that the Respondent is **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 Section 22 of the said Act 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.

Accordingly, in terms of Rule 14(2) of the aforesaid Rules, a copy of the prima facie opinion formed by the Director (Discipline) in the above Complaint along with a copy of the documents relied upon by him while formulating the aforesaid prima facie opinion are herewith being forwarded to you.

In terms of the requirement of sub-rule (4) of Rule 14 of the aforesaid Rules, the Respondent has been asked to submit a copy of his Written Statement to the Director (Discipline) and to you within 14 days of the receipt of this letter.

Your attention is invited to Rule 14(5) of the aforesaid Rules wherein on receipt of the Written Statement from the Respondent, you are required to submit your Rejoinder along with supporting documents, if any within 14 days of receipt of the same. A copy of the same is also required to be sent to the Respondent.

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Accordingly, after having sent the copy of Rejoinder to the Respondent, the proof of having sent the same to him be also forwarded to us for information and records.

Please note that in case your Rejoinder is not received within the aforesaid period of 14 days, as above, it shall be presumed that you have no further submissions to make and the Board of Discipline shall proceed to decide the case on merits.

The formal notice for enquiry in the above matter will be issued in due course of time.

In the meantime, kindly acknowledge receipt and keep us informed of any change in your communication address for further correspondence.

Yours faithfully,

Encl.: As above

(CA. PARVESH BANSAL)
DEPUTY SECRETARY
DISCIPLINARY DIRECTORATE
Phone No.: (011) 30110437

Email: disc@icai.in, parvesh.bansal@icai.in

Copy to:-

CA. Kishor Ramji Gala
M/s. K. Gala & Associates
Chartered Accountants,
12-B Singapuri Building,
1st Floor, 609, J S S Road,
Marine Lines,
MUMBAI – 400 002



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Ref. No. PR/130/2016-DD/153/2016/BOD/438/2018

CA. Kishor Ramji Gala
M/s. K. Gala & Associates
Chartered Accountants,
12-B Singapuri Building,
1st Floor, 609, J S S Road,
Marine Lines,
MUMBAI - 400 002

Dear Sir,

Sub: In the matter of Complaint made by Shri Snehlal Bansilal Thakkar,
Mumbai, against you, under Section 21 of the Chartered
Accountants Act, 1949.

I have been directed to inform you that the above Complaint, your Written Statement, Rejoinder of the Complainant and additional documents alongwith the prima facie opinion formed by the Director (Discipline) under Rule 9(1) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules 2007, were considered by the Board of Discipline. The Board on consideration of the same, concurred with the reasons given against the allegation(s) and thus, **agreed** with the prima facie opinion of the Director that the Respondent is **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 Section 22 of the said Act 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.

Further, in terms of Rule 14(2) of the aforesaid Rules, a copy of the prima facie opinion formed by the Director (Discipline) in the above Complaint along with a copy of the documents relied upon by him while formulating the aforesaid prima facie opinion are herewith being forwarded to you.

In terms of Rule 14(4) of the aforesaid Rule, you are hereby required to send a copy of your Written Statement along with supporting documents, if any, to the Director (Discipline) and the Complainant within 14 days of the receipt of this letter.

Accordingly, apart from sending a copy of Written Statement as requested above to us, you are also required to send proof of having sent the same to the Complainant for our information and records.

-2/-



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-2-

Please note that in case your Written Statement is not received within the aforesaid period of 14 days, it shall be presumed that you have no further submissions to make and the Board of Discipline shall proceed to decide the case on merits.

The formal notice for enquiry in the above matter will be issued in due course of time.

In the meantime, kindly acknowledge receipt and keep us informed of any change in your communication address for further correspondence.

Yours faithfully,

Parvesh

Encl.: As above

(CA. PARVESH BANSAL)
DEPUTY SECRETARY
DISCIPLINARY DIRECTORATE
Phone No.: (011) 30110437

Email: disc@icai.in, parvesh.bansal@icai.in

Copy for Information:-

✓ **Shri Snehlal Bansilal Thakkar**
E-605/606, Agrawal Residency,
Shankar lane,
Kandivali (West)
MUMBAI – 400 067