

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – I (2023-2024)]
[Constituted under Section 21B of the Chartered Accountants Act, 1949]

Findings under Rule 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007

Ref. No. PR/G/70/2022/DD/87/2022/DC/1664/2022

In the matter of:

Sh. Anil Yadav, ICLS
Dy. ROC,
Office of Registrar of Companies,
Ministry of Corporate Affairs
100, "Everest" Marine Drive,
Mumbai – 400002

.....Complainant

Versus

CA. Pramod Kumar Jhawar (M. No. 055341)
7 A, Bentinck Street,
2nd Floor, Room No. 202,
KOLKATA – 700001

.....Respondent

MEMBERS PRESENT: -

CA. Aniket Sunil Talati, Presiding Officer
Shri Prabhaskar Shankar, IRS (Retd.), (Government Nominee)
CA. Gyan Chandra Misra, Member

DATE OF FINAL HEARING : 27.04.2023
PLACE OF FINAL HEARING : New Delhi / Through Video Conferencing

PARTIES PRESENT (Through VC):-

Respondent : CA. Pramod Kumar Jhawar
Counsel for the Respondent : Mr. Mohit Bhuteria
Witness (Presented by the Respondent) : Mr. Piyush Jhawar

BRIEF OF THE DISCIPLINARY PROCEEDINGS: -

1. On the day of the first hearing held on 22nd March 2023 the Committee noted that Complainant was not present. The respondent along with his Counsel was present. Since notice of the hearing was duly delivered to the Complainant and no request for adjournment was received, the Committee decided to proceed ahead with the matter. The Respondent was put on oath. On being asked, the Respondent confirmed that he is aware of the charge levelled against him and pleaded not guilty on the same. Thereafter, the Respondent made his brief submissions. The Committee also posed questions to the Respondent. Thereafter, the Committee directed the Respondent to file following documents/information: -

- i) Information as to whether the Company was registered with the RBI as NBFC.
- ii) Nature of business and Copy of MOA and AOA of the Company.
- iii) Copy of Invoices, Form 26 AS and other documents /returns to establish that the Company was doing business from its registered office, and it was not a paper company.
- iv) Any other documents evidence /submissions, he wants to file in his defense.

The Committee also directed the Respondent to produce Mr. Piyush Jhawar, who was reported to have visited the registered address of the Company on behalf of the Respondent as his witness in the next hearing. With this, the hearing in the above matter was partly heard and adjourned.

2. On the day of final hearing held on 27th April 2023, the Committee noted that the Respondent, his Counsel and Mr. Piyush Jhawar (witness of the Respondent) were present. The Complainant was not present. The Committee also noted that since the notice was duly delivered and no adjournment request was received from the Complainant, the Committee decided to proceed in the matter. Thereafter, the hearing continued from the stage it was left in last hearing. The Committee asked the Respondent to make his submissions on the charges. The Counsel for the

Respondent stated that the Respondent has already submitted the Copy of Memorandum of Association, Articles of Association, copy of Tax Invoices, Copy of Income Tax Returns of the Company for F.Y 2018-19,2019-2020 and 2021-2022, Copy of Form -26 AS of the Company for F.Y 2018-19,2019-2020 and 2021-2022 vide his letter dated 6th April 2023 as sought in the last meeting by the Committee. The Committee directed witness Mr. Piyush Jhawar to take the oath and asked him as to whether he has carried out the physical verification of the Company. The witness, Mr. Piyush Jhawar, submitted that he has physically visited the site of the Company in Mumbai and also verified that the director of the Company was present at the time of verification. He stated that he also took the photograph of the director in the office premises of the Company. After hearing the final submissions of the Respondent, the Committee decided to conclude the hearing in the matter.

3 Brief Background of the matter: -

The Complainant Department (Dy. ROC, Officer Registrar of Companies MCA, Mumbai) in its Complaint inter-alia submitted that the Respondent has certified Form No. INC-22A under Rule 25A of the Companies (Incorporation) Rules, 2014 with respect to ACTIVE (Active Company Tagging Identities and Verification) for M/s China First Metallurgical Construction India Private Limited (hereinafter referred to as “Company”). The Complainant stated that on physical verification of the registered office of the Company, no such Company existed at the given address which is Flat No.B/ 1302, 13th Floor, Bhoomi Paradise, Sector-11, Sanpada (E), Navi Mumbai, 400705, Maharashtra.

4 CHARGES IN BRIEF: -

The Respondent has filed Form No. INC-22A under Rule 25A of the Companies (Incorporation) Rules, 2014 dated 13.04.2019. However, the Complainant has stated that on physical verification of the registered office of the Company, no such company existed at the given address which is Flat No. B/ 1302, 13th Floor, Bhoomi Paradise, Sector-11, Sanpada (E), Navi Mumbai, 400705, MH IN.

SUBMISSIONS OF THE PARTIES AND FINDINGS OF THE COMMITTEES

5. The Respondent inter-alia made the following written and verbal submissions in his defense:
- 5.1 That the registered office of the Company at Flat No. B/1302, 13th Floor, Bhoomi Paradise, Sector-11, Sanpada (E), Navi Mumbai, Thane, Maharashtra is since 1st February 2011 and relevant Form-18 duly certified by a Company Secretary has been filed and the same has been taken on record by the Registrar of Companies without pointing out any infirmities in the Form.
- 5.2 That the Director (Discipline) has drawn his conclusion mainly on account of some defects in appointment letter however, not in any way controverting the fact of the photographs having been attached in Form INC-22A with the presence of a Director alongside the name plate outside the office having the address, latitude, and longitude as well as inside the office.
- 5.3 That there is no requirement to state as to how Mr. Piyush Jhawar was associated since it has been stated earlier that he was deputed for the purpose of carrying out physical verification and to further rebut the allegation, an affidavit/confirmation from Mr. Piyush Jhawar has been placed on record to the effect that he has duly carried out the physical verification.
- 5.4 That ICSI has issued an FAQ on e-Form ACTIVE wherein it is stated that:
"It is nowhere mentioned that the professional must visit the Registered Office /or verification".
- 5.5 That pursuant to leave and license Agreement dated 21st October 2016 entered into between Mr. Vidyesh Khanolkar (Licensor) and M/s China First Metallurgical Construction India Pvt Ltd (Licensee) duly registered in the office of the Sub-

Registrar, Thane, the Licensor had granted license to the licensee to occupy the premises for the period commencing from 10th September 2016 to 9th June 2019 at a monthly license fee of Rs. 37,730/-, This clearly establishes the fact that the registered office was in existence and in terms of Section 49 of the Registration Act, 1908, a registered document has evidentiary value in respect of a transaction relating to immovable property.

6. During the course of hearing the Committee noted that with respect to verification of registered office of the Company, the Respondent has mentioned that though he had not physically verified the registered address of the Company himself, however, he has satisfied himself about the existence of the Company by deputing Mr. Piyush Jawar as his representative for carrying out the physical verification.
7. On examination of the witness of the Respondent i.e., Mr. Piyush Jhawar, the Committee noted that Mr. Piyush Jhawar submitted following on oath:
 - That he is the brother of Respondent.
 - That he has visited the site of the Company located at Bhoomi paradise, Navi Mumbai.
 - That he has verified that the mentioned directors of the Company were present at the aforesaid address, and that he had also taken pictures of the directors with the office.
8. The Committee also heard and noted the salient features of the Company with respect to its financials as briefed by the counsel of the Respondent.
9. Based on the documents on records, submission of the counsel of the Respondent and the witness, the Committee noted that the Respondent has ensured about the existence of the Company, though not in person but through his representative Mr. Piyush Jhawar who has been examined on oath and opined that there are no lapses on the part of the Respondent while discharging his Professional duties in relation to certification of the Form no. INC-22A of the Company.

Conclusion: -

Thus, in the considered opinion of the Committee, the Respondent is **NOT GUILTY** of Professional and Other Misconduct falling within the meaning of Item (7) of Part I of Second Schedule and Item (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949.

Sd/-
(CA. Aniket Sunil Talati)
PRESIDING OFFICER


Sd/-
(Shri Prabhash Shankar, IRS (Retd.))
GOVERNMENT NOMINEE

Sd/-
(CA. Gyan Chandra Misra)
MEMBER

DATE: 09/06/2023

PLACE: NEW DELHI

प्रमाणित सत्य प्रतिलिपि / Certified true copy


मुकेश कुमार मिट्टल / Mukesh Kumar Mittal
सहायक सचिव / Assistant Secretary
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shandra, Delhi-110032