

File No. PR/G/177/2022/DD/104/2022/DC/1675/2022

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – III (2023-24)]
[Constituted under Section 21B of the Chartered Accountants Act, 1949]

Findings under Rule 18(17) and 19(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007

Ref. No. PR/G/177/2022/DD/104/2022/DC/1675/2022

In the matter of:

Dy. Registrar of Companies, Karnataka,
Ministry of Corporate Affairs,
Kendriya Sadan,
2nd Floor, E Wing,
Koramangala,
Bengaluru - 560034

.....Complainant

Versus

CA. Apeksha Jain A (M.No. 230924)
11/2/2, F1,
First Floor, Namma Mane Apartment,
H B Samaja Road,
Basavanagudi,
Bengaluru- 560 004

.....Respondent

MEMBERS PRESENT:

CA. Aniket Sunil Talati, Presiding Officer
Smt. Anita Kapur, Member (Govt. Nominee)
CA. Piyush S Chhajed, Member
CA. Sushil Kumar Goyal, Member

Date of Final Hearing: 8th June, 2023 through Video Conferencing

PARTIES PRESENT:

- (i) Shri Venkatraman Kavadikeri, AROC – the Complainant's Representative
(ii) CA. Apeksha Jain – the Respondent
(i) and (ii) appeared from their personal location)

Base

Charges in Brief:

1. The Committee noted that in the *Prima Facie* Opinion formed by Director (Discipline) in terms of Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Respondent was held *prima facie* guilty of Professional Misconduct falling within the meaning of Item (7) of Part-I of Second Schedule to the Chartered Accountants Act, 1949. The said Item to the Schedule states as under: -

"(7) Does not exercise due diligence, or is grossly negligent in the conduct of his professional duties"

Brief background and allegations against the Respondent:

2. It has been alleged against the Respondent that she certified SPICe form of M/s FASTAPP Technology Private Limited (hereinafter referred as the "**Company**") and assisted in its incorporation. It is further stated that the Respondent has incorporated the Company with its suspicious conduct. The Complainant raised three allegations in relation to its registered office of the Company, its Chinese linkage and that activity of the Company not matching with incorporation documents. However, after due investigation by Director(Discipline) in the matter, the Respondent was held *prima facie* guilty only in respect of first allegation and accordingly the proceedings are confined to that charge.

Proceedings:

3. During the hearing held on 8th June 2023, the Committee noted that the Complainant's Representative as well as the Respondent appeared before it for the hearing through video conferencing. Thereafter, both of them gave a declaration that there was nobody present except them in their respective room from where they were appearing and that they would neither record nor store the proceedings of the Committee in any form.

The Committee noted that during the previous hearing, the Complainant's Representative was asked to file its rejoinder on further submissions made by the Respondent. The Committee noted that till then it had not received any rejoinder. However, the Complainant's representative informed to have sent the same through post. It was noted that the rejoinder, so sent, was not received by the Office. In any case, the Committee proceeded with the matter.

The Committee asked the Complainant's Representative to confirm if the documents brought on record by the Respondent was available in MCA database, to which he

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confirmed that the said documents were available with the Department along with the alleged e-Form. The Committee cross examined the parties in their submissions.

Based on the documents available on record and after considering the oral and/or written submissions of the parties concerned, the Committee concluded hearing in the matter and decided on the conduct of the Respondent.

Findings of the Committee:

4. It has been alleged that the Respondent certified SPICe form of the Company and assisted in its incorporation despite its suspicious conduct. On perusal of alleged SPICe Form (C-42 to C-49), the Committee noted that the Company was incorporated with registered office being #65, 29, C Cross, 10 Main, 4th Block Jaya Nagar, Bengaluru and Ms. Sushma Devi Jain and Ms. Vimala were being Directors of the said Company. As per the attachment column of said form (C-47) declarations, rental agreement, electricity bill, DIR 2 and NOC from owner to use the registered office were enlisted to be attached with it but none were found on records. In the absence of such vital/ supporting documents the question arose on the documents based on which the Respondent certified said SPICe Form.

4.1 The Respondent in her submissions before the Committee inter-alia stated that the company was incorporated on 15th November 2019, situated at #65, 29 C Cross, 10th Main, 4th Block, Jayanagar, Bangalore - 560011. The said address was verified by physical visit. The Respondent further stated that the copy of rental agreement and NOC from the owner were verified with original Rental agreement and No objection certificate. The Respondent brought on record a copy of rental agreement executed on 8th November 2022 as well as No Objection certificate dated 13th November 2022 to support her claim. It was noted that the Respondent also submitted following documents to support her claim that she incorporated the Company after enclosing the same with said SPICe Form at the time of incorporation of the Company:

- a. Rental Agreement
- b. No objection certificate from landlord
- c. Engagement letter
- d. INC 20A
- e. Utility Bill
- f. Declarations
- g. SPICe Form, MOA, AOA, AGILE
- h. PAN Card, Aadhar Card, Board Resolution, DIR 2, DIR 8, Appointment letter, DIR-12 of Lohith Raju



The Respondent contended to have attached all the required documents in the SPICe form that were necessary as per the form and format of the SPICe form. Further, as per her, the grant of registration was entirely dependent upon review and approval by centralized ROC team. She argued that a scenario could not be envisaged where an approval process was completed without verification of the attached required and mandatory documents in the SPICe form. With reference to the allegation that the registered office was not found, the Respondent reiterated that neither the date of inspection was provided, nor it was provided or clarified as to which address was visited. Thus, as per her, she had performed her professional duties with due diligence as required under the Companies Act and its rules and regulation to discharge her certification function.

4.2 In view of the Respondent's submissions, the Committee asked the Complainant Department to confirm if the documents brought on record by the Respondent was available in MCA database i.e., if the documents were attached with the SPICe Form certified by the Respondent, to which he confirmed that the said documents were available with the Department along with the alleged e-Form. However, the Complainant Department argued that the signature of the Director on the documents attached seemed to be copied and pasted. The Committee noted that the attached documents produced on record were signed by different individuals and the stated argument was not evident from the said documents. The Complainant argued that the Respondent had submitted various other documents where such a discrepancy was evident to which the Complainant Department was informed that the extant proceedings were limited to the charges raised in the Complaint filed by the Department. In case, if there were any further allegations against the Respondent in respect of further certifications done by her, being additional charges, the Complainant Department might consider filing separate Form I with the Directorate along with relevant evidence so that necessary action be taken against the Respondent as per law.

4.3 In view of above, the Committee considered only the allegation wherein the Respondent was held prima facie guilty i.e., with respect to SPICe Form (C-42 to C-49) whereby a company was incorporated in November 2019 (C-40) at #65, 29 C Cross, 10th Main, 4th Block Jayanagar, Bangaluru, Karnataka – 560011. It was noted that as per the Complainant Department, the Company was not found at its registered office during inspection by the officials of the Complainant Department. The Committee noted that after the alleged e-form filed in November 2019, another e-form INC 22 (C-50 to C-52) was filed by the Company for change of situation of registered office whereby the address of the registered office was changed with effect from 20th January 2020. It was

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digitally signed by one of the Directors of the Company and was not certified by the Respondent. Hence, it was viewed that if the Company was not found at the changed address, the Respondent could not be held liable for the same. In the absence of any evidence against the SPICe Form based on which the allegation was made against the Respondent and also in view of the fact that the Respondent had produced all documents based on which the address certified in the form was verified by her which was also confirmed by the Complainant Department, the Committee viewed that the allegation raised does not sustain. Thus, upon overall examination of facts and documents brought on record, the Committee viewed that the Respondent is Not Guilty under Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949

Conclusion:

5. Thus in conclusion, in the considered opinion of the Committee, the Respondent is held **Not Guilty** of professional misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

6. Accordingly, in terms of Rule 19(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee passes Order for closure of this case.

Sd/-
[CA. Aniket Sunil Talati]
Presiding Officer

Sd/-
[Smt. Anita Kapur]
Member (Govt. Nominee)

Sd/-
[CA. Sushil Kumar Goyal]
Member

Sd/-
[CA. Piyush S Chhajed]
Member

Date: 4th July, 2023
Place: New Delhi

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

बिष्वा नाथ थिवारी / Bishwa Nath Thwar
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इन्स्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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