

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-170/22-DD/107/2022/DC/1611/2022

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. Venkata Krishna M
No. 14, 1st Floor,
East End D, Main Road,
Jayanagar, 9th Block,
Bengaluru - 560069**

.....Respondent

MEMBERS PRESENT:

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

Date of Final Hearing: 4th July 2023 through Video Conferencing

PARTIES PRESENT:

**(i) Dr. Avais Patwegar, Dy. ROC – Complainant
(ii) CA. Venkata Krishna M. – Respondent
(appeared from their respective personal location)**

Bise

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: -

Part I of Second Schedule: Professional misconduct in relation to chartered accountants in practice

A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he-

“(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. The Complainant inter-alia submitted that the Respondent assisted in the incorporation of M/s Honghu Information Technology Private Limited (now known as M/s Profit Riser Information Technology Private Limited) as well as M/s Baryonyx Technologies Private Limited. It was stated that both the companies frequently changed their registered office since incorporation. That in case of change in registered office of the Companies there was mismatch in the amounts of rents or one lease agreements being used in multiple forms. There was change in the name of Company in former matter and that directors were also frequently changed in latter matter. Thus, as per the Complainant, there were suspicious conduct of the Companies incorporated by the Respondent. The Complainant stated that the Respondent who assisted in incorporation of companies and they did illegal business might be aware of their intentions. Further, it was informed that the said companies were involved in Micro Instant Loan App Scam. However, the Respondent did not report the same to appropriate enforcement authority.

Apart from above, the specific allegation raised against him, in respect of both the Companies, was that during physical inspection conducted by Complainant Department, both the Companies were not found at its registered office address and the Companies had frequently changed its registered office address since its date of incorporation.

2.1 It was noted, after due investigation by Director (Discipline) in the matter, the Respondent was held *prima facie* guilty only in connection to registered office i.e. SPICE + Form certified by the Respondent he had declared to have personally visited the registered office of the Company whereas he had not so it tantamounted to an incorrect declaration on part of the Respondent. Accordingly, the extant proceedings were limited to that charge only.

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Proceedings

3. On 4th July 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 gave a declaration that there was nobody else present 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.

Thereafter, the Committee noted that matter was part-heard and accordingly, the Committee asked the Complainant to present the matter. Thereafter, the Respondent was asked to make his submissions in the matter. The Committee examined the Respondent as well as the Complaint on their submissions. Thereafter, the Respondent made final submissions in the matter.

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.

Findings of the Committee

4. At the outset the Committee noted that there was only one allegation against the Respondent in respect of registered office of the Company which as per the Complainant was not found during physical verification conducted by its department. It was noted that the Respondent, in this regard, submitted that he had only provided the incorporation services to both the Companies. and the scope of work was only to give incorporation services. The Respondent reproduced the screenshots of column no. 4(a) and 4(b) of the alleged SPICE/SPICE+ form of both the Companies as well as Declaration undertaken by him while certifying the alleged forms as reproduced below:

Screen Shot 1

4. (a) *Correspondence address	
*Line I	S- 515 5th floor Manipal Centre
*Line II	South block, Mezzanine Dickenson Road
*City	BANGALORE
*State/Union Territory	Karnataka-KA
*Pin code	560042
*District	Bangalore
*Phone (with STD code)	- 9902775924
Fax	
*email ID of the company	kalyankeerthi1994@gmail.com

(b) *Whether the address for correspondence is the address of registered office of the company Yes No

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Screen Shot 2

Declaration and certification by professional

I

member of

having office at *

Who is engaged in the formation of the company declare that I have been duly engaged for the purpose of certification of this form. It is hereby also certified that I have gone through the provisions of the Companies Act, 2013 and rules thereunder for the subject matter of this form and matters incidental thereto and I have verified the above particulars (including attachment(s)) from the original/certified records maintained by the applicant which is subject matter of this form and found them to be true, correct and complete and no information material to this form has been suppressed. I further certify that;

- (i) the draft memorandum and articles of association have been drawn up in conformity with the provisions of sections 4 and 5 and rules made thereunder; and
- (ii) all the requirements of Companies Act, 2013 and the rules made thereunder relating to registration of the company under section 7 of the Act and matters precedent or incidental thereto have been complied with. The said records have been properly prepared, signed by the required officers of the Company and maintained as per the relevant provisions of the Companies Act, 2013 and were found to be in order;
- (iii) I have opened all the attachments to this form and have verified these to be as per requirements, complete and legible;
- (iv) I further declare that I have personally visited the premises of the proposed registered office given in the form at the address mentioned herein above and verified that the said proposed registered office of the company will be functioning for the business purposes of the company (wherever applicable in respect of the proposed registered office has been given).
- (v) It is understood that I shall be liable for action under Section 448 of the Companies Act, 2013 for wrong certification, if any found at any stage.

* Chartered Accountant (In whole-time practice) or Cost Accountant (In whole-time practice) or Company Secretary (In whole-time practice) or Advocate

* Whether Associate or Fellow Associate Fellow

* Membership number.

Certificate of practice number

He contended that based on information provided by the Client, details of the forms for incorporation were mentioned. As per him, in the certified form only the correspondence address was mentioned

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and not the registered office address as evident from the details filled in column no. 4(a) and 4(b) of the Form. He further stated though he had not verified the said address in person but one of his staff had verified the premises at correspondence address.

4.1 As regards 'Declaration' given by him in his professional capacity, the Respondent submitted that the format of the Form provided fixed declaration. He could not exclude or untick any of the clauses not applicable in his case. Further, he pointed out that while providing declaration regarding personally visit to registered office it was applicable only in selective cases wherever details of proposed registered office in the Form was mentioned as emphasized hereunder:

*"I further declare that I have personally visited the premises of the proposed registered office given in the form at the address mentioned herein above and verified that the said proposed registered office of the company will be functioning for the business purposes of the company (wherever applicable in respect of the proposed registered office has been given) **Emphasis added**".*

He stated that however, in the extant case of both the companies, they were incorporated by him with their correspondence addresses only, and it was after incorporation, the details of the registered office of the Companies or change in their registered offices were filed with the Complainant Department by other professionals but not him. The Respondent, accordingly, submitted that he had rendered his services to the best of his knowledge and had performed his duties as professional without any negligence and without ill intentions. The Respondent also stated that he was not aware of any of illegal intentions or activities or operations done by the companies post incorporation as he was not associated or connected to the Company in any manner. The Respondent finally submitted that he had also verified the original KYC documents of promoter/ directors before certifying purported forms for incorporation of Companies.

4.2 It was noted that the Complainant submitted about other allegations against the Respondent to which the Committee informed the Complainant Department 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 extant or further certifications done by him, 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 On perusal of the documents as available on record, the Committee noted that the Respondent had only certified the address for communication instead of registered office of the Company. Further, under "Declaration and certification by professional", a declaration in relation to personal visit to the premises of the proposed registered office was also included but it was subject to the condition –



"wherever applicable in respect of the proposed registered office has been given" as reproduced below:-

"(ii) all the requirements of Companies Act, 2013 and the rules made thereunder relating to registration of the company under section 7 of the Act and matters precedent or incidental thereto have been complied with. The said records have been properly prepared, signed by the required officers of the Company and maintained as per the relevant provisions of the Companies Act, 2013 and were found to be in order;

*.....
(iv) I further declare that I have personally visited the premises of the proposed registered office given in the form at the address mentioned herein above and verified that the said proposed registered office of the company will be functioning for the business purposes of the company (wherever applicable in respect of the proposed registered office has been given).*

(v) It is understood that I shall be liable for action under Section 448 of the Companies Act, 2013 for wrong certification, if any found at any stage."

Thus, the Committee viewed that the extant allegation was not maintainable against him.

4.4 Accordingly, upon overall examination of facts and documents brought on record, the Committee viewed that the Respondent is **Not Guilty** for Professional Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

4.5 With regard to frequent change in registered office address after incorporation of the Company, the Committee noted that the Complainant failed to bring any evidence to point out misconduct on the part of the Respondent, neither the said E-form for change/ shifting of registered office was certified by the Respondent nor any direct/ in-direct involvement of Respondent in this regard was provided.

Conclusion

5. Thus in conclusion, in the considered opinion of the Committee, the Respondent is **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.

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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. Piyush S Chhajed]
Member

Sd/-
[CA. Sushil Kumar Goyal]
Member

Date: 25th July, 2023
Place: New Delhi

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy



बिषा नाथ तिषारी / Bishwa Nath Tiwari
कार्यकारी अधिकारी / Executive Officer
अनुशासननात्मक निदेशालय / Disciplinary Directorate
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