

**CONFIDENTIAL**

**DISCIPLINARY COMMITTEE [BENCH – IV (2023-2024)]**

**[Constituted under Section 21B of the Chartered Accountants Act, 1949]**

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

**File No.: PR/104/2014/DD/162/14/DC/570/2017**

**In the matter of:**

**Shri Sanjay Kumar Gupta,**

Deputy Director,  
Ministry of Corporate Affairs  
'A' Wing, 5th Floor,  
Shastri Bhawan,  
New Delhi 110001.

.....Complainant

**Versus**

**CA. Narinder Nath Ahuja ... (M.No.080178)**

Partner, M/s. Nath Ahuja & Co.  
Chartered Accountants  
T-400, Greater Kailash, Part II  
New Delhi 110048

.....Respondent

**MEMBERS PRESENT:**

**CA. Ranjeet Kumar Agarwal, Presiding Officer (In person)**

**Shri Jiwesh Nandan, I.A.S (Retd.), Govt. Nominee (In person)**

**Ms. Dakshita Das, I.R.A.S (Retd.), Govt. Nominee (In person)**

**CA. Mangesh P. Kinare, Member (Through VC)**

**CA. Cotha S Srinivas, Member (In person)**

**DATE OF FINAL HEARING : 18<sup>th</sup> August 2023**

**PARTIES PRESENT:**

**Advocate Sukhmeet Lamba: - Counsel for the Respondent (in person)**

*Sukhmeet Lamba*

## 1. Background of the Case: -

The Respondent had certified two e-forms No.2 (Return of Allotment) of M/s. Alzo Investments Private Limited (hereinafter referred as “the Company”) one on 21<sup>st</sup> February 2012 and another on 02<sup>nd</sup> April 2012. The first e-form filed on 21<sup>st</sup> February 2012, was for allotment of 20,00,000 equity shares of Rs.10/- each to M/s. Forza Medi India Private Limited (without any premium) based on board resolution passed on 08<sup>th</sup> January 2012 at 2.00 P.M. The second e-form certified on 21<sup>st</sup> February 2012 was for the allotment of 20,000 equity shares of Rs.10/- each to M/s. Forza Medi India Private Limited based on Board resolution dated 08<sup>th</sup> January 2012 passed at 2.00 P.M. at a premium of Rs.990/- per share

## 2. Charges in brief:

2.1 The Respondent had certified/filed two e-forms No.2 (Return of Allotment) one on 21<sup>st</sup> February 2012 and another e-form on 02<sup>nd</sup> April 2012. The e-forms were signed and certified by the Director and the Respondent and two Board Resolutions of the same date and time were enclosed with these e-forms, but the contents of these resolutions are altogether different.

3. The relevant issues discussed in the prima facie opinion dated 16<sup>th</sup> January, 2017 by Director (Discipline) in the matter, in brief, are given below: -

3.1. A certificate is a written confirmation of the accuracy of the facts stated therein and does not involve any estimate or opinion. A Chartered Accountant who certifies a form/ document is responsible for the factual accuracy as stated therein. The Respondent had uploaded e-form No. 2 under question without verifying the relevant documents and merely saying that it was a mistake which is not acceptable and not expected of a Chartered Accountant. He has therefore failed to discharge his duties diligently as reversing/ editing the form for allotment of shares has serious implications and MCA Portal does not provide an option for editing once it is wrongly filed.

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3.2. The Director (Discipline) in Prima Facie Opinion dated 16<sup>th</sup> January 2017 has held the Respondent GUILTY of Professional Misconduct falling within the meaning of Clause (7) of Part - I of the Second Schedule to the Chartered Accountants Act, 1949. The said clause to the Schedule to the Act, states as under:

*Clause (7) of Part I of Second Schedule:*

"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."*

3.3. The Prima Facie Opinion formed by Director (Discipline) was considered by the Disciplinary Committee at its meeting held on 15<sup>th</sup> March 2017, at New Delhi. The Committee on consideration of the same, concurred with the reasons given against the charges and thus, agreed with the prima facie opinion of the Director (Discipline) that the Respondent is prima facie **GUILTY** of Professional Misconduct falling within the meaning of Clause (7) of Part-I of the Second Schedule to the Chartered Accountants Act, 1949 and accordingly, decided to proceed further under Chapter V of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. The Committee, also directed the Directorate that in terms of the provisions of sub-rule (2) of Rule 18, the prima facie opinion formed by the Director (Discipline) be sent to the Complainant and the Respondent including particulars or documents relied upon by the Director (Discipline), if any, during the course of formation of prima facie opinion and the Respondent be asked to submit his Written Statement in terms of the provisions of the aforesaid Rules, 2007.

#### **4. Date(s) of written submissions/pleadings by parties:**

The Relevant details of filing of documents in the instant case by the parties are given below:

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S.No.	Particulars	Dated
1.	Complaint in Form 'I' filed by the Complainant	15 <sup>th</sup> April 2014
2.	Written Statement filed by the Respondent	6 <sup>th</sup> August 2014
3.	Rejoinder if any	3 <sup>rd</sup> December 2014
4.	Prima facie Opinion by Director (Discipline)	16 <sup>th</sup> January 2017
5.	Written Submissions by the Respondent after Prima Facie Opinion	10 <sup>th</sup> April 2018 & 18 <sup>th</sup> September, 2019

5. **Brief Facts of the Proceedings:**

5.1 The details of the hearing fixed and held/adjourned in said mater is given as under:

Particulars	Date of Meeting	Status
1 <sup>st</sup> time	26 <sup>th</sup> July, 2019	Part heard and adjourned
2 <sup>nd</sup> time	24 <sup>th</sup> September, 2019	Part heard and adjourned
3 <sup>rd</sup> time	18 <sup>th</sup> August, 2023	Hearing concluded & decision taken

5.2 The matter was first listed on 26<sup>th</sup> July 2019, and the Committee noted that the Counsel for the Respondent, Advocate Jagdeep Singh Bakshi was present and Respondent was not present. Further neither any representative from the Complainant Department was present nor any communication was received. The Committee permitted the Counsel for the Respondent to make submissions on behalf of the Respondent. The Committee asked the Counsel for the Respondent whether the charges be read out and the charges were also read out. The Counsel of the Respondent stated that he was aware of the charges and pleaded Not Guilty to the charges on behalf of the Respondent. The Counsel for the Respondent made his submissions and drew the attention of the Committee to the procedure given under Section 21B (2) read with Section 18 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

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5.3 The Counsel for the Respondent pointed out that Rule 18(9) requires the committee to examine the witness and production of documents on the next date of the hearing. There was a request to consider the list of witnesses as given in the Written submissions dated 10<sup>th</sup> April 2018 whom he wished to examine before the Committee as evidence. The Counsel for the Respondent, after detailed discussion, requested to consider the list of witnesses. The Committee noted that the said list neither contained the addresses nor contact details of the witnesses nor provided their relevancy in the matter. The Committee directed the Counsel to provide the contact details of the witnesses along with the reasons or justification for summoning them. Further, the Committee informed the Counsel for the Respondent that if the Committee agreed, then the onus would be upon the Respondent to cause their appearances before the Committee. The matter was adjourned to a later date.

5.4 On the next date of the hearing held on 24<sup>th</sup> September 2019, the Committee noted that the Complainant, Shri Sanjay Kumar Gupta and the Counsel for the Respondent, Advocate Jagdeep Singh Bakshi along with partner of Respondent, CA. Dinesh Bajaj were present before it at time of the hearing. The Committee adjourned the hearing to a future date.

5.5 On the final date of the hearing held on 18<sup>th</sup> August 2023, the Committee noted that the Counsel for the Respondent, Advocate Sukhmeet Lamba was present in person and the Complainant was not present and notice of listing of the case has been served upon him. Further, it was noted that the case was part heard on earlier occasions.

5.6 The Counsel for the Respondent, wished to continue the hearing from stage it was last left and withdrew the request made by him earlier for examination of witness(es). The Committee directed him to make the submissions on merits of the case. The Counsel submitted that the first Form -2 (return of allotment of Shares) was inadvertently filed with Complainant Department so far as the number of shares was wrongly stated in the Board resolution. Thereafter, the Respondent visited the office of the Complainant Department and he was advised to file revised form, however, he has no evidence of said visit. And thereafter, revised Form – 2 was filed

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on 30<sup>th</sup> March 2012, whereas, 20,000 equity shares were allotted to M/s. Forza Medi India Pvt. Ltd. at premium of Rs. 990/-.

5.7 The Counsel for the Respondent brought on record, copy of affidavit of Director of Alzo Investments Pvt Ltd., wherein, it was acknowledged that the Company had allotted to M/s. Forza Medi India Pvt Ltd. 20,000 equity shares of Rs. 10 each at a premium of Rs. 990/-. Further, the Director of M/s. Forza Medi India Pvt Ltd had confirmed to have allotted 20,000 equity shares of Rs. 10 each at a premium of Rs. 990/- per share of M/s. Alzo Investments Private Limited.

5.8 After detailed deliberations, and on consideration of the facts of the case, various documents on record as well as oral submissions of Respondent and the Complainant before it, the Committee concluded the hearing in the instant case.

## **6 Findings of the Committee:**

The Committee noted the background of the case and gave its findings as under: -

6.1. The Committee noted that the Respondent in his submissions dated 10<sup>th</sup> April 2018 has submitted that E-Form 2 was filed on 20<sup>th</sup> February 2012 vide SRN S07950280 on behalf of M/s. Alzo Investments Private Limited for allotment of 20,00,000/- shares @ Rs. 10/- based upon Board Resolution passed on 08<sup>th</sup> January 2012 at 2.00 P.M. by the Company. The allottee of the shares was M/s Forza Medi India Private Limited.

6.2 Thereafter, the Respondent firm found some typographic error in the Board Resolution passed on 08<sup>th</sup> January 2012. Acting as a watchdog, the Respondent immediately sought a meeting with the Assistant Registrar of Companies on 27<sup>th</sup> March 2012. The Assistant Registrar of Companies advised that the correct course of action would be to file a fresh E-Form 2 by correctly stating that the shares allotted were 20,000 equity shares @ Rs. 10 each at premium of Rs. 990/- per share. The total value in both returns/forms was Rs. 2,00,00,000/- (Rupees Two Crores only) and allottee of shares as per both the Board resolutions of Company were same.

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6.3 Acting upon the advice of the Assistant Registrar of Companies a fresh Form 2, was filed on 30<sup>th</sup> March 2012 vide SRN S08231094 showing allotment of 20,000 shares @ Rs. 10 at premium of Rs. 990 by the Company. The said correction/rectification was carried out within the same financial year i.e., 2011-12. In fact, the Balance Sheet of the Company for the period ending on 31<sup>st</sup> March 2012 also depicts the correct figure, which is matching with the revised Form-2 filed on 30<sup>th</sup> March 2012.

6.4 The Committee noted that both the Board Resolutions were passed on same day i.e. on 8<sup>th</sup> January 2012 at 2.00 P.M. but the contents of both the resolutions were different; as the first allotment was made for 20,00,000 shares at face value Rs. 10/- each and another corrected/ rectified allotment was made for 20,000 equity shares of Rs. 10/- each having premium amount per share Rs. 990/-.

6.5 The Committee noted that the Respondent has brought on record affidavit of the Director of the Company i.e. M/s. Alzo Investments Private Limited dated 11<sup>th</sup> September 2013, wherein, the Director (Ms. Alka Nath) has submitted as under: -

*“3. That in the Board meeting held on 8<sup>th</sup> January 2012 Forza Medi India Pvt. Ltd. were allotted 20,000/- equity shares of 10/- each at a premium of Rs.990/- per share of Alzo Investment Private Limited.*

*4. That our Balance sheet for the year ending 31.03.2012 and 31.03.2013 shows paid up capital as Rs. 30,52,000/- consisting of 3,05,200 equity shares of Rs. 10/- each.*

*5. That the certified copy of the Resolution provided to Nath Ahuja & Co. for compliance and filling of Form 2 was incorrect in so far as the number of shares was wrongly stated.*

*6. That the mistake was inadvertent and not designed to mislead anyone.*

*7. That the mistake was subsequently discovered by Nath Ahuja & Co. and brought to the notice of the Registrar of Companies, who advised that the corrected form 2 be filed.*

*8. Consequently the amended form 2 was filed.*

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6.6 Further, in the affidavit of Director of M/s. Forza Medi (India) Private Limited, Shri. Ashish Jain has submitted as under: -

*"3. That on 8<sup>th</sup> January, 2012 Forza Medi India Private Limited were allotted 20,000 equity shares of Rs. 10/- each at a premium of Rs. 990/- per share of Alzo Investment Private Limited.*

*4. That Forza Medi India Private Limited have mistakenly shown the allotment as 20,00,000 equity shares of Rs. 10/- each in the balance sheet ended 31.03.2012.*

*5. That the aforesaid balance Sheet of the aforesaid year will be corrected and is in the process of being filed with the Registrar of Companies.*

*6. That the error was inadvertent and with no mala fide intentions."*

6.7 In view of the above, the Committee was of the view that end result of both e-forms was issue of share capital of Rs. 2,00,00,000/- and that was rectified within the same financial year. Further, the Respondent had communicated said rectification to Registrar of Companies. The Committee noted that it was a technical lapse which has no impact or loss to Companies. Moreover, the Complainant has just informed this lapse, but he has not reported any loss or wrongdoing which has caused due to this lapse at the end of the Respondent. It is also noted by the Committee that the complaint was filed on 15<sup>th</sup> April 2014 and said rectification/correction was made on 30<sup>th</sup> March 2012 i.e., much prior to filing of this complaint. Thus, the Committee opined that the action of the Respondent appeared to be genuine without any malafide. In other words, the revised Form 2 certified by the Respondent and filed on 30<sup>th</sup> March 2012 was available with ROC before the date of filing of complaint.

6.8 In view of above, the Committee was of the view that it was an inadvertent error which was corrected by the Companies (viz. M/s. Alzo Investments Private Limited and M/s. Forza Medi India Private Limited) and same has been acknowledged by the management of both Companies vide their above affidavits and reported to the Complainant Department before the filing this complaint. Therefore, the Committee found no merits in the charge made against the Respondent and held him **Not Guilty** of professional misconduct.

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## 7 Conclusion

In view of the above findings stated in the above paras, vis-à-vis material on record, the Committee gives its charge-wise findings as under:

Charges (as per PFO)	Findings	Decision of the Committee
Para 2.1 as given above	Paras 6.1 to 6.8 as given above	Not Guilty- Clause (7) of Part I of the Second Schedule

8 In view of the above observations, considering the submissions of the Respondent and documents on record, the Committee held the Respondent **NOT GUILTY** of Professional Misconduct falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

## Order

9 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 an Order for closure of this case against the Respondent.

Sd/-  
(CA. RANJEET KUMAR AGARWAL)  
PRESIDING OFFICER

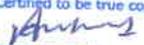
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MEMBER

Sd/-  
(CA. COTHA S SRINIVAS)  
MEMBER

DATE:10/01/2024  
PLACE: New Delhi

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