

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/301/2022/DD/215/2022/DC/1677/2022]

Shri Mangal Ram Meena
Deputy Registrar of Companies
Registrar of Companies
NCT of Delhi & Haryana
Ministry of Corporate Affairs
4th Floor, IFCI Tower
61, Nehru Place
New Delhi – 110019

...Complainant

Versus

CA. Durga Krishnamurthi
1/1, GF, Royal Garden,
12, Park Avenue
Kesava Perumalpuram
Chennai – 600028

...Respondent

MEMBERS PRESENT

CA. Aniket Sunil Talati, Presiding Officer
Smt. Anita Kapur, Member (Govt. Nominee)
Dr. K Rajeswara Rao, Member (Govt. Nominee)
CA. Plyush S Chhajed, Member
CA. Sushil Kumar Goyal, Member

Date of Final Hearing: 3rd November 2023 through Video Conferencing

The following Parties were present:

- (i) Sh. K Ravi – Counsel for the Respondent (from his personal location)

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*

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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 extant complaint was filed by the Dy. Registrar of Companies, NCT of Delhi and Haryana (hereinafter referred to as the “**Complainant**” and the “**Complainant Department**” respectively) wherein it was stated that certain foreign directors/individuals/shareholder/entities in the involved companies engaged dummy persons as subscribers to Memorandum of Association (MOA) and Directors and registered those companies with the Complainant Department by using forged documents/falsified addresses /signatures. Director Identification Numbers were also stated to have been obtained by submitting forged/false documents. Further, it was stated that these foreign individuals or entities directly or indirectly connected with these companies were found to be engaged in illegal/suspicious activities, money laundering, tax evasion and non-compliance of various provisions and prima facie disregarded the interest of the nation. It was further stated that while the Professionals (CA) were duty bound to discharge their duties as per applicable law(s) and certify / verify documents / e-forms or give certificate / report after due diligence so that the compliance to the provisions of law be ensured, however, they had failed to discharge their duties and wilfully connived with Directors / Company / Shareholders / Chinese Individuals in certifying E-forms knowingly with false information / documents / declaration / omitting material facts.

2.1 Against the above background, the Complainant inter-alia submitted that the Respondent assisted in the incorporation of M/s Scrolt Enterprise Pvt. Ltd. (hereinafter referred to as the “**Company**”) and the charges alleged against the Respondent were as under:

- (a) On 11.01.2022, during physical verification by the Complainant department, the Registered office of the Company was not found at such address; and
- (b) The Respondent certified the un-notarized rent agreement
- (c) there was a possibility of tempered documents used to incorporate the company

Accordingly, it was alleged against the Respondent that she failed to perform her duties as a certifying professional and appeared to be involved in suspicious/illegal activities and aiding the incorporation of suspected shell company.

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It was noted, after due investigation by Director (Discipline) in the extant matter, that the Respondent was prima facie guilty only in connection with (a) and (b) above. Accordingly, the extant proceedings were limited to those two charges only.

Proceedings

3. On 3rd November 2023, the Committee noted that the Counsel for the Respondent appeared before it for hearing through video conferencing. However, the Complainant was neither present for the hearing nor any communication was received in this regard despite notice for the said hearing being served on him both through email as well as through post. The Committee viewed that sufficient opportunity had been granted to the Complainant in terms of Rule 18(18) and accordingly decided to proceed in the matter.

It was noted that the matter was part heard and therefore, the Committee asked the Respondent to make submissions on the matter. The Committee examined the Respondent on his 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 the hearing in the matter.

Findings of the Committee:

4. At the outset, the Committee noted that there were only two allegations against the Respondent in respect of M/s Scroft Enterprise Pvt. Ltd. (Company). In the first allegation, the Complainant stated that during physical verification on 11.01.2022 by its officials, the Registered office of the Company was not found at address certified by the Respondent. It was noted that the Respondent had certified forms SPICe (C-18 to C-27), SPICe MOA (C-28 to C-31) and SPICe AOA (C-32 to C-42) for incorporation of the Company wherein she had certified the address of the registered office of the Company based at Delhi and in "Declaration and certification by professional" column certified that she was duly engaged in the formation of the Company/ certification of the e-form. In the said form, she further certified as under: -

"(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)".(C-26)

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- 4.1 The Committee noted that the Respondent in her defence inter-alia stated as under:-
- a. That she was engaged only for the incorporation process by her client and not for subsequent work of post-incorporation activities such as statutory audits etc. The two Directors and shareholders of the Company, Mr. Abhimanyu Vishwakarma and Mrs. Chavvi Rana were Indian nationals with valid IDs and documents issued by the Govt. of India as resident citizens of India. There was nothing in the documentation to suggest that Abhimanyu Vishwakarma and Mrs. Chavvi Rana were foreign nationals. The MoA of the said the Company clearly stated the intention of the said Company to engage in making and selling of furniture and other articles for personal and commercial use.
 - b. From the documents submitted to her for incorporation of the said Company, the registered Company address was 55, 2nd Floor, Lane No. 2, Westend Marg, Near Saket Metro Station, New Delhi – 110030 and the said address was a valid address as per postal and MTNL telephone records. There was a rental agreement between Team Co-Work and the Company. The NOC submitted by Team Co-Work, represented by Mr. Nitin Khatri stating no objection to the Company using the said address as their registered office accompanied by a MTNL bill dated 7th October 2019 was a proof of the address. For Small and Medium Enterprises engaged in assembling furniture, the registered office was not usually the place where the actual manufacturing takes place and the address was used as a co-working space for registered address and not the manufacturing address.
 - c. Regarding paint and affixture of name and address of the Company at the location where business was carried on, the Respondent stated that she was engaged only for incorporation documentation work and her responsibility ends upon submission of the documents for company registration to the MCA/ ROC website since all further compliances were handled by other professionals. The documents were uploaded on 11th November 2019 and the Company was incorporated on 13th November 2019.
 - d. The Respondent also questioned the physical verification of the Company conducted on 11.01.2022, stating that the said physical examination was conducted by the officials of the Complainant Department after two years and two months post the Incorporation period and that post registration, the affairs of the Company, its financial operations, subsequent change of address etc. was carried on by the Directors and another professional as engaged by the Company. The Respondent further stated that from 11th January 2022, DDMA ordered closure of private offices in Delhi which were already at that point working at 50% on account of the 3rd Wave of the pandemic and accordingly, the report of the officials was questioned.
 - e. Regarding visit to the registered office address, the Respondent stated that the same was visited by her associate who referred the work to her. However, no documentary evidence exists for the said visit. The Respondent stated that she engaged a local lawyer to show that he had inspected the premises and carried out

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the necessary verification and also enclosed his affidavit. Further, all the documents verifying the identity of the directors and subscribers were cross verified by her on relevant government websites. The Respondent further stated that Form INC-22 for change of address was not filed by her or her firm or any associated firm.

4.2 The Committee further noted that the registered office address certified by the Respondent belonged to one Mr. Nitin Khatri/Team Co-Work and that the Disciplinary Directorate had, before formation of prima-facie opinion by the Director (Discipline) , directly called for a confirmation from Mr. Nitin Khatri vide letter dated 12-08-2022(D-4) about renting its premises to the Company who vide his letter dated nil received in this office on 26-08-2022(D-73) is found to have confirmed his statement as mentioned by the Complainant department that the subject company was not his client at such place. The Respondent, in her defense, sought an opportunity to cross examine Mr. Nitin Khatri which was allowed by the Committee. Mr. Nitin Khatri appeared before the Committee on 13th September 2023 for his examination. The deposition of the witness was recorded wherein he stated that the Company named SCROLL ENTERPRISE PRIVATE LIMITED was not his client at the point of time he issued the letter. He clarified that on 31st October 2019 he provided the office space to this client, but the agreement expired in October 2020. He received the query from the Directorate in 2021 (Sic. by letter dated 12th August 2022 issued by the Directorate). At that point in time the Company was no more his client after 2020. Accordingly, he reported to Disciplinary Directorate as such. He further admitted the receipt of payment of 12 months as advance rent from his client for said premises.

4.3 The Committee, considering the overall facts and deposition of witness, was of the view that the role of the Respondent could not be extended to certify the maintenance and availability of registered office of the Company even after its incorporation. The Committee noted that the Respondent had brought forward sufficient defense to clarify the degree of diligence exercised by her before certifying the SPICe form for incorporation of the Company, verification of proposed registered office of the Company and accordingly, the Committee was of the considered view that the Respondent was **not guilty** for the extant charge.

5. As regards the second allegation, that the Respondent relied upon un-notarized rent agreement dated 31st October 2019 (**D-60 to D-64**), it was noted that the Counsel for the Respondent submitted that the said irregularity was merely a procedural lapse and it could not tantamount to gross negligence. It was argued that sufficient evidence was laid before the Committee about the existence and execution of a valid rent agreement between the parties, payment of consideration/ annual rent through examination of witness Mr. Nitin Khatri before the Committee. Therefore, the said procedural lapse be pardoned by the Committee. The Committee further noted that the said premises of the Company was also supported by MTNL Bill dated 7th October 2019 (**D-20**) in the name of Team Cowork (Prop. Nitin Khatri) and No Objection Certificate dated 31st October 2019 (**D-21**) issued by Mr. Nitin Khatri and addressed

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to the Complainant Department in respect consent to use the said premises as registered office address of the Company.

5.1 In light of the above, the Committee viewed that though the Respondent relied upon un-notarized rent agreement for incorporation of the Company, however, effectively it was executed as evident from deposition of Mr. Nitin Khatri. Therefore, said procedural lapse did not tantamount to professional gross negligence on the part of the Respondent. Accordingly, the Respondent was **Not Guilty** for the said charge too. However, the Respondent was cautioned that any procedural lapse should not occur in her future assignments.

Conclusion

6. 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.

7. 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.

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Sd/-

[CA. Aniket Sunil Talati]
Presiding Officer

Sd/-

[Smt. Anita Kapur]
Member (Govt. Nominee)

Sd/-

[Dr. K. Rajeswara Rao]
Member (Govt. Nominee)

Sd/-

[CA. Piyush S Chhajed]
Member

Sd/-

[CA. Sushil Kumar Goyal]
Member

Date: 22nd December, 2023

Place: New Delhi

सही प्रतिलिपि होने के लिए जमाणित
Certified to be true copy



बिष्व नथ तिवारी / Bishwa Nath Tiwari
कार्यकारी अधिकारी / Executive Officer

अनुशासनात्मक निदेशालय / Disciplinary Directorate

इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया

The Institute of Chartered Accountants of India

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