

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/130/2022/DD/105/2022/DC/1737/2023]

In the matter of:

**Smt. V Annapoorna,
Deputy ROC, O/o Registrar of Companies,
Ministry of Corporate Affairs,
Kendriya Sadan, 2nd Floor,
E- Wing, Koramangala
Bengaluru - 560034**

...Complainant

Versus

**CA. Durga Krishnamurthi,
D/o A.G. Purushotham,
R/o 1/1, GF, Royal Garden,
Kesava Perumalpuram,
Off Greenways Road, R.A. Puram,
Chennai - 600026**

...Respondent

MEMBERS PRESENT

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

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

PARTIES PRESENT:

- (i) Shri Varun BS (Dy. ROC) - the Complainant's Representative
(ii) K. Ravi – Counsel for the Respondent
(Appeared from personal location through video-conferencing)

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Charges in Brief

1. The Committee noted that the prima-facie opinion of the extant case was originally placed before the then Board of Discipline, at its meeting, held on 10th October 2022 whereat it was observed that the Respondent had certified Form no. 32 (SPICe+ Form) in respect of the Company, M/s. Safemode Technology Labs Private Limited. The then Board, on perusal of the copy of Form no. INC-32 certified by the Respondent noted that a copy of bill of postpaid mobile connection issued by a private operator in the name of Mrs. M. Sushila had been annexed to Form INC-32 as a copy of the utility bill. It was viewed by the then Board of Discipline that the same could not be accepted as valid proof of ownership of property in the name of Mrs. M. Sushila who had issued the NOC in the favor of Company to use the property as its registered address. Accordingly, the matter was referred back to the Director (Discipline) to further investigate after seeking from the Respondent a copy of any other document sought/verified by her to establish the ownership of property in the name of Mrs. M. Sushila. Thereafter, the Director (Discipline) investigated the matter.

The Committee noted that in the Prima Facie Opinion dated 11th January 2023 based on examination undertaken by him as per directions of the Board of Discipline, along with his earlier prima facie opinion dated 23rd August, 2022, 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. Item (7) of Part I of Second 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

2. The Committee noted that in extant matter, it was alleged against the Respondent that she had assisted in incorporation of 'M/s Safemode Technology Labs Private Limited' ('Company') by using fake/fabricated documents which were submitted by the unemployed youth for getting employment. The Complainant stated the following

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issues were noted by the Complainant Department after the incorporation of the Company:

- a) The Company was incorporated with the object as "Computer and related activities". However, it was brought to the notice by other agencies that the Company was involved in granting short term loans through loan applications with usurious rate of interest and high processing fees and that the Company recovered the amount with unethical means.
- b) As per the Complainant, on instructions of Chinese handlers, the KYC documents of BPO employees were used to register the Company by appointing them as the directors or subscribers to MOA. Further, it was the professionals (Respondent) who roped in the unemployed youth and made them the directors and subscribers to MOA. It was not known that the DSC of directors were misused to incorporate the Company. Further, it was also alleged that the documents submitted for incorporation were fabricated / fake and morphed.
- c) On physical verification, it was noticed that the Company was not working in the given address and that the registered office was nothing but a co-workplace. As per the Complainant, the Respondent must be aware of the facts, but she did not raise any concern.
- d) As per the lease agreement attached to Form INC-22, it was noticed that the property was taken on sublease, and it did not contain the details of the amount of rent, which seemed illogical.
- e) It was also noticed from the Bank statement annexed to the Form INC-9 that the amount was transferred to Spice Route Business Solutions.

In the earlier prima facie opinion placed before the Board of Discipline, the Respondent was held Not Guilty for all the above five allegations. However, on consideration of the same, the Board of Discipline had directed the Director (Discipline) to conduct further investigation only with respect to third Allegation limited to the observation if the evidence brought on record for establishing ownership of the premises of the registered office of the Company for certification of Form no. 32 (SPICe+ Form) be considered in compliance with applicable Rules. Accordingly, the extant proceedings were limited to that issue.

Proceedings

3. During the hearing held on 3rd November 2023, the Committee noted that the Complainant's Representative as well as the Counsel of the Respondent appeared before it for the hearing through video conferencing. The Committee noted that matter was part-heard and accordingly asked the Counsel for the Respondent to make submissions on the matter. The Counsel for the Respondent made submissions. The Committee examined the Respondent on his submissions. Thereafter, it asked the

Complainant's Representative to make submissions thereon. Thereafter, the Counsel for the Respondent made final submissions in the matter.

Based on the submissions made, the Committee directed the Complainant's Representative to submit within 7 days from the date of hearing copy of circular whereby utility bill issued by private players could not be accepted as evidence of ownership of the premises in terms of Rule 25 of the Companies (Incorporation) Rules, 2014. Accordingly, hearing in the matter was concluded and decision on the matter was reserved.

- 3.1 On 21st November, 2023, the Committee considered the documents and information available on record and after considering the oral as well as written submissions made in the matter, the Committee decided the matter.

Findings of the Committee

4. In the extant matter the Respondent was alleged to have failed in exercising due diligence at the time of certifying Form INC-32 (SPICe+ Form) of M/s Safemode Technology Labs Private Limited wherein the only issue before the Committee was related to ownership proof of the property. It was noted that while certifying the said Form the Respondent had relied upon copy of telephone bill issued by JIO digital life in the name of the owner of the property - Mrs. M. Sushila as a utility bill for proof of the address of the premises for registered office of the Company in the name of the owner.
5. The Committee noted that the Respondent in her defence, inter alia, submitted that the proof of the utility bill issued by Jio Digital Life was relied upon by her while certifying the form since as per the instructions kit of INC-32 (SPICe+Form), the utility bill not later than 2 months was to be provided. She also submitted that the Jio bill was attached with the Form INC-32 (SPICe+Form) as proof of address, not as an evidence of proof of ownership. Thus, the non-acceptance of the Jio bill would not be correct. However, she had also provided the municipal tax receipt dated 23rd April, 2020 in the name of Mrs. M. Sushila. She submitted that since the demand by the BBMP Bengaluru was made annually, the receipt was not within the period of two months.
6. The Committee noted that the Respondent had relied upon the utility bill issued by Jio Digital life which is a private operator. In this regard, it was noted that the requirements of the documents was laid in Rule 38 (7) read with Rule 25 (2) of the Companies (Incorporation) Rules, 2014 stating as under

"38. Simplified Proforma for Incorporating Company for Electronically Plus (SPICE+)

n/



(1) ...

(7) A company using the provisions of this rule may furnish verification of its registered office under sub-section (2) of section 12 of the Act by filing SPICE+ (Simplified Proforma for Incorporating company Electronically Plus: INC-32 FORM No. INC-32 (SPICE) in which case the company shall attach with such SPICE+ (Simplified Proforma for Incorporating company Electronically Plus: INC-32 FORM No. INC-32 (SPICE), any of the documents referred to in sub-rule (2) of rule 25"

"25. Verification of registered office. - (1) ..

(2) There shall be attached to said Form, any of the following documents, namely:-

(a) the registered document of the title of the premises of the registered office in the name of the company; or

(b) the notarized copy of lease or rent agreement in the name of the company along with a copy of rent paid receipt not older than one month;

(c) the authorization from the owner or authorized occupant of the premises along with proof of ownership or occupancy authorization, to use the premises by the company as its registered office; and

(d) the proof of evidence of any utility service like telephone, gas, electricity, etc. depicting the address of the premises in the name of the owner or document, as the case may be, which is not older than two months."

From the above para, it was noted that as per the Companies (Incorporation) Rules, 2014, for the verification of the registered address of the Company, a utility bill including that of telephone bill was required. As regards the submission that the said bill was that of the private operator, the Committee sought from the Complainant Department a copy of circular whereby utility bill issued by private players could not be accepted as evidence of address of the premises in terms of Rule 25 of the Companies (Incorporation) Rules, 2014. It was noted that the Complainant Department had not provided any such circular despite sufficient opportunity provided to them. Further, it was noted that the Respondent had also brought on record the municipal tax receipt dated 23rd April, 2020 in the name of Mrs. M. Sushila on which the address was same as mentioned in the Jio Bill and in the form INC-32 (SPICE+Form). Accordingly, it was viewed that although the municipal tax receipt was older than two months, but it duly substantiated that the address of Mrs. M. Sushila as also bring reflected from the alleged telephone bill. Accordingly, it was viewed that the said utility bill was a valid document attached with the Form INC-32 certified by the Respondent. Thus, it was viewed that there was no error in submitting the document in relation to proof of the

address of the registered office of the Company as certified by the Respondent and hence the Respondent was held Not Guilty of Professional Misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

Conclusion:

7. 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.
8. 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. Sushil Kumar Goyal]
Member

Sd/-

[CA. Piyush S. Chhajed]
Member

Date: 22nd December, 2023
Place: New Delhi

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy.

बिष्वा नाथ तिवारी / Bishwa Nath Tiwari
कार्यकारी अधिकारी / Executive Officer
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