



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)

Date of Pronouncement – 23.01.2024

PR-191/18-DD/245/2018-DC/1327/2020

ORDER UNDER SECTION 21B(3) OF THE CHARTERED ACCOUNTANTS ACT, 1949 READ WITH RULE 19(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATION OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007 WITH REGARD TO PUNISHMENT.

[PR-191/18-DD/245/2018-DC/1327/2020]

In the matter of:

Mr. Pradyumankumar Dwarkadas Patel,
M/s Dwarkadas Narandas Patel,
31, Vishwaketu Flats, 1, Near Judges Bunglow,
Premchand Nagar, Bodakdev,
Ahmedabad- 380 054

.....Complainant

Versus

CA. Minesh Rajnikant Mehta (M.No. 121675)
M/s Minesh Mehta & Co.,
Chartered Accountants,
A-1108, Titanium City Center,
Nr. Sachin Tower, 100 Ft. Road, Satellite,
Ahmedabad- 380015

.....Respondent

MEMBERS PRESENT:

1. **CA. Ranjeet Kumar Agarwal, Presiding Officer** (Present in person)
2. **Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee** (Present in person)
3. **Shri Arun Kumar, I.A.S. (Retd.), Government Nominee** (Present in person)
4. **CA. Sanjay Kumar Agarwal, Member** (Present in person)

1. The Committee noted that the Respondent has been held guilty vide findings dated 14.12.2023 (Ref no.PR-191/18-DD/245/2018-DC/1327/2020). The said findings holding him guilty were duly communicated to the Respondent. **This is regarding M/s. Polygold Precured Systems Pvt. Ltd.** The findings of the Committee whereby the Respondent had been held guilty are as below:-

"FINDINGS OF THE COMMITTEE

10. The Committee noted that the Respondent had not submitted his written statement or any documents in his defence.



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11. The Committee noted that the present matter relates to certification of form SH-7 and form PAS-3. The form SH-7 relates to notice to Registrar for alteration of authorised share capital while Form PAS-3 relates to filing of Annual Return with ROC after allotment of Shares.

12. The Committee on perusal of documents noted that the Company, for purpose of increase in authorized capital called meeting of Board of Directors' on 8th December 2017 [as per **Prima Facie Opinion**] and Extra Ordinary General meeting on the same day i.e. on 8th December 2017 [as per **Prima Facie Opinion**]. However, while filing of form SH-7 with the Registrar, the EGM date is mentioned as 1st January 2018 [as per **Prima Facie Opinion**], whereas the meeting was in fact held on 8th December 2017.

13. The Committee observed that section 101 of the Companies Act, 2013 states as under:

(1) A general meeting of a company may be called by giving not less than clear ²[twenty one days] notice either in writing or through electronic mode in such manner as may be prescribed

[Provided that a general meeting may be called after giving shorter notice than that specified in this sub-section if consent, in writing or by electronic mode, is accorded thereto—

(i) in the case of an annual general meeting, by not less than ninty-five per cent of the members entitled to vote thereat; and

(ii) in the case of any other general meeting, by members of the company—

(a) holding, if the company has a share capital, majority in number of members entitled to vote and who represent not less than ninty-five per cent. of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or

(b) having, if the company has no share capital, not less than ninety-five per cent of the total voting power exercisable at that meeting:

Provided further that where any member of a company is entitled to vote only on some resolution or resolutions to be moved at a meeting and not on the others, those members shall be taken into account for the purposes of this sub section in respect of the former resolution or resolutions and not in respect of the latter.]

(2)

(3) The notice of every meeting of the company shall be given to—



- (a) every member of the company, legal representative of any deceased member or the assignee of an insolvent member;
- (b) the auditor or auditors of the company; and
- (c) every director of the company

(4).....

14. On perusal of above provisions, the Committee noted that for holding a general meeting, the notice should be served upon the shareholders atleast 21 days before the meeting. Further for a shorter period notice, the consent of atleast 95% of shareholder should be taken. However in the present matter, the Committee noted that the notice for calling general meeting for increasing the authorized share capital was served on 8th December, 2017 and the meeting was also conducted on the same day, i.e. 8th December, 2017.

15. The Committee noted that the Complainant group was holding more than 50% shares of the Company and had mentioned that the notice of the meeting was not served to them. The Respondent, to establish his bonafide, was required to submit documents evidencing that the consent of 95% shareholder for such meeting as required under the Companies Act 2013. The Committee noted that the Respondent chose not to reply/appear before the Committee despite sufficient opportunities and he even failed to submit any defence at prima-facie stage also. Hence, his absence in other words, is admission of guilt on this charge.

16. The Committee further observed the provisions of section 61 and section 64 (1) the Companies Act, 2013 which states as under:

Section 61 of the Companies Act 2013:

(1) A limited company having a share capital may, if so authorised by its articles, alter its memorandum in its general meeting to—

(a) increase its authorised share capital by such amount as it thinks expedient;

(b) consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares:

Provided that no consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner;



(c) convert all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination.

d) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;

(e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) The cancellation of shares under sub-section (1) shall not be deemed to be a reduction of share capital

Section 64 of the Companies Act 2013 states that:

(1) Where—

(a) a company alters its share capital in any manner specified in sub-section (1) of section 61;

(b) an order made by the Government under sub-section (4) read with sub-section (6) of section 62 has the effect of increasing authorised capital of a company; or

(c) a company redeems any redeemable preference shares,

the company shall file a notice in the prescribed form with the Registrar within a period of thirty days of such alteration or increase or redemption, as the case may be, along with an altered memorandum.

17. The Committee noted that as per section 61 of the Companies Act, 2013 issue of shares which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner. However in the present case no such approval has been brought on record.

18. The Committee further noted that in form SH-7 and Form PAS-3 the Respondent certified as under:

Form SH-7

It is hereby certified that I have verified the above particulars (including attachment(s)) from the records I declare that I have been duly engaged for the purpose of certification of this form. It is hereby 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



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above particulars (including attachment(s)) from the original/certified records maintained by the Company/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 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;**
- ii. All the required attachments have been completely and legibly attached to this form

Form PAS-3

"that I have been duly engaged for the purpose of certification of this form. It is hereby 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 Company/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 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;
- ii. All the required attachments have been completely and legibly attached to this form.

18.1 The Committee further noted that, before giving the declaration the Respondent was supposed to verify the following:-

- a. Whether the company is authorized by the Articles of Association to increase the share capital if company's Article of Association does not permit or authorize, then it is to be done with the objective of altering them.
- b. The board meeting has to be conducted for enabling the board to call for the extraordinary general meeting, it is mandatorily required to get approval from the shareholders for increasing the authorized share capital
- c. The company then calls for an extraordinary general meeting of the shareholders of the company by sending them a notice with clear agenda and proper explanatory statements, explanation, with a proper reasoning along with the resolutions to be passed to alter the Memorandum of Association and Articles of Association which are to be altered for the purpose of increasing the authorized share capital.
- d. Thereafter, resolutions for increasing the authorized share capital of the company and corresponding alterations in the Memorandum of Association and Articles of Association by resolution.



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After completing the whole procedural part, the company authorizes the board to file necessary forms and resolutions with ROC having jurisdiction.

19. *The Committee on perusal of records noted that Company had issued right issue of 5,44,940 equity shares of Rs.10 each on 22nd January 2018. The Complainant along with his family members was holding 52.497% stake in the company before issue of right shares which was reduced to 33% after right shares issue. The reason behind the same was that notice of EGM was not sent to existing shareholders who have got first right on the right issue of the company as per requirement of Section 62 of Companies Act, 2013. No consent of existing shareholders was obtained for allotment of shares to other shareholders.*

20. *The Committee on perusal of above certification requirements noted that it was the duty of the Respondent to satisfy himself that whether the whole procedural part for the purpose of increasing the authorized share capital has been followed or not before certifying the forms however in the present matter the Respondent neither submitted his written statement when asked by the Director (Discipline) at PFO stage nor appeared before the Committee during the hearing stage despite giving him reasonable opportunities to do so which shows that the Respondent does not want to submit anything in the matter.*

21. *The Committee noted that the Complainant had also approached NCLT where the name of the Respondent had been mentioned as one of the Respondents. The Committee further noted that the NCLT had admitted the application of the Complainant under section 7 of the Code for Corporate Insolvency Resolution Process (CIRP) of M/s Polygold Pre-Cured Systems Limited (CD) vide Order dated 16th March 2020 and appointed IRP in the matter.*

22. *The Committee in absence of any defence from the Respondent held that the Respondent failed to exercise due diligence and had failed to ensure the compliance of the provisions of the Companies Act while certifying form SH-7 and PAS-3.*

CONCLUSION

23. *In view of the above findings stated in the above para's vis-a-vis material on record, the Committee, in its considered opinion, holds the Respondent is **GUILTY** of Professional Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949."*

2. After communication of the aforesaid findings of the Committee dated 14.12.2023, the Respondent was called by the Committee to appear before it on 09.01.2024 and to make



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his submissions / representations under Rule 19(1) of the Chartered Accountants (Procedures of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 on quantum of punishment. The Respondent appeared on 09.01.2024 and submitted his representations with regard to quantum of punishment as under:-

- That before 26.09.2021, he was staying together with his wife, son and Father-in-law). There was sudden death of his son on 26.09.2021 and father-in-law on 04.10.2021.
- Further he was suffering from Alzheimer disease, hence the medical consultants advised him to keep away from work. Further, his wife was behaving like she doesn't have any reason to live.
- Hence, he left Ahmedabad to take care of himself and his wife and therefore, he was not present before the Committee during hearings.
- As regards use of UDIN, he mentioned that for a long time he had staff of six persons working for him for more than 10 years and they are dependent on his work and were taking care of his works. Due to his health, the staff might not have informed him about generation of UDIN.
- He also submitted that on similar ground the matter filed by the Complainant was dismissed by Hon'ble NCLT, Ahmedabad.

3. After careful consideration of the facts and circumstances, material on record and submissions of the Respondent before it as well his submissions made on 09.1.2024, the Committee decided to reprimand the Respondent along with a fine of Rs.50,000/- (Rupees Fifty Thousand Only) on the Respondent, to be paid within 90 days of receipt of the said Order.

SD/-

(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

SD/-

(MRS. RANI NAIR, I.R.S. RETD.)
GOVERNMENT NOMINEE

SD/-

(SHRI ARUN KUMAR, I.A.S. RETD.)
GOVERNMENT NOMINEE

SD/-

(CA. SANJAY KUMAR AGARWAL)
MEMBER

DATE: 23.01.2024

PLACE: New Delhi

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy
Nitika Gupta
सीए नीतिका गुप्ता / CA. Nitika Gupta
सहायक निदेशक / Assistant Director
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahdara, Delhi-110032

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2023-2024)]

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

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

File No. : [PR-191/2018-DD/245/2018/DC/1327/2020]

In the matter of:

Mr. Pradyumankumar Dwarkadas Patel,
M/s Dwarkadas Narandas Patel,
31, Vishwaketu Flats, 1, Near Judges Bunglow,
Premchand Nagar, Bodakdev,
Ahmedabad- 380 054

.....Complainant

Versus

CA. Minesh Rajnikant Mehta (M.No. 121675)
M/s Minesh Mehta & Co.,
Chartered Accountants,
A-1107 & 1109, Titanium City Center,
Nr. Sachin Tower, 100 Ft. Road, Satellite,
Ahmedabad- 390015

.....Respondent

MEMBERS PRESENT:

CA. Ranjeet Kumar Agarwal, Presiding Officer (Present in person)
Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee (Present in person)
Shri Arun Kumar, I.A.S. (Retd.), Government Nominee (Present in person)
CA. Sanjay Kumar Agarwal, Member (Present in person)

DATE OF FINAL HEARING: 11.07.2023 (through physical/video conferencing mode)

PARTIES PRESENT :

Complainant: Shri Pradyumankumar Dwarkadas Patel with his son Mr. Hardik Patel
(Through Video Conferencing Mode)

Respondent: Not Present

BACKGROUND OF THE CASE:

1. The brief background of the case is as under :
 - a. That as per the Complainant, he and his family hold 52% shares in M/s Polygold Precured Systems Pvt. Ltd. [hereinafter referred to as the “**Company**”] located at Ahmedabad.
 - b. The Company during the year 2017-18 increased authorized share capital and issued Right shares.
 - c. The Respondent was the statutory auditor of the Company and had certified e-forms SH-7 (relating to alteration of share capital) and PAS-3 (relating to return of allotment after issue of shares) in respect of above acts of the Company.
 - d. According to the Complainant, the act of the Company was in violation of provisions of the Companies Act, 2013 and the Respondent certified the e-forms without verification of necessary documents like date of sending notice of the EGM for increase in the authorized share capital of the company as the notice of EGM was not sent through valid mode and was not served on all the existing shareholders of the company. Hence, the Respondent is helping the directors of the Company by giving illegal and non-professional advise.

CHARGES IN BRIEF:-

2. The Committee noted that the charges against the Respondent were as under:
 - a. The Respondent has certified form SH-7 (**as per Prima Facie Opinion**) without ensuring that the company has complied with provisions of the Companies Act, 2013.
 - b. That the Respondent has certified form PAS-3 (**as per Prima Facie Opinion**) without ensuring that the company has complied with provisions of the Companies Act, 2013.

3. The Director (Discipline) had, in his Prima-facie opinion, noticed that the Respondent had failed to submit his written statement to defend himself on the allegations levelled by the Complainant. Further on reading of the declaration given by the Respondent, in Form SH-7 and PAS-3, it is observed by Director (Discipline) that it was the duty of the Respondent to satisfy himself that the requirement of certifying Form SH-7 and Form PAS-3 has been complied however he has failed to do the same.
4. Accordingly, the 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, held the Respondent Prima-facie Guilty of Professional Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949. The said item in the Schedule to the Act states as under:

Item (7) of Part I of the 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"

BRIEF FACTS OF THE PROCEEDINGS:

5. The Committee noted that the instant case was fixed for hearing on following dates:

S.No.	Date	Status of Hearing
1.	27.01.2021	Part-Heard and Adjourned to provide opportunity to the Respondent.
2.	06.04.2023	Adjourned on request of the Complainant and in absence of the Respondent
3.	20.06.2023	Part-Heard and Adjourned
4.	11.07.2023	Heard & Concluded

6. On the day of the first hearing, held on 27th January 2021, the Committee noted that the Respondent was not present despite due delivery of notice to him. The Committee further noted that the Complainant along with his son, Mr. Hardik Patel were present through Video Conferencing Mode. The Complainant was administered on Oath.
- 6.1 Thereafter, the Complainant was asked to submit his charges. The Complainant's representative in his submissions had, inter-alia, submitted as under:
- a. That he along with his family members hold 52% shareholding in the Company and were also the directors in the Company, however, due to some family disputes, they decided to withdraw from the directorship in 2017.
 - b. That no notice of an EGM was served upon them which was held in 2018 wherein resolution was passed to issue right shares at face value and the same were allotted to all family members, without offering them due to which their shareholding was reduced to 33% from 52%.
 - c. That they have filed the petition before the NCLT for mismanagement in the Company however the same is still pending.
 - d. That the Respondent has certified the forms related to said allotment.
 - e. That the right shares have been allotted before the receipt of allocation money.
 - f. That in 2017 also no notice was served on them and they have already taken up the matter with NCLT in 2018.
7. On the day of the second hearing held on 6th April 2023, the Committee noted that the Complainant vide his email dated 3rd April, 2023 sought adjournment on medical grounds i.e. due to his cancer treatment. The Committee further noted that the Respondent was not present despite due delivery of notice to him. Thereafter, the Committee on account of humanity and natural justice acceded to the request of the Complainant and in absence of Respondent decided to adjourn the case to a future date.

8. On the day of the third hearing held on 20th June, 2023, the Committee noted that the Complainant and his son Mr. Hardik P. Patel were present through Video Conferencing Mode. The Committee noted that the Respondent vide email dated 14th June, 2023 had stated that due to the sudden demise of his son and father-in-law on 26th September 2021 and 4th October 2021 respectively, he was not able to come out of that biggest setback and had shifted to Dhoraji, Gujarat, since the last one and a half years. He further submitted that the Government has cut off power supply due to the Biporjoy cyclone that will pass through his town from tomorrow until the next three days. He further submitted that he would submit the whole set of documents and represent the case from his side once he came out as early as possible.

8.1 Thereafter, in absence of the Respondent, the Complainant was asked to submit his charges. The Complainant/ his son in his submissions had, inter-alia, submitted as under:

- i. He reiterated his earlier submissions.
- ii. That they were not aware of the increased authorised share capital and were not given the chance to participate in the right issue.
- iii. That new family members were added in the Company without their consent despite the fact that they were majority shareholders.
- iv. That ROC has also issued summon to the Respondent for taking an action under section 206 of the Companies Act, 2013.

8.2 Thereafter, the Committee, looking into the grounds of natural justice decided to give final opportunity to the Respondent. Further, the Committee, while adjourning the matter, directed the office to check whether any UDIN (Unique Document Identification Number) was generated by the Respondent. With this, the hearing in the matter was part heard adjourned.

9 On the day of final hearing held on 11th July, 2023, the Committee noted that the Complainant alongwith his son Mr. Hardik Patel were present from their place through Video Conferencing mode. The Committee noted that neither the Respondent was present nor any intimation was received, despite

notice/email duly served upon him. The Committee noted that though the Respondent was not present in previous hearings, however he had generated around 500 UDIN's from 01.01.2023. The Committee noted that the Respondent was involved in doing full time practice by generating UDINs on various dates as provided by UDIN Directorate of ICAI. The Committee looking into the fact and on the grounds of natural justice, it had already extended sufficient opportunities to the Respondent to present his case and despite the same there is no reply from the Respondent, decided to proceed with this case ex-parte while considering the material available on record.

- 9.1 The Committee told the Complainant that the Committee had already heard him in the previous hearing, so if he wants to submit anything new he can submit. On the same, the Complainant has submitted that he has sent a letter dated 26th June, 2023 indicating the major points of the issue. Thereafter, the Committee, looking into the Complainant's submissions, documents on record and the absence of Respondent in all the hearings, decided to conclude the hearing.

FINDINGS OF THE COMMITTEE

10. The Committee noted that the Respondent had not submitted his written statement or any documents in his defence.
11. The Committee noted that the present matter relates to certification of form SH-7 and form PAS-3. The form SH-7 relates to notice to Registrar for alteration of authorised share capital while Form PAS-3 relates to filling of Annual Return with ROC after allotment of Shares.
12. The Committee on perusal of documents noted that the Company, for purpose of increase in authorized capital called meeting of Board of Directors' on 8th December 2017 [**as per Prima Facie Opinion**] and Extra Ordinary General meeting on the same day i.e. on 8th December 2017 [**as per Prima Facie Opinion**]. However, while filing of form SH-7 with the Registrar, the

EGM date is mentioned as 1st January 2018 [as per Prima Facie Opinion], whereas the meeting was in fact held on 8th December 2017.

13. The Committee observed that section 101 of the Companies Act, 2013 states as under:

(1) A general meeting of a company may be called by giving not less than clear ²[twenty one days'] notice either in writing or through electronic mode in such manner as may be prescribed

[Provided that a general meeting may be called after giving shorter notice than that specified in this sub-section if consent, in writing or by electronic mode, is accorded thereto—

(i) in the case of an annual general meeting, by not less than ninety-five per cent of the members entitled to vote thereat; and

(ii) in the case of any other general meeting, by members of the company—

(a) holding, if the company has a share capital, majority in number of members entitled to vote and who represent not less than ninety-five per cent. of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or

(b) having, if the company has no share capital, not less than ninety-five per cent of the total voting power exercisable at that meeting:

Provided further that where any member of a company is entitled to vote only on some resolution or resolutions to be moved at a meeting and not on the others, those members shall be taken into account for the purposes of this sub section in respect of the former resolution or resolutions and not in respect of the latter.]

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(3) The notice of every meeting of the company shall be given to—

(a) every member of the company, legal representative of any deceased member or the assignee of an insolvent member;

(b) the auditor or auditors of the company; and

(c) every director of the company

(4).....

14. On perusal of above provisions, the Committee noted that for holding a general meeting, the notice should be served upon the shareholders atleast 21 days before the meeting. Further for a shorter period notice, the consent of atleast 95% of shareholder should be taken. However in the present matter, the Committee noted that the notice for calling general meeting for increasing the authorized share capital was served on 8th December, 2017 and the meeting was also conducted on the same day, i.e. 8th December, 2017.
15. The Committee noted that the Complainant group was holding more than 50% shares of the Company and had mentioned that the notice of the meeting was not served to them. The Respondent, to establish his bonafide, was required to submit documents evidencing that the consent of 95% shareholder for such meeting as required under the Companies Act 2013. The Committee noted that the Respondent chose not to reply/appear before the Committee despite sufficient opportunities and he even failed to submit any defence at prima-facie stage also. Hence, his absence in other words, is admission of guilt on this charge.
16. The Committee further observed the provisions of section 61 and section 64 (1) the Companies Act, 2013 which states as under:

Section 61 of the Companies Act 2013:

(1) A limited company having a share capital may, if so authorised by its articles, alter its memorandum in its general meeting to—

(a) increase its authorised share capital by such amount as it thinks expedient;

(b) consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares:

Provided that no consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner;

(c) convert all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination.

d) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;

(e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) The cancellation of shares under sub-section (1) shall not be deemed to be a reduction of share capital

Section 64 of the Companies Act 2013 states that:

(1) Where—

(a) a company alters its share capital in any manner specified in sub-section (1) of section 61;

(b) an order made by the Government under sub-section (4) read with sub-section (6) of section 62 has the effect of increasing authorised capital of a company; or

(c) a company redeems any redeemable preference shares,

the company shall file a notice in the prescribed form with the Registrar within a period of thirty days of such alteration or increase or redemption, as the case may be, along with an altered memorandum.

17. The Committee noted that as per section 61 of the Companies Act, 2013 issue of shares which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner. However in the present case no such approval has been brought on record.
18. The Committee further noted that in form SH-7 and Form PAS-3 the Respondent certified as under:

Form SH-7

*It is hereby certified that I have verified the above particulars (including attachment(s)) from the records I declare that I have been duly engaged for the purpose of certification of this form. It is hereby 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 Company/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 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;*
- ii. *All the required attachments have been completely and legibly attached to this form*

Form PAS-3

"that I have been duly engaged for the purpose of certification of this form. It is hereby 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 Company/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 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;
- ii. All the required attachments have been completely and legibly attached to this form.

18.1 The Committee further noted that, before giving the declaration the Respondent was supposed to verify the following:-

- a. Whether the company is authorized by the Articles of Association to increase the share capital if company's Article of Association does not permit or authorize, then it is to be done with the objective of altering them.
- b. The board meeting has to be conducted for enabling the board to call for the extraordinary general meeting, it is mandatorily required to get approval from the shareholders for increasing the authorized share capital
- c. The company then calls for an extraordinary general meeting of the shareholders of the company by sending them a notice with clear agenda and proper explanatory statements, explanation, with a proper reasoning along with the resolutions to be passed to alter the Memorandum of Association and Articles of Association which are to be altered for the purpose of increasing the authorized share capital.
- d. Thereafter, resolutions for increasing the authorized share capital of the company and corresponding alterations in the Memorandum of Association and Articles of Association by resolution. After completing the

whole procedural part, the company authorizes the board to file necessary forms and resolutions with ROC having jurisdiction.

19. The Committee on perusal of records noted that Company had issued right issue of 5,44,940 equity shares of Rs.10 each on 22nd January 2018. The Complainant along with his family members was holding 52.497% stake in the company before issue of right shares which was reduced to 33% after right shares issue. The reason behind the same was that notice of EGM was not sent to existing shareholders who have got first right on the right issue of the company as per requirement of Section 62 of Companies Act, 2013. No consent of existing shareholders was obtained for allotment of shares to other shareholders.
20. The Committee on perusal of above certification requirements noted that it was the duty of the Respondent to satisfy himself that whether the whole procedural part for the purpose of increasing the authorized share capital has been followed or not before certifying the forms however in the present matter the Respondent neither submitted his written statement when asked by the Director (Discipline) at PFO stage nor appeared before the Committee during the hearing stage despite giving him reasonable opportunities to do so which shows that the Respondent does not want to submit anything in the matter.
21. The Committee noted that the Complainant had also approached NCLT where the name of the Respondent had been mentioned as one of the Respondents. The Committee further noted that the NCLT had admitted the application of the Complainant under section 7 of the Code for Corporate Insolvency Resolution Process (CIRP) of M/s Polygold Pre-Cured Systems Limited (CD) vide Order dated 16th March 2020 and appointed IRP in the matter.
22. The Committee in absence of any defence from the Respondent held that the Respondent failed to exercise due diligence and had failed to ensure the

compliance of the provisions of the Companies Act while certifying form SH-7 and PAS-3.

CONCLUSION

23. In view of the above findings stated in the above para's vis-a-vis material on record, the Committee, in its considered opinion, holds the Respondent is **GUILTY** of Professional Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

SD/-

**(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER**

SD/-

**(MRS. RANI NAIR, I.R.S. RETD.)
GOVERNMENT NOMINEE**

SD/-

**(SHRI ARUN KUMAR, I.A.S. RETD.)
GOVERNMENT NOMINEE**

SD/-

**(CA. SANJAY KUMAR AGARWAL)
MEMBER**

DATE: 14TH DECEMBER, 2023

PLACE: NEW DELHI

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

Nitika Gupta

सीए नीतिका गुप्ता / CA. Nitika Gupta

सहायक निदेशक / Assistant Director

अनुशासनात्मक निदेशालय / Disciplinary Directorate

इंस्टिट्यूट ऑफ चार्टर्ड अकाउंटेंट्स ऑफ इंडिया

The Institute of Chartered Accountants of India

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