



भारतीय सनदी लेखाकार संस्थान

(संसदीय अधिनियम द्वारा स्थापित)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

DISCIPLINARY COMMITTEE [BENCH-III (2024-2025)]

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

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

PR/G/309/2022/DD/221/2022/DC/1676/2022

In the matter of:

Shri Nitin Phartyal
ROC, NCT of Delhi & Haryana
Ministry of Corporate Affairs
4th Floor, IFCI Tower, 61 Nehru Place
New Delhi-110019

...Complainant

Versus

CA. Sambhav Mehta (M.No. 238733)
71, Pratishta Chambers,
1st Floor, 5th Main Road,
Chamrajpet,
Bengaluru – 560 018

...Respondent

MEMBERS PRESENT:

CA. Charanjot Singh Nanda, Presiding Officer (Present in Person)
Smt. Anita Kapur, Government Nominee (Present through Video Conferencing Mode)
Dr. K. Rajeswara Rao, Government Nominee (Present through Video Conferencing Mode)
CA. Piyush S. Chhajed, Member (Present in person)

Date of Hearing: 19th March 2024

Date of Order: 8th May, 2024

1. That vide findings under Rule 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 dated 3rd October 2023, the Disciplinary Committee was, inter-alia, of the opinion that **CA. Sambhav Mehta (M.No. 238733)** (hereinafter referred to as the "**Respondent**") was **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. That charge against the Respondent was that he had certified the form for incorporation of M/s Digipeergo Tech. Pvt. Ltd. (hereinafter referred to as '**Company**') without personally verifying address of the Company., Further the proposed registered office was not meeting with the requirements of the Companies Act which was laid in Section 12 of Companies Act, 2013 read with



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Rule 25 of Companies (Incorporation) Rules, 2014. Hence, the Respondent is grossly negligent in the conduct of his professional duties while certifying incorporation documents of the Company.

3. That pursuant to the said findings, an action under Section 21B(3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and a communication was addressed to him thereby granting an opportunity of being heard in person/through video conferencing and to make representation before the Committee on 19th March 2024.

4. The Committee noted that on the date of hearing held on 19th March 2024, the Respondent was present through Video Conferencing Mode and made his verbal submissions on the findings of the Disciplinary Committee. The Committee noted that the Respondent relied on his written submissions, wherein he, inter-alia, submitted as under:

- (a) That the Complaint filed against him does not have the requisite authorization.
- (b) The Director (Discipline) has taken the Complainant's statement at face value without satisfying himself whether the Complainant has even conducted a "physical verification" of the registered office of the Company.
- (c) That the Bench has suo-moto decided to delve into whether a "registered office plan" would satisfy the conditions under Section 12 of the Companies Act 2013 in its final order without granting him an opportunity of hearing on the same.
- (d) That if the "registered office plan" was not in compliance with the Section 12 of the Act, the Registrar of Companies could have rejected the form and refused to incorporate the Company and therefore the Bench ought to respect the Registrar of Companies' interpretation.
- (e) That the law is silent with respect to "registered office plan" and he had given a reference of case wherein the Respondent was held Not Guilty by the Disciplinary Committee.
- (f) That he has no role in drafting or signing the sub-lease agreement and had acknowledged the errors pointed by the Bench in the said agreement as trivial typographical mistakes.
- (g) That a Professional cannot be condemned for all and sundry trivial mistakes committed involuntarily in the course of discharge of his duties.
- (h) That no financial loss was caused to anyone due to his filing of Form, and hence requested to take a lenient view.

5. The Committee considered the reasoning as contained in the findings holding the Respondent Guilty of professional misconduct vis-à-vis written and verbal representation of the Respondent made before it.

6. Keeping in view the facts and circumstances of the case, material on record including verbal and written representations on the findings, the Committee observed that the objections raised at point no (a) and (b) of para 4 above, was never raised by the Respondent at hearing stage. However, the issues raised at this later stage were also duly responded vide email dated 15.03.2024. The Committee also noted that the facts of the case referred by the Respondent were distinguishable from the instant matter. As regards other objections the Committee noted that the same were duly dealt with along with reasoning in its findings.



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7. The Committee upon examination of overall facts noted that the Respondent had certified the form for incorporation of the Company i.e. M/s Digipeergo Tech. Pvt. Ltd. which was found not to be in line with the requirements of the Companies Act 2013. Further the Respondent failed to evaluate the same and instead went on to give the wrong declaration to have personally verified the registered office of the Company. Thus, the Respondent was held accountable for not performing his professional duties with due diligence. Such a conduct of the Respondent pointed out at his lackadaisical approach towards professional assignments and the Respondent is held Guilty of Professional Misconduct falling within the meaning of Item (7) of Part-I of Second Schedule to the Chartered Accountants Act, 1949.

8. The Committee noted that professional misconduct on the part of the Respondent is clearly established as spelt out in its findings dated 3rd October 2023 which is to be read in conjunction with the instant Order being passed in the case.

9. The Committee, hence, viewed that the ends of justice will be met if appropriate punishment commensurate with his professional misconduct is given to the Respondent.

10. Accordingly, the Committee, upon considering the nature of charges and the gravity of the matter ordered that the name of **CA. Sambhav Mehta (M.No. 238733) be removed from Register of Members for a period of 60 (sixty) days and a fine of Rs. 20,000 (Rupees Twenty Thousand only) be imposed upon him, to be paid within 90 days of the receipt of the order and in case of failure in payment of fine as stipulated, the name of the Respondent be removed for a further period of 30 days from the Register of Members.**

Sd/-

(CA. CHARANJOT SINGH NANDA)
PRESIDING OFFICER

Sd/-

(SMT. ANITA KAPUR)
GOVERNMENT NOMINEE

Sd/-

(DR. K. RAJESWARA RAO)
GOVERNMENT NOMINEE

Sd/-

(CA. PIYUSH S CHHAJED)
MEMBER

Date: 8th May, 2024

Place : New Delhi

DISCIPLINARY COMMITTEE [BENCH – III (2023-24)]
[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

Ref. No. PR/G/309/2022/DD/221/2022/DC/1676/2022

In the matter of

Shri Nitin Phartyal
ROC, NCT of Delhi & Haryana
Ministry of Corporate Affairs
4th Floor, IFCI Tower, 61 Nehru Place
New Delhi-110019

...Complainant

-Vs-

CA. Sambhav Mehta
M/s. MGIRT & Co.,
No.270, 3rd Floor, Sachin Towers,
Albert Victor Road,
Chamrjpete, Ist Main Road,
Bangalore-560018

...Respondent

MEMBERS PRESENT

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

Date of Final Hearing: 26th July, 2023 through Video Conferencing

PARTIES PRESENT

(i) CA. Sambhav Mehta – the Respondent (appeared 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* guilty of Professional Misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949. The 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 and the allegations against the Respondent

2. The extant complaint was filed by the Registrar of Companies, NCT of Delhi and Haryana (hereinafter referred to as the “**Complainant**”) wherein it was stated that certain individuals/ directors/ shareholders/ entities in M/s Digipeergo Tech. Pvt. Ltd. (hereinafter referred to as the “**Company**”) had engaged dummy persons as subscriber’s to Memorandum of Association (MOA) & Directors and registered the company with forged documents/ falsified addresses/ signatures and found to be engaged in illegal/ suspicious activities, money laundering, tax evasion and non-compliance of various provisions of laws. It was further stated that the Professionals (CA) failed to discharge their duties and wilfully connived with directors/ company/shareholders/ individuals in certifying e-forms knowingly with false information/ documents/ false declaration/omitting material facts or information in the said Company. With the said background, the allegations raised against the Respondent were as under: -

- a. On physical verification of registered office of the Company (at Plot No. 90 B, Sector – 18, Gurgaon, Haryana – 122001), the Company was not found at the said address, the name and the registered office address of the Company was neither painted nor affixed outside the premises, no employee was present, further receptionist present there had no knowledge of the existence of the Company. Accordingly, it was alleged that the Respondent had failed to discharge his duties and willfully connived with directors/ company/ shareholders/ individuals in certifying e-forms knowingly with false information/ documents/ false declaration/ omitting material facts or information in the said Company.
- b. It was also alleged that the frequent appointment and cessation from the post of directorship was observed in the company which indicated that the Company was involved in suspicious/

illegal activities. It was also stated that the Company had not filed its annual financial statements since incorporation.

Keeping in view the aforesaid background, in the instant complaint, it was noted that the Complainant had raised four allegations against the Respondent i.e. (i) the Company was not found at its registered office address at the time of inspection by the officials of Complainant Department, (ii) Company was involved in illegal/ suspicious activities, (iii) frequent appointment and cessation of directors in the Company and (iv) engagement of dummy persons as subscribers to MOA/ AOA and the Company was registered with forged documents/ falsified addresses/ signatures. However, after due investigation by Director (Discipline) in the matter, the Respondent was held prima facie guilty only in respect of first allegation in relation to registered office of the Company and accordingly the extant proceedings are limited to that charge.

Proceedings:

3. During the hearing held on 26th July 2023, the Committee noted that the Respondent appeared before it 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 was only one allegation against the Respondent in respect of registered office of M/s. Digipeergo Tech Private Limited (hereinafter referred to as 'the Company') which as per the Complainant was not found during physical verification conducted by its department. It was noted that the Respondent had certified the SPICe Form **(C-15 to C-24)** for incorporation of the Company wherein he had certified the address of the registered office of the Company based at Delhi and in "Declaration and certification by professional" column certified that he was duly engaged in the formation of the Company/ certification of the e-form. In the said form, he 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)”.

- 4.1 The Committee noted that the Respondent in his defense inter-alia submitted as under:
- a. That he had verified the address, he had sent his associate to visit the registered office of the Company while he himself had verified the particulars of the registered office via video call. To support his contention, the Respondent produced on record an affidavit dated 29th August 2022 of his associate, Mr. Ravi Kumar, wherein he stated to have then visited the premises of the then proposed registered office of the Company and video called the Respondent to confirm the location where the Company proposed to set its registered Office.
 - b. The Respondent stated that the requirement of “personally visiting” the premises of the proposed registered office by the certifying professional did not stem from any provision of the Companies Act, 2013 or the Companies (Incorporation) Rules, 2014. He argued that the said requirement was included only as a part of declaration by the certifying professional in the form SPICe Form as notified by the Ministry of Corporate Affairs whereas the declaration that all the requirements of this Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with, is contained in section 7(1)(b) of the Companies Act, 2013. He further argued that Rule 14 of the Companies (Incorporation) Rules, 2014 prescribes form INC-8 containing the declaration required under section 7(1)(b) but did not include a declaration of having "personally visited" the proposed registered office. As per him, the requirements of SPICe form be interpreted harmoniously with the scheme of the Act. The SPICe form could not be interpreted to expand the scope of the legislation to include an affirmative requirement for a professional to "physically visit" the proposed registered office.
 - c. He also argued in context of meaning of the phrase "personally visited" as used in the SPICe form - whether the scope of the phrase "personally" would mean only "physically" to a categorical exclusion of video conferencing or other audio-visual mode. As per him,

the word "personally" to mean by a person, and not to categorically exclude by a person through video conferencing or other audio-visual mode. In other words, the scope of the phrase "personally visit" was much broader than "physically visit" and would include video conferencing and other audio-visual mode of verification as well.

- d. Regarding incorrect declaration in SPICe form, the Respondent stated that the SPICe form issued by the Ministry of Corporate Affairs was a standard electronic form which could not be amended. So, as per him, it was not possible for him to change the language of the declaration (which does not find mention in the Companies Act, 2013 or the Companies (Incorporation) Rules, 2014) to clarify that his "personal visit" was through video conferencing or other audio-visual mode. Thus, by merely affixing of his digital signature on the SPICe form with a non-editable declaration that he had "personally visited" the premises of the proposed registered office, could not be literally interpreted and be tantamount to an incorrect declaration.
- e. Regarding allegation of non-compliance with Section 12 of the Companies Act 2013, the Respondent submitted that as per Section 7(2) of the Companies Act, 2013 a proposed company came into existence only on the date the Registrar issues the certificate of incorporation. Thus, he argued that an inference could be drawn that the provisions of Section 12 of the Companies Act, 2013 would only be applicable after a Company was incorporated and not before that.
- f. The Respondent further submitted that as per clause 13 of the co-working agreement **(W-54 to W-59)** the Company from the date of its incorporation, was eligible to receive communications via mails and call forwarding at the premises of the proposed registered office. As per him, such arrangement ensured compliance with section 12(1) of the Companies Act, 2013.
- g. Further, the Respondent informed that on a subsequent physical visit (in August 2023) and enquiry at the registered office of the Company by an independent Chartered Accountant (M/s Sharma Jitendra & Associates), it was found and confirmed by the co-working space that a Board containing the name of the Company was displayed in the premises during their tenure of agreement with the said co-working space. Thus, he argued that there was compliance with section 12(3)(a) of the Companies Act, 2013.
- h. The Respondent additionally adopted following measures for the verification of premises of the proposed registered office of the Company:
 - Verification of documents viz Copy of signed co-working agreement between company and 91 Springboard Business Hub Private Limited (hereinafter referred to as 'Service Provider') **(W-54 to 59)**, NOC signed on behalf of Service Provider **(W-60)**, Telecommunication utility bill. **(W-81 to 83)**, Tax Invoice from 91 Springboard for the use of premises **(W-121 to 122)**, Payment advice from InstaMojo for payment towards the use of premises in 91 Springboard. **(W-123)**
 - Verification of the official website of the co-working space Service Provider.

- Verification of the google maps location.
 - Visit to the Bangalore office of the said co-working space.
- i. The Respondent further referred to Code of Ethics issued by the Institute and dealt with the term due diligence in order to justify the duties discharged by him.

4.2 The Committee noted that the Respondent had certified SPICe Form for incorporating the Company wherein the registered office address of the Company was also mentioned. It was also noted that while certifying the said form, the Respondent had given the declaration to have verified that requirements of the Companies Act as well as that of Rules made thereunder in relation to registration of the Company and the matters incidental thereto were complied with and that he had personally visited and verified the registered office of the Company. However, as per the submissions of the Respondent, he had verified the premises of the registered office through video call and also verified the agreement of the Company with service provider along with taking various steps like verifying official website of Service provider, google map the location of proposed office. It was also noted that the record of the said video call was submitted to be not available with him.

4.3 It was noted that the Respondent had argued on the applicability of Sec 12 before the incorporation of the Company and meaning of phrase 'personally visited'. It was viewed that in extant matter the role of the Respondent was being assessed based on the agreement(s) and other records he had for incorporating into the Company. If the said agreements/records did not meet the requirements of the Companies Act, 2013, then it raises a question on degree of diligence exercised by him during incorporation of alleged company. The Committee viewed that irrespective of the fact that the Company was then incorporated or not when the Respondent was providing a declaration in relation to registered office of the Company he was required to verify if the proposed registered office met the requirements of the Companies Act which was laid in Section 12 of Companies Act, 2013 read with Rule 25 of Companies (Incorporation) Rules, 2014. Certain relevant abstracts thereof were read as below:

"Section 12 of Companies Act, 2013

(1) A Company shall, within thirty days of its incorporation and at all times, thereafter, have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it.

(2) ...

(3) ...

(4) ...

(5) Except on the authority of a special resolution passed by a company, the registered office of the company shall not be changed—

(a) in the case of an existing company, outside the local limits of any city, town or village where such office is situated at the commencement of this Act or where it may be situated later by virtue of a special resolution passed by the company; and

(b) in the case of any other company, outside the local limits of any city, town or village where such office is first situated or where it may be situated later by virtue of a special resolution passed by the company:

Provided that no company shall change the place of its registered office from the jurisdiction of one Registrar to the jurisdiction of another Registrar within the same State unless such change is confirmed by the Regional Director on an application made in this behalf by the company in the prescribed manner.

(6) ...

(7) ...

(8) ...

(9) If the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may cause a physical verification of the registered office of the company in such manner as may be prescribed and if any default is found to be made in complying with the requirements of sub-section (1), he may without prejudice to the provisions of sub-section (8), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII."

From the above, it was viewed that a registered office was envisaged as an office capable of receiving and acknowledging all communications and notices as may be addressed to it at all times. Similarly, there were requirements of change in the registered office defined in terms of outside the local limits of a city, town, village or even outside the state. Further, it was noted that sub-clause (9) of Section 12 of the Companies Act, 2013 empowers the Registrar to cause 'physical verification' of the registered office. It was viewed that such requirements/ power stems from the fact that the Companies Act, 2013 presumes that there should be a physical registered office of the Company irrespective of the mode through which the business of the Company was being conducted. In case, the Companies Act, 2013 had envisaged the registered office as virtual office, then neither the requirements of change in registered office would have been defined in terms of limits of city or state nor the requirement to physically verify the office would have existed.

4.4 On perusal of documents available on record, the Committee noted from Tax invoice as raised by the Service Provider **(W-121)** vs a vs the plans being offered by it **(W-86 read with W-58)** that the Company had paid subscription at the rate of Rs.2,199 for each of 6 months from November, 2019 to April 2020 which signified that the Company had opted for virtual office space/ Registered Office plan rather than a co-working space as being argued by the Respondent in his submissions. On review of the related conditions, it was evident that the Company was entitled for its board/logo on the service provider logo wall, call forwarding facility for first six months, receiving mails addressed to the Hub address which could be collected at the end of week and that the postal package could be forwarded by the service provider provided the Company was liable to pay actual charges plus 20% thereon as administrative charges. Further, it also stated that once the agreement was entered into for a specific period, it could

not be terminated before the period of the agreement unless the member i.e. the Company brought proof of rejection for registration. Accordingly, the Committee noted that such clauses in the agreement opted for by the Company indicated that there was no physical office of the Company. A mere display of logo on board, call and mail forwarding facility as well as package forwarding facility against administrative charge, further free exit if statutory registration not obtained signify that such arrangement was intended to showcase compliance of the provisions of Companies Act but there existed no intention to establish any registered office. It was viewed that there was no arrangement either to acknowledge all communications and notices addressed to the Company nor any office was hired wherein the employee of the Company could function in relation to the business of the Company. In view of the said discussion, further defense of the Respondent that proposed registered office was physically visited by his associate or that of independent enquiry by an independent Chartered Accountant (M/s Sharma Jitendra & Associates) for the registered office of the Company stating that a Board containing the name of the Company was displayed in the premises during their tenure of agreement was not sustainable as the form of registered office hired by the Company was not in compliance with the requirements of the Companies Act, 2013.

4.5 Further, the Committee noted certain discrepancies in the documents verified by the Respondent for incorporation of the Company. It was noted from the copy stated to be co-working agreement between Company and Service Provider that it was an offer letter which was although signed between the Company and the Service Provider, but the said offer was made to 'Information Technologies, LLP'(W-54). In other words, there was a difference in the names of parties to whom the offer was made and that which accepted the offer. Further, it was noted that the Respondent had also argued to have verified the agreement between the Service Provider and the owner of the premises to ensure that Service Provider had the right to sub-lease the premises, however, it was noted on perusal of the said agreement that the day on which the said agreement was made was not mentioned in the agreement (W-62). Accordingly, it was viewed that such discrepancies had raised questions on diligence exercised by the Respondent.

4.6 It was evident from discussion held in preceding paragraphs that the Companies Act 2013 never envisaged a registered office in virtual space with limited facility of receiving calls and packages. Such an arrangement was found to be not in line with the requirements of the Companies Act 2013, which the Respondent failed to evaluate and instead he went on to give the wrong declaration to have physically verified registered office of the Company. Thus, the Respondent was held accountable for not performing his professional duties with due diligence. Such a conduct of the Respondent pointed out at his lackadaisical approach towards professional assignments and the Respondent is held **Guilty** of Professional Misconduct falling within the meaning of Item (7) of Part-I of Second Schedule to the Chartered Accountants Act, 1949.

Conclusion:

5. Thus in conclusion, in the considered opinion of the Committee, the Respondent is **GUILTY** of Professional Misconduct falling within the meaning of Item (7) of Part-I of Second Schedule to the Chartered Accountants Act, 1949.

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: 3rd October, 2023

Place: New Delhi