



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-IV (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/280/2021/DD/298/2021/DC/1608/2022]

In the matter of:

CA. Neeraj Kumar Singh (M. No. 426435)

73, First Floor, East Extension,

Sector-1A, Trikuta Nagar,

Jammu Tawi,

Jammu and Kashmir - 180012

.....Complainant

Versus

CA. Jayshankar Mishra (M. No. 521305)

Partner, M/s M M H & Co.,

Chartered Accountants

309, 3rd Floor, Dua Complex,

Shakarpur, Near Metro Pillar No. 59,

Delhi - 110092

.....Respondent

MEMBERS PRESENT:

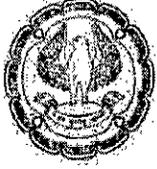
1. CA. Ranjeet Kumar Agarwal, Presiding Officer (In person)
2. Shri Jiweesh Nandan, I.A.S (Retd.), Government Nominee (In person)
3. Ms. Dakshita Das, I.R.A.S. (Retd.), Government Nominee (Through VC)
4. CA. Mangesh P Kinare, Member (In person)
5. CA. Abhay Chhajed, Member (In person)

DATE OF HEARING : 28th MARCH, 2024

DATE OF ORDER : 16th May, 2024

1. That vide Findings dated 05.02.2024 under Rule 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Disciplinary Committee was inter-alia of the opinion that **CA. Jayshankar Mishra (M. No. 521305)** (hereinafter referred to as the **Respondent**) is **GUILTY** of Professional Misconduct falling within the meaning of Item (7) and Item (8) of Part (I) of the Second Schedule to the Chartered Accountants Act, 1949.

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2. That pursuant to the said Findings, an action under Section 21B(3) of the Chartered Accountants (Amendment) Act, 2006 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 28th March 2024.

3. The Committee noted that on the date of hearing on 28th March 2024, the Respondent was present through video conferencing. During the hearing, the Respondent stated that he had already submitted his written representation dated 24th February 2024 on the Findings of the Committee. The Respondent admitted the mistake and further stated that the Director of the Company told him that the payment was made to the Complainant but the Complainant had denied the receipt of any payment. The Respondent further stated that he did not resubmit the Form for the reason that the Form already submitted would be rejected. The Committee also noted the written representation of the Respondent dated 24th February 2024 on the Findings of the Committee, which, inter alia, are given as under:-

(a) No compliance has been done for the financial years 2018-2019 and 2019-2020 and ROC have issued Form STK-7 on 04/02/2021 giving reference of Form STK-2 filed earlier instead of rejecting the Form.

(b) Sub rule (4) of Rule 10 of the Companies (Registration Offices and Fees) Rules, 2014, states that where such further information called for has not been provided or has been furnished partially or defects or incompleteness has not been rectified, the Registrar shall either reject or treat the application or e-form or document, as invalid in the electronic record.

(c) That as per the above Rule, Form STK-2 filed shall be rejected or shall be treated as invalid in the electronic record.

(d) The person in the ROC office on customer care number also told the Respondent that the Form has been sent for re-submission and it will be rejected if not replied within the time allowed. Keeping these provisions and conversation, he did not consider it appropriate to resubmit the Form.

(e) That minor errors and lapses, if any, cannot constitute professional misconduct as per judgment of the Hon'ble Calcutta High Court in the case of S.Ganesan v. A.K. Joscelyne.

(f) The Respondent prayed to the Committee for lenient view in the matter.

4. The Committee considered the reasoning as contained in Findings holding the Respondent 'Guilty' of Professional Misconduct vis-à-vis written and verbal representation of the

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Respondent. The Committee noted that the issues/ submissions made by the Respondent as aforesaid have been dealt with by it at the time of hearing under Rule 18.

5. Thus, keeping in view the facts and circumstances of the case, material on record including written and verbal representation of the Respondent on the Findings, the Committee noted that while certifying Form STK-2, the Respondent was required to ensure whether the facts/details given in the Form STK-2 were correct or not. However, the Respondent only relied upon the indemnity bond of the Company and the declaration given in Form STK-2 was found to be incorrect for the reason that the outstanding audit fee payable to the Complainant is reflected in the Balance Sheet for the year ended 31st March, 2018. Therefore, the Committee held that the Respondent cannot be absolved of his responsibility in complying with the provisions of Companies Act 2013 and related Rules made thereunder. Hence, the Professional Misconduct on the part of the Respondent is clearly established as spelt out in the Committee's Findings dated 05th February 2024 which is to be read in consonance with the instant Order being passed in the case.

6. Accordingly, the Committee was of the view that the ends of justice would be met if punishment is given to him in commensurate with his Professional Misconduct.

7. Thus, the Committee ordered that the Respondent i.e., CA. Jayshankar Mishra (M. No. 521305), be REPRIMANDED, under Section 21B(3)(a) of the Chartered Accountants Act, 1949.

Sd/-

(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

Sd/-

(SHRI JIWESH NANDAN, I.A.S. (RETD.))
GOVERNMENT NOMINEE

Sd/-

(MS. DAKSHITA DAS, I.R.A.S. (RETD.))
GOVERNMENT NOMINEE

Sd/-

(CA. MANGESH P KINARE)
MEMBER

Sd/-

(CA. ABHAY CHHAJED)
MEMBER

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

बिना नाथ तिवारी / Bishwa Nath Tiwari
कार्यकारी अधिकारी / Executive Officer
अनुशासनमालक विभाग / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्व नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shaheedra, Delhi-110032

CONFIDENTIAL

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

[Constituted under Section 21B of the Chartered Accountants (Amendment) 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/280/2021/DD/298/2021/DC/1608/2022]

In the matter of:

CA. Neeraj Kumar Singh (M. No. 426435)

Authority Villas, Sector 3,
Near Aster Public School,
Gautam Budh Nagar,
Greater Noida (West) – 201306

.....Complainant

Versus

CA. Jayshankar Mishra (M. No. 521305)

Partner, M/s M M H & Co.,
Chartered Accountants
309, 3rd Floor, Dua Complex
Shakarapur, Near Metro Pillar No. 59, Delhi – 110092

.....Respondent

MEMBERS PRESENT:

CA. Ranjeet Kumar Agarwal, Presiding Officer (In person)
Shri Jiweh Nandan, I.A.S. (Retd.), Government Nominee (In person)
Smt. Dakshita Das, I.R.A.S. (Retd.), Government Nominee (In person)
CA. Mangesh P Kinare, Member (Through VC mode)
CA. Cotha S Srinivas, Member (In person)

DATE OF FINAL HEARING : 11.07.2023

PARTIES PRESENT

Complainant : CA. Neeraj Kumar Singh (Through VC)
Respondent : CA. Jayshankar Mishra (Through VC)

1 Background of the case:

In the instant case, the Complainant Firm was the Statutory Auditor of M/s WINSYS ITES Private Limited and the Complainant had signed its balance sheet and issued Audit Report till 31st March 2018 but his audit fees was pending amounting to INR 31,275/-. The Complainant has further stated that he had filed his resignation and at the time of filing of Resignation Letter, the Company was in the process of striking off / removing its name from the register of Companies. The Company approached the Respondent to complete the formalities relating to its closure / striking off its name. In the present case, the Respondent had certified Form STK-2 and Statement of Account of the Company according to which the Company had no liability however, the Complainant's audit fee for the FY 2017-18 was still pending.

2 Charges in Brief: -

2.1 The Respondent had filed Form STK-2 for closure of the Company and also attached Statement of Account dated 11.03.2019 with signatures and stamp of the Respondent firm which mentioned that the Company had no liability(ies) to pay. The Complainant has stated that it was the duty of the Respondent to check how the Company paid Auditor's pending fees amounting Rs. 31,275/- as shown in balance sheet as on 31.03.2018 as the Respondent had signed the Statement of Account with 'Nil' Liability. The Complainant has further stated that while filing Form STK-2 for closure of Company, the Respondent had attached a Profit and Loss Statement for the year ended 31st March 2018 which contained the name of Complainant's Firm as an Auditor which appeared to be the same, but figures mentioned in the documents were changed as compared to original March 2018 financials which were signed by the Complainant. The Complainant had sent an e-mail dated 28.03.2019 to the Respondent mentioning about pending audit fee therein, but no response was received from the Respondent in this regard.

3 The relevant issues discussed in prima facie opinion dated 21st June 2022 formulated by Director (Discipline) in the matter in brief is given below:-

- 3.1 The Form No. STK-2 is the 'application by Company to ROC for removing its name from Register of Companies' which is filed pursuant to Section 248(2) of the Companies Act 2013 and Rule 4(1) of the Companies (Removal of names of Companies from the Register of Companies) Rules 2016. For better clarity and understanding, the provisions of Section 248(2) of the Companies Act 2013 are reproduced as under:

'(2) Without prejudice to the provisions of sub-section (1), a company may, after extinguishing all its liabilities, by a special resolution or consent of seventy-five per cent, members in terms of paid-up share capital, file an application in the prescribed manner to the Registrar for removing the name of the company from the register of companies on all or any of the grounds specified in sub-section (1) and the Registrar shall, on receipt of such application, cause a public notice to be issued in the prescribed manner.'

Provided that in the case of a company regulated under a special Act, approval of the regulatory body constituted or established under that Act shall also be obtained and enclosed with the application.'
(emphasis added)

- 3.2 While Section 248(2) of the Companies Act 2013 mandatorily requires the Company to extinguish all its liabilities, the Respondent being the practising professional was required to ensure the compliance of such provisions of Companies Act. The amount of Rs. 31,275/- is reported / disclosed as 'Audit Fee Payable' under the head 'Other Current Liabilities' in the Balance Sheet of the Company for the year ended on 31.03.2018 which has been signed by the Complainant as the Statutory Auditor of the Company. It is also noted that as an attachment / enclosure to Form STK-2, the Company has uploaded its Profit and Loss Statement for the year ended on 31.03.2018 which though mentioned the name of the Complainant and Complainant firm as the Auditors but are unsigned i.e., the said Profit and Loss Statement has not been signed by the Complainant / Complainant firm as Auditors. In this regard, it is noted that the various figures in the said Profit and Loss Statement which has been uploaded

by the Company as an attachment to Form STK-2 and the Profit and Loss Statement which has been audited by the Complainant firm, are completely different in respect of financial year ending on 31.03.2018. This proves that the Respondent has failed to exercise due diligence and also failed to call the documents / information from the management of the Company before certifying Form STK-2 and merely relied upon the information / documents provided by the Company to him.

3.3 In this connection, Para 3 of 'Guidance Note on Audit Reports and Certificates for Special Purposes' (Revised 2016) was noted, which reads as under:

*"3. Sometimes, the applicable law and regulation or a contractual arrangement that an entity might have entered into, prescribe the wording of report or certificates. The wording often requires the use of word or phrase like "certify" or "true and correct" to indicate absolute level of assurance expected to be provided by the practitioner on the subject matter. **Absolute assurance indicates that a practitioner has performed procedures as considered appropriate to reduce the engagement risk to zero.**"*

From the perusal of above alleged STK-2 and keeping in view the Paragraph of the 'Guidance Note on Reports or Certificates for Special Purposes' as stated above, it is seen that while certifying Form STK-2, the Respondent was required to ensure whether the facts given in the aforementioned Form was correct or not. It is also noted that at Rule 8(5) stage, when specifically asked by the Directorate about the documents checked / relied by the Respondent while certifying Form STK-2, in response the Respondent provided the Statement of Account which has been certified by him and in which the Company's liability was reflected as 'NIL' but the Respondent failed to provide any sufficient documentary evidence(s) on record to substantiate that whether the payment in respect of Complainant's audit fees for FY 2017-18 had actually been made by the Company which was reflected in its Balance Sheet for the financial year 2017-18. Further, the Respondent in his defence has brought on record Form STK-3

(Indemnity Bond) according to which the Directors of the Company had to indemnify the claimants for all lawful claims and liabilities which had not come to the notice of the Company upto the date of closure. However, it is viewed that only by relying upon the indemnity bond, the Respondent does not get absolved of his responsibilities to check that he along with the Company had complied with various provisions of Companies Act 2013 and related Rules made thereunder.

- 3.4 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 had been held Prima Facie GUILTY of Professional misconduct falling within the meaning of Item (7) and Item (8) of Part (I) of the Second Schedule to the Chartered Accountants Act, 1949. The said Item(s) to the Schedule to the Act. states as under: -

Item (7) and Item (8) of Part I of Second Schedule:

"A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he-

(7) does not exercise due diligence or is grossly negligent in the conduct of his professional duties.

(8) fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion;"

- 3.5 The Prima Facie Opinion formed by Director (Discipline) was considered by the Disciplinary Committee at its meeting held on 10th August 2022. The Committee on consideration of the same, concurred with the reasons given against the charges and thus, agreed with the prima facie opinion of the Director (Discipline) that the Respondent is prima facie GUILTY of Professional Misconduct falling within the meaning of Item (7) and Item (8) of Part - I of the Second Schedule to the Chartered Accountants Act, 1949 and accordingly, decided to proceed further under Chapter V of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. The Committee, also directed the Directorate

that in terms of the provisions of sub-rule (2) of Rule 18, the prima facie opinion formed by the Director (Discipline) be sent to the Complainant and the Respondent including particulars or documents relied upon by the Director (Discipline), if any, during the course of formation of prima facie opinion and the Respondent be asked to submit his Written Statement in terms of the provisions of the aforesaid Rules, 2007.

4 Date(s) of submissions/pleadings:

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

S.No.	Particulars	Dated
1.	Complaint in Form 'I' filed by the Complainant	13 th September 2021
2.	Written Statement filed by the Respondent	05 th October 2021
3.	Rejoinder	Dated 'Nil' (Received on 8 th November 2021)
4.	Prima Facie Opinion by Director (Discipline)	21 st June 2022
5.	Further Written Submissions by the Respondent	12 th May 2023 and 6 th July 2023
6.	Further Written Submissions by the Complainant	13 th June 2023

5 Further written submissions filed by the Respondent:

5.1 The Committee noted that the Respondent in his written submissions dated 12th May 2023 and 6th July 2023 has submitted that the resubmission of Form STK-2 was done by his staff on 16.04.2019 as he was engaged in arrangement of his marriage. The Respondent stated that when he rejoined the office on 22.04.2019, he found the mistake in the Profit and Loss Account prepared by the Director of the Company, then he verbally informed MCA about the mistake in the Profit and Loss Account and requested them to send back the said Form for resubmission. Thereafter, MCA sent the Form for resubmission on

22.04.2019, 14.05.2019, 30.05.2019, 19.6.2019, 12.7.2019, 29.7.2019 and 03.09.2019 along with the following remarks:

"This e-Form should be resubmitted and complete in all respects failing which the e-Form shall be treated as INVALID and shall not be taken on record or transaction shall be cancelled"

5.2 The Respondent has claimed that, if any Form is required to be resubmitted, the Form already filed becomes 'invalid' and treated as not having filed. In the present case, the Form filed had as such become "INVALID" and should be treated as not filed having regard to the contents of email as mentioned in para 5.1 above. The Respondent has further added that he had not resubmitted the Form even after receipt of seven such emails from MCA, and Respondent verbally requested MCA to reject the form but instead, MCA issued STK-7 on 04/02/2021. Thereby, the name of the Company has been removed from the Register of Companies. The Respondent has further stated that before filing of the Form STK-2, he has asked about the pending professional fee of the auditor and Director confirmed that the amount of fee has been paid to the Complainant.

5.3 The Respondent has further stated that when he did not receive the resignation letter along with the NOC of the Complainant, he did not resubmit the Form STK-2 even after receipt of several emails from MCA. The Respondent has further added that the Director of the Company (Mr. Arvind Singh Rawat) sent to the Respondent a copy of resignation letter dated 05.09.2019 of the Complainant and even after receiving such resignation letter, the Respondent had not resubmitted Form STK-2.

6 Further written submissions filed by the Complainant:

6.1 The Committee noted that the Complainant in his Written Submissions 13th June 2023 has submitted that Respondent has filed the Form STK-2 on 27.03.2019 and Complainant has sent an email to Respondent on 28.03.2019 regarding his pending audit fee however, the said email was ignored by the Respondent and on 16.4.2019 Respondent has resubmitted the Form.

7 Brief facts of the Proceedings:

7.1 The details of the hearing(s) fixed and held/adjourned in said matter is given as under:

Particulars	Date of Meeting(s)	Status
1 st time	18 th May 2023	Part heard and Adjourned
2 nd time	20 th June 2023	Part heard and Adjourned
3 rd time	11 th July 2023	Hearing concluded and decision taken

7.2 On the day of first hearing on 18th May 2023, the Complainant was present through video conferencing mode for the hearing and the Respondent was present in person. The Complainant and the Respondent were put on oath. Thereafter, the Committee enquired from the Respondent as to whether he was aware of the charges, and the same was read out to him as contained in para 2.1 above. On the same the Respondent replied that he is aware about the charges but pleaded 'Not Guilty' on the charges levelled against him. Thereafter, as per Rule 18 (9) of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee adjourned the case to a later date and the matter was part heard and adjourned.

7.3 Thereafter, on the day of hearing on 20th June 2023, the Committee asked the Complainant and Respondent to make submissions in the matter. The Complainant submitted that he had informed the Respondent through email that his undisputed audit fee as reflected in Balance Sheet were pending but he ignored the said email and dues were still pending. The Respondent stated that filing of Form STK-2 was done by his staff on 16.04.2019 in his absence and the Respondent joined office on 22.04.2019 and then found the mistake in Profit & Loss Account prepared by the Director of Company. He called MCA and intimated the mistake and requested for resubmission. Thereafter, he did not file revised Form STK-2 even after Seven reminders (auto- email) by the Ministry of Corporate Affairs (MCA) in this respect, and hence Respondent

believed that Form STK-2 has been rejected by MCA. After recording the arguments of both the parties, the Committee adjourned the matter.

- 7.4 Thereafter, on the day of final hearing on 11th July 2023, the Committee noted that the Complainant and the Respondent were present through Video conferencing mode. The Committee asked the Complainant and Respondent to make submissions in the matter. The Complainant submitted that when Respondent certified STK 2, his audit fees was pending but the same has been shown as 'NIL' in the Profit & Loss Account certified by the Respondent. The Respondent submitted that dues of the Complainant has been paid and the Director of the Company undertook to indemnify any liability if arising after strike off the name of the Company. The Committee noted that the undisputed audit fees Rs. 31,275/- was pending and reflected in the Balance Sheet of the Company as on 31.03.2018, however, in attachment with STK 2 certified by the Respondent, it was shown as 'NIL'; which reflected lack of due diligence on the part of the Respondent. On the basis of documents and information available on record and after considering the oral and written submissions made by the Complainant and the Respondent, the Committee concluded hearing in the matter.

8 Findings of the Committee

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

- 8.1 The Committee noted that the Respondent has certified the Form STK-2 for strike off the name of the Company i.e. WINSYS ITES Private Ltd. from the Register of Companies and enclosed the Statement of Account as on 11.03.2019 wherein it shows Company Liabilities as 'NIL'. However, in the Balance Sheet of the Company for the year ended on 31.3.2018, audit fees payable to the Complainant is reflected as Rs 31, 275/- under the head 'Current Liabilities'. In this regard, the Committee noted the relevant portion of declaration as contained in Form STK-2 which was certified by the Respondent being the Chartered Accountant in practice which reads as under:

"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 relevant to this form and I have verified the above particulars (including attachment(s)) from the original 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."

- 8.2** The Committee further observed that Form No. STK-2 is 'application by Company to ROC for removing its name from Register of Companies' which is filed pursuant to Section 248(2) of the Companies Act 2013 and Rule 4(1) of the Companies (Removal of names of Companies from the Register of Companies) Rules 2016; and noted the said provisions as contained in para 3.1 above.
- 8.3** From the above, the Committee noted that in terms of the provisions of Section 248(2) of Companies Act 2013, a Company is mandatorily required to extinguish all its liabilities prior to removal of its name from the Register of Companies, and the Respondent was required to ensure the compliance of such provisions of Companies Act. However, in the present case, the Respondent has certified the Statement of Account as on 11.03.2019 wherein Company's liability is shown as 'NIL'. The Committee also observed that the Respondent in his defense stated that he relied on the indemnity bond provided by the Directors of the Company wherein the Directors have declared to indemnify any lawful claims against the Company which will arise in future after striking off the name of the Company.
- 8.4** The Committee further observed that the Respondent has mentioned in his submissions that before filing the Form STK-2, he confirmed from the Director of the Company regarding the pending audit fee (if any) of the Complainant. However, he had not made any written communication with the Complainant regarding his pending audit fees to be paid to him. Therefore, such an act on the part of the Respondent, of merely relying on the statement of the Director of the Company and not making written communication with the Complainant implied that he did not apply due diligence before certifying Form STK-2 and instead he relied solely on the information/documents provided by the Company. The Committee further observed that as an attachment/enclosure to

Form STK-2, the Company has uploaded its Profit and Loss Statement for the year ended 31.3.2018 which was incorrect. The Respondent acknowledged this error in his submission, stating that he informed MCA verbally about the mistakes in Profit & Loss Statement by the Company and requested MCA to allow the Respondent to resubmit the Form STK-2. However, despite receiving several reminders from MCA, the Respondent did not resubmit the Form, assuming that it would be rejected and deemed invalid by MCA. However, MCA issued STK-7 on 04.02.2021. As a result, name of the Company is removed from the Register of Companies. The Committee noted that the auto-emails dated 22.04.2019, 14.5.2019, 30.5.2019, 19.6.2019, 12.7.2019 and 3.9.2019 received from MCA clearly stated that, "Please track the status of your transaction at all times until it is finally disposed of by the Registrar," indicating that the Respondent should have monitored the status of his transaction. However, he did not track the status of Form STK-2 filed with MCA and assumed that such Form would be rejected and considered as invalid.

8.5 The Committee further observed that the auto-emails received from MCA clearly indicated that it is essential to track the transaction until its final disposal, which implies that the STK-2 Form can be either accepted or rejected by MCA. The Committee noted that the responsibility of the Respondent does not end solely with acknowledging MCA's email but he should also have ensured whether MCA has accepted or rejected the originally submitted Form STK-2. Further Respondent has not brought on record any evidence which indicates that Respondent has taken any corrective measures, once the Form STK-2 has been accepted by MCA. Accordingly, the Committee observed that the Respondent has not discharged his duties which he is expected to perform.

8.6 The Committee further emphasized on Para 3 of Guidance Note on Audit Reports and Certificates for Special Purposes (Revised 2016) which reads as under:

"3. Sometimes, the applicable law and regulation or a contractual arrangement that an entity might have entered into, prescribe the wording of report or certificates. The wording often requires the use of word or phrase like "certify" or "true and correct" to indicate absolute level of

assurance expected to be provided by the practitioner on the subject matter. Absolute assurance indicates that a practitioner has performed procedures as considered appropriate to reduce the engagement risk to zero."

- 8.7 The Committee was of view that Respondent did not bring any positive evidence to show that he has taken any step to withdraw Form STK-2 and his argument that Form STK-2 would be deemed 'rejected' is not tenable. The emails which he is referring to as a response from MCA is an auto reply emails from MCA21 administrator (MCAADM@mca.gov.in) which cannot be deemed as decision of Ministry of Corporate Affairs. The said emails also advised the recipient to track the status of application till it is finally disposed off. The Committee further observed that while filing Form STK-2 initially on 27.3.2019 the Respondent has certified the following:

"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 there under relevant to this form and I have verified the above particulars (including attachment(s)) from the original 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."

- 8.8 The Committee noted that while certifying Form STK-2, the Respondent was required to ensure whether the facts/details given in the Form STK-2 were correct or not. However, the Respondent only relied upon the indemnity bond of the Company and the declaration given in Form STK-2 was found to be incorrect for the reason that the outstanding audit fee payable to the Complainant is reflected in the Balance Sheet for the year ended 31st March, 2018. Therefore, the Committee was of the opinion that Respondent cannot be absolved of his responsibility in complying with the provisions of Companies Act 2013 and related Rules made thereunder. Thus, on perusal of the documents/material on record along with the oral and written submissions made by the Complainant and the Respondent and keeping in view of the above paragraph of Guidance Note on Reports or Certificates for Special

Purposes, the Committee held the Respondent **Guilty** of Professional Misconduct falling within the meaning of Item (7) and Item (8) of Part (I) of the Second Schedule to the Chartered Accountants Act, 1949.

9 Conclusion

In the view of the findings states in the above paras, vis-a vis material on record, the Committee gives its findings as under: -

Charge(s) (as per PFO)	Findings (Para ref.)	Decision of the Committee
Para 2.1 as above	Para 8.1 to 8.8 as above	Guilty - Item (7) and Item (8) of Part (I) of the Second Schedule

10 In view of the above observations, considering the submissions of the Respondent and documents on record, the Committee held the Respondent **GUILTY** of Professional Misconduct falling within the meaning of Item (7) and Item (8) of Part (I) of the Second Schedule to the Chartered Accountants Act, 1949.

Sd/-

(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

Sd/-

[SHRI JIWESH NANDAN, IAS (RETD)]
GOVERNMENT NOMINEE

Sd/-

[MS. DAKSHITA DAS, IRAS (RETD)]
GOVERNMENT NOMINEE

Sd/-

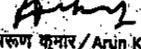
(CA. MANGESH P KINARE)
MEMBER

Sd/-

(CA. COTHA S SRINIVAS)
MEMBER

DATE : 05/02/2024
PLACE: New Delhi

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy


अरुण कुमार / Arun Kumar
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
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