



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/102/2022/DD/129/2022/DC/1682/2022

In the matter of:

Dr. Avias Patwagar,
Deputy ROC, O/o Registrar of Companies,
Ministry of Corporate Affairs,
Kendriya Sadan, 2nd Floor,
E Wing, Koramangala
Bengaluru - 560034

...Complainant

Versus

CA. Santhosh D N (M.No.252502)
Yeshwanthapura Malur Taluk,
Kolar District,
Bengaluru - 563130

...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 22nd December 2023, the Disciplinary Committee was, inter-alia, of the opinion that **CA. Santhosh D N** (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 and Item (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949.

2. That charge against the Respondent was that he had failed to exercise due diligence at the time of certifying incorporation documents of 20 Companies as the Respondent incorporated these 20 Companies within the span of 18 days with same address and same set of directors. Further, the Respondent declared that subscribers/ directors signed the incorporation documents before him whereas the said subscribers/ directors never met him and being involved in such an act, brings disrepute to the profession.



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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, in his submissions, inter-alia stated as under:

- a. That he was professionally associated with CA. Shashi Kumar RS and during such period his Digital Signatures Certificate (DSC) were used by CA. Shashi Kumar RS for the incorporation of alleged companies.
- b. However, he claimed not to have received any additional amount over and above his fixed salary of Rs.30,000/- per month from CA. Shashi Kumar RS.
- c. Although CA. Shashi Kumar denied providing the affidavit required by Committee, but he expressed his willingness to provide clarification before Committee regarding the usage of DSC, but Committee concluded the decision before taking any clarification from him.
- d. He admitted that as a professional, he should not have shared his DSC credentials with any other person, but he relied upon other professional, CA. Shashi Kumar RS in the due course of his engagement.
- e. That he had not intentionally taken any actions to do any fraudulent activities, and all his professional endeavors were carried out with utmost care and diligence.
- f. That he is not a Statutory auditor or Tax auditor of the alleged companies to know whether the companies were carrying out the activities which are mentioned in MOA or any other activities similar to shell companies.
- g. With respect to incorporation of companies, he certified only to the extent of correctness of data provided to him, and ultimately, MCA is the final approving authority.

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 Disciplinary Committee is of the view that the Respondent was not able to prove that his signatures were used by another professional. He took inconsistent positions during the course of the proceedings: initially he claimed that his DSC was used fraudulently, while at another stage, he asserted that his DSC was used by CA. Shashi Kumar RS. Even if for the sake of argument it is considered that his signatures were used by CA. Shashi Kumar RS, he was wholly responsible in terms of Information Technology Act, 2000 as brought out in findings report and is accountable for certification of documents relating to certification of twenty Companies. Further, despite being aware of the alleged conduct of CA. Shashi Kumar R S, he has not filed any complaint against him before any forum, which raises questions regarding the validity of his claims. Hence, the Committee did not find any merits or consistency in defense of the Respondent.



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7. Accordingly, the Committee held the Respondent Guilty for Professional and Other Misconduct falling within the meaning of Item (7) of Part I of Second Schedule and Item (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949. Hence the professional misconduct on the part of the Respondent is clearly established as spelt out in the Committee's Findings dated 22nd December 2023 which is to be read in conjunction with the instant Order being passed in the case.

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

9. Accordingly, the Committee upon considering the nature of charges and the gravity of the matter ordered that the name of **CA. Santhosh D N (M.No. 252502) be removed from Register of Members for a period of 3 (Three) years and a fine of Rs. 2,00,000/- (Rupees Two Lakhs 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

CONFIDENTIAL

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/102/2022/DD/129/2022/DC/1682/2022]

In the matter of:

Dr. Avias Patwegar,
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...Respondent

MEMBERS PRESENT:

CA. Aniket Sunil Talati, Presiding Officer
Smt. Anita Kapur, Member (Govt. Nominee)
CA. Piyush S. Chhaged, Member
CA. Sushil Kumar Goyal, Member

Date of Final Hearing: 4th July, 2023 through Video Conferencing

PARTIES PRESENT:

- (i) Shri Venkatraman Kavadikeri (AROC) - the Complainant's Representative
- (ii) CA. Santhosh D N – Respondent
(Appeared from personal location through video-conferencing)

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 and Other Misconduct falling within the meaning of Item (7) of Part I of Second Schedule and Item (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949. Item (7) of Part I of Second Schedule and Item (2) of Part IV of First Schedule state 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”

Part IV of First Schedule:

A member of the institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he—

...

“(2) In the opinion of the council, brings disrepute to the profession or the institute as a result of his action whether or not related to his professional work.”

Brief background

2. In the extant case, the Complainant had alleged that the Respondent certified incorporation of 20 (twenty) companies which were shell companies. As per the Complainant, the communication address of all the 20 companies were same belonging to “Urban desk Workspace” and none of the Companies were found at its registered/ communication address during inspection. In addition, the Complainant alleged that the initial directors and subscribers of all 20 Companies were the same, namely Mr. Chitransh Raj and Mr. Shubham Kumar Singh, who abruptly left some of the companies and were replaced by different directors in those Companies. The Complainant also alleged that as per the information received from other government agencies, some of the companies were having huge credit and debit transactions in

their bank accounts, and many debits to Chinese nationals / accounts. The Complainant had alleged that all 20 companies were incorporated using forged/ fabricated documents and none of them had any business operations or employees / workers.

Proceedings:

3. During the hearing held on 4th July, 2023, the Committee noted that the Complainant's Representative as well as the Respondent appeared before the Committee for the hearing through video conferencing. Thereafter, both gave a declaration that there was nobody else present in their respective room from where they were appearing and that they would neither record nor store the proceedings of the Committee in any form. The Committee noted that matter was part-heard and had asked the Respondent to make his submissions on the matter. The Respondent was examined by the Committee on the submissions made. Thereafter, the Respondent made final submissions in the matter.

Thereafter the Committee directed the Respondent to submit within 7 days from the date of hearing, the duly sworn and notarized affidavit of Sh. Shashi Kumar RS (M No. 241273) that his DSC was misused by Sh. Shashi Kumar RS in the matter of incorporation of alleged 20 companies. Accordingly, hearing in the matter was concluded and decision on the matter was reserved.

- 3.1 On 5th September 2023, the Committee considered the documents on record, oral and written submissions made by both parties, and upon consideration of the facts and circumstances of the case, decided the matter.

Findings of the Committee:

4. In the extant matter the Respondent was alleged to have failed in exercising due diligence at the time of certifying incorporation documents of following 20(twenty) Companies:
 - A. M/s Eproducx Technology Private Limited
 - B. M/s Nishadyaa Technology Private Limited
 - C. M/s Kitetech Technology Private Limited
 - D. M/s Metabit Technology Private Limited
 - E. M/s Orten Technology Private Limited
 - F. M/s Werezic Technology Private Limited
 - G. M/s Lettertech Technology Private Limited
 - H. M/s Racker Technology Private Limited

- I. M/s Rigboost Technology Private Limited
- J. M/s Techium Technology Private Limited
- K. M/s Softblog Technology Private Limited
- L. M/s Corebot Technology Private Limited
- M. M/s Lettech Technology Private Limited
- N. M/s Chipic Technology Private Limited
- O. M/s Cotechno Technology Private Limited
- P. M/s Droidler Technology Private Limited
- Q. M/s Gopixel Technology Private Limited
- R. M/s Technokings Technology Private Limited
- S. M/s Zilch Technology Private Limited
- T. M/s Zinging Technology Private Limited.

It was stated that the registered/communication address of the said Companies as mentioned in the incorporation forms certified by the Respondent, belonged to “Urban desk Workspace” and that the Complainant department carried out physical inspection at the said addressed no such Companies were found. Further, it was also alleged that the initial directors and subscribers of all 20 Companies were the same, namely Mr. Chitransh Raj and Mr. Shubham Kumar Singh, who abruptly left some of the companies and were replaced by different directors in those Companies. For certain companies, it was stated that they were having huge credit and debit transactions in their bank accounts, and many debits to Chinese nationals / accounts, as per the information received by the Complainant Department from other government agencies.

- 4.1 It was noted as per the Complainant 2 (two) companies were incorporated on 28th May 2021, another 8 (eight) companies were incorporated on 4th June 2021 and the remaining 10 (ten) were incorporated on 15th June, 2021. Further, the first directors and subscribers of all 20 Companies were same for the said companies namely, Mr. Chitransh Raj and Mr. Shubham Kumar Singh who, as per the Complainant, resigned within a brief period in some of the companies and certain other directors were appointed in such companies. It is also stated that complaints were received from both of them i.e., Mr. Chitransh Raj and Mr. Shubham Kumar Singh stating that they were unaware of any of the companies in which they had been appointed as directors. They had also stated that their DSC was registered in the pretext of giving them jobs, and a person namely, Mr. Ashish Kumar Singh in connivance with his brother had

fraudulently used their DSC and forged their signatures to appoint them in the said companies. It was noted that the Complainant Department had produced on record their Statement on Oath as recorded by it which signify the same.

5. The Committee noted that the Respondent had in his defence before the Director (Discipline) submitted that he was associated with Chartered Accountant CA. Shashi Kumar RS during the period when alleged companies were incorporated and that it was CA. Shashi Kumar RS who had used his DSC to incorporate the alleged 20 Companies. He was not aware of the procedures followed by CA. Shashi Kumar RS. However, in his submissions, before Disciplinary Committee he argued on merits stating that during his submissions before Director(Discipline) he had stated that his DSC was used in the office of RS Shashi & Co. However during that time Mr. Shshi who was the proprietor of the Firm was not available to provide clarification for the same. Since it was a time bounded notice, so he was compelled to reply within the due date. After the reply he had communicated same with CA Shashi Kumar R S he stated that it was a normal assignment which the office had carried out. He further explained that there was no malicious intentions by taking up alleged assignment and that the team had exercised with due diligence while working for the same.
- 5.1 It was further noted that the Respondent brought on record copy of extract of Spice+ forms of 4 Companies stating that only the communication address of the companies were certified and not the address of the registered office. He also brought his Annual Information Statement, Taxpayer Information Summary as well as Income Tax Return for the financial year 2021-22, his Kotak Bank Statement for the period March, 2021 to September, 2021, to prove his innocence in the matter. The Respondent submitted that alleged 20 (twenty) Companies certified by using his DSC were incorporated without mentioning the registered address, only correspondence address was mentioned in the Part B of the Spice forms. As regards obtaining the DSC of the Directors fraudulently, the Respondent submitted that as per the Affidavit of Mr. Ashish Kumar Singh (**C-82 to C-87**), the DSC was procured by him in connivance with his brother Mr. Amit Kumar Singh and that he was ignorant of any such role being played by Mr. Singh with respect to DSC of the directors. However, in his final submissions he again submitted before the Committee that it was CA Shashi Kumar R S who used his DSC for incorporation of the said companies. Accordingly, the Committee asked the Respondent to submit duly sworn and notarized affidavit of Sh. Shashi Kumar RS (M No. 241273) for using the Respondent's DSC for incorporation of alleged 20 companies. However, it was noted that the Respondent had failed to provide any such affidavit.

- 5.2 It was noted that the Complainant had brought on record before the Disciplinary Committee the Statements on Oath as recorded by it of the Respondent as well as that of first directors and subscribers namely Mr. Chitransh Raj and Mr. Shubham Kumar Singh. Further, it also brought on record the incorporation documents of all companies as filed with the Complainant Department. On perusal of documents available on record, it was evident that Mr. Chitransh Raj and Mr. Shubham Kumar Singh had provided their documents to Mr. Ashish Kumar Singh and Mr. Amith Kumar Singh and that they had them only. Further, it was noted from incorporation documents available on record that the SPICe+ as well as SPICe+MoA were certified under the DSC of the Respondent. In SPICe+ Forms, it was communication address of each Company was certified alongwith certifying the details of first directors. Further, under SPICe+MOA Form, it was certified that said directors had signed before the Respondent.
5. The Committee noted that the Respondent had admitted to be working in partnership with CA. Shashi Kumar RS and that he had kept his DSC in the office itself. As regards use of DSC without his knowledge, it was noted that the Respondent had never filed any complaint against any individual before any forum for the misuse of his DSC even when he came to know that his DSC was used for 20 alleged companies. As regards the stand of the Respondent that the DSC had been used by his partner CA. Shashi Kumar RS, it was noted that the Respondent had failed to bring in any document to prove his innocence and that he had been changing his stand from time to time by stating that his DSC were used in the office whereas earlier in his submissions he had stated that his DSC were used by his partner CA. Shashi Kumar RS.
- 5.1 The Committee noted that that the Digital Signatures are the personal property of the person in whose name such signatures were issued by the Certifying authority and the onus to keep the signatures in safe custody was fully of its owner and in case of professionals like Respondent whose signatures holds credibility in the Society being entrusted by ICAI as member in practice, was expected to keep his signatures with extra and utmost care so as to avoid any fraudulent usage of his signatures on any document and the resulting loss to the stakeholders and users of such documents. That the **Para 6.6 and 10.1 of the Guidelines for Usage of Digital Signatures in e-Governance, version 1.0 (December 2010)** issued by Department of Information Technology, Ministry of Communications and Information Technology, Government of India, states as under:

“6.6 Precautions while using Digital Signature Certificates

Digital Signatures are legally admissible in the Court of Law, as provided under the provisions of IT Act 2000. Therefore, users should ensure that the Private keys are not disclosed to anyone. For example, Users generally give their crypto tokens to their personal secretaries or subordinates to sign the documents on their behalf. Any illegal electronic transaction undertaken using a person's private key cannot be repudiated by the certificate owner and will be punishable in the Court of Law. (emphasis added):

“10.1 Annexure 1 - Frequently Asked Questions

Q11. Is it possible for someone to use your Digital Signature without your knowledge?

Ans. It depends upon the how the signer has kept his private key. If private key is not stored securely, then it can be misused without the knowledge of the owner.

As per the IT Act 2000, the owner of the private key will be held responsible in the Court of Law for any electronic transactions undertaken using his/her PKI credentials (public/private keys) (emphasis added)

From the above para, it was noted that under the provisions of IT Act, 2010, the person in whose name the digital signatures were issued, was wholly responsible for its usage. Thus, the defense taken by the Respondent that his DSC were used by his partner/ his office signified that he was grossly negligent in respect of his DSC and was aware of the incorporation of alleged 20 companies with dummy directors. Even if the matter be considered on merits, it was noted that within the span of 18 days twenty companies were incorporated with same address and same directors stating that said directors were signing before him when the said individuals never met him. Such an act led to providing a platform to the preparators of fraud and thus unbecoming of the chartered accountant. Thus, it was viewed that the Respondent was grossly negligent while exercising his professional duties and hence held Guilty of Professional and Other Misconduct. Accordingly, the Committee held the Respondent **Guilty** for Professional and Other Misconduct falling within the meaning of Item (7) of Part I of Second Schedule and Item (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949.

Conclusion:

6. Thus, in conclusion, in the considered opinion of the Committee, the Respondent is GUILTY of Professional and Other Misconduct falling within the meaning of Item (7) of Part-I of Second Schedule and Item (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949.

Sd/-
[CA. Aniket Sunil Talati]
Presiding Officer

Sd/-
[Smt. Anita Kapur]
Member (Govt. Nominee)

Sd/-
[CA. Piyush S. Chhajer]
Member

Sd/-
[CA. Sushil Kumar Goyal]
Member

Date: 22nd December, 2023

Place: New Delhi