



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/260/2022/DD/159/22/DC/1733/2023

In the matter of:

Sh. Nitin Phartyal
Deputy Registrar of Companies
Registrar of Companies,
NCT of Delhi & Haryana,
Ministry of Corporate Affairs
4th Floor, IFCI Tower,
61, Nehru Place,
New Delhi – 110019

.....Complainant

Versus

CA. Muni Kumar Gubiligari (M. No. 234106)
No. 18, Old No. 1612,
2nd Floor, East End Main Road,
Jayanagar 9th Block,
Bengaluru- 560 069

.....Respondent

MEMBERS PRESENT:

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

Date of Hearing: 2nd May 2024

Date of Order: 31st July, 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. Muni Kumar Gubiligari (M. No. 234106)** (hereinafter referred to as the "Respondent") was **GUILTY** of Professional and/or Other 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.



भारतीय सनदी लेखाकार संस्थान

(संसदीय अधिनियम द्वारा स्थापित)

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

2. That charge against the Respondent was that he was grossly negligent in the conduct of his professional duties while certifying Form No. INC – 22 of M/s. NIPTR Marketing Solutions Private Limited (hereinafter referred as the 'Company'). It is further alleged that the Respondent assisted in incorporation of the Company whose directors were dummy directors and were from the state other than the one in which the Company was incorporated. Further e-MOA and e-AOA were witnessed by the Respondent without actually meeting the subscribers.
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 2nd May 2024.
4. The Committee noted that on the date of hearing held on 2nd May 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 stated that the lapses were unintentional. He while accepting the negligence had requested for lenient view as the assignment was undertaken in initial years of his practice.
5. The Committee considered the reasoning as contained in the findings holding the Respondent Guilty of professional misconduct vis-à-vis representation of the Respondent made before it.
6. Keeping in view the facts and circumstances of the case, along with the material on record including representations on the findings, the Committee is of the view that the Respondent was grossly negligent in performing his professional duties. The Committee noted that the Respondent while certifying e-form INC- 22 had specifically declared that he had personally verified the registered office of the Company whereas he in his submissions stated that he had not physically verified the registered office of the Company as the same was situated in another state and instead he had relied upon physical verification done by Mr. Shreyas Jain (who was the son of one of the director). The Committee further noted that Leave and License Agreement enclosed with the said e-form was not notarised by the notary as per requirement of the Rule 25(2) of the Companies (Incorporation) Rules, 2014.
7. As regards dummy directors, the Committee noted that Mr. Jayaraj Hegde (one of the directors and subscriber of the Company) in his statement clearly states the modus operandi used for incorporation of the Company.
8. The Committee further observed that the Respondent had witnessed the SPICe MOA & AOA of the Company. As per Rule 13(1) of the Companies (Incorporation) Rules, 2014 read with Q.58 of FAQs issued by the MCA, the witness is required to attest his signature after all the subscribers had attested their digital signature. However, the Respondent accepted that he had never met with the subscribers of e-MOA and e-AOA at the time of



भारतीय सनदी लेखाकार संस्थान

(संसदीय अधिनियम द्वारा स्थापित)

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

incorporation of the Company and he had received the documents through Mr. Shreyas Jain. Accordingly, it was viewed that the Respondent had carried out the professional assignment disregarding the provisions of the Rules. This conduct of the Respondent constitutes Professional Misconduct as per Item (7) of Part 1 of the Second Schedule and Item (2) of Part-IV of First Schedule to the Chartered Accountants Act, 1949.

9. 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.

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

11. Accordingly, the Committee, upon considering the nature of charge and the gravity of the matter ordered that the name of **CA. Muni Kumar Gubiligari (M. No. 234106)** be removed from Register of Members for a period of 60 (sixty) days. The said punishment shall run concurrently with the punishment awarded in PR/G/90/2022/DD/92/2022 and PR/G/171/22/DD/108/2022 (clubbed)-DC/1671/2022.

sd/-

(CA. CHARANJOT SINGH NANDA)
PRESIDING OFFICER

sd/-

(SMT. ANITA KAPUR)
GOVERNMENT NOMINEE

sd/-

(DR. K. RAJESWARA RAO)
GOVERNMENT NOMINEE

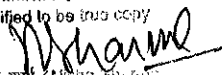
sd/-

(CA. PIYUSH S CHHAJED)
MEMBER

DATE: 31ST JULY, 2024

PLACE: NEW DELHI

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


निशा शर्मा / Nisha Sharma
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्डेड अकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास हेगुल, शेकरा, दिल्ली-110022
ICAI Bhawan, Vishwas Hegula, Shekara, Delhi-110022

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/260/2022/DD/159/22/DC/1733/2023

Sh. Nitin Phartyal
Deputy Registrar of Companies
Registrar of Companies,
NCT of Delhi & Haryana,
Ministry of Corporate Affairs
4th Floor, IFCI Tower,
61, Nehru Place,
New Delhi – 110019

.....Complainant

Versus

CA. Muni Kumar Gubiligari
M/s. Piyush and Muni,
Chartered Accountants,
No. 18, Old No. 1612,
2nd Floor, East End Main Road,
Jayanagar 9th Block,
Bengaluru- 560 069

.....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 Chhajed, Member

Date of Final Hearing: 15th September 2023 through Video Conferencing

The following party was also present: -

(i) CA. Muni Kumar Gubiligali – the Respondent (appeared from his personal location)

2

Bis

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 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: Other misconduct in relation to members of the Institute generally

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 and the allegations against the Respondent

2. The extant complaint was filed by the Dy. Registrar of Companies, NCT of Delhi & Haryana (hereinafter referred to as 'the Complainant' or 'the Complainant Department') wherein it was stated that certain individuals viz., Directors / Shareholders / entities in certain companies, had engaged dummy persons as subscribers to MOA and registered the Company with ROC, Delhi & Haryana by using forged documents / falsified addresses / signatures. Further, Director Identification Number (DIN) was obtained by furnishing false / forged document. It was also stated that the companies / individuals / entities directly or indirectly connected with the Company were found to be engaged in illegal / suspicious activities viz, money laundering, tax evasion and non-compliance of various provisions of laws. It was further stated that certain professionals had connived with these companies / its directors / subscriber to MOA and individuals who were acting behind the Company and had incorporated the Company and were also assisting in running of these Companies in violation of various laws and also certified various reports / e-forms filed with Ministry of Corporate Affairs on MCA21 Portal with false information or by concealing the material facts / information to hide the real identity of persons behind the companies particularly at the time of incorporation by certifying professional and by Auditors by knowingly filing financial statements without attaching the annexures of Borrowing / Loans & Advances / Investments / Inventories and Notes to Accounts for hiding material information. It was also stated that while the Professionals including Chartered Accountants were duty bound to discharge their duties as per applicable law(s) and

Bisig

certify / verify documents / e-forms or give certificate / report after due diligence so that the compliance to the provisions of law should be ensured.

Against the above backdrop, it was stated that the Respondent had filed / certified e-form INC-22 (Notice of situation or change of situation of registered office) of 'M/s NIPTR Marketing Solutions Private Limited' (hereinafter referred to as 'Company') and that the Complainant raised following two allegations against the Respondent:

- (a) It was alleged that on conducting the spot inspection of the Registered office of the Company by the Complainant department, it was found that the said Registered Office was not operational at the address certified by the Respondent in Form No. INC-22.
- (b) That the Respondent assisted in incorporating a Company in Delhi whose directors were dummy directors and were from the state other than the one in which the Company was incorporated.

Hence, the extant proceedings were confined to the said two allegations only.

Proceedings

3. During the hearing held on 15th September 2023, the Committee noted that the Respondent appeared before it for a hearing through video conferencing. The Committee noted that the matter was part heard. Thereafter, the Committee asked the Respondent to make his submissions. The Committee examined the Respondent based on the facts and documents placed on record.

Based on the documents and information available on record and after considering the oral and written submissions made by the parties, the Committee concluded hearing in the matter.

Findings of the Committee:

4. In the extant case, it was noted that the Respondent had certified e-form INC-22 (C-14 to C-16, D-4b to D-15) of the Company wherein the Respondent had certified the registered address of the Company as situated at "1/22, Second Floor, Asaf Ali Road, New Delhi, India-110002" with effect from 06/09/2019 which was also mentioned in the master database of the Company on the MCA portal till the date of investigation by Director (Discipline) i.e. till 14th September, 2022. Hence, it was reasonably certain that the Complainant department, had physically verified the said premises as certified by the Respondent in Form INC-22 as the registered office of the Company. The Complainant alleged that on physical verification, they found that the said Company was not operational from the said address and that the said Company was incorporated with dummy directors.

4.1 It was noted that to support its claim regarding dummy directors, the Complainant Department had brought on record the statement of Mr. Jayaraj Hegde (one of the Directors of the Company) wherein the Director had stated as under (R-5 to R-7):

"I and my relative Mr. Honnappa Raghavan (other Director cum promoter of the Company) have accepted the proposal offered by Mr. Weijian Liu had (CEO cum Director of M/s. Adviev Technology Private Limited) of becoming the employees / directors of the Company on the fixed remuneration of Rs. 25,000/- per month in need of job and money.

✓

Bisr

However, after signing several documents we have not received any money from him or from any Company founded by him. We tried to Contact Mr. Weijan Liu but all went in vain as we did not have much contact details of him. Subsequently after receiving call from CCB Police Bengaluru, we got to know that Mr. Weijan Liu had founded a Company called 'NIPTR Marketing Solutions Private Limited' making us the Directors and he had opened / founded many Companies by misleading the Common people.....

We haven't had any access to the Company or Bank Account we are not aware of the things happened in the Company....."

4.2 It was noted that the Respondent in his defence, interalia, submitted that they had obtained all the incorporation documents from one Mr. Shreyas Jain, who was the son of one of the director's Mr. Jayaraj Hedge and that the other director was the relative of Mr. Shreyas Jain. It was Mr. Shreyas Jain who had shared all the information and coordinated with the directors of the Company for incorporating the same. Further, Mr. Shreyas Jain was working in IDFC Bank, Mysore. The account of the alleged Company was opened in the same branch. Further, the registered office of the Company was physically verified by Mr. Shreyas Jain, through his counterparts from the IDFC bank. They had sent a picture of the office to him on WhatsApp to confirm the registered office address of the Company. Since, the address of the Company was in other city, it was difficult for him to physically verify the registered address. He had relied on the documents received by him.

4.3 He further argued that all the documents were signed by the directors which were self-explanatory that they would be the directors in the proposed Company for incorporation. So as per him, they could not take shelter saying, they were not aware of the incorporation of the Company and that they signed the documents blindly without reading them. Further, he argued that they had even transferred their contribution to share capital amount to the bank account of the Company and the Respondent produced a statement wherein as per him the said bank transactions were shown. Accordingly, as per him, it could not be said that they were dummy directors just because they were acting innocent. They had cooperated with all the steps involved in the incorporation of the said Company.

4.4 With respect to allegation in relation to the registered office of the Company, it was noted from alleged Form INC-22 that under "Certificate by practicing professional" column (C-15), the Respondent had given an undertaking that he had personally visited the registered office of the Company at the given address and that it was functioning therefrom when the undertaking certified by him read as follows:

"(3) I further declare that I have personally visited the registered office given in the form at the address mentioned herein above and verified that the said registered office of the company is functioning for the business purposes of the company".

However, it was noted that despite such undertaking the Respondent had submitted to have not physically verified the registered office of the Company, instead relied upon physical verification done by Mr. Shreyas Jain, through his counterparts from the IDFC bank. It was viewed that as per submissions of the Respondent, it was Mr. Shreyas Jain who was coordinating for

Basg

incorporation of the Company and providing him all documents. Hence, relying on Mr Shreya Jain for physical verification of the registered office of the Company tantamount to diluting his independence which was an essential element for certification of INC 22. Incidentally, it was noted that although the Respondent had submitted to have relied upon the rental agreement and utility bill but it was noted from the Leave and License Agreement (D-7 to D-11) brought on record by the Respondent himself, that the same was not notarised by the notary which was again against the applicable Rule of the Companies (Incorporation) Rules, 2014 as well as the provisions of Companies Act, 2013.

4.5 Accordingly, in view of the admission on the part of the Respondent for non-visiting/non-verifying the registered office of the Company on account of Registered Office being situated in some other city and other observations discussed in preceding paragraphs, it was viewed that Respondent was negligent in performing his professional duties and thus, he was held **GUILTY** of Professional Misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

5. As regards the second charge that the directors of the Company were dummy directors residing in a state other than the state where the registered office address of the Company was situated, it was noted that the primary ground of defense taken by the Respondent was that both of the directors had knowingly filled up the forms and had even contributed to the share capital of the Company through their bank account, hence, if they afterwards tried to act innocent, it should not be accepted. In other words, the statement brought on record by the Complainant Department be not considered against him. It was noted that Mr. Jayaraj Hegde (one of the directors and subscriber of the Company) in his statement clearly states the modus operandi used for incorporation of the Company (R-6). The Committee viewed that mere banking transaction for payment of subscription money in the bank account of the Company could not be considered as sufficient ground to exonerate the Respondent from the charges alleged against him. It was viewed that in the absence of any evidence, it could not be presumed that the transactions reported were done by the directors especially when the statement brought on record was not on the bank stationery but a mere typed statement. Thus, the plea of the Respondent that the said statement could not be relied upon was not acceptable.

5.1 On review of the documents available on record, it was noted that Respondent had witnessed the SPICe MOA & AOA of the Company. With respect to witnessing of subscribers sheet of e-Memorandum of Association and e-Articles of Association, the Committee noted Rule 13(1) of the Companies (Incorporation) Rules, 2014 read with Q.58 of FAQs issued by the MCA provided as under:-

Rule 13(1) of the Companies (Incorporation) Rules, 2014

"The memorandum and articles of association of the company shall be signed by each subscriber to the memorandum, who shall add his name, address, description and occupation, if any, in the presence of at least one witness who shall attest the signature and shall likewise sign and add his name, address, description and occupation, if any and the witness shall state that "I witness to subscriber/subscriber(s) who has/have subscribed and signed in my presence (date and place

✓

B. H. R.

to be given); further I have verified his or their Identify details (ID) for their identification and satisfied myself of his/her/their identification particulars as filled in"

Q.58 of FAQs

"58. What if the subscribers to eMoA and eAOA are at different places as only one witness is provided?

The eMoA and eAOA would be witnessed after all subscribers have signed as per the current practice."

5.2 From the above, it was noted that the said Rule clearly required about the witness being present while the subscriber(s) affixed their signature(s). It was noted that though FAQs required the witness to attest his signature after all the subscribers had attested their digital signature as per the current practice i.e. to witness their attestation and also be convinced with their identification details. However, in extant case, it was noted from the submissions of the Respondent that he had obtained all documents from one Mr. Shreyas Jain and proceeded to incorporate the Company. He did not bother to personally meet them or witness their attestation. It was thus evident that the Respondent had never met with the subscribers of MOA and AOA at the time of incorporation of the Company and that he had received the said documents through Mr. Shreyas Jain. in other words, it was an admitted fact that the Respondent had carried out the professional assignment disregarding the provisions of the Rules. Thus, upon overall examination of facts and keeping in view the submissions of the parties and documents brought on record, the Respondent is held **Guilty** of Professional as well as 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 as well as 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/-

[Dr. K. Rajeswara Rao]
Member (Govt. Nominee)

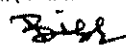
Sd/-

[CA. Piyush S Chhajed]
Member

Date: 22nd December, 2023

Place: New Delhi

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy


श्रीमान बिश्वनाथ तिवारी / Bishwa Nath Tiwari
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक विभाग / Administrative Directorate
इंस्टीट्यूट ऑफ चार्टर्ड अकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आई.सी.ए.आई. भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032