

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – IV (2024-2025)]

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

Findings under Rule 18(17) read with Rule 19(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

File No: [PR/G/411/22/DD/259/2022/DC/1706/2023]

In the matter of:

**Ms. Seema Rath,
ROC, Kanpur,
Ministry of Corporate Affairs
Office of the Registrar of Companies
37/17, Westcott Building, The Mall,
Kanpur – 208001**

...Complainant

Versus

**CA. Rakesh Kumar (M. No. 533191)
Office no. 7, Ground Floor
D-Block, DDA Market,
Vikas Puri,
New Delhi – 110018**

...Respondent

MEMBERS PRESENT:

**CA. Ranjeet Kumar Agarwal, Presiding Officer (In person)
Ms. Dakshita Das, IRAS (Retd.), Government Nominee (Through VC)
CA. Mangesh P Kinare, Member (Through VC)
CA. Abhay Chhajed, Member (Through VC)**

DATE OF FINAL HEARING : 03rd June 2024

PARTIES PRESENT:

**Respondent : CA. Rakesh Kumar (in person)
Counsel for Respondent : Advocate Nitin Kanwar (in person)**

1. Background of the Case:

- 1.1 As per the Complainant Department, certain information had come to the knowledge of Central Government that Foreign Nationals/ individuals/ entities with the help and support of professional were involved in formation of Companies wherein dummy persons were

engaged as subscribers to MOA & Directors by furnishing forged documents with falsified addresses / signatures, Director Identification Number (DIN) to MCA.

- 1.2 It is stated that some companies/individuals/entities who were directly or indirectly connected with the above Company were found to be engaged in illegal/ suspicious activities, money laundering, tax evasion and non-compliance of various provisions of laws.
- 1.3 The Complainant Department stated that certain professionals in connivance with such individuals/directors/subscriber to MOA have assisted in incorporation and running of these Companies for illegal/suspicious activities in violation of various laws by certifying e-forms/various reports etc. on MCA portal with false information concealing the real identities of such individuals.
- 1.4 It was further stated that professionals are duty bound to discharge their duties as per law and certify / verify documents / e-forms or give certificate / Report after due diligence so that compliance to the provisions of law shall be ensured. However, they had failed to discharge their 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 said Company.
- 1.5. In the instant case, M/s Gold Million Consulting Private Limited (hereinafter referred to as "Company") had filed Form INC-20A (Form for Declaration for commencement of business) and had attached a copy of ledger account of Company as proof of receipt of subscription money from the Promoters/Directors.

2. **Charges in brief:**

- 2.1. The Company had filed Form INC-20A (Form for Declaration for commencement of business) and has attached a copy of the Journal Entry as proof of payment. The declaration filed by the Company is defective as proof of payment is not given. The form has been certified by the Respondent without due diligence.

3. **The relevant issues discussed in the Prima Facie Opinion dated 26th September 2022 formulated by the Director (Discipline) in the matter, in brief, are given below:**

- 3.1. The Company was incorporated on 11th January 2021 and the Respondent had certified e-Form INC-20A (Declaration for commencement of business) on 02nd April 2021 pursuant to Section 10A(1)(a) of the Companies Act, 2013 and Rule 23A of the Companies (Incorporation) Rules, 2014, wherein he had certified as under: -

3.6. The Prima Facie Opinion formed by the Director (Discipline) was considered by the Disciplinary Committee in its meeting held on 07th January 2023. 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 **GUILTY** of Professional Misconduct falling within meaning of Item (7) of Part I of 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.

4. **Dates of Written Submissions/ Pleadings by the Parties:**

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

S. No.	Particulars	Dated
1.	Date of Complaint in Form 'I' filed by the Complainant	29 th April 2022
2.	Date of Written Statement filed by the Respondent	30 th June, 2022
3.	Date of Rejoinder filed by the Complainant	05 th August 2022
4.	Date of Prima Facie Opinion formed by Director (Discipline)	26 th September 2022
5.	Written Submissions filed by the Respondent after PFO	20 th March 2023
6.	Written Submissions filed by the Complainant after PFO	---

5. **Written Submissions filed by the Respondent:**

The Respondent vide letter dated 20th March 2023 had filed his written submissions inter alia stating as under:

- a. The Company was incorporated with 2 (two) Directors who were the Directors cum shareholders cum subscribers of the Company.
- b. The Directors of the Company were the Executive Directors and they both were also the Shareholders cum Subscribers in the Company. Further, they both had subscribed to pay the subscription money as per the Companies Act, 2013 read with the Rules made thereunder. There was no restriction or limitation to receive the subscription money in cash. Further, no third-party stake or interest was involved in the Company and the ledger account attached by the Company with Form INC-20A after affixation of the DSC of one of the Director cum Shareholder cum Subscriber of the Company constituted a valid proof or document to evidence that the subscription money was received by the Company.

- c. The ledger account attached with the Form INC-20A was valid enough to show that the subscription money was duly paid by the subscribers and the same was duly received by the Company.
- d. The Companies Act, 2013 read with the Rules and Regulations made thereunder, do not restrict or limit the receipt of the subscription money in cash. The receipt of subscription money in cash is valid proof that the subscription money was received by the Company. Before certifying the said Form INC-20A, the Director of the Company had duly authenticated the said Form along with the attachments therein.
- e. The Respondent has received Form INC-20A from the Directors cum Shareholders cum Subscribers of the Company, after affixation of the Digital Signature of Mr. Pawan Kumar Pandey (DIN: 08214351) (one of the Directors of the Company) along with the ledger account attached therewith.

The Directors cum Shareholders cum Subscribers of the Company has stated that they have paid the subscription money in cash and the same was acknowledged by the Company by way of the ledger account. Therefore, the said ledger was conclusive proof and acknowledgment that the Company had received the subscription money from the subscribers.

6. **Brief facts of the Proceedings:**

6.1 Details of the hearing(s) fixed and held/ adjourned in the said matter are given as under –

Particulars	Date of Meeting(s)	Status
1 st hearing	05 th June 2023	Part heard and adjourned.
2 nd hearing	28 th May 2024	Adjourned at the request of the Respondent
3 rd hearing	03 rd June 2024	Hearing concluded and decision taken.

- 6.2 On the day of first hearing held on 05th June 2023, the Committee noted that the Respondent along with Counsel were present in person and appeared before it. The Committee noted that the Complainant was not present and notice of listing of the case has been served upon the Complainant. Being first hearing of the case, the Respondent was put on Oath. Thereafter, the Committee enquired from the Respondent as to whether he was aware of the charges, and then charges against the Respondent were read out. On the same the Respondent replied that he was aware of the charges and pleaded 'Not Guilty' to the charges levelled against him.

- 6.3 In the absence of the Complainant and in view of 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.
- 6.4 On the day of the hearing on 28th May 2024, the Committee noted that the Respondent vide mail dated 27.05.2024 had sought adjournment on medical grounds. Acceding to the request of the Respondent, the Committee adjourned the captioned case to a future date.
- 6.5 On the day of final hearing held on 03rd June 2024, the Committee noted that the Respondent along with his Counsel were present and appeared before it. The Complainant was not present and the notice of listing of the subject case was duly served upon the Complainant. The Committee noted that the Respondent was put on oath on 05.06.2023. The Committee also noted that the Respondent had filed Written Statement dated 20th March 2023.
- 6.6 Thereafter, the Committee asked the Counsel for the Respondent to make submissions. The Committee noted the submissions of the Counsel for the Respondent which, inter alia, were given as under:-
- a. The Respondent had certified Form INC – 20A of the Company.
 - b. Subscription money was received in cash by the Company.
 - c. As per said Form, there was no such requirement to verify, whether subscription money has been credited into the bank account of the Company.
 - d. The ledger account of the Company was the only proof of receipt of subscription money.
 - e. The Respondent had no relation with the Company at present, nor was he the auditor of the Company.
- 6.7 Based on the documents/material and information available on record and the oral and written submissions made by the Counsel for the Respondent, and on consideration of the facts of the case, the Committee concluded the hearing in the captioned case and decided on the conduct of the Respondent.

7 Findings of the Committee:

The Committee noted the background of the case as well as oral and written submissions made by the Respondent, documents/ material on record and gives its findings as under: -

- 7.1 The charge against the Respondent in which he had been held Prima Facie Guilty is that the Company had filed Form INC-20A (Form for Declaration for commencement of business)

and has attached a copy of the Journal Entry as proof of payment of subscription money from the subscribers. The declaration filed by the Company is defective as proof of payment is not given. The details of allegation is given in para 2.1 above.

- 7.2 The Committee noted that the Respondent was engaged by the Company for filing e-Form INC-20A. On perusal of Form INC – 20A, the Committee observed that a 'pdf' copy of share capital account had been attached with said Form showing the receipt of subscription money by the Company in cash. Further, the Committee noted that the Respondent had been held Prima Facie 'Guilty' on the count that said copy of ledger account of share capital was unsigned and unauthenticated.
- 7.3 In view of papers on record, including e-Form INC – 20A, the Committee noted that Director of the Company Mr. Pawan Kumar Pandey, who was the subscriber to the share money had given the declaration in said Form stating that: *"whatever is stated in this form and the attachments thereto is true, correct and complete and no information material to the subject matter of this form as been suppressed or concealed and is as per the original records maintained by the Company. **Every subscriber to the MOA has paid the value of shares agreed to be taken by him**".*
- 7.4 On the basis of above certification/declaration by the subscriber (Mr. Pawan Kumar Pandey), who was the applicant to share subscription money, the Committee was of the opinion that said certification itself authenticated that the ledger account of share capital is a valid proof that the Company had received share application money from the subscribers. In view of this, there is no doubt on veracity of ledger account of share capital account which is duly certified/authenticated by the Director of the Company in e-Form INC – 20A.
- 7.5 Moreover, the Committee noted that the requirement of Form INC – 20A is that "every subscriber to Memorandum of Association" has paid the value of shares agreed to be taken by him/them". The Respondent had certified INC-20A (Form for Declaration for commencement of business); wherein he had brought on record a copy of the ledger account as proof of receipt of subscription money to prove that subscription money has been received by the Company in cash. The Committee was of the view that a copy of the share capital ledger account showing the receipt of subscription money by the Company in cash was also attached as proof with the Form INC-20A. On other side, the Complainant has not brought on record any evidence to prove that the declaration given in Form INC – 20A by the Respondent was wrong.

- 7.6 The Committee, after considering the documents/material and information available on record and the oral and written submissions made by the Counsel for the Respondent, and on consideration of the facts of the case, was of the view that there is no specific provision of law which restrict that subscription money cannot be accepted in cash.
- 7.7 In view of the above, the Committee held the Respondent **NOT GUILTY** of Professional Misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.
- 7.8 While arriving at its Findings, the Committee also observed that in the background of the instant case the Complainant Department informed that the Company was registered with ROC, Kanpur by engaging dummy persons as subscribers to MOA & Directors by furnishing forged documents with falsified addresses / signatures, Director Identification Number (DIN) to MCA. Further, certain professionals in connivance with such individuals/directors/subscriber to MOA assisted in incorporation and running of these Companies for illegal/suspicious activities in violation of various laws by certifying e-forms/various reports etc. on MCA portal with false information concealing the real identities of such individuals. However, no evidence of the involvement of the Respondent to that effect had been brought on record by the Complainant Department. The role of the Respondent was limited to certification of e-Form INC 20A which has been examined by the Committee.

8 **Conclusion:**

In view of the findings stated in the above paras, vis-à-vis material on record, the Committee gives its charge-wise findings as under:

Charges (as per PFO)	Findings	Decision of the Committee
Para 2.1 as given above	Para 7.1 to 7.7 as above	NOT GUILTY- Item (7) of Part I of the Second Schedule

- 9 In view of the above observations, considering the oral and written submissions of the parties and material on record, the Committee held the Respondent **NOT GUILTY** of Professional Misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

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10 **ORDER**

Accordingly, in terms of Rule 19 (2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee passes an Order for closure of this case against the Respondent.

Sd/-

(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

Sd/-

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

Sd/-

(CA. MANGESH P KINARE)
MEMBER

Sd/-

(CA. ABHAY CHHAJED)
MEMBER

DATE: 16/10/2024

PLACE: New Delhi

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

मीनू गुप्ता / Meenu Gupta
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
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