

CONFIDENTIAL

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

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

Findings under Rule 18(17) and Order under 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/299/2022/DD/208/2022/DC/1771/2023]

In the matter of:

Shri Mangal Ram Meena
Deputy Registrar of Companies,
NCT of Delhi & Haryana
Ministry of Corporate Affairs,
4th Floor, IFCI Tower,
61, Nehru Place
New Delhi – 110 019

...Complainant

Versus

CA. Tarun Kumar (M.No.542545)
Office No. 334,
Vardhman Big V Plaza,
Plot No.12, M2K Pitampura,
New Delhi – 110 034

...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 Chhajer, Member (through VC)

DATE OF FINAL HEARING : 03rd June 2024

PARTIES PRESENT:

Complainant : Mr. Gaurav, Dy. ROC – Authorized Representative of the Complainant (through VC)
Respondent : CA. Tarun Kumar (through VC)

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. Scrolt Enterprise Private Limited (hereinafter referred to as '**Company**') was incorporated on 13th November 2019 and the Respondent was Statutory Auditor of the Company for Financial Years 2019-2020 and 2020- 2021 and had certified Form INC-20A (Declaration of Commencement of Business) of the Company.

2. **Charges in brief:**

- 2.1 Upon examination of the documents filed by the Respondent on behalf of the Company during incorporation and after physical verification of the registered office by the Complainant department, it was found that the Company did not appear to have any registered office as disclosed in its incorporation documents due to following(s):
 - (i) The name and address of the Company was not painted/affixed at its location where the business was carried on and hence, no evidence of existence of the Company was found.
 - (ii) No official/employee of the Company was found there.
 - (iii) Utility bill was furnished in the name of Team Co-work, whose proprietor Mr. Nitin Khatri executed a rent agreement dated 31-10-2019 in the capacity of service provider and furnished a copy of NOC in the capacity of owner of the address. On physical

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verification, Mr. Nitin Khatri represented himself as owner of the premises (registered office address) but he had no knowledge of the subject Company having any office there.

- (iv) The rent agreement without notarial also contained the information that the whole premises was in the control/possession of Team Co-Work of Mr. Nitin Khatri however, he outrightly denied any knowledge of such agreement and instead claimed himself to be the owner of the said premises.

3. **The relevant issues discussed in the Prima Facie Opinion dated 08th September 2022 formulated by the Director (Discipline) in the matter, in brief, are given below:**

- 3.1 The Company was incorporated on 13/11/2019 and at the time of incorporation, its registered office address was 'No.55, 2nd Floor, Lane No.2 Westend Marg, Saidulajab, Near Saket Metro Station, New Delhi' which belonged to Mr. Nitin Khatri/ Team Co-Work. The Company w.e.f. 19/04/2022 changed/ shifted its registered office address to other address i.e. Plot No.2A, First Floor, Kh no. 229, Kehar Singh State, Saidulajab Village, Lane no. 2 New Delhi.
- 3.2 The Respondent had not certified the incorporation Form(s) i.e. INC-32 (SPICe) or e-MOA and e-AOA, rather he had certified only Form INC-20A (Declaration of Commencement of Business) on 20/02/2020 and before that the registered office of the Company was already verified and recorded in MCA database. The Respondent gave the certification in Form INC-20A in respect of all the particulars as contained in it including that the Company has filed with the registrar a verification of its registered office as provided in Section 12 (2) of the Companies Act, 2013.
- 3.3 The Respondent was also the statutory auditor of the Company for the Financial Years 2019-2020 and 2020-2021. The Respondent had taken the defense that he had not certified the incorporation Form, wherein the registered office of the Company was declared/certified, however, being the statutory auditor of the Company, he had also claimed that the Company was operating from such registered office address which was a co-working space and in support of which he had put forth a rent agreement and a copy of NOC (issued by Mr. Nitin Khatri).
- 3.4 The Respondent in his written statement had contended about the genuineness of the registered office of the Company at such premises of Mr. Nitin Khatri on the basis of only rent agreement or NOC submitted at the time of incorporation of the Company. Nowhere the Respondent had stated anything about his personal visit to such premises/office for the purpose of the audit of the Company as he was the Statutory Auditor of the Company since

its incorporation viz. for the years 2019-20 and 2020-21 or submitted any other evidence in support of his claim that an employee of the said Company was mostly present at the registered office during the working hours.

3.5 A copy of the bank statement of the Company was called for from the Respondent to show the amount paid to Mr. Nitin Khatri towards rent of the premises which was shown as registered office of the Company. However, the Respondent vide letter dated 25th August 2022 had failed to put forth any bank account statement to prove from where the amount was paid to Mr. Nitin Khatri towards the rent or any other relevant evidence, rather he had put forth just an invoice dated 30/10/2019 of Rs.18,054/- issued by M/s. Team Co-work to the Company towards full year rent.

3.6 As the Respondent was appointed as Statutory Auditor of the Company to perform attestation function, he was mandatorily required to ensure the address of the Company, however, it appeared that he did not bother about it and went ahead with the audit assignment of the Company. Hence, it was viewed that he has been grossly negligent in the performance of his professional duties as he did not even verify and ensure whether the registered office of the Company was genuine or not, before and during his audit.

3.7 The Respondent without applying due diligence certified in such INC-20A its particulars including registered office address, to be true and correct and especially in the light of the fact that at the time of such certification, he was already appointed as statutory auditor of the Company.

3.8 The Director (Discipline) in Prima Facie Opinion dated 08th September 2022 opined that the Respondent was Prima Facie **Guilty** of Professional Misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949. The said item of the Schedule to the Act, states as under:

Item (7) of Part I of the Second Schedule:

"A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct if he:

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

3.9 The Prima Facie Opinion formed by the Director (Discipline) was considered by the Disciplinary Committee in its meeting held on 09th June 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

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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	15 th March 2022
2.	Date of Written Statement filed by the Respondent	23 rd May 2022
3.	Date of Rejoinder filed by the Complainant	29 th July 2022
4.	Date of Prima Facie Opinion formed by Director (Discipline)	08 th September 2022
5.	Written Submissions filed by the Respondent after PFO	20 th July 2023
6.	Written Submissions filed by the Complainant after PFO	---

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

The Respondent vide letter dated 20th July 2023 had, inter alia, made the submissions which are given as under –

- a. That the Respondent relied upon the following documents for filing of the Form INC-20A:
 - (i) HDFC Bank Account Statement of the Company for the period 05.12.2019 to 17.02.2020.
 - (ii) Copy of rent agreement duly signed by the representatives of "Team Co-work" and "M/s. Scroft Enterprise Private Limited".
- b. Physical verification of Company's address and KYC had been done by the HDFC bank and accordingly, the bank account was opened on 05.12.2019, which was as per the banking norms and the Respondent relied on the same.
- c. Due to the Covid restrictions imposed in Delhi NCR at that point of time, the physical verification of address could not be performed.

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	10 th August 2023	Part heard and adjourned.
2 nd hearing	28 th May 2024	Deferred due to paucity of time.
3 rd hearing	03 rd June 2024	Hearing concluded and Decision Taken.

- 6.2 On the day of first hearing on 10th August 2023, the Committee noted that the Respondent was present in person before the Committee and appeared before it. The office apprised the Committee that the Complainant was not present and notice of listing of the case has been served upon him. Being first hearing of the case, the Respondent was put on Oath.
- 6.3 Thereafter, the Committee enquired from the Respondent as to whether he was aware of the charges, and 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. 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 hearing on 28th May 2024, consideration of the subject case was deferred by the Committee due to paucity of time.
- 6.5 On the day of final hearing on 03rd June 2024, the Committee noted that the authorized representative of the Complainant and the Respondent were present through video conferencing and appeared before it. The Committee noted that the Respondent was put on oath on 10.08.2023. The Committee also noted that the Respondent had filed a Written Statement dated 20th July 2023.
- 6.6 Thereafter, the Committee asked the Respondent to make submissions. The Committee noted the submissions of the Respondent which, inter alia, are given as under –
- a) Company was doing business in luxury items such as luxury furniture (chair, table etc.)
 - b) Company was in its initial period of business and the volume of business was very less.
 - c) Respondent had filed Form INC – 20A of the Company.
 - d) Documents/certification regarding incorporation of Company was done by another professional, viz. CA. Durga Krishnamurthi.
 - e) Respondent was the first auditor of the Company.
 - f) Respondent was not supposed to visit the registered office of the Company.

Also, the authorized representative of the Complainant submitted that he had already submitted all the documents related in this case and has nothing more to submit in this case.

- 6.7 After detailed deliberations, and on consideration of the facts of the case, various documents on record as well as oral and written submissions made by the parties before it, the Committee decided on the conduct of the Respondent.

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7. **Findings of the Committee:**

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

- 7.1 The Committee noted that the allegation against the Respondent is that registered office of the Company ('M/s Scroft Enterprise Pvt. Ltd') was not found on inspection conducted by the Complainant Department. The Respondent was Statutory Auditor of the Company and Form INC-20A was also certified by him. The details of allegations are given in para 2.1 above.
- 7.2 The Committee noted that the Respondent was the Statutory Auditor of the Company for Financial Years 2019-2020 and 2020-2021, but allegations of the Complainant did not pertain to the audited Financial Statements of the Company certified by the Respondent. The allegation of the Complainant pertained to the incorporation/registered office of the Company, which was not found at its registered office address at the time of inspection conducted by the Complainant Department. The Respondent in this matter had certified Form 20A (Declaration for commencement of business by the Company) of the Company.
- 7.3 The Committee further noted that there was no role or responsibility of the Respondent in respect of certification of incorporation documents of the Company, viz. Form INC-32 (SPICe) or e-Memorandum of Association and e-Articles of Association, rather he had only certified Form INC-20A (Declaration of Commencement of Business). The said certification was done on 20/02/2020 by the Respondent.
- 7.4 The Committee, in this regard, also observed that certification regarding incorporation documents of the Company was done by CA. Durga Krishnamurthi (by another professional) and the Respondent was Statutory Auditor and had certified Form INC - 20A of the Company and was not concerned with incorporation of the Company. Further, there was a separate disciplinary case filed by Deputy Registrar of Companies, NCT of Delhi & Haryana, New Delhi against CA. Durga Krishnamurthi bearing reference no. PR/G/301/2022/DD/215/2022/DC/1677/2022, wherein it was inter-alia alleged that on physical verification of registered office of the Company (M/s. Scroft Enterprises Pvt. Ltd. the same Company involved in the instant case), the Company was not found at its registered address. In the case against CA Durga Krishnamurthi as referred above, Mr. Nitin Khatri who appeared before Disciplinary Committee (Bench - III) as witness had stated that the office space was provided to the Company for use of its registered office address during the period October, 2019 to October, 2020 and same was accepted by the Committee. The Committee further noted that in the said case CA. Durga Krishnamurthi was held 'NOT GUILTY' of

Professional Misconduct falling within meaning of and Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949 by the Disciplinary Committee (Bench – III) vide its Order dated 22/12/2023.

- 7.5 The Committee was of the view that the Respondent had certified Form INC – 20A, wherein he had certified the declaration of the Director of the Company stating *“the Company has filed with registrar a verification of its registered office as provided in subsection (2) of Section 12 of the Companies Act, 2013”* and except this certification related to registered office, the Respondent had not given any comment/certification in respect of registered office of the Company.
- 7.6 Furthermore, the Committee noted that the Respondent had certified Form INC – 20A of the Company on 20/02/2020 and the Complainant Department had conducted the inspection on 11/01/2022 but has not shared the inspection report with the Disciplinary Committee. Further, it is also on record that the registered office address of the Company was shifted/changed w.e.f. 19/04/2022 from ‘No.55, 2nd Floor, Lane No.2 Westend Marg, Saidulajab, Near Saket Metro Station, New Delhi’ to other address i.e. Plot No.2A, First Floor, Kh no. 229, Kehar Singh State, Saidulajab Village, lane no. 2 New Delhi i.e. after two years of certification given by the Respondent. In view of deposition of Mr. Nitin Khatri (as contained in para 7.4 above), the Committee was of the opinion that at the time of certification of Form INC – 20A i.e. 20/02/2020, the registered office of the Company was existed at ‘No.55, 2nd Floor, Lane No.2 Westend Marg, Saidulajab, Near Saket Metro Station, New Delhi’. Thus, the Committee absolved the Respondent in this matter.
- 7.7 Accordingly, based on the documents/ material and information available on record and after considering the oral and written submissions made by the parties, the Committee held that the Respondent was **“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, NCT of Delhi & Haryana 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 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 above.	Paras 7.1 to 7.7 as above.	NOT GUILTY- Item (7) of Part I of 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.

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
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahdara, Delhi-110032