

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/603/22/DD/518/2022/ DC/1798/2023]

In, the matter of:

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

.....Complainant

Versus

**CA. Sandesh Jain (M. No. 538441)
U-110, FF-9 First Floor,
Surya Arcade Building,
Shakarpur, East Delhi,
New Delhi-110092**

.....Respondent

MEMBERS PRESENT:

**CA. Ranjeet Kumar Agarwal, Presiding Officer (In person)
Shri Jiweh Nandan, I.A.S (Retd.), Govt. Nominee (In person)
CA. Mangesh P Kinare, Member (In person)
CA. Abhay Chhajed, Member (In person)**

DATE OF FINAL HEARING : 10th April 2024

DATE OF DECISION TAKEN : 28th May 2024

PARTIES PRESENT:

Complainant : Ms Seema Rath (Through VC)

Respondent : CA. Sandesh Jain (In person)

Counsel for the Respondent: Advocate S.S. Sharma (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 matter, the Respondent had certified Spice Form INC-32 in respect of M/s Genone Optech Private Limited on 30.05.2019.

2. **Charges in brief:**

- 2.1. The Respondent certified Spice Form INC-32 in respect of M/s Genone Optech Private Limited which contained the rent agreement executed between Mr. Pankaj Kumar Rawat and Mr. Avinash Kumar Jha, Director of the Company. The said rent agreement was not in the name of the Company, and the said Form has been certified by the Respondent without exercising due diligence.

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3. **The relevant issues discussed in the Prima facie opinion dated 20th January 2023 formulated by the Director (Discipline) in the matter in brief, are given below:**

- 3.1. The Respondent had certified Spice Form INC-32 in which he had certified the address for correspondence and the address of registered office of the Company. The requirements of Section 12 of Companies Act, 2013 read with Rule 25 of the Companies (Incorporation) Rules, 2014 were automatically applicable in extant case.
- 3.2. In Form INC-32, which was certified by the Respondent, wherein at point 4(a), Correspondence address of the Company was mentioned as C-84, Sector-33, Noida, Gautam Buddha Nagar, Uttar Pradesh and at point 4(b), it was mentioned that address for correspondence is the address of registered office of the Company.
- 3.3. As per Section 12 of the Companies Act, 2013 dealing with 'Registered office of the Company', the Company shall furnish to the Registrar of Companies, verification of its registered office within a period of thirty days of its incorporation in such manner as may be prescribed. Further, as per Rule 25 of the Companies Act, 2013 dealing with 'Verification of Registered Office', the verification of the registered office shall be filed in Form No. INC. 22 and along with the said Form, copy of lease Agreement/ Rent Agreement/ Utility Bill and No-objection Certificate is required to be attached.
- 3.4. In the instant case, the requisite documents are enclosed with INC-32 but these are in the name of one of the Directors of the Company. Rent agreement was executed on 24th August 2018 and vide point no. 4 of the said rent agreement, the tenancy is for the period till 23rd June 2019. Further in the said rent agreement, the name of the Company was nowhere mentioned. However, NOC by the landlord signed on 26th May 2019 (when the agreement was going to expire) in this regard mentioned that landlord has no objection if the premises i.e., C-84, Sector-33, Noida, Gautam Buddha Nagar, Uttar Pradesh is used by the Company as its registered office. The e-form INC-32 (Spice) was also certified on 30th May 2019. This raised question that when the incorporation documents of the Company were certified later after 8-9 months i.e., end of May 2019 then what was the need to have rent agreement registered in August 2018. The Respondent failed to submit any documentary evidence in support of his claim that the incorporation work of the Company got delayed in 2018 due to some unavoidable circumstances.
- 3.5. The landlord and the tenant share common premises, and as per Aadhar copy of both the Directors, they were also residing at same address. Hence, it was not ascertainable that the

premise was exclusively hired for the use of the Company in question in the instant complaint as registered office.

- 3.6 The Respondent, while filing INC 32, was under obligation to attach Rent Agreement which is specifically in the name of the Company or there should have been a reference / specific mention of the Company proposed to be run from the said premise. On perusal of said agreement, it is observed that the said rent agreement was entered in the name of Director namely Mr. Avanish Kumar Jha instead of name of the Company and as such there was no reference / mention of the proposed Company.
- 3.7. The Director (Discipline) in his Prima Facie Opinion dated 20th January 2023 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 items 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:

x x x x x x x

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

- 3.8 The Prima Facie Opinion formed by the Director (Discipline) was considered by the Disciplinary Committee in its meeting held on 11th July 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 the meaning of item (7) 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.

4. **Date(s) of Written Submissions/Pleadings by parties:**

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

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S.No.	Particulars	Dated
1.	Date of Complaint in Form 'I' filed by the Complainant	27 th July 2022
2.	Date of Written Statement filed by the Respondent	12 th October 2022
3.	Date of Rejoinder filed by the Complainant	---
4.	Date of Prima Facie Opinion formed by Director (Discipline)	20 th January 2023
5.	Written Submissions filed by the Respondent after PFO	04 th September 2023
6.	Written Submissions filed by the Complainant after PFO	---

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

The Respondent vide letter dated 04th September 2023, inter-alia, made the submissions which are given as under:-

- (i) Respondent was associated with the incorporation of the Company.
- (ii) The Respondent filed e-Form No. INC-32 (i.e., Simplified Peforma for Incorporating Company Electronically) dated 26th May 2019, with the Complainant Department, (ROC) with respect to incorporation of the Company.
- (iii) Respondent had certified INC-32 in which he had certified the address for correspondence and the address of registered office of the Company. The requirement of Section 7 (1) (d) of Companies Act, 2013, which deals with Incorporation of the Company, is to give the address for correspondence till its registered office is established.
- (iv) The compliance of requirements of Section 12 of Companies Act, 2013 read with Rule 25 of the Companies (Incorporation) Rules, 2014 is the responsibility is of the Company and is to be informed within 30 days from the date of incorporation to ROC.
- (v) That Mr. Avinash Kumar Jha (Director of the Company) has given assignment of incorporation work of the Company to the Respondent during August, 2018 and Company was incorporated in May, 2019. That Mr. Avinash Kumar Jha has taken services of advocate for preparation of the rent agreement and advocate demanded legal proof/ identity of Company for preparation of rent agreement in the name of the Company while any legal document in name of the Company was not available at that time.
- (vi) Due to non-existence of the Company, Mr. Avinash Kumar Jha entered into rent agreement with landlord in his personal name and mentioned that he is taking premises for commercial purpose to avoid any legal issue in future.

- (vii) Due to some unavoidable circumstances incorporation work of the Company got delayed in year 2018 and the Company was actually incorporated in May 2019.
- (viii) The rent agreement was still valid, in any case would have renewed only on expiry of the same. The rent agreement is in the name of the director, who is involved in the incorporation of the company, and the same also could have been ratified in the first meeting of the board of directors after incorporation of the Company.
- (ix) As per clause 4 of the rent agreement, it was going to expire on 23.06.2019 but with further mentioning that this period could be further extended as per the mutual consent of both the parties. Hence the rent agreement was having a flexible clause to extend the period as per mutual consent.
- (x) The Respondent, while filing INC 32, was under obligation to attach any one of the documents as mentioned in Rule 25 (2) of the Companies (Incorporation) Rules, 2014. The NOC has been issued by the owner of the property. The said rent agreement was entered in the name of Director namely Mr. Avanish Kumar Jha instead of name of the Company.

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

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

Particulars	Date of meeting(s)	Status
1 st Hearing	05 th September 2023	Part heard and Adjourned
2 nd Hearing	10 th April 2024	Hearing concluded and Judgment Reserved
	17 th May 2024	Deferred due to paucity of time
	28 th May 2024	Decision taken

- 6.2. On the day of first hearing on 05th September 2023, the Committee noted that the Respondent along with Counsel were present in person and appeared before it. However, the Complainant was not present.
- 6.3. 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. 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. With this, the case was part heard and adjourned.

- 6.4. On the day of the final hearing on 10th April 2024, the Committee noted that the Respondent along with his Counsel were physically present for the hearing. The Complainant was present through video conferencing mode. Thereafter, the Complainant gave a declaration that there was nobody present except her from where she was appearing and that she would neither record nor store the proceedings of the Committee in any form. The Committee noted that the case was part heard and the Respondent was already on oath. Thereafter, the Committee asked the Counsel for the Respondent to make submissions. The Counsel for the Respondent, while reiterating his submissions as contained in written submissions dated 04/09/2023, submitted that the subject Company is presently functional. The Respondent also submitted that at present, he is the Auditor of the subject Company, and the Company has changed its address. The Counsel for the Respondent admitted that the rent agreement was in the name of the Director of the Company as the Company was not incorporated on the date of rent agreement. He further submitted that the responsibility of fulfilling the requirements of Section 12 of Companies Act, 2013 read with Rule 25 of the Companies (Incorporation) Rules, 2014 is on the Company, which states that registered office address of the Company be informed within 30 days from the date of incorporation to Registrar of Companies.
- 6.5. The Committee asked the Complainant to make her submissions. The Complainant, in reply to the same, submitted that allegations have been explained in detail in the Complaint along with supporting evidence. Further, she submitted that the rent agreement should be in the name of the Company. The Committee gave 10 days' time to the Respondent to submit further written submissions, if any, in the matter with a copy to the Complainant. Based on the documents and material available on record and after considering the oral and written submissions made by both the parties, the Committee concluded the hearing in the matter and judgment was reserved.
- 6.6. On 17th May 2024, the subject case was fixed for taking decision in the matter. However, consideration was deferred by the Committee due to paucity of time.
- 6.7. Thereafter, in the meeting held on 28th May 2024, the Committee noted that the subject case was heard by it at length in the presence of the Complainant and the Respondent. Further, the Committee had concluded the hearing at its meeting held on 10.04.2024 and the judgment was reserved. During the hearing held on 10.04.2024, the Committee directed the Respondent to submit his written submissions if any, within 10 days with copy to the Complainant.

6.8. The Committee noted that the Respondent, on its direction, vide email/ letter dated 22.04.2024 submitted his written submissions, which, inter-alia, are given as under:-

- (i) The Respondent is continuing as the present statutory auditor of the Company and there is no allegation against the Company made by the complainant.
- (ii) That the same Directors who were named as first Directors of the Company are also working presently as Directors of the Company.
- (iii) That the present address of the Company is situated at F1, Plot No-I, Ground Floor, Ecotech- Industrial Park, Kasna Greater Noida UP 201308 IN and the same was changed from the correspondence address filed with ROC while incorporating the company. Presently, the Company had already vacated that rented premises as filed with ROC during the incorporation and shifted to new address i.e., F 1 Plot No-I, Ground Floor, Ecotech- Industrial Park, Kasna Greater Noida UP 201308 IN.

6.9. The Committee further noted that the Respondent also submitted documents including financial statements of the Company for the financial year 2021-22 and financial year 2022-23.

6.10. 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 parties before it, the Committee took the decision on the conduct of the Respondent.

7. **Findings of the Committee:-**

7.1. The Committee noted the charge against the Respondent was that he has certified the Form INC-32 in respect of M/s Genone Optech Private Limited (hereinafter referred to as 'Company') without exercising due diligence. The details of allegation are given in Para 2.1 above.

7.2. On perusal of Form INC-32 dated 30.05.2019 certified by the Respondent along with its attachment, the Committee noted that the address of the Company was C-84, Sector-33, Noida, UP and the said premise was acquired on rent and Mr. Avinash Kumar Jha had executed the rent agreement with the owner of the property on 24th August 2018. The Committee on perusal of the SPICe MOA and SPICe AOA attached with Form INC-32 of the Company, observed that Mr. Avinash Kumar Jha was the first subscriber and first Director of the Company. The Committee further observed that, the Company while filing Form INC-32, along with the rent agreement, had also attached an NOC issued by the owner of the property in the favour of the company, wherein it is mentioned that "*owner of the premise*

has no objection to the use of premise as the registered office of the proposed Company 'M/s Genone Optech Private Limited'."

- 7.3. The Committee noted the submissions of the Respondent that the rent agreement was not in the name of Company since the Company was under process of incorporation. The Respondent also stated that no rent agreement could have been executed in the Company's name unless it was incorporated. The Respondent also stated that Mr. Avinash Kumar Jha was involved in the formation of the proposed Company.
- 7.4. The Committee noted that Mr. Avinash Kumar Jha being the first subscriber of the Company was involved in the formation of the Company. In this regard, the Committee deliberated on the role of the promoter in formation of the Company and noted that as per Section 2(69) of the Companies act, 2013, "a promoter means a person who controls the company affairs, indirectly or directly, whether as a director, shareholder or otherwise." The promoter undertakes all the activities necessary for the company's incorporation and establishes it as a separate legal entity.
- 7.5. The Committee observed that the rent agreement was executed in the month of August 2018 and the Company was later incorporated on 30.05.2019. The Committee in this regard, noted the submissions of the Respondent that due to some unavoidable circumstances, the incorporation of the Company got delayed.
- 7.6. The Committee on perusal of Form INC-32 of the Company which was certified by the Respondent observed that in point 4(a) of the Form, the address of the Company was C-84, Sector-33, Noida, UP and the same address was declared as registered address in point 4(b) of the form. The Respondent, in this regard, admitted during the hearing that the correspondence address was inadvertently marked as registered office in the Form. The Committee further noted the requirement of Section 12 of Companies Act, 2013 read with Rule 25 of the Companies (Incorporation) Rules, 2014, which states that registered office address of the Company be informed within 30 days from the date of incorporation to Registrar of Companies.
- 7.7. Further, the Committee noted that as per MCA portal, the Company is in existence as on date and also active in MCA records. The Committee also noted that the Company has changed its registered office by way of filing Form INC-22 after incorporation of the Company.

- 7.8. The issue raised is concerned that the Rent agreement was in the name of the first Director instead of Company. The Committee noted that the fact that the subject Company is active and carrying on the business activities as on date with due ROC Compliances and the Respondent is presently the auditor of the Company. Further, the Respondent also submitted documents including financial statements of the Company for the financial year 2021-22 and financial year 2022-23, which reflect that the Company is operational and the Respondent is its statutory auditor.
- 7.9. The Committee further noted that Mr. Avinash Kumar, who had signed the rent agreement continued as Director of the Company after the incorporation of Company as well; and the said fact was supported by the DIN details of the Director on Company Master Data of MCA. The Committee also noted that the Company was not in existence on the date of rent agreement, and hence, it was entered by the first Director of the Company.
- 7.10. In view of the above, the Committee exonerated the Respondent from the present charge and held the Respondent 'Not Guilty' of Professional Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act 1949.
- 7.11. 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 Spice e-form INC-32 which has been examined by the Committee.

8. **Conclusion:**

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

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Charges (as per PFO)	Findings	Decision of the Committee
Para 2.1 as above	Para 7.1 to 7.10 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.

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/-

(SHRI JIWESH NANDAN, I.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

Neelam Pundir
नीलम पुंडीर / Neelam Pundir
परिचय कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
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