

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/259/2022/DD/158/2022/DC/1802/2023]

In the matter of:

Sh. Nitin Phartyal, Deputy ROC,
O/o 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. Himmat Yadav (M.No.527296)
SF- 3, Second Floor,
Omaxe Celebration Mall,
Gurugram – 122 018

...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

DATE OF DECISION TAKEN : 09th August 2024

PARTIES PRESENT:

Complainant : Mr. Gaurav, Dy. ROC – Authorized Representative of the
Complainant (through VC)
Respondent : CA. Himmat Yadav (through VC)
Counsel for Respondent : CA. Princy Kr. Singhal (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 Companies 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.
- 1.5. In the instant matter, the Respondent was associated with M/s. Vasu Software Solutions (OPC) Private Limited (hereinafter referred to as 'the Company') at the time of its incorporation and has certified SPICE+ Form and other incorporation related documents of the Company.

2. Charges in brief:

- 2.1. The Complainant Department had conducted spot inspections at the physical registered address of the Company and as per Section 12 of the Companies Act, 2013, a Company incorporated is mandatorily required to maintain the registered address, where all official communications are received, and statutory records and books of accounts are kept. Upon conducting the spot inspection of the Company's office, it was found that the Company was not operational from the registered address and existed only on paper.

3. The relevant issues discussed in the Prima Facie Opinion dated 25th January 2023 formulated by the Director (Discipline) in the matter, in brief, are given below:

- 3.1. The Complainant Department had conducted spot inspection at the physical registered address of the Company, and it was found that the Company was not operational from the

registered address and existed only on paper. It was noted that the Company is a One Person Company and was incorporated on 13.04.2021 as per the details available at MCA portal.

3.2. The Complainant has provided the copy of SPICe+ MOA Form (Form INC-33) which is mandatorily required to be attached to SPICe+ Form (Form INC-32). Further, the Directorate has also downloaded the copy of SPICe+ AOA Form (Form INC-34) which is also mandatorily required to be attached to SPICe+ Form (Form INC-32). Both SPICe+ MOA Form and SPICe+ AOA Form have been witnessed by the Respondent. However, it was further noted that the details of the subscribers (i.e., their name, address, description, and occupation) have not been given in the said Forms. Thus, it was not ascertainable that what the Respondent had actually witnessed when no details of subscribers were available in the said SPICe+ MOA Form and SPICe+ AOA Form which proved that the Respondent was negligent while witnessing the incorporation related Forms of the Company.

3.3. At Rule 8(5) stage, the Respondent was specifically asked to provide the copy of all documents checked by him before certifying SPICe+ Form of the Company as well as to clarify whether he had physically visited the registered office address of the Company. However, the Respondent failed to provide any response to the Directorate.

3.4. Thus, based on documentary evidence(s) available on record and in the absence of required submissions / documentary evidence(s) provided by the Respondent, it was viewed that no benefit could be given to the Respondent at prima facie stage.

3.5. Accordingly, the Director (Discipline) in his Prima Facie Opinion dated 25th 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 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:

x x x x x x

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

3.6 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 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 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	15 th March 2022
2.	Date of Written Statement filed by the Respondent	Dated 'NIL' (received on 25 th July 2022)
3.	Date of Rejoinder filed by the Complainant	---
4.	Date of Prima Facie Opinion formed by Director (Discipline)	25 th January 2023
5.	Written Submissions filed by the Respondent after PFO	---
6.	Rejoinder filed by the Complainant after PFO	---
7.	The Respondent submitted copy of SPICe+ MoA	03 rd June 2024 (during the hearing)

5. Brief facts of the Proceedings:

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	14.09.2023	Part heard and adjourned.
2 nd Hearing	28.05.2024	Deferred due to paucity of time.
3 rd Hearing	03.06.2024	Hearing Concluded and Judgment Reserved.
---	09.08.2024	Decision taken.

5.1 On the day of the first hearing on 14th September 2023, the Committee noted that the Respondent was present through Video conferencing mode. Thereafter, he gave a declaration that there was nobody present except him from where he was appearing and that he would neither record nor store the proceedings of the Committee in any form. The office apprised the Committee that the Complainant was not present and notice of listing of the case has been served upon him.

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- 5.2 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 is 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.
- 5.3 On the day of hearing on 28th May 2024, consideration of the subject case was deferred by the Committee due to paucity of time.
- 5.4 On the day of the final hearing on 03rd June 2024, the Committee noted that the authorized representative of the Complainant and the Respondent along with Counsel were present and appeared before it. The Committee noted that the Respondent was put on oath on 14th September 2023.
- 5.5 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, are given as under –
- a) The Respondent signed only subscription page of SPICe+ Memorandum of Association and Article of Association as Witness.
 - b) The Respondent produced SPICe+ Memorandum of Association, which was digitally signed by Mr. Shamsher Singh, Director of the Company, wherein address and PAN/ DIN and shareholding of the Mr. Shamsher Singh was mentioned therein.
- 5.6 The authorized representative of the Complainant submitted that he had already provided all the documents related to this case and has nothing more to submit in this case and Committee may decide the matter accordingly. The Committee directed the office to seek clarification/ confirmation from Complainant on copy of SPICe+ Memorandum of Association brought on record by the Respondent with digital signatures of Mr. Shamsher Singh, Director of the Company.
- 5.7 Based on the documents/ material and information available on record and the oral and written submissions made by the parties, and on consideration of the facts of the case, the Committee concluded the hearing in subject case and judgement was reserved.
- 5.8 Thereafter, on 09th August 2024, the subject case was fixed for taking decision. 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 concluded the hearing in this case at its meeting held on 03.06.2024 and the judgment was reserved. During the hearing held on 03.06.2024, the Committee directed the office to seek clarification/confirmation from Complainant on copy of SPICe+ Memorandum of Association brought on record by the Respondent with digital signatures of Mr. Shamsher Singh, Director of the Company.

- 5.9 In response to the directions of the Committee, the Complainant vide mail dated 30.07.2024 has submitted that as per Registrar of Companies' office records available on MCA 21 portal, Memorandum of Association of the Company contained DSCs of Mr. Shamsher Singh (under the head Subscribers details) and Mr. Himmat Yadav (under the head Signed before me), and accordingly, Complainant has submitted a copy of Memorandum of Association.
- 5.10 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 the parties and reply of the Complainant before it, the Committee passed its judgment.

6. Findings of the Committee:

6.1 The Committee noted that the allegation against the Respondent is that the Company (M/s. Vasu Software Solution Private Limited) was not operational and existed only on papers and the Respondent has witnessed the Form SPICe+ Memorandum of Association and Articles of Association. The details of allegation is given in para 2.1 above.

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: -

- 6.2 The Committee noted the submissions of the Counsel for the Respondent that the Respondent had signed only subscription page of SPICe+ Memorandum of Association and Article of Association as Witness. Further, the Committee noted that the Complainant has not brought on record any evidence which prove that the Respondent had certified SPICe+ Form of the Company.
- 6.3 The Committee noted that the allegation primarily related to non-availability of registered office of the Company and the Respondent had been held Prima Facie Guilty as he had witnessed the subscriber's sheet without the name and signatures of the subscriber i.e. Mr. Shamsher Singh. However, during the hearing held on 03.06.2024, the Committee noted that a copy of

SPICe+ Memorandum of Association was brought on record by the Respondent with digital signatures of Mr. Shamsher Singh, Director of the Company containing his PAN and details of share subscription. In view of this, the Committee directed the office to seek clarification/confirmation from Complainant on copy of SPICe+ Memorandum of Association brought on record by the Respondent with digital signatures of Mr. Shamsher Singh, Director of the Company.


6.4 The Committee noted that the Complainant vide mail dated 30.07.2024 has confirmed and submitted that as per Registrar of Companies' office records available on MCA 21 portal, Memorandum of Association of the Company contained DSCs of Mr. Shamsher Singh (under the head Subscribers details) and Mr. Himmat Yadav (under the head Signed before me), and accordingly, the Complainant submitted a copy of Memorandum of Association.

6.5 The Committee noted that the Respondent had witnessed the Memorandum of Association and Articles of Association (copies of MoA and AoA are available on record); wherein it is stated that the subscriber to Memorandum of Association and Articles of Association had signed before him. On perusal of copy of Memorandum of Association and Article of Association available on record, the Committee noted that Memorandum of Association and Article of Association has been digitally signed by Mr. Shamsher Singh and details of his PAN and equity shares had been given therein.

6.6 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 in the instant case. As such, the role of the Respondent was limited to witnessing the SPICe+ MoA and AoA, which has been examined by the Committee.

6.7 In view of the above facts and based on the documents/material and information available on record and after considering the oral and written submissions made by the Complainant and the Respondent, the Committee was of the view that the Respondent was **NOT GUILTY** of

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Professional Misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

7. Conclusion

In view of the above 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 (Para ref.)	Decision of the Committee
Para 2.1 as given above	Para 6.1 to 6.7 as given above	NOT GUILTY as per Item (7) of Part I of Second Schedule

8. In view of the above observations, considering the oral and written submissions of the parties and documents 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.

Order

9. 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: 28/11/2024
PLACE: New Delhi

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

नीलम पंडित / Neelam Pundit
प्रमुख कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासन-संबंधी विभाग / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड अकाउंटेंट्स ऑफ इंडिया
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