

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/593/22-DD/428/2022/DC/1790/2023]

In the matter of:

Shri. Mangal Ram Meena,
Deputy Registrar of Companies,
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. Vijay Aggarwal (M.No.093387)
M/s. Vijay Shubham & Associates (FRN 017042N),
Chartered Accountants,
PD-101A, Ground Floor, Pitampura
New Delhi– 110 034

...Respondent

MEMBERS PRESENT:

CA. Ranjeet Kumar Agarwal, Presiding Officer (in person)
Ms. Dakshita Das, IRAS (Retd.), Government Nominee (in person)
CA. Mangesh P Kinare, Member (in person)

DATE OF FINAL HEARING : 18th September 2024

PARTIES PRESENT:

Complainant : Mr. Gaurav, Dy. ROC – Authorized Representative of the
Complainant (Through VC)
Respondent : CA. Vijay Aggarwal (In person)
Counsel for Respondent : Advocate Rishabh Gupta (In person)

1. Background of the Case:

- i. As per the Complainant Department, certain information had come to the knowledge of Central Government that Foreign individuals, viz. Director/shareholders/entities had

- engaged dummy persons as subscribers to MOA & Directors by furnishing forged documents with falsified addresses / signatures, Director Identification Number (DIN) to MCA.
- ii. It is stated that some 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.
 - iii. The Complainant Department stated that certain professionals in connivance with such Companies/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.
 - iv. 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 wilfully 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.
 - v. In the instant case, the Respondent was the statutory auditor of M/s. Igrphenix Electron Private Limited (hereinafter referred to as 'the Company') for Financial Years 2017-2018 to 2022-2023 and he has also certified the incorporation & other related Forms and documents of the Company.

2. Charges in brief:

- 2.1. On physical verification conducted by the Complainant's Department on 22.03.2022 at the registered office mentioned in the incorporation documents, the Company namely M/s. Igrphenix Electron Private Limited does not appear to exist at the said address owing to their following observations:
- a) That 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 was found / provided in the incorporation documents.
 - b) No official / employee of the Company was found there.
 - c) In the said registered office address, the Complainant's officers team met Mr. Raj Kumar Gupta, Administrative in-charge of the premises, who stated that the registered office of the Company was situated in Noida and not at the stated location.

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3. The relevant issues discussed in the Prima Facie Opinion dated 06th January 2023 formulated by the Director (Discipline) in the matter, in brief, are given below:

- 3.1. The Respondent brought on record a copy of Form INC-22A certified by him in support of his contention that the same address has been mentioned in the said form as the registered office of the Company. On the perusal of the same, it was noted that the registered office address mentioned in the said form is 70B/35A, 2nd Floor, Rama Road Industrial Area, New Delhi-110015 and further from the master data of the Company available on MCA portal, it was noted that the Company still was maintaining the same registered address. Hence, it is reasonably certain that the Complainant department visited the address as mentioned in the Form INC-22A on 22.03.2022 i.e., 70B/35A, 2nd Floor, Rama Road Industrial Area, New Delhi-110015.
- 3.2. The Complainant has failed to bring on record any documentary evidence to substantiate his contentions. Even when the Complainant was specifically asked to provide "Copy of statement on oath, if any, recorded with respect to the instant matter from the key managerial personnel of the Company", he failed to provide the same. The Respondent had taken a defence that, "the Registered office address of the premises mentioned in the documents, 70B/35A, 2nd Floor, Rama Road Industrial Area, New Delhi-110015 is correct and that the Company also have a corporate office cum factory located at Noida". He also stated that "all the books of accounts and all ROC records of the Company were maintained at its registered office address only and that he conducted all the audits at the Registered office address of the Company".
- 3.3. On perusal of the financial statement of the Company audited by the Respondent himself for the financial year 2017-18, it was noted that the Respondent has certified the Financial Statements, wherein the corporate office address at Noida was mentioned instead of the registered address at Delhi. Further from the financial statements of the Company for the financial year 2018-19, it was noted that the Delhi Address was mentioned as the Registered Office address of the Company and the Noida Address was mentioned as the Corporate Address.
- 3.4. As per Section 128 of Companies Act, 2013, a Company is required to keep its books of accounts at the Registered office address, however from the financial statement of the Company for the financial year 2017-18, it appears that the Books of Accounts were maintained at the Corporate Office Address as the same was mentioned in the said financial statements.

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- 3.5. On perusal of Form INC -22A and instruction kit for e-Form INC- 22A of MCA, it was noted that certain photographs of Registered office of the Company showing external building and inside office with one of the Directors are found to be enclosed with the said Form INC - 22A which is mandatorily required to be attached while filing Form INC - 22A. However, on the perusal of the photographs attached to the said Form, it was noted that no name board was affixed / painted at the external building premises.
- 3.6. As per Section 12 of the Companies Act, 2013, every Company is required to affix its name and address of the registered office outside every office from where the business is carried out. However, from the perusal of the photographs of the registered office of the Company clicked with the director of the Company, brought on record by the Respondent himself, it was observed that merely a printout containing the name of the Company, and its registered office address was pasted on the wall of cabin and that outside the entrance door of the Company,
- 3.7. As per the declaration given by the Respondent while certifying Form INC - 22A, it was noted that the Respondent has ensured with the compliance of the provision of Companies Act, 2013, however he himself has brought on record the photograph of the registered office of the Company, wherein it was observed that no name board was affixed outside the premises. Thus, it was viewed that the Respondent has not exercised due diligence while ensuring the Compliance of provisions of Companies Act, 2013, with respect to the particulars of the said Form.
- 3.8. Accordingly, the Director (Discipline) in his Prima Facie Opinion dated 06th 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".

- 3.9. 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 in terms of reasoning as mentioned in para

14.1 to 14.1.6 of prima facie opinion, 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	26 th July 2022
2.	Date of Written Statement filed by the Respondent	12 th September 2022
3.	Date of Rejoinder filed by the Complainant	29 th September, 2022
4.	Date of additional submissions/ documents filed by the Respondent	22 nd November 2022
5.	Date of Prima Facie Opinion formed by Director (Discipline)	06 th January 2023
6.	Written Submissions filed by the Respondent after PFO	Not Filed
7.	Written Submissions filed by the Respondent during the hearing	14 th September 2024

5. Written Submissions filed by the Respondent:

The Respondent vide letter dated 14th September 2024 had, inter alia, made the submissions which are given as under –

- a. Mr. Shaozhong Zhang, a Chinese National was appointed as Additional director of the Company on 24.01.2019 and discontinued w.e.f. 30.09.2019.
- b. Mr. Shaozhong Zhang had Invested Rs. 45,000/- (Rupees Forty-Five Thousand only) in the Company by purchasing 4500 Equity Shares of the Company.
- c. The Company had imported Raw Material/ Components used in assembly of Mobile Batteries from Pair (Hong Kong) Co. Ltd., China during FY 2018-19 and 2019-20. Neither Company nor the Respondent was aware during the relevant period about the fact that Mr. Shaozhong Zheng was associated with Pair (Hong Kong) Co., Ltd.

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- d. M/s Pair (Hong Kong) Co. Ltd, China filed a petition under Section 9 of Insolvency and Bankruptcy Code, 2016 against the Company for non-payment of its dues with National Company Law Tribunal (NCLT), New Delhi and NCLT dismissed the petition by its Order dated 22.07.2024.
- e. Mr. Shaozhong Zhang became Additional Director of the Company for the period 24.01.2019 to 30.09.2019 and had thereafter dissociated himself from the Company due to very low Profitability/ Losses in the business of the Company.

6. 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	18 th August 2023	Part heard and adjourned.
2 nd Hearing	17 th May 2024	Deferred due to paucity of time.
3 rd Hearing	18 th June 2024	Part heard and adjourned.
4 th Hearing	15 th July 2024	Adjourned at the Request of the Respondent.
5 th Hearing	29 th July 2024	Adjourned at the Request of the Respondent.
6 th Hearing	21 st August 2024	Adjourned at the Request of the Respondent.
7 th Hearing	18 th September 2024	Hearing concluded and decision taken.

- 6.1 On the day of the first hearing on 18th August 2023, the Committee noted that the Respondent was present in person and appeared before it. The office apprised the Committee that the Complainant was not present and the notice of listing of the case has been served upon him.
- 6.2 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 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.
- 6.3 On the day of the hearing on 17th May 2024, consideration of the subject case was deferred by the Committee due to paucity of time.
- 6.4 On the day of the hearing on 18th June 2024, the Committee noted that the authorized representative of the Complainant through VC and the Respondent in person were present

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and appeared before it. The Committee noted that the Respondent was put on oath on 18.08.2023.

- 6.5 Thereafter, the Committee asked the Respondent to make his submissions. The Committee noted the submissions of the Respondent which, inter alia, are given as under –
- a) The Registered office address of the Company is situated at 70B/35A, 2nd Floor, Rama Road Industrial Area, New Delhi – 110015 since its incorporation and still exist as on date.
 - b) The Company has corporate office at Noida and due to mistake, corporate office address was mentioned in the Financial Statements for Financial Year 2017-2018 audited by him.
 - c) The Respondent admitted his mistake that he mentioned the corporate office address of the Company in Financial Statements.
- 6.6 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 after considering the arguments/submissions of the parties, directed the Respondent to file/ submit the following documents within 10 days:
- (i) Date of appointment of the Chinese Director(s) in the Company and date of their resignation.
 - (ii) Investment brought in by the Chinese Directors.
 - (iii) Copy of Financial Statements with Notes to Accounts of the Company for relevant financial year to highlight the details regarding supply of material by the Company.
 - (iv) The ground on which Chinese Director had filed case with NCLT and allegations involved.
 - (v) Details along with present status of the case filed with NCLT and settlement if any arrived at with the Chinese Director(s).
 - (vi) Details of any other dispute of Company with Chinese Director(s).
- 6.7 On the day of the hearing(s) on 15th July 2024 and 29th July 2024, the Committee noted that in the captioned case, the Respondent vide mail(s) dated 12.07.2024 and 29.07.2024 had sought adjournment(s) on account that he has some prior professional commitments on the date of hearing. Acceding to the said request(s) of the Respondent, the Committee adjourned the captioned case to a future date.
- 6.8 On the day of the hearing on 21st August 2024, the Committee noted that the authorized representative of the Complainant was present through VC and the Respondent along with Counsel was present in person and appeared before it. The Counsel for the Respondent requested an adjournment in the matter as he required some more time to prepare the submissions. Acceding to the request of Counsel for the Respondent, the Committee adjourned the captioned case to a future date. The Committee also directed the Respondent

to appear before it, at next listing of this case and in case of his failure to appear, the matter would be decided ex-parte based upon the documents and materials available on record.

- 6.9 On the day of the final hearing on 18th September 2024, the Committee noted that the authorized representative of the Complainant was present through VC and the Respondent along with Counsel were present in person and appeared before it. The Committee noted the charges against the Respondent. The Committee noted that, in response to the directions given on 18.06.2024, the Respondent vide letter dated 14.09.2024 has filed written submissions, which has been mentioned at para 5 above.
- 6.10 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 –
- The Company is running as on date at address i.e., 70B/35A, 2nd Floor, Rama Road Industrial Area, New Delhi-110015 which was certified by the Respondent in Form INC-22A filed with Complainant Department.
 - The Company has corporate office address at 8-79, Sector-80, phase-II, Gautam Budh Nagar, Noida - 201210, Uttar Pradesh.
 - The Respondent is auditor of the Company since its inception.
 - At present there is no Chinese/foreign Directors in the Company and directors are Mrs. Rashmi Agarwal and Mr. Harsh Agarwal only.
- 6.11 The Committee asked the authorised representative of the Complainant to make submissions. The authorized representative of the Complainant Department submitted that he has no further submissions to make and that the matter be decided on merits of the case.
- 6.12 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 took decision on the conduct of the Respondent.

7. Findings of the Committee:

7.1 The Committee noted that the charge against the Respondent is as under: -

On conducting the spot inspection by the Complainant Department on 22.03.2022, the Company did not appear to have any Registered office as disclosed in the incorporation documents since no name was found to be affixed at that location. No employee / official of the Company was found at the address. The Respondent was Statutory Auditor of the Company for Financial Year 2017-2018 and had certified Form INC-22A of the Company.

The details of charge 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: -

- 7.2 The Committee noted that the Respondent had been held prima facie guilty as the Respondent had certified the Financial Statements of the Company for Financial Year 2017-2018, wherein the corporate office address at Noida viz. 8-79, Sector-80, phase-II, Gautam Budh Nagar, Noida - 201210, Uttar Pradesh was mentioned as registered office address of the Company. The Committee noted the submissions of the Counsel for the Respondent that the Respondent had mistakenly mentioned the corporate office address of the Company in Financial Statements for Financial Year 2017-2018. The Committee further noted that the Respondent was statutory auditor of the Company for financial years 2017-2018 to 2022-2023, but the issue pertained to financial year 2017-18 only which has been dealt with herein below.
- 7.3 The Committee noted the submissions of the Counsel for the Respondent and observed that in Financial Statements of the Company for subsequent Financial Year 2018-2019, the Respondent had rectified the said mistake and had correctly mentioned the registered office address of the Company, viz. 70B/35A, 2nd Floor, Rama Road Industrial Area, New Delhi-110015.
- 7.4 The Committee was of the view that mentioning of corporate office address against the registered office address in the financial statements for financial year 2017-2018 is a technical lapse, which has been admitted by the Respondent. Moreover, the said mistake was rectified by the Respondent in subsequent Audited Financial Statements of the Company for financial year 2018-2019, wherein the registered office address of the Company at 70B/35A, 2nd Floor, Rama Road Industrial Area, New Delhi-110015 was mentioned. Accordingly, the Committee decided to absolve the Respondent on this charge.
- 7.5 Thereafter, the Committee noted that the Respondent was held prima facie guilty on the count that every Company is required to affix its name and address of the registered office outside every office from where the business is carried out. As observed in the Prima Facie Opinion, from perusal of the photographs of the registered office of the Company clicked with the Director of the Company, brought on record by the Respondent himself, it is observed that merely a printout containing the name of the Company, and its registered office address was pasted on the wall of cabin and that too outside the entrance door of the Company. However,

as per the requirement of Section 12 of Companies Act, 2013, no such name board was found to be affixed outside the building of the Company.

7.6 The Committee noted that the Respondent had certified Form INC-22A of the Company and had attached office photographs of the Company. The Committee noted the requirements of Section 12 of the Companies Act, 2013, which are as under: -

"12. Registered office of company:

(1) *A company shall, on and from the fifteenth day of its incorporation and at all times, thereafter, have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it.*

(2)

(3) *Every company shall:*

(a) paint or affix its name, and the address of its registered office, and keep the same painted or affixed, on the outside of every office or place in which its business is carried on, in a conspicuous position, in legible letters, and if the characters employed therefore are not those of the language or of one of the languages in general use in that locality, also in the characters of that language or of one of those languages."

7.7 The Committee noted that the Respondent had certified Form INC - 22A (Active Company Tagging Identities and Verification), wherein the Company had affixed name and address of the Company at the entrance of office and outside building premise of the Company and had attached photographs with Form INC-22A as per requirements of Section 12 of the Companies Act, 2013. Further, in those photograph(s), the director of the Company was also present at registered office of the Company. The Committee viewed that the name and address of the Company as affixed and shown in the photograph(s) attached with Form INC - 22A, was sufficient and would meet the requirements of Section 12 of the Companies Act, 2013.

7.8 Moreover, the Committee observed that the Company is still active at Registrar of Companies portal and have registered office address at 70B/35A, 2nd Floor, Rama Road Industrial Area, New Delhi-110015, which was certified by the Respondent in Form INC- 22A. The Respondent is continuing as statutory auditor of the Company till date. In view of these facts, the Committee absolved the Respondent in this charge.

7.9 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, Chandigarh 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 certification of Form INC-22A and statutory auditor of the Company which has been examined by the Committee.

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

8. 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 7.1 to 7.10 as given above	NOT GUILTY - as per 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 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

10. 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, IRAS (RETD.))
GOVERNMENT NOMINEE

Sd/-
(CA. MANGESH P KINARE)
MEMBER

DATE: 28/11/2024
PLACE: New Delhi

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

M. Shama

निदेशिका / निदेशिका अधिकारी /
Sr. Executive Officer
अनुशासन शाखा /
Disciplinary Directorate
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