

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (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/87/2022/DD/433/2022/DC/1749/2023]

In the matter of:

Dr. Alpesh Maniya,
Dy. ROC, Registrar of Companies, Mumbai
Office of the Registrar of Companies,
100, Everest Ground Floor,
Marine Drive,
Mumbai-400002.

....Complainant

Versus

CA. Mala Arun Todarwal (M.No.134571)
104, Maker Bhavan No. 03,
21, New Marine Lines,
Mumbai-400020.

....Respondent

MEMBERS PRESENT:

CA. Ranjeet Kumar Agarwal, Presiding Officer (in person)
Mrs. Rani S. Nair, I.R.S. (Retd.), Government Nominee (Through VC)
Shri Arun Kumar, I.A.S. (Retd.), Government Nominee (in person)
CA. Sanjay Kumar Agarwal, Member (in person)
CA. Cotha S Srinivas, Member (Through VC)

DATE OF FINAL HEARING : 23rd April 2024

DATE OF DECISION TAKEN : 28th May 2024

PARTIES PRESENT:

Authorized representative of the Complainant Department: Shri. Rajiv Kadam,
Senior Technical Officer, Office of ROC (Through VC)
Respondent: CA. Mala Arun Todarwal (M.No.134571) (Through VC)
Counsel for the Respondent: CA. Utsav Hirani (Through VC)

1. BACKGROUND OF THE CASE:

1.1 It was stated by the Complainant Department that it has come to the knowledge of the Central Government that certain Chinese Director or

individuals/Shareholders/entities in the involved Companies have engaged dummy persons as subscriber's to MOA and as Directors and they got registered these Companies with ROC, Mumbai by using forged documents/falsified addresses/signatures, Director identification Number (DIN) obtained by furnishing false/forged document to MCA. The Companies / Chinese individuals or entities directly or indirectly connected with these Companies are found to be engaged in illegal/ suspicious activities, money laundering, tax evasion and non-compliance of various provisions of laws.

- 1.2 Further, certain professionals have connived with these Companies/their directors/subscriber to MOA and Chinese individuals who are acting behind these Companies. The professionals, despite having knowledge of the aforesaid facts incorporated these Companies and are also assisting in running of these Companies for illegal/ suspicious activities in violation of various laws.
- 1.3 They also certified various Reports/ E-Forms filed with Ministry of Corporate Affairs on MCA 21 Portal with false information or by concealing the material facts/ information to hide the real identity of Chinese person behind the Companies particularly at the time of incorporation. They also allegedly filed financial statements without attaching the annexure of Borrowing/ Loan & Advances/Investments/Inventories and Notes to Accounts for hiding material information.
- 1.4 In the instant case, the Respondent has certified E-Form AOC-4 in which the Financial Statement of the Company 'M/s. Chang Chun Chemical India Pvt. Ltd.' for the financial year 2018-19 and 2019-20 audited by CA. Arun Jha and CA. Amar Singh respectively was attached.

2. CHARGES IN BRIEF:-

- 2.1 Against the aforesaid background, the Complainant informed that 'M/s. Chang Chun Chemical India Pvt. Ltd.' (hereinafter referred to as the 'Company') was incorporated on 13.03.2018 wherein the first subscribers and the witness to the Memorandum of Association (MOA) were as under: -

| Sl. No. | Name, address, occupation and description of each subscriber | No. of equity shares taken by each subscriber | Signature of witness, his name, address |
|---------|--|---|---|
| 1. | Name: Chang Chun Petrochemical Co. Ltd. Address: 7F, No. 301, Songkiang Rd., Zhongshan Dist., Taipei City 104, Taiwan (R.O.C), Through: Mr. Chen, Jung-Tsung, Add: No.60, Aly. 140 Ln.101, Sec 4, Xinhai Rd. Xingchang Vil., Wenshan Dist., Taipei City, Na Taiwan Occupation - Business | 6,49,226 equity shares | <u>Witness to both</u> Mr. Huang, Tsufeng, R/o 2-2; Ln 192, Sewai Rd, Daan Dist. Taipei City, Na Taiwan Business Executive |

| | | | |
|----|--|------------------------|--|
| 2. | Name: Chang Chun Plastic's Co. Ltd., Add: No.8, Huaxi Rd., Daliao Dist., Kaohsiung City, 83164, Taiwan (R.O.C.), Through: Mr. Su. Shihkuang, Add: 2F, No.05, ALY 4, Ln.97, Sec. 4, Minsheng E.Rd. Songshan Dist Taipei City, Na Taiwan Occupation - Business | 6,49,226 equity shares | |
|----|--|------------------------|--|

2.2 On examination of the documents filed by the Company with the ROC, it was observed that the first subscribers to MOA and the witness are Taiwan based and the modus operandi of the Company Secretary of the Company was to help foreign nationals take the ownership of the Company. The Complainant Department also stated that the subscribers and the witness to the MOA have also been part of the conspiracy. Accordingly, they are liable for criminal actions as stated in this complaint / FIR.

2.3 The Company filed Form ADT-1 and ADT-3 for appointment and resignation of auditors with MCA but there is discrepancy in the details of other documents filed by the Company which is shown as under:

| S.No. | Name of Auditor | Date of Appointment as per ADT-1 | Date of Resignation as per ADT-3 | Remarks |
|-------|----------------------------|----------------------------------|----------------------------------|---|
| A | M/s Abhilesh Jha & Company | 30.09.2019 | 31.03.2020 | No objection certificate given to M/s Amar Singh & Company |
| B | M/s Amar Singh & Co. | 01.04.2020 | No ADT-3 | As per Directors' report of Financial Year 2019-20, M/s Amar Singh & Co was appointed in last Extraordinary General Meeting held on 30.07.2019 and M/s Arun Tadarwal & Associates LLP was appointed from conclusion of this Annual General Meeting till the conclusion of the next Annual General Meeting held in year 2021. Further, Books of accounts for financial year 2019-20 were audited by M/s Amar Singh & Co. |
| C | M/s Arun | 31.12.2020 | 26.07.2021 | Appointment was made |

| | | | | |
|---|---------------------------|------------|----------|--|
| | Todarwal & Associates LLP | | | before resignation of M/s Abhilesh Jha & Company and Books of accounts for financial year 2019-20 were audited by M/s Amar Singh and Co. |
| D | M/s BSR & Co LLP | 04.08.2021 | No ADT-3 | As per Board resolution attached with Form ADT-1, appointment was made to fill casual vacancy caused due to resignation of M/s Arun Todarwal & Associates LLP. |

2.4 On examination of the financial statements of the Company, it was observed as under:

- The Company did not file Directors' report along with Form AOC-4 for the financial year 2018-19.
- The financial statement of the Company for the financial year 2018-19 were not signed by any of the directors of the Company and for Financial Year 2019-20, Taiwan based directors did not sign the financial statement of the Company.
- The Company had shown in its Profit and Loss statement for FY 2019-2020 that there is foreign exchange loss, but as per the Directors' report there are no foreign exchange inflows (earning) or outgo during the year.

2.5 The e-Form AOC-4 for the financial year 2018-19 and 2019-20 in which the Financial Statement audited by CA. Arun Jha and CA. Amar Singh respectively was attached, was certified by the Respondent and filed with the Registrar of Companies, wherein she certified as under:

"I declare that I have been duly engaged for the purpose of certification of this Form. It is hereby certified that I have gone through the provisions of the Companies Act, 2013 and Rules thereunder for the subject matter of this Form and matters incidental thereto and I have verified the above particulars (including attachment (s) from the original / certified records maintained by the Company / applicant which is subject matter of this Form and found them to be true, correct and complete and no information material to this Form has been suppressed.

I further certify that:

1. The said records have been properly prepared, signed by the required officers of the Company and maintained as per the relevant provisions of the Companies Act, 2013 and were found to be in order.

2. All the required attachments have been completely and legibly attached to this Form.

3. It is understood that I shall be liable for action under Section 448 of the Companies Act, 2013 for wrong certification, if any found at any stage."

Accordingly, inquiry under Section 206(4) of the Companies Act, 2013 was initiated into the affairs of the Company.

3. THE RELEVANT ISSUES DISCUSSED IN THE PRIMA FACIE OPINION DATED 5th JANUARY, 2023 FORMULATED BY THE DIRECTOR (DISCIPLINE) IN THE MATTER IN BRIEF, ARE GIVEN BELOW:

3.1 The Committee noted that the Director (Discipline), in his Prima-facie opinion dated 5th January 2023, opined as under:

| S.no. | Charge(s) | Opinion of the Director (Discipline) |
|--------|--|--------------------------------------|
| a. | The Company was incorporated on 13.03.2018 wherein the first subscribers to MOA and the witness were Taiwan based nationals, and the Modus Operandi of Company Secretary of the Company was that they were helping foreign nationals in acquiring the ownership of the Company. | Not Guilty |
| b. | The appointment of the Respondent was made before resignation of M/s. Abhilesh Jha & Company (previous auditor) and books of accounts of the Company for FY 2019-20 were audited by M/s. Amar Singh & Co. | Not Guilty |
| c(i) | Non-filing of Directors' report along-with Form AOC-4 for the financial year 2018-19 which was certified by the Respondent | Not Guilty |
| c(ii) | The Respondent did not exercise due diligence while certifying Form AOC-4 and uploaded the same with the financial statements for the financial year 2018-19 which were not signed by any of the director of the Company and for FY 2019-20, Taiwan based director had not signed the financial statements of the Company. | Guilty |
| c(iii) | The Company has shown in its Profit & Loss Statement that there is foreign exchange loss. However, no foreign exchange loss had been given as per Director's Report. | Not Guilty |
| d. | The e-Form AOC-4 for the financial years 2018-19 and 2019-20 have been certified by the Respondent and inquiry under section 206(4) of the Companies Act, 2013 has been initiated into the affairs of the Company. | Not Guilty |

3.2 With respect to charge specified at S.no. c(ii) above, the Director(Discipline) observed as under:

- 3.2.1 The financial statements for the financial year 2018-19 was not signed by any of the directors of the Company, and for financial year 2019-2020, Taiwan based director has not signed the financial statements of the Company.
- 3.2.2 The Financial statements of the Company for Financial Year(s) 2018-2019 and 2019-2020 was audited by M/s. Abhilesh Jha & Company and M/s. Amar Singh & Co. respectively.
- 3.2.3 The Respondent brought on record copy of financial statements for the financial year 2018-19 which were signed by five directors and the financial statements for financial year 2019-2020 which were signed by three directors of the Company including Chinese directors of the Company.
- 3.2.4 The copy of the financial statements as authenticated as per Section 134 of the Companies Act, 2013, is required to be attached with AOC- 4. However, on perusal of financial statements attached with AOC-4 certified by the Respondent it was noted that the financial statements were not signed by any of the directors of the Company for the financial year 2018-19 and the same raises question on the authenticity of the financial statements brought on record by the Respondent.
- 3.3 The Committee also noted that in respect of general allegation as mentioned in the background of the case, the Director(Discipline) in his Prima Facie Opinion observed that the Respondent does not appear to have been involved in any illegal / suspicious activity of the Company as no evidence to the contrary has been produced by the Complainant Department. Further, there is no reason even remotely suggesting that the Respondent has facilitated transfer of money from / to various sources of Company or rendered assistance in diversion of money for tax evasion or other unlawful purposes. Further, no evidence has been adduced to show that the Respondent was aware of suspicious / illegal activities, if any, carried out by the Directors of the Company which he failed to highlight while carrying out his professional assignment with the Company.
- 3.4 Thus, taking an overall view of facts/evidences on record, the Director (Discipline) in terms of Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, held the Respondent Prima-facie **Guilty** of Professional Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949. The said Item in 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—
(7) *does not exercise due diligence or is grossly negligent in the conduct of his professional duties.*"

- 3.5 The Committee at its meeting held on 10th April 2023 , on consideration of the Prima Facie Opinion of the Director (Discipline) dated 5th January 2023, concurred with the reasons given against the charge(s) 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 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:

- 4.1 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 | 16 th August, 2022 |
| 2. | Date of Written Statement filed by the Respondent | 01 st September, 2022 |
| 3. | Date of Rejoinder filed by the Complainant | Not Submitted |
| 4. | Date of Prima facie Opinion formed by Director (Discipline) | 05 th January, 2023 |
| 5. | Written Submissions filed by the Respondent after Prima Facie Opinion | 24 th May 2023, 16 th April 2024, 25 th April 2024, 30 th April 2024, 11 th May, 2024 and 15 th May, 2024 |
| 6. | Written Submissions filed by the Complainant Department after Prima Facie Opinion | 01 st May 2024 and 10 th May, 2024 |

5. SUBMISSIONS OF THE RESPONDENT ON PRIMA FACIE OPINION:

- 5.1 The Committee noted that the Respondent in her submission dated 24th May 2023, in response to the Prima Facie Opinion, inter-alia, stated as under: -
- The Complaint is in violation of the basic requirements of Form I stipulated under Rule 3(1) of the Rules as Director(Discipline) in his adjudicating role, does not have the authority to invoke multiple clauses of the Chartered Accountants Act 1949.
 - The Complainant does not hold the office of Joint Secretary or Under Secretary.
 - The Registrar of Companies cannot be afforded any benefit of doubt in matters of legal compliances with respect to designation, fees to be paid as a Complainant especially when filing a quasi-criminal complaint before a quasi-judicial body.
 - The Form AOC-4 has neither been treated/labeled as "defective", nor marked for "re-submission". The status of the same from MCA website, mentions the transaction status for Form AOC 4 having SRN number

R09592734 to be "Approved" and that is why the Form was never revised by the Company.

- e) The ROC could have rejected the Form and the same could have been revised. However, even as on date, the said Form is still marked as approved.
- f) The financial statements for the year ended March 2019 is approved in the Board meeting of the Company and have been duly signed by both the Directors and the auditors of the Company. But mistakenly a copy without the signatures was attached in the e-Form AOC-4 certified by the Respondent.

5.2 Further, the Respondent vide letter dated 16th April 2024 and 25th April 2024, inter-alia, submitted as under:

- a) She was never the statutory auditor of the Company.
- b) She was neither aware nor was she responsible about the foreign exchange gain or loss as rightly concluded in paragraph 12 of the Prima Facie Opinion.
- c) The financial statements of the Company were audited by M/s Abhilesh Jha & Co., Chartered Accountants for the year ended 31st March 2019.
- d) The financial statements for the year ended March 2019 and 31 March 2020 have been duly signed by both the Directors and auditors.
- e) However, due to an inadvertent error, a copy without the Directors' signatures was uploaded in Form AOC 4 for year ended 31st March 2019.
- f) The signed financial statements, and those attached and uploaded along with Form AOC-4 match completely without any discrepancies of any nature. It would not have impacted the decision of the user of the financial statements, as there was no misleading information. No information of any nature is hidden or withheld.
- g) The financial statements for year ended 31st March 2019 and 31 March 2020, were approved in the Board Meeting held on 7th September 2019 and 16th December 2020 respectively. The same can be noted in the Form AOC - 4. Therefore, there is no situation where the financial statements were not approved by the Board of Directors.
- h) The Respondent had filed the Form AOC 4 for the financial year 2018-19, on 29th October 2019 vide challan SRN R09592734, by paying Rs 600 as the normal Form filing fees. The Form AOC 4 had been processed under Straight Through Process (STP) by the Ministry of Corporate Affairs ("MCA") and the Registrar of Companies ("ROC").
- i) Attention is drawn to Rule 10 (4) and (6) of the Companies (Registration Offices and Fees) Rules, 2014. These Rules specifically states that if the Form is found incomplete or defective, the same can be returned to the Company, for regularising the defect, by the MCA / ROC. However, the same was never done by the MCA / ROC. Even Rules envisage that there could be procedural errors in the said matter and hence, the above provisions have been inserted in the Rules so that the mistakes can be later rectified.
- j) A procedural error, which is a minor deviation from established protocols, should not be automatically deemed as professional misconduct. It is

important to distinguish between genuine mistakes or procedural lapses that do not result in significant harm and deliberate misconduct that leads to substantial financial losses for companies and the wider community.

- 5.3 The Committee also noted that the Respondent vide communication dated 30th April 2024 provided a duly notarised Affidavit dated 30th April 2024 to the effect that post the visit of the Respondent to the police for interrogation on the FIR filed against her, no further investigation is going on against her.
- 5.4 The Respondent in response to the Complainant Department's submissions, vide letter dated 11th May 2024 and 15th May 2024, inter-alia, stated as hereunder:
- a) The documents currently under consideration were not included in the initial complaint filed by the Complainant in Form – I. Introducing these documents at this stage constitutes an improper expansion of the complaint's scope, which is not allowed under the Rules governing proceedings related to professional misconduct involving chartered accountants.
 - b) The Respondent was solely required to certify Form AOC-4. The statutory obligations under the sections of the Companies Act, 2013, as stated by the ROC in their letter, extend primarily to the auditors, officers and the Company itself, rather than her responsibilities in the certification of Form AOC-4. There is no specific allegation or lapse on the part of the Respondent and the same has also not been pointed out.
 - c) The Ministry of Corporate Affairs (MCA) has initiated investigations into numerous companies solely based on the presence of names that appear to be Chinese. This broad and seemingly arbitrary criterion has led to the launching of canned inquiries against hundreds of professionals associated with these companies.
 - d) It is mentioned on page 4 of the FIR that the Respondent has incorporated the Company and registered it with the Ministry of Corporate Affairs (MCA). However, she was not involved in the incorporation or the registration process of the Company. The Prima Facie Opinion (issued by ICAI) on page 8, point no 8, and on page 13, point no 14, has already cleared the Respondent's name in this matter, supporting the assertion that the Respondent had no involvement in the incorporation or registration of the Company.
 - e) Concerning the observation on page 5 of the FIR about the office not being present at the registered office, the conclusion drawn is incorrect. The registered office inspection visit report dated 29th December 2021 (as shared by the Complainant) merely noted that the office door was closed. A closed door does not imply that the Company was not present at their registered office or that the Company does not exist. The Company has been consistently filing their GST returns, Income Tax returns, and ROC returns annually since its inception until date, with all necessary taxes being paid.

6. SUBMISSIONS OF THE COMPLAINANT DEPARTMENT ON PRIMA FACIE OPINION:

6.1 The Complainant Department vide letter dated 1st May 2024 provided a copy of the "Registered Office Inspection Report" of the Company dated 29.12.2021 and also informed that an Inquiry report (without furnishing a copy thereof) concerning the following violation of various provisions of the Companies Act, 2013 has been submitted:

- a) Violation of Section 448 of the Companies Act, 2013,
- b) Violation of Section 158 of the Companies Act, 2013,
- c) Violation of Section 166(2) & (3) of the Companies Act, 2013,
- d) Violation of Section 7(6) and Section 7(7) of the Companies Act, 2013,
- e) Violation of Section 188 of the Companies Act, 2013,
- f) Violation of Section 134(4) of the Companies Act, 2013,
- g) Violation of Section 12 of the Companies Act, 2013.

6.2 The Complainant Department vide letter dated 10th May 2024 provided the copy of FIR together with the Letter dated 19th January 2022 with which the request was made to the Marine Lines Police Station to lodge FIR against the directors of the Company and the Respondent amongst others. Since the FIR was in Marathi language, vide communication dated 10th May 2024, the Complainant Department was asked to provide a duly certified English translation of the same. However, the same was not furnished.

7. BRIEF FACTS OF THE PROCEEDINGS:

7.1 The Committee noted that the instant case was placed before it for consideration on the following dates: -

| S.No. | Particulars | Date(s) of meeting | Status |
|-------|-------------------------|--------------------|---|
| 1. | 1 st Hearing | 09.06.2023 | Part heard and adjourned |
| 2. | 2 nd Hearing | 23.04.2024 | Heard and concluded. Decision on the conduct of the Respondent was reserved |
| 3. | ----- | 28.05.2024 | Decision on the conduct of the Respondent taken. |

7.2 On the day of the first hearing held on 9th June 2023, the Committee noted that the Respondent and her Counsel(s), CA. A.P. Singh and CA. Utsav Hirani, were present before it through Video Conferencing. The Committee further noted that neither the authorised representative of the Complainant Department was present, nor any intimation as regard their non-appearance was received from their side, despite the notice/ email duly served upon them. The Respondent was administered on Oath. Thereafter, the Committee read out the charges against her and enquired from the Respondent as to whether she was

aware of the charges alleged against her to which she replied in the affirmative. On being asked by the Committee as to whether she pleaded Guilty in respect of the charges levelled against her, she pleaded Not Guilty to the charges. Thereafter, looking into the fact that this was the first hearing and in the absence of any representation from the Complainant Department, the Committee decided to adjourn the hearing to a future date.

- 7.3 On the day of the second hearing held on 23rd April 2024, the Committee noted that the Authorized representative of the Complainant Department and the Respondent along with her Counsel was present before it through video conferencing. The Committee noted that subsequent to the first hearing held in the case on 9th June 2023, there had been a change in the composition of the Committee which was duly intimated to the Authorized Representative of the Complainant Department and the Respondent who were present before the Committee and the case was taken up for hearing.
- 7.4 On being asked by the Committee to substantiate their case, the authorized representative of the Complainant Department referred to the contents of their Complaint in Form 'I' and confirmed that they have nothing more to add in this case. Subsequently, the Counsel for the Respondent presented the Respondent's line of defence, inter-alia, reiterating the written submissions made by her on the Prima Facie Opinion. He emphasised that even today this particular Form AOC -4 is shown as approved on the Registrar of Companies (ROC) website. If the Registrar of Companies (ROC) had issue with the unsigned financials being uploaded, they could have simply rejected this particular Form. The matter is a procedural issue for which the Respondent cannot be held liable for professional misconduct.
- 7.5 On consideration of the submissions made by the authorized representative of the Complainant Department and the Counsel for the Respondent, the Committee posed certain questions to them which were responded by them.
- 7.6 Thus, on consideration of the submissions and documents on record, the Committee directed both the parties to the case to provide the following documents/ information within next 10 days with a copy to the other party to the case to provide their comments thereon, if any: -

(a) Complainant: -

1. Copy of FIR filed with Marine Drive Police Station dated 9th January 2022 together with the status of the same as on date.
2. Any further submission with respect to the charge for which the Respondent had been held prima facie guilty.

(b) Respondent: -

1. An Affidavit to the effect that post the visit of the Respondent to the police for interrogation on the FIR filed against her, no further investigation is going on against her.

- 7.7 With the above, the hearing in the case was concluded. However, the decision on the conduct of the Respondent was kept reserved by the Committee.
- 7.8 Thereafter, the Committee noted that the Respondent vide letter dated 25th April 2024 submitted her response. The Committee also noted that she provided a duly notarised Affidavit dated 30th April 2024 to the effect that post the visit of the Respondent to the police for interrogation on the FIR filed against her, no further investigation is going on against her. Also, the Complainant Department vide letter dated 1st May 2024 provided a copy of the "Registered Office Inspection Report" of the Company dated 29.12.2021 and also informed that an Inquiry report (without furnishing a copy thereof) concerning the violation of various provisions of the Companies Act 2013, has been submitted. The Complainant Department vide letter dated 10th May 2024 provided the copy of FIR together with the Letter dated 19th January 2022 with which the request was made to the Marine Lines Police Station to lodge FIR against the directors of the Company and the Respondent amongst others. Since the FIR was in Marathi language, vide communication dated 10th May 2024, the Complainant Department was asked to provide a duly certified English translation of the same. However, the same was not furnished. The response of the Complainant Department was shared with the Respondent who vide her letter dated 11th May 2024 and 15th May 2024 submitted her response on the same.
- 7.9 Thereafter, the Committee at its meeting held on 28th May 2024, duly considered the submissions and documents, thus, on record and decided on the conduct of the Respondent.

8. FINDINGS OF THE COMMITTEE:

- 8.1 Before delving on the examination of the conduct of the Respondent, the Committee noted that the Respondent raised following technical objections with respect to the instant case and decided to first deal with the same:
- a) The Director (Discipline) in his adjudicating role, does not have the authority to invoke multiple clauses of the Chartered Accountants Act 1949.
 - b) The Complainant does not hold the office of Joint Secretary or Under Secretary.
- 8.2 As regards the objection pointed out at para 8.1(a) above, the Committee held that a Complainant is required as per law to state the allegations which are to form a factual foundation for an Adjudicating Authority to exercise jurisdiction. Thus, even if an incorrect provision of law/no clause is mentioned by the Complainant in FORM 'I', that alone cannot be a ground to dismiss a complaint if otherwise the Authority has the jurisdiction to entertain the complaint.
- 8.3 As regard the objection pointed out at para 8.1(b) above, the Committee viewed that the instant complaint had been registered only after ensuring the due

compliance of the provisions of the Chartered Accountants Act 1949 and the Rules framed thereunder.

- 8.4 Thereafter, as regards the merits of the case, the Committee noted that the only charge with respect to which the conduct of the Respondent has been examined is with respect to the certification of Form AOC 4 for the following years:
- a) Financial year 2018-19: copy of financial statements of the Company which were not endorsed by any director of the Company were attached to the said Form to comply with legal obligations.
 - b) Financial year 2019-20: copy of financial statements of the Company which were signed by the Chinese directors of the Company but were not signed by Taiwan based directors of the Company were attached to the said Form to comply with legal obligations.
- 8.5 The Committee noted that it is the case of the Respondent that due to an inadvertent error, unauthenticated copy of the Financial Statements of the Company were attached while uploading Form AOC 4 of the Company for the Financial year 2018-19 and Financial year 2019-20.
- 8.6 The Committee further noted that the Respondent brought on record, authenticated copy of the financial statements of the Company for the year ended 31st March 2019 and 31st March 2020. The Committee noted that both sets of the financial statements for year ended 31st March 2019 and 31st March 2020, i.e. the ones attached with Form AOC-4 filed with ROC by the Respondent (which were unauthenticated) and the financials (which were signed by all Directors of the Company and its Auditor) brought on record by the Respondent were one and the same i.e. the figures under all heads of Balance Sheet and Profit & Loss account were exactly the same.
- 8.7 The Committee also observed that the financial statements of the Company for the year ended 31st March 2019 and 31st March 2020, were approved in the Board Meetings held on 7th September 2019 and 16th December 2020 respectively which is well before the date of filing the Form AOC-4 of the concerned financial years i.e. 29th October 2019 and 23rd February 2021 respectively.
- 8.8. In view of the above observations, the Committee was of the view that the alleged misconduct on the part of the Respondent is basically on account of a procedural error. It did not involve any material misstatement and/or misrepresentation which could impact the decision of stakeholders of the said financial statements.
- 8.9. The Committee also noted that the Respondent brought on record a duly notarized Affidavit dated 30th April 2024 to the effect that post the visit of the Respondent to the police for interrogation on the FIR filed against her, no further investigation is going on against her.

- 8.10 Thus, considering the facts and documents/ submissions on record, the Committee noted that the Respondent while certifying the Form AOC-4 of the Company for the Financial year 2018-19 and Financial year 2019-20 inadvertently failed to attach the authenticated financial statements which were required to be attached as per requirements of Form AOC-4.
- 8.11 Thus, in the given facts and circumstances of the case, the Committee was of the view that, since the error was procedural in nature, it did not amount to gross negligence on the part of the Respondent. Accordingly, 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 in respect of the charge alleged.
- 8.12 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, Mumbai 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 AOC-4 which has been examined by the Committee. Further, the Committee noted that the Complainant Department during the course of hearing in its written submissions informed that an Inquiry report (without furnishing a copy thereof) pointing out violation of several provisions of the Companies Act, 2013 has been submitted. In this regard, the Committee was of the view that in case the Complainant Department has any evidence to substantiate the said violations, they may consider filing a separate complaint with the Disciplinary Directorate of ICAI as the charge alleged against the Respondent in the instant case was limited to certification of E-Form AOC-4 with unauthenticated copy of the Financial Statements of the Company for the Financial year 2018-19 and Financial year 2019-20 which has been examined by the Committee.

9. CONCLUSION:

- 9.1 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 |
|--|--------------------------------------|---|
| S.no. c(ii) of Para 3.1 as given above | Para 8.4 to Para 8.11 as given above | NOT GUILTY - Item (7) of Part I of the Second Schedule |

- 9.2 In view of the observations stated in the above paras vis-a-vis material on record, the Committee, in its considered opinion, holds 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.

10. ORDER:

10.1 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 Order for closure of this case against the Respondent.

Sd/-
(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

Sd/-
(MRS. RANI S. NAIR, I.R.S. RETD.)
GOVERNMENT NOMINEE

Sd/-
(MR. ARUN KUMAR, I.A.S., RETD.)
GOVERNMENT NOMINEE

Sd/-
(CA. SANJAY KUMAR AGARWAL)
MEMBER

Sd/-
(CA. COTHA S SRINIVAS)
MEMBER

DATE: 25th November 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
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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