

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/12/2022-DD/77/2022-DC/1632/2022

In the matter of:

Smt. Kamna Sharma,
Deputy Registrar of Companies,
Office of the Registrar of Companies
NCT of Delhi & Haryana,
Ministry of Corporate Affairs
4th Floor, IFCI Tower,
61, Nehru Place
New Delhi – 110019.

.....Complainant

-Versus-

CA. Akshay Mathur (M. No. 536054)
H-304, Elite Homz,
Sector -77
Noida – 201301.

.....Respondent

Members Present:

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

DATE OF FINAL HEARING : 17th May 2024

Parties Present:

Authorised Representative of the Complainant Department: Shri Gaurav, Deputy Registrar
of Companies, Delhi & Haryana (Through V.C.)
Respondent: CA. Akshay Mathur (M. No.536054) (In Person)

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 Directors 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, NCT of Delhi & Haryana 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/subscribers 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 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 certified Form 'AOC-4' XBRL for financial year 2017-18 and 2018-19 for "M/s Lakeland Gloves and Safety Apparel Private Limited" (hereinafter referred to as "Company").

2. CHARGES IN BRIEF:-

- 2.1 Against the aforesaid background, the Complainant Department informed that "M/s Lakeland Gloves and Safety Apparel Private Limited" (hereinafter referred to as "Company") failed to annex Form AOC-1 with the financial statements filed by it through e-Form AOC-4 XBRL for the financial years 2017-18 to 2019-20 on MCA portal which contains the salient features of the financial statements of the Company's subsidiary or subsidiaries, associate Company or Companies and joint venture or ventures, to hide the material information.
- 2.2 Thus, the Complainant Department alleged that the Respondent who certified Form 'AOC-4' XBRL for financial year 2017-18 and 2018-19 of the Company, deliberately concealed the material information and filed e- Forms in non-compliance of the provisions of the Companies Act, 2013.

3. **THE RELEVANT ISSUES DISCUSSED IN THE PRIMA FACIE OPINION DATED 30th AUGUST, 2022 FORMULATED BY THE DIRECTOR (DISCIPLINE) IN THE MATTER IN BRIEF, ARE GIVEN BELOW:-**

- 3.1 With regard to the allegation that the Respondent deliberately concealed the material information and made non-compliance of the provisions of the Companies Act, 2013 while certifying and filing Forms AOC-4 XBRL for the financial years 2017-18 to 2018-19 on MCA portal, the Respondent stated that Form AOC-1 is required to be attached with Form AOC-4 only in case of the Company having a foreign subsidiary. In respect of the requirement under the Companies Act, 2013 and Rules framed there under for attaching Form AOC-1 with Form AOC-4 XBRL, the following was noted: -

Section 129 of Companies Act, 2013 prescribes as under: -

"(1).....

(2).....

(3) Where a Company has one or more subsidiaries or associate Company, it shall, in addition to financial statements provided under sub-section (2), prepare a consolidated financial statement of the Company and of all the subsidiaries and associate Companies in the same form and manner as that of its own and in accordance with applicable accounting standards, which shall also be laid before the annual general meeting of the Company along with the laying of its financial statement under sub section (2):

Provided that the Company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary Company or subsidiaries and associate Companies or Companies in such form as may be prescribed."

Further, Rule 5 of the Companies (Accounts) Rules, 2014 stipulates as under:

Rule 5: Form of Statement containing salient features of financial statements of subsidiaries: -

"The statement containing the salient feature of the financial statement of a Company's subsidiary or subsidiaries, associate Company or Companies and joint venture or ventures under the first proviso to sub section (3) of section 129 shall be in Form AOC-1."

- 3.1.1 Considering the above requirement, it can be stated that if a Company is having subsidiary, Joint Venture or Associate Company, then it is required to file Form AOC-1 as per first proviso to sub section (3) of Section 129 of Companies Act, 2013 read with Rule 5 of the Companies (Accounts) Rules, 2014.

- 3.1.2 From the aforesaid provisions, it was noted that no exemption / relaxation for not filing of Form AOC-1 appears to have been given to the Companies having Indian Subsidiary and the aforesaid provisions nowhere states that Form AOC-1 is required to be filed / attached by only those Companies which are having foreign subsidiary.
- 3.1.3 On perusal of financial statements of the Company for the financial years 2017-18 and 2018-19, it was observed that in Note 10 'Non-Current Investments', an investment of Rs.79,992/- has been shown in wholly owned subsidiary Company "Lakeland India Pvt. Ltd." and the same clearly indicates that the Company is having wholly owned subsidiary.
- 3.1.4 Though as per requirement of Section 129 read with Rule 5 of Companies (Accounts) Rules, 2014, Form AOC-1 is required to be filed, yet Form AOC-4 XBRL in point no.3 of attachment states that Form AOC-1 is to be attached in respect of foreign subsidiaries.
- 3.1.5 Hence, there is contradiction / conflict in the requirement as mentioned in the Companies Act, 2013 read with Rule framed thereunder and the requirement as mentioned in Form AOC-4 XBRL itself. However, as per settled principle of law, if there is a conflict between the Act and the Rules & Regulations, the provisions of Act always prevail. Accordingly, benefit cannot be granted to the Respondent and keeping in view the requirement of provisions of Section 129 read with Rule 5 of Companies (Accounts) Rules, 2014, he was required to annex Form AOC-1 as attachment to Form AOC-4 XBRL.
- 3.1.6 Moreover, the Respondent while certifying the Form AOC-4 XBRL declared that he had gone through the provisions of the Companies Act, 2013 and Rules there under for the subject matter of this Form and matters incidental thereto. He further declared that no information material to this Form has been suppressed. Therefore, in case of conflict of requirements as mentioned in the Companies Act, 2013 read with Rules and the format of Form AOC-4 XBRL, the Respondent was expected to follow the requirement of provisions of the Companies Act, 2013 and Rules framed there under and accordingly, he should have ensured that Form AOC-1 has been attached to Form AOC-4 XBRL but he appears to have failed to do so.
- 3.1.7 Also, no documentary evidence was produced by the Complainant Department which may indicate the Respondent's connivance with the management of the Company or indicate that he had deliberately not filed Form AOC-1 with Form AOC-4 XBRL. In view of above, it was stated that the Respondent had failed to exercise due diligence while certifying Form AOC-4 for the relevant years.
- 3.2 Accordingly, 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 under Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949 which provides 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"

- 3.3 The Committee at its meeting held on 19th September 2022, on consideration of the Prima Facie Opinion of the Director (Discipline) dated 30th August 2022, 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 under Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949, and decided to proceed further under Chapter V of these Rules.

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	3 rd January, 2022
2.	Date of Written Statement filed by the Respondent	10 th April, 2022
3.	Date of Rejoinder filed by the Complainant	25 th July, 2022
4.	Date of Prima facie Opinion formed by Director (Discipline)	30 th August, 2022
5.	Written Submissions filed by the Respondent after Prima Facie Opinion	2 nd December, 2022 and 16 th May 2024
6.	Written Submissions filed by the Complainant Department after Prima Facie Opinion	9 th May 2024

5. WRITTEN SUBMISSIONS FILED BY THE RESPONDENT ON THE PRIMA FACIE OPINION:-

- 5.1 The Committee noted that the Respondent in his submissions dated 2nd December 2022, in response to the Prima Facie Opinion, inter-alia, stated as under: -

M/s. Lakeland Gloves and Safety Apparel Private Limited ('the Company') has a wholly owned Indian subsidiary Company namely M/s Lakeland India Private Limited having an investment of merely Rs. 79,992/-. The same was mentioned in the XBRL standalone financial statements and in the XBRL Consolidated financial statements attached with the Form AOC-4 XBRL filed for FY 2017-18 and 2018-19. Therefore, the allegation made by the Complainant Department that he had deliberately concealed the material information of the subsidiary Company is baseless as the details of the subsidiary Company was mentioned in the financial statements as attached with the Form AOC-4 XBRL.

- 5.2 Further, as per Section 129 read with Rule 5 of Companies (Accounts) Rules, 2014, Form AOC-1 is required to be filed to Form AOC-4 XBRL. However, in point no. 3 of attachment to the Form, it is stated that Form AOC-1 is to be attached in respect of foreign subsidiaries. Hence, in the first place, there was a contradiction/ conflict in the requirement as mentioned in the Companies Act, 2013 read with Rules framed there under and the requirement as mentioned in Form AOC-4 XBRL itself.
- 5.3 Also, there is a size limit of 6 MB of Form AOC-4 XBRL for uploading on the MCA website.
- 5.4 Since already 2 attachments viz., XBRL standalone financial statements and XBRL consolidated financial statements were attached with the Form, the size of the Form increased to more than 6 MB and attaching Form AOC-1 was not possible.
- 5.5 Moreover, since it was clearly mentioned in Form AOC-4 XBRL that Form AOC-1 is to be attached in the case of foreign subsidiary, the Company did not attach Form AOC-1 considering that the details of the Indian subsidiary Company were already mentioned in the XBRL standalone and consolidated financial statements.
- 5.6 Therefore, per se there was not any concealment of material information related to subsidiary Company. It was only because of the size limit of 6 MB of the Form for uploading, the Company did not attach Form AOC-1 with Form AOC-4 XBRL.
- 5.7 Complete due diligence and study of the Form and its requirements was done before filing the Form AOC-4. After considering the technical difficulties, the relevant Form AOC-1 was not attached.
- 5.8 The Committee noted that the Respondent in response to the Complainant Department's submissions vide communication dated 16th May 2024 submitted as under:
- (a) Size of AOC-4: The Respondent duly informed the relevant authorities (MCA helplines) about this issue. Similar concerns have been voiced in various public forums. Additionally, the recent update to the MCA website, version V3, has indeed increased the attachment size limit from 6MB to 10MB for the new Forms. This change reflects the acknowledgment of the pressure from the public to accommodate larger attachments.
 - (b) Requirement of AOC-1: Form AOC-4 XBRL, explicitly delineates the required attachments, which include:
 - (1)...
 - (2)...
 - (3) **Statement of subsidiaries as per section 129 - Form AOC-1 (to be attached in respect of Foreign Subsidiaries)**
 - (4)..."

The highlighted portion explicitly indicates that Form AOC-1 is exclusively mandated for companies with foreign subsidiaries. Further, the MCA had mentioned the said requirement in the instruction kit of Form AOC-4 XBRL as well. As the client does not have any foreign subsidiary, the same was not attached due to technical reasons relating to size of the Form.

- (c) Furthermore, the information in respect of Indian subsidiary was already mentioned in XBRL financials attached in the Form.
- (d) Company link with Chinese company: The client is a wholly owned subsidiary of a US based company and merely import trading products from China after paying all the duties and taxes to the Government.

6. WRITTEN SUBMISSIONS FILED BY THE COMPLAINANT DEPARTMENT ON THE PRIMA FACIE OPINION: -

- 6.1 The Committee noted that the Complainant Department vide email dated 09th May 2024 provided their response which is as under:
- a) All companies are invariably filing all the attachments with e-Form AOC-4. However, for specific query relating to size limit to attachment to AOC-4, E-Governance Cell of Ministry of Corporate Affairs may be contacted.
 - b) The query raised at point (b) above is a policy matter. Hence, the Ministry of Corporate Affairs may be contacted for information in this regard.
 - c) With respect to issue relating to subject company's Chinese link, the Complainant Department received a reference from Intelligence sources wherein it was stated that the subject company is having Chinese link. However, the name of the company was not provided.

7. BRIEF FACTS OF THE PROCEEDINGS:-

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

S. No.	Particulars	Date of meeting	Status
1.	1 st Hearing	20.04.2023	Part heard and adjourned.
2.	2 nd Hearing	23.04.2024	Part heard and adjourned.
3.	3 rd Hearing	17.05.2024	Heard and concluded.

- 7.2 On the day of the first hearing held on 20th April 2023, the Committee noted that the Respondent was present in person before it. However, the Complainant was neither present, nor any intimation was received from her side despite due notice/e-mail to her. The Respondent was then administered on Oath. Thereafter, the Committee enquired from the Respondent as to whether he was aware of the charges alleged against him and then the charges as contained in Prima Facie Opinion were read out. On the same, the Respondent replied in the affirmative and pleaded Not Guilty to the charges leveled against him. The Committee, looking into the absence of the Complainant and the fact that this was the first

hearing, decided to adjourn the hearing to a future date. With this, the hearing in the matter was part heard and adjourned.

- 7.3 On the day of second hearing held on 23rd April 2024, the Committee noted that the Authorized representative of the Complainant Department was present before it through video conferencing and the Respondent was present in person before it, who were duly intimated of the change in the composition of the Committee.
- 7.4 Thereafter, the authorized representative of the Complainant Department confirmed that he has nothing more to add in this case. Subsequently, the Respondent presented his line of defense. The Committee posed certain questions to the Authorized Representative of the Complainant Department and the Respondent which were responded by them.
- 7.5 On consideration of the submissions and documents on record, the Committee directed the Authorized Representative of the Complainant Department to provide following clarification within next 10 days with a copy to the Respondent to provide his comments thereon, if any:
- a) Whether any size limits with respect to the attachment to E-Form AOC-4 was there. If so, the date from which the same has been made applicable.
 - b) The exact requirement of attachment of Form AOC-1 to E-Form AOC-4 (keeping in view the requirements of Sec 129 read with Rule 5 of Companies (Accounts) Rules, 2014) i.e. whether the same is applicable to only foreign subsidiaries/associates/joint ventures or all subsidiaries/associates/joint ventures. Whether there is any change in the said requirement subsequent to the filing of the Complaint with the Disciplinary Directorate?
 - c) The alleged Company under question is a 100% subsidiary of a US based Company, whereas it is the contention of the Complainant Department that it has connection with the Chinese Companies.

With the above, the hearing in the case was part heard and adjourned.

- 7.6 On the day of third hearing held on 17th May 2024, the Authorized representative of the Complainant Department was present through video conferencing and the Respondent was present in person before the Committee. The Committee noted that the Complainant Department vide email dated 09th May 2024 provided their response which was shared with the Respondent who countered the same vide communication dated 16th May 2024.
- 7.7 On consideration of the submissions made by the Authorized Representative of the Complainant Department and the Respondent, the Committee posed certain questions to them which were responded by them. Thereafter, the Committee, on considering the documents on record and the oral and written submissions of the parties to the case vis-à-vis facts of the case, concluded the hearing in the case and decided on the conduct of the Respondent.

8. FINDINGS OF THE COMMITTEE:-

8.1 On perusal of the documents and submissions on record, the Committee noted that the Company did not annex Form AOC-1 with the financial statements filed by it through e-Forms AOC-4 XBRL for the financial years 2017-18 and 2018-19 on MCA portal. Thus, the Complainant Department alleged that the Respondent who certified and filed Form 'AOC-4' XBRL for financial year 2017-18 and 2018-19 on MCA portal, deliberately concealed the material information and filed E-Forms in non-compliance of the provisions of the Companies Act, 2013.

8.2 In this regard, the Committee noted that Section 129 of Companies Act, 2013 prescribes as under: -

"(1).....

(2).....

(3) *Where a Company has one or more subsidiaries or associate Company, it shall, in addition to financial statements provided under sub-section (2), prepare a consolidated financial statement of the Company and of all the subsidiaries and associate Companies in the same form and manner as that of its own and in accordance with applicable accounting standards, which shall also be laid before the annual general meeting of the Company along with the laying of its financial statement under sub section (2):*

Provided that the Company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary Company or subsidiaries and associate Companies or Companies in such form as may be prescribed."

Further, Rule 5 of the Companies (Accounts) Rules, 2014 stipulates as under:-

"Rule 5 Form of Statement containing salient features of financial statements of subsidiaries: -

The statement containing the salient feature of the financial statement of a Company's subsidiary or subsidiaries, associate Company or Companies and joint venture or ventures under the first proviso to sub section (3) of section 129 shall be in Form AOC-1."

8.3 The Committee further noted that the instruction kit issued by MCA with respect to filing of Form AOC-4 XBRL inter-alia, specifies as under: -

'Statement of subsidiaries as per section 129 - Form AOC-1 (to be attached in respect of Foreign Subsidiaries)' as one of the attachments.'

8.4 The Committee opined that although as per the settled principle of law, if there is a conflict between the Act and the Rules & Regulations, the provisions of Act always prevail, but this principle applies only in the case where the Rule is not specific about the requirement to be followed or complied with.

However, in the instant case, the Committee noted that the requirement was specifically mentioned on the face of the Form AOC 4 XBRL itself as well as the instruction kit issued by MCA for filing the said Form.

- 8.5 Furthermore, on bare perusal of the Form AOC-4 XBRL, the Committee noted that in point no.3 of attachment, it is stated in brackets that AOC-1 is to be attached in respect of foreign subsidiaries.
- 8.6 The Committee noted that the alleged Company is a 100 % subsidiary of a US based Company. It did not had any foreign subsidiary.
- 8.7 The Committee further noted that the alleged Company had a wholly owned Indian subsidiary Company namely M/s Lakeland India Private Limited having an investment of merely Rs. 79,992/-. The information in respect of Indian subsidiary was already mentioned in XBRL financials attached in the Form AOC-4 XBRL certified by the Respondent for the Financial year 2017-18 and 2018-19.
- 8.8 Thus, considering the facts and circumstances in the instant case, the Committee noted that the Respondent had certified Form AOC-4 XBRL for financial years 2017-18 and 2018-19 with respect to the alleged Company without Form AOC-1 being attached to it as attachment of Form AOC-1 is required only in the case of foreign subsidiary and the alleged Company did not had a foreign Subsidiary. The Committee noted that the said requirement is mentioned in the Form itself and also in the instruction kit issued by MCA with respect to Form AOC-4 XBRL.
- 8.9 The Committee also noted that nothing was brought on record by the Complainant Department to establish that the alleged Company had connection with the Chinese Companies.
- 8.10 Thus, the Committee held that due diligence was exercised by the Respondent while performing his duty of certification of Form AOC-4 XBRL for the Financial year 2017-18 and 2018-19. Accordingly, the Committee decided to hold the Respondent **Not Guilty** in respect of the charge alleged against him.
- 8.11 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, NCT of Delhi & Haryana by engaging dummy persons as subscribers to MOA & Directors by furnishing forged documents with falsified addresses / signatures, Director Identification Number (DIN) to MCA. Further, certain professionals in connivance with such individuals/directors/subscriber to MOA assisted in incorporation and running of these Companies for illegal/suspicious activities in violation of various laws by certifying e-Forms/various reports etc. on MCA portal with false information concealing the real identities of such individuals. However, no evidence of the involvement of the Respondent to that effect had been brought on record by the Complainant Department. The role of the Respondent was limited to certification of Form AOC 4-XBRL for the Financial year 2017-18 and 2018-19 which has been examined by the Committee. The Committee was also of the view that in case the Complainant Department has any evidence to substantiate the violations as pointed out in the background of the case in Form 'I' against any Chartered Accountant, they may consider filing a separate complaint with the Disciplinary Directorate of ICAI.

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
Para 2.1 to 2.2 as given above	Paras 8.1 to 8.10 as given above	NOT GUILTY - Item (7) of Part-I of Second Schedule to the Chartered Accountants Act, 1949

In view of the above observations, considering the submissions 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 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

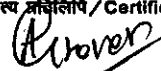
Sd/-
(MR. ARUN KUMAR, I.A.S., RETD.)
GOVERNMENT NOMINEE

Sd/-
(CA. SANJAY KUMAR AGARWAL)
MEMBER

Sd/-
(CA. COTHA S SRINIVAS)
MEMBER

DATE : 28th November, 2024
PLACE : NEW DELHI

प्रमाणित सत्य प्रतिलिपि / Certified True Copy


अंजू ग़ोवर / ANJU GROVER
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