

**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/270/2022/DD-167/2022-DC/1773/2023**  
**(Clubbed files PR/G/271/22, PR/G/272/22 & PR/G/273/22)**

**In the matter of:**

**Sh. Nitin Phartyal,  
ROC, NCT of Delhi & Haryana,  
Ministry of Corporate Affairs,  
4<sup>th</sup> Floor, IFCI Tower, 61 Nehru Place,  
New Delhi-110019**

**.....Complainant**

**Versus**

**CA. Abhishek Bindal (M. No. 532081)  
Shop No. 118-A, Satyam Plaza  
Opposite Sharma Tourist Complex,  
Gurugram-122001, Haryana**

**.....Respondent**

**MEMBERS PRESENT:**

**Shri Jiwesh Nandan, IAS (Retd.), Government Nominee (in person)  
Ms. Dakshita Das, IRAS (Retd.), Government Nominee (through VC)  
CA. Mangesh P Kinare, Member (in person)  
CA. Abhay Chhajer, Member (through VC)**

**DATE OF FINAL HEARING : 21<sup>st</sup> August, 2024**

**PARTIES PRESENT:**

**Complainant: Mr. Gaurav, Dy. ROC, Delhi (Authorized Representative of the Complainant  
(Through VC)**

**Respondent : CA. Abhishek Bindal (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/ shareholders/ entities involved in the Companies had engaged dummy persons as subscribers to MOA & Directors by furnishing forged documents with falsified addresses / signatures to MCA.

- 1.2. It is stated that some companies/individuals/entities who were directly or indirectly connected with the above Company were found to be engaged in illegal/ suspicious activities, money laundering, tax evasion and non-compliance of various provisions of laws.
- 1.3. The Complainant Department stated that certain professionals in connivance with such individuals/directors/subscriber to MOA have assisted in incorporation and running of these Companies for illegal/suspicious activities in violation of various laws by certifying e-forms/various reports etc. on MCA portal with false information concealing the real identities of such individuals.
- 1.4. It was further stated that professionals are duty bound to discharge their duties as per law and certify / verify documents / e-forms or give certificate / Report after due diligence so that compliance to the provisions of law shall be ensured. However, they had failed to discharge their duties and willfully connived with directors / company / shareholders / individuals in certifying e-forms knowingly with false information / documents / false declaration / omitting material facts or information in said Company.
- 1.5. In the instant case, the Respondent has certified incorporation documents in respect of two Companies, namely, 'M/s Draphant Infotech Private Limited' and 'M/s Zhudao Infotech Private Limited', and also audited the financial statements of 'M/s Zhudao Infotech Private Limited'.

2. **Charges in brief:-**

2.1. **Charge in respect of M/s Draphant Infotech Private Ltd:-**

It is observed by the Complainant department on the basis of record/documents available on MCA portal that Mr. Sandeep Kumar having DIN:00009270 was appointed as director of the company and company has filed Form DIR-12 which shows that above director has no interest in any other company. However, he was director in other companies. The Form is certified by the Respondent without verifying the facts.

2.2. **Charge in respect of M/s Zhudao Infotech Private Limited**

On inspection by Complainant Department, it was observed that registered address (at Unit No. 16-006, 16-007, 16<sup>th</sup> Floor, Palms Spring Plaza, Golf Course Road, Gurgaon, Haryana) of the company is not operational from the registered address and exists only on paper and company used false documents to deceive the regulatory authorities and stakeholders. All the documents (Annual Return, Financial Statements, other board resolution etc.) filed by the company mentioned the name of registered office at given address and same were approved in the board Meeting held at the registered office however upon conducting the

spot inspection of the office it was found that the company is not existing at present address. Thus, on the basis of above facts it has been alleged that the subject company is prima facie a shell company incorporated for the purpose of either siphoning of funds or for conducting any other unsolicited activities.

3. **The relevant issues discussed in the Prima Facie Opinion dated 28<sup>th</sup> September 2022 formulated by the Director (Discipline) in the matter in brief, are given below:**

- 3.1. It was observed that the same Complainant department filed another three complaints in Form-I dated 14<sup>th</sup> March, 2022 vide file no. PR-G/271/2022 on 15<sup>th</sup> March, 2022 and dated 15<sup>th</sup> March, 2022 vide file no. PR-G/272/2022 received on 15<sup>th</sup> March, 2022 and dated 14<sup>th</sup> March, 2022 vide file no. PR-G/273/2022 received on 15<sup>th</sup> March, 2022 against the same Respondent. The subsequent Complaints were then examined under Rule 5(4)(a) of Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules 2007 and it was found that the subject matters of three subsequently filed complaints were substantially the same as that of the first Complaint previously filed by the Complainant on 14<sup>th</sup> March, 2022 vide file no. PRG/270/2022/DD-167/2022 which was still under examination of this Directorate. Hence, it was decided to club all the subsequent three complaints with such previous complaint as mentioned above and an intimation in this regard was sent to the Complainant department and the Respondent vide letter dated 19<sup>th</sup> April 2022.
- 3.2. As regards the **first charge** related to 'M/s Draphant Infotech Private Limited', it was observed from clause (xx) of DIR-12 that Mr. Sandeep Kumar has declared no interest in other entities and the Respondent has stated that it was completely inadvertent and unintentional as Mr. Sandeep Kumar's interest details are already available in public domain and the latest interest sheet is stated in MBP-1 dated 11<sup>th</sup> April, 2022. It was viewed that the Respondent being the practicing Chartered Accountant is expected to exercise complete due diligence and to verify all facts before signing or certifying any form so that the compliance to the provisions of law may be ensured. Thus, such a defense taken by the Respondent cannot be accepted and keeping in view the apparent lack of due diligence on the part of the Respondent in conduct of his duties, he was Prima Facie held **Guilty** for Professional Misconduct within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.
- 3.3. As regards the **second charge** related to 'M/s Zhudao Infotech Private Limited', it was observed that the Respondent has certified Form INC-7 i.e., form for incorporation of the Company as a professional and the Respondent has stated that the Company was

incorporated with registered office address (at 5th Floor, AIPL Masterpiece, DLF Phase-5, Golf Course Road, Gurgaon, Haryana-122002) on 8th November 2016. The Respondent further stated that he has personally visited the registered office of the subject Company. Further, the Company was shifted to Unit no. 16-006, 007, 16th Floor, Palms Spring Plaza, Golf Course Road, Gurgaon, Haryana-122002 and lease deed dated 3rd January, 2017 as well as No objection certificate from Nahar Capital & Financial Services Ltd. (i.e. Lessor) have been submitted by the Respondent.

3.4. Further, it was observed that the Company has shifted its registered office to Unit no. 16-006, 007, 16th Floor, Palms Spring Plaza, Golf Course Road, Gurgaon, Haryana-122002 from 3rd January 2017 as per the No Objection Certificate and lease deed executed by the Company (Lessee) and M/s Nahar Capital & Financial Services Ltd. (Lessor). However, it was noted from the financial statements of the subject company for the financial year ended 31st March 2017 and 31st March 2018 which were audited by the Respondent and signed by him on 03rd August 2017 and 03rd September 2018 respectively that old registered office address (5th Floor, AIPL Masterpiece, DLF Phase-5, Golf Course Road, Gurgaon, Haryana 122002) was mentioned. Therefore, it was incomprehensive as to how, the Respondent did not even notice that the old registered office address was written in the financial statements while signing the same. This reflects upon the casual approach on the part of the respondent (i.e. auditor), which is not expected from a Chartered Accountant in practice. Therefore, it was viewed that the Respondent should have been more careful in the circumstances and should have exercised required due diligence before signing the financial statements. Accordingly, it was viewed 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.

3.4. Accordingly, the Director (Discipline) in his Prima Facie Opinion dated 28th September, 2022 opined that the Respondent was *Prima Facie Guilty* of Professional Misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949. The said items of the Schedule to the Act, states as under:

**Item (7) of Part I of the Second Schedule:**

"A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct if he:

X                      X                      X                      X                      X

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

3.5. The Prima Facie Opinion formed by the Director (Discipline) was considered by the Disciplinary Committee in its meeting held on 09<sup>th</sup> 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 the Respondent is GUILTY of Professional Misconduct falling within the meaning of item (7) of Part – I of the Second Schedule to the Chartered Accountants Act, 1949 and accordingly, decided to proceed further under Chapter V of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

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

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

| S.No. | Particulars   | Dated                           |
|-------|---|---------------------------------|
| 1.    | Date of Complaint in Form 'I' filed by the Complainant      | 14 <sup>th</sup> March 2022     |
| 2.    | Date of Written Statement filed by the Respondent           | 28 <sup>th</sup> May 2022       |
| 3.    | Date of Rejoinder filed by the Complainant                  | Not filed                       |
| 4.    | Date of Prima facie Opinion formed by Director (Discipline) | 28 <sup>th</sup> September 2022 |
| 5.    | Written Submissions filed by the Respondent after PFO       | Not filed                       |
| 6.    | Written Submissions filed by the Complainant after PFO      | Not filed                       |

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

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

| Particulars             | Date of meeting(s)           | Status                                      |
|-------------------------|------------------------------|---|
| 1 <sup>st</sup> hearing | 10 <sup>th</sup> August 2023 | Fixed and adjourned in absence of parties.  |
| 2 <sup>nd</sup> hearing | 23 <sup>rd</sup> April 2024  | Part heard and adjourned.                   |
| 3 <sup>rd</sup> hearing | 28 <sup>th</sup> May 2024    | Deferred due to paucity of time.            |
| 4 <sup>th</sup> hearing | 03 <sup>rd</sup> June 2024   | Adjourned in the absence of the Respondent. |
| 5 <sup>th</sup> hearing | 20 <sup>th</sup> June 2024   | Deferred due to paucity of time.            |
| 6 <sup>th</sup> hearing | 21 <sup>st</sup> August 2024 | Hearing concluded and decision taken.       |

5.2. On the day of first hearing on 10<sup>th</sup> August, 2023, the Committee noted that both the parties were not present when the case was called up and the Committee noted that notice(s) of 3

listing of the case have been served upon them. Being first hearing of the case, the Committee extended one more opportunity to both the parties to present/defend the case.

- 5.3. On the day of hearing on 23<sup>rd</sup> April, 2024, the Committee noted that the Respondent was present through Video conferencing mode. Thereafter, he made 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. 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 against him and then the charges as contained in prima facie opinion 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 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
- 5.4. On the day of hearing on 28<sup>th</sup> May, 2024, consideration of the subject case was deferred by the Committee due to paucity of time.
- 5.5. On the day of hearing on 03<sup>rd</sup> June, 2024, the Committee noted that the authorized representative of the Complainant was present through video conferencing mode. The Respondent was not present and the notice of listing of subject case was duly served upon the Respondent. Thereafter, the Committee, in the absence of the Respondent, adjourned the subject case to a future date and directed the office to inform the Respondent to appear before it at next meeting and in case of his failure to appear, the matter would be decided ex-parte.
- 5.6. On the day of hearing on 20<sup>th</sup> June, 2024, consideration of the subject case was deferred by the Committee due to paucity of time.
- 5.7. On the day of the hearing on 21<sup>th</sup> August 2024, the Committee noted that the authorized representative of the Complainant and the Respondent were present through VC and appeared before it. Thereafter, the Committee asked the Respondent to make submissions. The Committee noted the submissions of the Respondent which, inter alia, are given as Under:-
- (i) Director's interest details are already available in public domain on MCA website.

- (ii) M/s. Zhudao Infotech Private Limited is fully operational since its incorporation in 2016 and does not merely exist on papers as alleged by the Complainant.
- (iii) The Company was incorporated with registered office address (at 5<sup>th</sup> Floor, AIPL Masterpiece, DLF Phase-5, Golf Course Road, Gurgaon, Haryana 122002). The same address is mentioned in Certificate of Incorporation. Later, shifted to Unit no. 16-006, 007, 16<sup>th</sup> Floor, Palms Spring Plaza, Golf Course Road, Gurgaon, Haryana-122002 and lease deed dated 3<sup>rd</sup> January 2017 as well as No objection certificate from Nahar Capital & Financial Services Ltd. (i.e. Lessor) have been submitted.
- (iv) On 03.03.2022, the Company has shifted its registered office (at Unit no. 3, 4 and 5, 12<sup>th</sup> Floor, Tower B, Emaar Digital Greens, Sector 61, Golf Course Extension Road, Gurgaon-122001) and lease deed dated 03<sup>rd</sup> March 2022 has been submitted by the Respondent.
- (v) The Respondent was Statutory auditor of the Company for Financial Years 2016-17 and 2017-18

5.8. Thereafter, 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.

5.9. After detailed deliberations, and on consideration of the facts of the case, various documents on record as well as oral submissions made by the parties before it, the Committee took decision on the conduct of the Respondent.

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

6.1. In the instant case, the Respondent had certified Form DIR-12 and Form INC-7 in respect of the following two Companies: -

| Name of the Company        | Name of Form certified by Respondent | Date of certification/ Date of filing of Form |
|----------------------------|--------------------------------------|---|
| Draphant Infotech Pvt. Ltd | DIR-12                               | 31.12.2020                                    |
| Zhudao Infotech Pvt. Ltd   | INC-7                                | 08.11.2016                                    |

6.2. The allegation against the Respondent in respect of M/s. Draphant Infotech Pvt. Ltd. is that the company had filed Form DIR-12 (certified by the Respondent) showing that the Director has no interest in any other company; whereas he was Director in other Companies. The next allegation in respect of M/s Zhudao Infotech Private Limited is that the Respondent has

certified Form INC-7 (i.e. Form for incorporation of company) but the company is not operational from the registered address and existed only on paper.

- 6.3. As regards the allegation related to wrong declaration given in Form DIR-12, the Committee noted that in Point 1(xxi) of the Form, i.e. Interest in other entities – Number of such entities, it was mentioned that the Director so appointed has no interest in other entities. The details of directorship in other entities as declared by the company in Form DIR-12 are given hereunder:-

**xx Interest in other entities**

xxi Number of such entities

0

- 6.4. The Committee noted that the Respondent while certifying the Form DIR-12 of 'M/s. Draphant Infotech Pvt. Ltd.' had given the declaration which stated as under: -

***Certificate by practicing professional***

*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:*

- *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 ;*
- *All the required attachments have been completely and legibly attached to this form;*
- *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.*

- 6.5. The Committee noted that the contents in Form DIR 2 is to be filled by the Director of the Company. The Committee observed that there is no requirement on the part of the Respondent to verify and certify that the contents as given by Director in Form DIR 2 is correct. It is noteworthy that the proposed Director generally gives his consent to act as Director in the company in Form DIR 2 in accordance with the provisions of Section 152(5)



of the Companies Act 2016 read with Rule 8 of the Companies (Appointment and Qualification of Directors) Rules 2014.

- 6.6. The Committee was of the view that the responsibility on declaration of interest in other entities rests with Directors concerned, and the role of Respondent cannot be stretched to verifying each and every detail as contained in attachments/declarations of Director. The Committee observed that generally contents in Form DIR – 2 is signed by Director concerned and the certifying professional has to only verify that all the relevant documents including attachments are annexed to Form DIR-12. The Committee was of the view that the Respondent was not supposed to certify the declaration made by the Director of the Companies. Further, the Complainant failed to bring on record copy of Form DIR-2. The Committee noted the argument of the Respondent that the details of directorship are available in public domain on MCA Portal; and thus, there appeared no malafide intention on the part of the Respondent. The Committee was therefore inclined to give benefit of doubt to the Respondent looking into his limited role. Accordingly, the Committee decided to absolve the Respondent of this charge.
- 6.7. As regards the **next allegation** related to non-operation of M/s. Zhudao Infotech Pvt. Ltd. from the registered address, the Committee noted the submissions of the Respondent that he had personally visited the registered office of the company and lease deed dated 03.01.2017 as well as NOC from lessor have been submitted by him. However, it was noted that the Respondent did not notice that the old registered address of the company was written in the financial statements of the company for FY 2016-17 and 2017-2018 which were audited and signed by him and thereby he has not exercised due diligence in the matter.
- 6.8. According to the Respondent, the registered address of the company, viz. 5<sup>th</sup> Floor, AIPL Tower, Masterpiece, Golf Course Road, DLF Phase V, Gurgaon, Haryana-122002 was mentioned in the financial statements of the company which were audited and signed by the Respondent for financial years 2016-17 and 2017-18. In this regard, the Committee noted that the Company was incorporated on 08.11.2016 with its registered office address at 5<sup>th</sup> Floor, AIPL Tower, Masterpiece, Golf Course Road, DLF Phase V, Gurgaon, Haryana-122002 and thereafter, the Company shifted its registered office on 03<sup>rd</sup> January 2017 to a new address situated at Unit no 16-006,007, 16<sup>th</sup> Floor, Palms Spring Plaza, Golf course Road, Gurgaon, Harayana-122002. Further, the new office address, viz. Unit no 16-006,007, 16<sup>th</sup> Floor, Palms Spring Plaza, Golf course Road, Gurgaon, Harayana-122002, of the

company was within the close vicinity of the old registered office address and both the premises were owned by the company.

6.9. The Committee noted that the new registered address of the company was within close vicinity of the old registered address of the Company. Moreover, the Committee noted that the Company is active as on date. On overall consideration, the Committee was of the view that mentioning of old registered office address in the financial statements is a technical lapse. The Committee was also of the view that mentioning of old registered office address in the financial statements does not impact the true and fair view of the Financial Statements of the Company. Therefore, the Committee decided to extend benefit of doubt to the Respondent on this charge. Accordingly, the Committee decided to absolve the Respondent of this charge also..

6.10. 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 certification of Form DIR- 12 of 'M/s Draphant Infotech Private Limited', and certification of Form INC-7 and audit of the Financial Statements of 'M/s Zhudao Infotech Private Limited' (wherein old registered office address was mentioned in financial statements of the Company) which has been examined by the Committee.

6.11. Accordingly, based on the documents/ material and information available on record and after considering the oral and written submissions made by the parties, the Committee held 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.

7. **Conclusion:**

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<br>(as per PFO)     | Findings                  | Decision of the Committee  |
|-----------------------------|---------------------------|--|
| Para 2.1 to 2.2<br>as above | Para 6.1 to 6.11 as above | <b>Not Guilty</b> as per Item (7) of Part I of the<br>Second Schedule. |

8. In view of the above observations, considering the oral and written submissions of the Respondent and material on record, the Committee held the Respondent **NOT GUILTY** of Professional Misconduct falling within the meaning of Item (7) of Part-I of Second Schedule to the Chartered Accountants Act, 1949.

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/-  
(SHRI JIWESH NANDAN, I.A.S. (RETD.)  
GOVERNMENT NOMINEE

Sd/-  
(MS. DAKSHITA DAS, I.R.A.S. (RETD.)  
GOVERNMENT NOMINEE

Sd/-  
(CA. MANGESH P KINARE)  
MEMBER

Sd/-  
(CA. ABHAY CHHAJED)  
MEMBER

DATE: 19.12.2024  
PLACE: New Delhi

सही प्रतिलिपि होने के लिए प्रमाणित  
Certified to be true copy

गीता अनिरुध कुमार / GEETHA ANIRUDHA KUMAR  
कार्यकारी अधिकारी / Executive Officer  
अनुशासन-नात्मक निदेशालय / Disciplinary Directorate  
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