



भारतीय सनदी लेखाकार संस्थान

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)

[DISCIPLINARY COMMITTEE [BENCH-IV (2024-2025)]
[Constituted under Section 21B of the Chartered Accountants Act, 1949]

ORDER UNDER SECTION 21B(3) OF THE CHARTERED ACCOUNTANTS ACT, 1949 READ WITH
RULE 19(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATIONS OF
PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007.

File No.:- [PR/G/104/22/DD/131/2022/DC/1650/2022]

In the matter of:

Dr. Avais Patwegar,
Dy. ROC, Karnataka
Ministry of Corporate Affairs
Kendriya Sadan,
2nd Floor, E Wing,
Koramangala
Bengaluru – 560 034

.....Complainant

Versus

CA. Hemant Kumar Gupta (M. No.510246)
A-96, Ground Floor,
Shanker Garden,
New Delhi – 110 018

.....Respondent

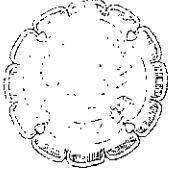
MEMBERS PRESENT:

1. CA. Ranjeet Kumar Agarwal, Presiding Officer (In person)
2. Shri Jiwesh Nandan, I.A.S (Retd.), Government Nominee (In person)
3. Ms. Dakshita Das, I.R.A.S. (Retd.), Government Nominee (Through VC)
4. CA. Mangesh P Kinare, Member (In person)
5. CA. Abhay Chhajed, Member (In person)

DATE OF HEARING : 06th January 2025

DATE OF ORDER : 20th January 2025

1. That vide Findings dated 05/11/2024 under Rule 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Disciplinary Committee was inter-alia of the opinion that CA. Hemant Kumar Gupta (M. No. 510246) (hereinafter referred to as the Respondent") is GUILTY of Professional



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

2. That pursuant to the said Findings, an action under Section-21B(3) of the Chartered Accountants (Amendment) Act, 2006 was contemplated against the Respondent and a communication was addressed to him thereby granting an opportunity of being heard in person/ through video conferencing and to make representation before the Committee on 06th January 2025.

3. The Committee noted that on the date of hearing on 06th January 2025, the Respondent was physically present and appeared before it. During the hearing, the Respondent submitted that he had already submitted his written representations dated 25/11/2024 and 03/01/2025 on the Findings of the Committee. The Respondent also submitted that e-MOA and e-AOA of the Company were witnessed by him and phrase 'sign before me' as used on MOA and AOA does not mean physical presence of the subscribers and the professional who witnessed the signatures. In the case of E-MOA and E- AOA, there is no difference between physical presence and virtual presence as both are used simultaneously. The Committee also noted the written representations of the Respondent dated 25/11/2024 and 03/01/2025 on the Findings of the Committee, which, inter alia, are given as under:-

- (a) The composition of the bench on date of final hearing dated 21/08/2024 was not complete and proceedings were conducted before incomplete quorum in the absence of President or Vice – President of the ICAI.
- (b) He had met the Directors personally and verified documents and identified them.
- (c) DSC of Directors were downloaded on 21/04/2021.
- (d) After year 2017, e-MOA and e-AOA got digitalized and he verified documents after seeing the originals.
- (e) Rule 13(1) of the Companies (Incorporation) Rule 2014 casts no difference between a physical presence or a digital or virtual presence and does not even prescribe that the presence has to be necessarily a physical presence.

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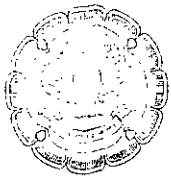
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(f) Presence may be physical or virtual; and Physical presence is nowhere mandated or compulsory.

4. The Committee considered the reasoning as contained in Findings holding the Respondent 'Guilty' of Professional Misconduct vis-à-vis written and verbal representation of the Respondent. The Committee noted that the issues/ submissions made by the Respondent as aforesaid have been dealt with by it at the time of hearing under Rule 18.

5. Thus, keeping in view the facts and circumstances of the case, material on record including written and verbal representation of the Respondent on the Findings, the Committee noted that the Respondent had raised objection that at the time of hearing, Quorum was incomplete. The Committee noted that as per Rule 16(4) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 "in the event Presiding Officer not being able to attend a meeting of the Committee, the seniormost member amongst the members nominated by the Central Government under subsection (1) of Section 21B of the Act shall act as the Presiding Officer". In view of this provision, the Committee noted that at the time of the final hearing of the case on 21.08.2024, the bench was presided over by the senior most Government Nominee member and thus was of the view that the said objection raised by the Respondent is not tenable.

6. Further, the Committee noted that the Respondent has contended that he had received the relevant documents for incorporation of Company through e-mail and that the digital signatures have been fixed on Memorandum of Association and Articles of Association by the Respondent as well as Directors of the Company. However, no proof was produced for receipt of other documents for identity verification. The Committee opined that having accepted the contention of the Respondent that he visited the registered office on 20/04/2021; it fails to understand that why the documents could not be verified when he was physically present. The Committee observed that e-MOA and e-AOA were witnessed by the Respondent. According to Rule 13(1) of the Companies (incorporation) Rules, 2014 - *the witness shall state that "I witness to subscriber/subscriber(s), who has/have subscribed and signed in my presence (date and place*



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to be given); further I have verified his or their Identity Details (ID) for their identification and satisfied myself of his/her/their identification particulars as filled in" Hence as per the above Rule, the witness has to confirm that the subscribers' signatures have been affixed in the presence of the witness; whereas there is no proof brought on record to confirm this fact and to show that the Respondent had verified incorporation documents (including documents for identity verification) from original records. Thus, the Committee was of the view that the Respondent failed to exercise due diligence.

7. Hence, the Professional Misconduct on the part of the Respondent is clearly established as spelt out in the Committee's Findings dated 05/11/2024 which is to be read in consonance with the instant Order being passed in the case.

8. Accordingly, the Committee was of the view that the ends of justice would be met if punishment is given to him in commensurate with his Professional Misconduct.

9. Thus, the Committee ordered that the Respondent i.e. CA. Hemant Kumar Gupta (M. No. 510246), New Delhi be REPRIMANDED and also imposed a fine of Rs. 25,000/- (Twenty-Five thousand rupees only) upon him, which shall be paid within a period of 60 (sixty) days from the date of receipt of the Order.

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

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

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – IV (2024-2025)]

[Constituted under Section 21B of the Chartered Accountants Act,1949]

Findings under Rule 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

File No.:- [PR/G/104/22-DD/131/2022/DC/1650/2022]

In the matter of:

**Dr. Avais Patwegar,
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.....Complainant

Versus

**CA. Hemant Kumar Gupta (M. No.510246)
A-96, Ground Floor,
Shanker Garden,
New Delhi – 110 018**

.....Respondent

MEMBERS PRESENT:

**Shri Jiwesh Nandan, I.A.S (Retd), Government Nominee (In person)
Ms. Dakshita Das, IRAS (Retd.), Government Nominee (through VC)
CA. Mangesh P. Kinare, Member (In person)
CA. Abhay Chhajed, Member (through VC)**

DATE OF FINAL HEARING : 21st August 2024

PARTIES PRESENT:

Complainant : Mr. Varun B. S, Dy. ROC Bengaluru (Authorized representative of the Complainant) (Through VC)

Respondent : CA. Hemant Kumar Gupta (in person)

Counsel for the Respondent: Advocate N K Bhatnagar (in person)

1. Background of the Case:

- 1.1. The Complainant stated that the Central Government, Ministry of Corporate Affairs, New Delhi directed the Complainant Department to carry out inquiry under Section 206(4) of the Companies Act, 2013 which were incorporated in India with dummy directors / subscribers for suspicious transactions on behalf of foreign nationals / entities.

1.2 These Companies were registered during Covid – 19 pandemic both at first and second wave when the people of Country was facing all sort of problems. The Complainant had received information that all these Companies were shell Companies and have registered in the address of firms which provide office space on rental basis/co-working spaces. The incorporation of one such Company Technoblack Technologies Private Limited has been facilitated and certified by the professional.

1.3. In the instant matter, the Respondent has certified incorporation documents of M/s. Technoblack Technologies Private Limited' (hereinafter referred to as **the Company**).

2. **Charges in brief:**

2.1. The registered office of the Company (M/s Technoblack Technologies Private Limited) was at '224, Sri Nanjundeswara Edifice, Bhanerghatta Main Road, Arakere, Bengaluru – 560076'. However, on physical verification conducted by the Complainant's Office, the said Company was not found at its registered office address.

2.2. The registered office of the Company was the address of the relative of the subscriber, whose signature were pasted on documents including DIR-2 and the Company was incorporated using forged documents.

2.3. The Company was having huge credit and debit transactions in its bank accounts and many debits to Chinese nationals/ accounts and the Company was incorporated using forged documents with the support of the professional.

3. **The relevant issues discussed in the Prima Facie Opinion dated 24th August 2022 Formulated by the Director (Discipline) In the matter in brief, are given below:**

3.1. As regards the **First charge**, it was observed that SPICe+ was neither provided by the Complainant nor by the Respondent. The Respondent stated that he could not physically visit the registered office of the Company due to lockdown strictness in the State. In this regard, it was viewed that though the Complainant did not bring on record copy of the incorporation form "SPICe+" yet the submissions made by the Respondent clearly indicates that he had signed the same.

3.2. As per declaration, the Respondent was required to personally visit the premises of the proposed registered office of the Company but as per the Respondent's own submission, he failed to visit the same. Further, there was nothing to show that during Covid-19 lockdown,

MCA had granted any exemption / relaxation in respect of physical verification of the proposed registered office of the Company. Hence, the Respondent had given incorrect declaration while certifying the Incorporation form. Thus, he 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.

- 3.3. As regards the **Second charge**, the Respondent stated that he had verified the documents through online mode and held virtual interaction with subscribers. Further, it was observed that there does not appear to be any restriction on giving any property on rent basis to any relative. Though the Respondent brought on record documents verified by him for certification, yet it was observed that none of the documents were signed by the subscribers / directors of the Company as certified/true copy or authenticated copy of the original documents. Furthermore, e-MOA and e-AOA were witnessed by the Respondent and by witnessing he confirmed that the same were signed before him. There was nothing on record to show that the Respondent had any interaction with the subscribers except through e-mail regarding signing of e-MOA and e-AOA and the subscribers had signed e-MOA and e-AOA before him. Thus, he 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.
- 3.4. With regard to the **Third charge** that the Companies are having huge credit and debit transactions in their bank accounts and many debits to foreign nationals/ accounts and further, the Companies were incorporated using forged documents with support of the professional, the Complainant did not bring on record any handwriting expert opinion / report or any documentary evidence to establish that the documents used in incorporation of the subject company were fake and fabricated. It was also noted that the Respondent cannot be held responsible for any wrongdoings, if any, done by the Company in future subsequent to filing of incorporation forms of the Companies especially when the Respondent was not associated with the subject Company post incorporation. Hence, the Respondent was Prima Facie **Not Guilty** of Professional and Other Misconduct falling within the meaning of Item (2) of Part IV of First Schedule and Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.
- 3.5. The Director (Discipline) in his Prima Facie Opinion dated 24th August 2022 opined that the Respondent was prima facie **Guilty** of Professional falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

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- 3.6. The Prima Facie Opinion Formed by the Director (Discipline) was considered by the Disciplinary Committee in its meeting held on 13th October 2022. The Committee, on consideration of the same, concurred with the reasons given in para 9.1 to 9.3 (including sub-para) of the Prima Facie Opinion. As regards the reasons given in para 9.4 of the prima facie opinion against the allegation that the Companies are having huge credit and debit transactions in their bank accounts and many debits to Chinese nationals/ accounts and further that the Companies were incorporated using forged documents with support of the professional, the Committee did not concur with the opinion/reasoning of Director (Discipline) holding the Respondent Not Guilty on this allegation.
- 3.7. The Committee was of the opinion that the intensity and the gravity of the allegation was serious in nature which cannot be taken note of lightly. The Committee further noted that the magnitude of allegation was very high as it touched upon the larger background of siphoning off funds by shell companies to foreign nationals/accounts and therefore, there is a need to get into the bottom of the matter for ascertaining the truthfulness of the allegation. In view of the same, the Committee was of the view that the allegations as contained in para 9.4 was also required to be examined at the time of hearing/ inquiry by it. Accordingly, the Committee did not concur with the prima facie opinion holding the Respondent Not Guilty in respect of charges contained in para 9.4 of the prima facie opinion and decided to proceed with the matter treating the Respondent as prima facie **Guilty** of professional misconduct falling within the meaning of Item (2) of Part IV of First Schedule and Item (7) of Part I of Second Schedule to the Chartered Accountants Act 1949.
- 3.8. In view of the above and in terms of reasoning as mentioned in para 9.1 and 9.3 of Prima Facie Opinion and as per reason given above in respect of charge contained in para 9.4, the Respondent was Prima Facie held **GUILTY** of Professional Misconduct falling within the meaning of Item (2) of Part IV of First Schedule and 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.
- 3.9. The said items of the Schedule to the Act, states as under:

Item (2) of Part IV of the First Schedule:

"A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he:

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(2) in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work."

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 X

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

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	17 th March 2022
2.	Date of Written Statement filed by the Respondent	21 st April 2022
3.	Date of Rejoinder filed by the Complainant	Not filed
4.	Date of Prima Facie Opinion Formed by Director (Discipline)	24 th August 2022
5.	Written Submissions filed by the Respondent after PFO	03 rd June 2023, and 23 rd April 2024
6.	Written Submissions filed by the Respondent during the hearing	18 th June, 2024
7.	Written Submissions filed by the Complainant after PFO	Not filed
8.	Written Submissions filed by the Complainant during the hearing	17 th May 2024

5. Written submissions filed by the Respondent: -

The Respondent vide letters dated 03rd June 2023 and 23rd April 2024, inter-alia, made the submissions which are given as under:-

(a) Written submissions of the Respondent vide letter dated 03rd June 2023:-

- (i) The Respondent had only acted in his professional capacity and was neither associated with any of the Board members nor with any business activity of the Company in respect of which the alleged complaint has been made.

- (ii) The Respondent made a journey to Bengaluru on 20th April 2021 but owing to the implementation of lockdown measures, he was unable to physically attend and fulfil the requirement of verifying the registered office location.
- (iii) There was neither mens rea and malafide intention of the Respondent at the time of incorporation nor he was engaged in any illegal business activity. Furthermore, the Respondent was not involved in any illicit or unlawful business activities.
- (iv) The Respondent had no knowledge of the facts or circumstances that would lead the Company, to engage in financial transactions with Chinese nationals.
- (v) Any errors or omissions in witnessing the electronic Memorandum of Association (e-MOA), Articles of Association (e-AOA), can be attributed to human error or clerical oversight.
- (vi) The inadvertent human error or error of Judgment/ interpretation of a professional, does not qualify as Professional misconduct when there are no malafide intentions.
- (b) Written submissions of the Respondent vide letter dated 23rd April 2024:-
- (i) A genuine mistake of fact has led to this inadvertent admission of error on his part.
- (ii) The Respondent had, while drafting and submitting his Written Statement, made the inadvertent admission of not visiting the proposed registered office of the Company. However, as per the facts, the address was very much visited by the Respondent before facilitating the said incorporation and digitally signing the document.
- (iii) Therefore, admission with respect to not visiting the Registered Office of the proposed Company under incorporation, had occurred due to oversight.
- (iv) The earlier inadvertent admission of the Respondent may accordingly be treated as null and void and fresh deposition of the Respondent may be taken on record stating that he has personally visited the registered office of the proposed Company.
- (v) The Respondent had visited the registered office address of the Company at the time of incorporation at 121,2 Devarachikkanahalli New Layout, 1st Main Road Near Govt. School Bangalore Karnataka 560076 India for which SPICE+ Form was earlier filed by the Respondent, and that he had not visited the registered office address given by the Complainant Department in Form 'I' i.e. 224, Sri Nanjundeshwara Edifice, Bhanerghatta Main Road, Arakere, Bengaluru - 560 076. The address given in Form 'I' was changed registered office address of the Company w.e.f. 09/06/2021 for which INC Form 22 has been



filed by the Company and the same was not certified by him. The address of the Company which was visited by the representative of Complainant is different from the address that was available after the date of change of registered office address.

- (vi) There is reference to INC-22 Form submitted by the Company referring to change of registered office address to the new address, which was neither processed nor signed by the Respondent and the said Company changed its registered office address w.e.f. 09.06.2021 and this change was not facilitated by the Respondent or his office team.
- (vii) The Respondent therefore has no role in the change of registered office and it is the new address at which the ROC Complaint has been originally filed and investigated.
- (viii) Rent agreement was for 11 months and law does not mandate to witness it compulsory.

6. Brief facts of the Proceedings:

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

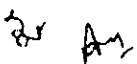
Particulars	Date of meeting(s)	Status
1 st Hearing	05 th June 2023	Part heard and adjourned.
2 nd Hearing	23 rd April 2024	Part heard and adjourned at the request of the Complainant.
3 rd Hearing	17 th May 2024	Part heard and adjourned.
4 th Hearing	18 th June 2024	Part heard and adjourned.
5 th Hearing	15 th July 2024	Adjourned at the request of the Respondent.
6 th Hearing	29 th July 2024	Adjourned at the request of both the parties.
7 th Hearing	21 st August 2024	Hearing Concluded and decision taken.

6.2. On the day of first hearing on 05th June 2023, the Committee noted that the Respondent was present in person and appeared before it. The Complainant vide e-mail dated 02/06/2023 has sought adjournment to another date due to transfer of Investigating Officer. 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 charges against the Respondent were read out. On the same, the Respondent replied that he is aware of the charges and pleaded 'Not Guilty' to the charges levelled against him. In view of adjournment request of the Complainant and Rule 18(9) of the Chartered Accountants (Procedure of

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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 hearing on 23rd April 2024, the Committee noted that the Respondent along with Counsel were present in person and appeared before it. The Committee noted that the Complainant Department vide email dated 23.04.2024 has stated that Mr. Varun BS, Deputy Registrar of Companies, Karnataka is engaged with some official assignment and therefore he had requested to give short adjournment in captioned case. The Committee noted that the Counsel for the Respondent had filed written submissions by way of an additional affidavit dated 23.04.2024 in the subject case. The Committee directed him to provide the copy of same to the Complainant also.
- 6.4. As regards the charge that the Companies are having huge credit and debit transactions in their bank accounts and many debits to foreign nationals/ accounts and further that the Companies were incorporated using forged documents with support of the professional, the Committee directed that the Complainant Department be asked to submit documentary evidence in support of the allegation levelled, so as to enable the Committee to conduct inquiry into the same. Thereafter, the Committee, acceding to the request of the Complainant, adjourned the case to a future date.
- 6.5. On the day of hearing on 17th May 2024, the Committee noted that the authorized representative of the Complainant and the Respondent along with Counsel were present and appeared before it. Thereafter, the Committee asked the Respondent to make submissions. The Committee noted that the Counsel for the Respondent reiterated the submissions as contained in the written submissions dated 23rd April 2024, given in para 5(b) above.
- 6.6. Thereafter, the authorized representative of the Complainant submitted that he had already submitted all the documents related to this case. Further, he submitted that in respect of allegation as contained in para 9.4 of the prima facie opinion (i.e., the Companies are having huge credit and debit transactions in their bank accounts and many debits to foreign nationals/ accounts and further that the Companies were incorporated using forged documents with support of the professional), he would not contest this allegation and he would argue on the remaining two allegations in respect of which the Respondent had been held guilty in Prima Facie Opinion of Director (Discipline). He further submitted that the Respondent did not physically visit the registered office of the Company as given in Form 'I'.
- 6.7. The Committee after considering the arguments of the Complainant's Representative and the Counsel for the Respondent, directed to file/submit following documents related to



subject matter:

(a) From the Complainant:

- (i) Copy of SPICe+ Form.
- (ii) Copy of INC – 22 Form.

(b) From the Respondent:

- (i) Copy of hotel bills and boarding passes, if any, in support of his visit to the registered office address of the Company for physical verification.

6.8. The Committee further directed the Complainant to provide the copy of these documents to the Respondent also.

6.9. As per directions of the Committee, the Complainant provided copy of e-Form SPICe+ vide e-mail dated 17/05/2024 and Form INC-22 vide e-mail dated 18/06/2024. The Respondent vide letter/affidavit dated 18/06/2024 had submitted the copy of boarding passes of the visit undertaken by him for physical verification of registered office address of the Company.

6.10. On the day of hearing on 18th June 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. 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 –

- (i) The Respondent had visited the registered office address of the Company at the time of incorporation at 121, 2 Devarachikkanahalli New Layout, 1st Main Road, Near Govt. School Bangalore, Karnataka 560076 India.
- (ii) The Respondent had not visited the registered office address inspected by the Complainant Department i.e. 224, Sri Nanjundeshwar Edifice, Bhannerghatta Main Road, Arakere, Bengaluru - 560 076 which was the changed registered office address.
- (iii) The address inspected by the Complainant was changed registered office address of the Company w.e.f. 09/06/2021.
- (iv) Respondent stayed in Bengaluru in his friend's residence.
- (v) Respondent submitted additional affidavit through which boarding passes of his air travel from Delhi to Bengaluru on 20/04/2021 were submitted.

6.11. The Committee asked the authorised representative of the Complainant to make submissions. He stated that their investigation in respect of subject Company is under process. Directors of the Company were dummy persons and even those persons were not

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aware that they were Directors in the Company. He further added that the Respondent in his statement on oath had admitted that he had not visited the registered office address of the Company.

- 6.12. The Committee noted that the name of certifying professional was not appearing in the Form INC – 22 regarding change of registered office address of the Company, which was provided by the Complainant Department vide e-mail dated 18th June 2024. Accordingly, the Committee after considering the arguments/submissions of the parties, directed the Complainant to provide copy of Form INC – 22 filed with Registrar of Companies containing name of professional who had certified it within 10 days.
- 6.13. On the day of hearing on 15th July 2024, the Committee noted that in the captioned case, the Respondent vide e-mail dated 10.07.2024 had sought adjournment, as his Counsel was not available on the date of hearing. Acceding to the above request of the Respondent, the Committee adjourned the captioned case to a future date.
- 6.14. On the day of hearing on 29th July 2024, the Committee noted that the Complainant Department vide mail dated 25.07.2024 had sought an adjournment on account that Mr. Varun BS (Dy. ROC) has some prior official commitments on the date of hearing. The Respondent vide mail dated 29.07.2024 also sought an adjournment. Acceding to the above request of the Complainant and the Respondent, the Committee adjourned the captioned case to a future date.
- 6.15. On the day of 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. Thereafter, the Committee asked the Counsel for the Respondent to make submissions. The Committee noted that the Counsel for the Respondent while reiterating his submissions made by him during hearing dated 18th June 2024 also submitted that the Respondent had verified the incorporation documents through online mode and held virtual interaction with subscribers of the Company.
- 6.16. Thereafter, the Committee asked the authorised representative of the Complainant to make submissions. The authorized representative of the Complainant Department submitted that as per MCA records, the certification of professional is not mandatory in case of e-Form INC – 22 and said e-form INC – 22 was also not certified by any professional in this case. He further submitted that the signature of Mr. Amrish M, Director of the Company is different as shown in No Objection Certificate produced by the Respondent and as per record available

with his office. He further submitted that he has no further submissions to make and that the matter be decided on merits of the case.

6.17. The Committee, after considering the submissions of the Respondent and Complainant and based on the documents and information available on record, decided to conclude the hearing in the captioned case and took the decision on the conduct of the Respondent.

7. Findings of the Committee:

7.1 The Committee noted that the charges against the Respondent are as under: -

- (i) During physical verification of the Company conducted by the Complainant's Office, the said Company was not found at its registered office address.
- (ii) The registered office of the Company was the address of the relative of the subscribers, whose signature were pasted on documents including DIR-2 and Companies were incorporated using forged documents.
- (iii) The Company having huge credit and debit transactions in its bank accounts and many debits to foreign nationals/ accounts and further that the Company was incorporated using forged documents with support of the professional.

The details of charges are given in paras 2.1 to 2.3 above.

The Committee noted the background of the case as well as oral and written submissions made by the Complainant and Respondent, documents / material on record and gives its findings as under: -

7.2 As regards the **first charge** related to verification of registered office address of the Company, the Committee noted the submissions of the Counsel for the Respondent that the Respondent had visited the registered office address of the Company at the time of incorporation at 121,2 Devarachikkanahalli New Layout, 1st Main Road Near Govt. School, Bangalore - 560076 for which SPICE+ Form was filed by the Respondent, and that he had not visited the registered office address given by the Complainant Department in Form 'I' i.e. 224, Sri Nanjundeshwara Edifice, Bhanerghatta Main Road, Arakere, Bengaluru – 560 076. The address given in Form 'I' was changed registered office address of the Company w.e.f. 09/06/2021 for which INC Form 22 has been filed by the Company and the same was not certified by him. The address of the Company which was visited by the representative of Complainant was different from one which was verified/certified by the Respondent.

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- 7.3 The Committee noted that the Respondent had submitted in his written statement dated 21.04.2022 at the prima facie opinion stage that he could not physically visit the registered office of the company due to lockdown strictness in the State; and the Respondent, during the stage of hearing before it, had filed additional affidavit dated 23.04.2024 and stated that he had come across a mistake of fact which led to his inadvertent admission of error on his part which he is rectifying by submitting that the address of registered office of the company at 121, 2 Devarachikkanahalli New Layout, 1st Main Road, Near Govt. School, Bangalore, was very much visited by the Respondent before facilitating the incorporation and digitally signing the documents.
- 7.4 As regards the query of Committee to ascertain the name of professional who has certified the Form INC-22 regarding change of registered office address of the company effective from 09.06.2021, the authorized representative of Complainant informed that the said Form has been filed in MCA portal with the signatures of the Director of the Company without certification by any professional. According to the Complainant, Form INC-22 available on the MCA portal does not carry the certification by professional; and the matter which has been referred to in the complaint relates to the declaration given by the Respondent in SPICE+ Form that he had personally visited and verified the registered office address as well as the relevant incorporation documents of the Company. However, the Respondent is stating facts contrary to such declaration given in the SPICE+ Form. According to the Respondent, he had personally visited the registered office address of the Company at the time of certification of incorporation documents which was different to the address mentioned by the Complainant in Form I.
- 7.5 Responding to the statement of authorized representative of the Complainant that the submission of Respondent pertaining to his personal visit to Bengaluru to verify the registered office address of the company was an after-thought, the Counsel for Respondent stated the complaint filed in Form 'I' does not disclose a substantive cause of action and therefore the complaint is defective and no punitive action can be taken on such defective complaint.
- 7.6 According to the authorized representative of Complainant, statement from the Respondent was taken by the Complainant Department about verification of registered office address of the Company in which the Respondent had stated that it was not possible to personally visit and verify the registered office address of the Company because of prevailing lockdown situation during Corona pandemic.

- 7.7 The authorized representative of the Complainant Department stated that as per the own statement of the Respondent, he had failed to personally visit the premises of registered office at the time of incorporation as per the declaration given by him in SPICE+ Form. In view of the said statement, the production of boarding pass by the Respondent about his personal visit to Bengaluru for physical verification is said to be an after-thought. Further, it is not known and there is also no evidence to show that the visit of Respondent, if assumed to have been made, to Bengaluru was for the purpose of physical verification of registered office of the company or for some other different purpose.
- 7.8 The Counsel for Respondent submitted that the statement of Respondent referred to by the Complainant Department is not on records; and that he raised objection to production of such documents as evidence by the Complainant Department at this stage of hearing.
- 7.9 The Committee noted the submissions of the Counsel for the Respondent and on perusal of documents on record observed that the Respondent had certified incorporation Form "SPICE+ INC-32" of the Company with the registered address of the Company situated at 121, 2 Devarachikkanahalli New Layout, 1st Main Road, Near Govt. School, Bangalore - 560076 India and thereafter, the Company had changed its registered office address w.e.f. 09/06/2021 to 224, Sri Nanjundeshwara Edifice, Bhannerghatta Main Road, Arakere, Bengaluru - 560 076. The Committee observed that the Respondent had produced the boarding pass of his air travel undertaken to Bengaluru on 20/04/2021 in support of his defence to substantiate the fact of his presence in Bengaluru for physical verification of registered office address of the Company for the purpose of certification of incorporation documents.
- 7.10 The Committee further observed that Form INC - 22 regarding change of registered office of the Company had been filed by the Director of the Company without the certification of any professional. In this regard, the Committee viewed that the Complainant could not produce any evidence to substantiate that the Respondent had any role in filing/certification of said Form INC - 22. The Committee noted that the allegation against the Respondent as contained in Form - I filed by Complainant Department was that the Respondent had not undertaken due diligence in physical verification of the Company at its registered office situated in 224, Sri Nanjundeshwara Edifice, Bhannerghatta Main Road, Arakere, Bengaluru - 560 076 for which no professional has certified Form INC - 22.
- 7.11 In view of the above and having regard to the facts that the Respondent has produced boarding passes for travel undertaken from Delhi to Bengaluru (via Mumbai) on 20/04/2021

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for the purpose of physical verification of registered office address of the Company; whereafter SPICe+ Form was filed on 28/04/2021, the Committee decided to give benefit of doubt to the Respondent on this charge and accordingly held him **Not Guilty** of Professional Misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

7.12 As regards the **second charge** related to witnessing of e-Memorandum of Association and E-Article of Association, the Committee noted that the Counsel for the Respondent submitted that the Respondent had travelled from Delhi to Bengaluru on 20/04/2021 by Air and had personally visited the registered office address of the Company and has also submitted boarding pass for his visit to Bengaluru. The Committee asked the Respondent as to why he had signed the Spice+ MOA and AOA of the Company through video conferencing with subscribers of the Company; as the requirement in the subscriber sheet states that the subscribers have to append their signatures in the presence of the Respondent. Further, when the Respondent had personally visited the registered office address in Bengaluru as claimed by him, he could have certified the documents in the physical presence of subscribers themselves. The Counsel for the Respondent responded by stating that the incorporation documents were filed by his office team and the same was done at a subsequent date. The Counsel for the Respondent further submitted that digital signatures were affixed in presence of the parties through video conferencing.

7.13 The Committee noted the submissions of the Counsel for the Respondent that the Respondent had made physical visit to verify the registered office of the Company at Bengaluru on 20/04/2021 and he had signed the Spice+ Memorandum of Association and Articles of Association of the Company through a video conferencing with subscribers of the Company and subscribers had affixed their digital signatures 06/05/2021. The Committee observed that the Respondent has contended that he had received the relevant documents for incorporation of Company through e-mail and that the digital signatures have been fixed on Memorandum of Association and Articles of Association by the Respondent as well as Directors of the Company. However, no proof was produced for receipt of other documents for identity verification. The Committee expressed that having accepted the contention of the Respondent that he visited the registered office on 20/04/2021; it fails to understand that why the documents could not be verified when he was physically present. The Committee observed that e-MOA and e-AOA were witnessed by the Respondent. According to Rule 13(1) of the Companies (incorporation) Rules, 2014 - *the witness shall state that "I witness to subscriber/subscriber(s), who has/have subscribed and signed in my presence (date and place to be given); further I have verified his or their Identity Details (ID) for their*

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identification and satisfied myself of his/her/their identification particulars as filled in" Hence as per the above Rule, the witness has to confirm that the subscribers' signatures have been affixed in the presence of the witness; whereas there is no proof brought on record to confirm this fact and to show that the Respondent had verified incorporation documents (including documents for identity verification) from original records.

7.14. In view of the above, the Committee opined that the Respondent failed to exercise due-diligence while certifying the incorporation related documents of the Company and giving declaration as required under Rule 13(1) of the Companies (Incorporation) Rules, 2014 without actually being present at the time of signing by the subscribers and without verification of identity details of the subscribers from the original documents. In view of this, the Committee held the Respondent **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 second charge.

7.15. As regards the **third charge** related to the Companies having huge credit and debit transactions in their bank accounts and many debits to foreign nationals/accounts, the Committee noted that the Complainant Department was asked to submit the documentary evidence in support of this charge (as no evidence was brought on record with Form - I) so as to enable it to conduct inquiry into the same. However, the Committee noted that no documentary evidence in support of this charge was brought on record and the authorized representative of the Complainant submitted before it that he would not contest this charge.

7.16. In view of absence of documentary evidence and having regard to the statement of the authorised representative of Complainant Department that he would not contest this particular charge, the Committee decided to drop this charge against the Respondent and held him "**Not Guilty**" of Professional and Other Misconduct falling within the meaning of Item (2) of Part IV of First Schedule and Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949 in respect of third charge.

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:

Dr. Avais

Charges (as per PFO)	Findings (Para ref.)	Decision of the Committee
Para 2.1 as given above	Para 7.1 to 7.11 as given above	NOT GUILTY as per Item (7) of Part I of Second Schedule
Para 2.2 as given above	Para 7.12 to 7.14 as given above	GUILTY as per Item (7) of Part I of Second Schedule
Para 2.3 as given above	Para 7.15 to 7.16 as given above	NOT GUILTY as per Item (2) Part IV of First Schedule and 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 **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 second charge only.

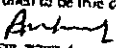
Sd/-
(SHRI JIWESH NANDAN, I.A.S. (RETD.))
GOVERNMENT NOMINEE

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

Sd/-
(CA. MANGESH P KINARE)
MEMBER

Sd/-
(CA. ABHAY CHHAJED)
MEMBER

DATE: 05/11/2024
PLACE: New Delhi

सारी प्रतिलिपि जो की किंग प्रमाणित
Certified to be true copy

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