



भारतीय सनदी लेखाकार संस्थान

(संसदीय अधिनियम द्वारा स्थापित)

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.

[PR/G/291/2022/DD/210/2022/DC/1712/2023]

In the matter of:

Mr. Nitin Phartyal

Deputy Registrar of Companies,
O/o Registrar of Companies,
NCT of Delhi and Haryana,
Ministry of Corporate Affairs
4th Floor, IFCI Tower,
61, Nehru Place,
New Delhi – 110 019

...Complainant

Versus

CA. Kapil Kumar Agarwal (M.No.445719)

U160, Third Floor,
Shakarpur, Near Patel Hospital
Delhi – 110 092

...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 (Through VC)
5. CA. Abhay Chhajed, Member (In person)

DATE OF HEARING : 20th January 2025

DATE OF ORDER : 04th February 2025

1. That vide Findings dated 16th October 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. Kapil Kumar Agarwal (M.No.445719)** (hereinafter referred to as the **Respondent**) is **GUILTY** of Professional Misconduct falling within the meaning of Item (7) of Part-I of Second Schedule to the Chartered Accountants Act, 1949.



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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 20th January 2025.

3. The Committee noted that on the date of the hearing on 20th January 2025, the Respondent was physically present for the hearing and appeared before it. Thereafter, the Committee asked the Respondent to make submissions on the matter. The Respondent reiterated his written representation dated 11th November 2024 filed by him on the Findings of the Disciplinary Committee, which, inter alia, are given as under:-

- (a) The Respondent had checked the documents properly before certifying e-form INC 20A of M/s. Qwikpayment Technologies Private Limited and M/s. Wenexa Technologies Private Limited.
- (b) The Respondent had attached the Audited balance sheet(s) for the financial year ended 31st March 2021 of both the Companies as evidence of payment of subscription amount.
- (c) There is no default in payment of subscription amount in both Companies.
- (d) The Respondent has not done any non-compliance while certifying e-Form(s) INC 20A.
- (e) The Respondent requested the Committee to take a lenient view in the matter.

4. The Committee considered the reasoning as contained in the 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 with Form(s) INC-20A of M/s Qwikpayment Technologies Private Limited and M/s Wenexa Technologies Private Limited filed on 23rd September 2021 and 12th October 2021, respectively, only declaration letter(s) of subscribers were attached stating that subscription money has been paid by them. The Committee also noted that the audited Balance Sheet(s) of



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both Companies were provided by the Respondent vide his written representation dated 11th November 2024 submitted on the findings of the Committee and were never produced by him at the stage of hearing under Rule 18 of aforesaid Rules. Moreover, it was evident that no documentary evidence proving that subscription money has been received by the Company before the certification of Form(s) INC-20A was attached with the impugned Forms, which were certified by the Respondent. Thereby, it is apparent that the Respondent has not exercised the required due diligence in certifying Form INC-20A in respect of both subject Companies. The Respondent in his submission has also requested the Committee to take a lenient view in the matter.

6. Hence, the Professional Misconduct on the part of the Respondent is clearly established as spelt out in the Committee's Findings dated 16th October 2024 which is to be read in consonance with the instant Order being passed in the case.

7. 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.

8. Thus, the Committee ordered that the Respondent i.e. CA. Kapil Kumar Agarwal (M.No.445719), Delhi be REPRIMANDED, under Section 21B(3)(a) of the Chartered Accountants Act,1949.

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

Certified to be true copy
अरुण कुमार / Arun Kumar
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अं.सं. 110032
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ICAI Bhawan, Vishwas Nagar, Shaheedra, Delhi-110032

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/291/2022/DD/210/2022/DC/1712/2023]

In the matter of:

Mr. Nitin Phartyal
Deputy Registrar of Companies,
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4th Floor, IFCI Tower,
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U160, Third Floor,
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Delhi – 110 092

...Respondent

MEMBERS PRESENT:

CA. Ranjeet Kumar Agarwal, President- ICAI, Presiding Officer (in person)
Shri Jiwesh Nandan, IAS (Retd.), Government Nominee (in person)
CA. Mangesh P Kinare, Council Member (through VC)

DATE OF FINAL HEARING : 18th June 2024

PARTIES PRESENT:

Complainant : Mr. Gaurav, Dy. ROC - AR of the Complainant (through VC)
Respondent : CA. Kapil Kumar Agarwal (in person)

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/ entities with the help and support of professional were involved in formation of Companies wherein dummy persons were

engaged as subscribers to MOA & Directors by furnishing forged documents with falsified addresses / signatures, Director Identification Number (DIN) 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 wilfully connived with directors / company / shareholders / individuals in certifying e-forms knowingly with false information / documents / false declaration / omitting material facts or information in said Company.
- 1.5. In the instant matter, the Respondent had certified Form INC-20A (Declaration for Commencement of Business) of the Companies namely M/s Qwikpayment Technologies Private Limited (hereinafter referred to as 'QTPL') and M/s Wenexa Technologies Private Limited (hereinafter referred to as 'WTPL').

2. **Charges in brief:**

- 2.1. In the Form INC-20A filed by both the Companies namely M/s Qwikpayment Technologies Private Limited (QTPL) and M/s. Wenexa Technologies Private Limited (WTPL) regarding the declaration for the commencement of business, it is mentioned that subscription money has been received in cash thereby hiding the identity of subscribers. In the said Form INC-20A, subscribers' proof of payment for the value of shares has to be attached, however, neither of the Companies have attached the proof of the payment i.e., the Bank Statement of the Company. Both the Companies have merely mentioned that both the subscribers have paid their subscription money via cash and the Companies have taken a note of the same. The Respondent had certified Form INC – 20A of the Companies, but proof of payment for subscription money was not attached with said Form.

3. **The relevant issues discussed in the Prima Facie Opinion dated 23rd December 2022 formulated by the Director (Discipline) in the matter, in brief, are given below:**
- 3.1. That the Company has filed Form 20A, which was certified by the Respondent as a professional. There is no prohibition / restriction under the Companies Act that may specifically restrain from receiving the subscription money in cash (i.e., not through account payee cheque or other banking channel). However, in case the subscription money was received in cash then how Respondent ascertained that the same has actually been received by the Company before certification of the impugned form INC 20A is not known at this stage as he could not produce anything which may prove his contention. Thus, in the instant matter, it was viewed that by paying the subscription money in cash amounting to Rs. 25,000/- each, by the subscribers to the Company, the fact could not be established that whether the amount was actually paid by the subscribers to the Company and that the said amount paid by subscribers was actually deposited in the Company's Bank Account.
- 3.2. That the Respondent has annexed / attached letter of subscription money payment with the said Form as the "subscriber proof of payment", and later on at Written Statement stage, the Respondent has put forth the cash ledger account of the Company, which could not be taken as a valid proof of payment. Further, from the perusal of the said letter, it was noted that the subscription money is stated to be received in cash which cannot be verified / confirmed as to whether the subscription money for value of shares was actually received or not by the Company.
- 3.3. Even if the said amount was received in cash, it was the duty of the Respondent being the certifying professional to attach the valid proof for the cash receipt or the Bank statement of the Company having all credit entries, for documenting the receipt of subscription money received from all subscribers to MOA. However, the Respondent has failed to attach the same while certifying the said Form INC-20A. Moreover, even when the Respondent was specifically asked to provide the "Documentary evidence to prove the subscription money received", the Respondent has failed to provide the same and has merely brought on record copy of cash ledger of the Company which in no way can be considered as a valid proof of receipt of the payment.
- 3.4. The Respondent has failed to bring on record the conclusive proof for the credit of the amount received from the subscribers to the Bank Account of the Company. Thus, in the absence of the evidence, it was noted that this clearly raises a serious doubt as to whether the said amount was actually received by the subject Company. Thereby, it is viewed that

the Respondent has not exercised required due diligence in certifying Form 20A in respect of both the subject companies.

- 3.5. Accordingly, the Director (Discipline) in his Prima Facie Opinion dated 23rd December 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 item of the Schedule to the Act, states as under:

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

"A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he –

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

- 3.6. The Prima Facie Opinion formed by the Director (Discipline) was considered by the Disciplinary Committee in its meeting held on 16th January 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 meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949 and accordingly, decided to proceed further under Chapter V of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

4. **Dates of Written submissions/ Pleadings by the Parties:**

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

S. No.	Particulars	Dated
1.	Date of Complaint	15 th March 2022
2.	Date of Written Statement filed by the Respondent	dated Nil (received on 15 th July 2022)
3.	Date of Rejoinder filed by the Complainant	---
4.	Date of Prima Facie Opinion formed by Director (Discipline)	23 rd December 2022
5.	Written Submissions filed by the Respondent after PFO	09 th January 2023 & 03 rd April 2023
6.	Written Submissions filed by the Complainant after PFO	---

5. **Written Submissions filed by the Respondent:**

5.1 The Respondent vide letter dated 09th January 2023 had, inter alia, made the submissions which are given as under –

- a. The Respondent had properly checked the evidence before preparing and certifying the e- forms INC-20A of the subject Companies.
- b. The Respondent was not appointed through an engagement letter and certified the said e-forms on casual basis.
- c. The Respondent checked the cash book of the Company for verification of subscription amount and the amount was deposited on time.

5.2 Apart from re-iterating his earlier submissions, the Respondent vide letter dated 03rd April 2023 had, inter alia, made the submissions which are given as under –

- a. That it was the initial period of his career when he certified the Form INC-20A and he was not fully aware of the relevant Sections of the Companies Act, 2013, and due to lack of knowledge of the relevant provisions of the Act, he had certified the Form INC-20A.

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

6.1 Details of the hearing(s) fixed and held/ adjourned in the said matter are given as under –

Particulars	Date of Meeting(s)	Status
1 st hearing	05 th June 2023	Part heard and adjourned.
2 nd hearing	17 th May 2024	Adjourned at the request of the Respondent.
3 rd hearing	18 th June 2024	Hearing concluded and Decision taken.

6.2 On the day of the first hearing held on 05th June 2023, the Committee noted that the Complainant was present through Video conferencing mode and the Respondent was present in person and appeared before it. Thereafter, the Complainant gave 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 the 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 was 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 future date.

- 6.3 On the day of the hearing on 17th May 2024, the Committee noted that the Respondent had sought an adjournment vide email dated 15.05.2024 on account that he was out of town due to professional assignment. The Committee, acceding to the request of the Respondent, adjourned the case to a future date.
- 6.4 On the day of the final hearing on 18th June 2024, the Committee noted that the authorized representative of the Complainant through VC and the Respondent was present in person and appeared before it. The Committee noted that the Respondent was put on oath on 05.06.2023. The Committee also noted that the allegation against the Respondent is that he had certified Form INC – 20A of the Company, but proof of payment for subscription money was not attached with said Form.
- 6.5 Thereafter, the Committee asked the Respondent to make submissions. The Committee noted the submissions of the Respondent which, inter alia, are given as under –
- Subscription money was received in cash and Company assured him that same would be deposited in the Bank.
 - Directors of the Company had given a letter(s) stating that they had paid subscription value of shares to the Company.
 - The Financial Statements of the Company for relevant financial year are not available to him, and he could not even contact the Director(s) of the Company despite several attempts.
- 6.6 The authorized representative of the Complainant submitted that he had already provided all the documents related to this case and has nothing more to submit in this case and Committee may decide the matter accordingly.
- 6.7 Based on the documents/material and information available on record and the oral and written submissions made by the Respondent, and on consideration of the facts of the case, the Committee concluded the hearing in the subject case and decided on the conduct of the Respondent.

7. Findings of the Committee:

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: -

- 7.1 The charge against the Respondent in which he had been held Prima Facie Guilty is that the Companies in Form INC-20A regarding the declaration for the commencement of business, have not attached the proof of the payment for the subscription money i.e., the Bank Statement of the Company. Both the Companies have merely mentioned that both the subscribers have paid their subscription money via cash and the Companies have taken a note of the same. The details of allegation is given in para 2.1 above.
- 7.2 The Committee noted that the Respondent was engaged by the Companies for certifying e-Form INC-20A. On perusal of the said Form INC-20A, the Committee observed that the Respondent has annexed / attached letter(s) addressed by the Director(s) of the Companies to Registrar of Companies, wherein the Director(s) of the Companies had admitted to have paid subscription value of shares in cash and said letter(s) had been attached as the "subscriber proof of payment", and later on, the Respondent has put forth the cash ledger account of the Companies. Further, from the perusal of the said letter(s), it is noted that the subscription money is stated to be received in cash which cannot be verified / confirmed as to whether the subscription money for value of shares was actually received or not by the Companies.
- 7.3 In view of papers on record, including e-Form INC-20A, the Committee noted that Director of the Company Ms. Deepika, who was the subscriber to the share money had given the declaration in said Form stating that: *"whatever is stated in this form and the attachments thereto is true, correct and complete and no information material to the subject matter of this form as been suppressed or concealed and is as per the original records maintained by the Company. **Every subscriber to the MOA has paid the value of shares agreed to be taken by him**".*
- 7.4 The Committee noted that the Government vide Notification dated 02.11.2018, has introduced the Companies (Amendment) Ordinance, 2018 ("the Ordinance") and later on Section 10A was introduced. As per the said Ordinance and the relevant provisions of the Companies Act, 2013, it is noted that a Company incorporated on or after 02nd November 2018, shall within 180 days of incorporation is required to file the declaration by the Director with the Registrar of Companies stating that every Subscriber to the Memorandum has paid the value of shares taken by them vide Form-20A. In view of the said Ordinance and Section 10A of the Companies Act, 2013, it is noted that the Company has filed Form 20A, which was certified by the Respondent as a professional. The Committee observed that as per

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provisions of Companies Act, 2013 and Rules framed thereunder, there is no prohibition / restriction that may specifically restrain receiving the subscription money in cash (i.e., not through account payee cheque or other banking channel). However, in case the subscription money was received in cash, then the certifying professional/ Respondent must have assured that the same has actually been received by the Company before certification of Form INC 20A.

- 7.5 On the perusal of Form INC - 20A, it is an admitted fact that the Respondent has annexed / attached letter(s) of confirmation of subscription money payment with the said Form as the "subscriber proof of payment". Further, from the perusal of the said letter(s), it is noted that the subscription money is stated to be received in cash which cannot be verified / confirmed as to whether the subscription money for value of shares was actually received or not by the Company. It was the duty of the Respondent being the certifying professional to attach the valid proof for the cash receipt or the Bank statement of the Companies having all credit (deposit) entries, for documenting the receipt of subscription money received from all subscribers to Memorandum of Association.
- 7.6 The Committee noted that the Respondent vide written submissions dated 03/04/2023 has admitted that it was the initial period of his career when he certified the Form INC 20A and he was not fully aware of relevant provisions of the Companies Act and due to lack of knowledge of relevant Sections of the Act, he had certified the Form INC-20A. Further the Respondent has submitted that he was not appointed through an engagement letter and had certified the said e-forms on causal basis. The Respondent had submitted during the hearing that the subscribers informed him that money will be deposited later; and against which the confirmation letter was given by the subscribers and placing reliance on the same he had filed Form INC-20A. The Respondent further submitted that the professional colleague on whom he had reposed trust, had undertaken this assignment. The Respondent also submitted that he had later certified many INC-20A Forms wherein all the requirements were duly complied with by him. In view of this statement of the Respondent and in the absence of conclusive proof of receipt of subscription money, it is evident that the Respondent has failed to exercise due diligence regarding mandatory attachment to be annexed to Form INC-20A certified by him. The Respondent has certified the declaration that:

*"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 records maintained by the company 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."***

(emphasis added)

7.7 In the above declaration, the Committee observed that the Respondent has certified that he has gone through the provisions of Companies Act, 2013 and the subject matter of this Form and the matter incidental thereto have been fully complied with. However, against the same, and as per his own admission he was not aware of the relevant provisions of the Companies Act, 2013 as it was the initial period of his career. Further, it was also observed that the assignment was performed through his professional colleague reposing trust on him. Moreover, no engagement letter was given to the Respondent for the said assignment as admitted by him. The Committee viewed that mere declaration letter of subscribers was attached with Form INC-20A stating that subscription money has been paid, without producing any documentary evidence that the subscription money has been received by the Company. The Committee was thus of the opinion that the Respondent has failed to attach with Form INC-20A, which was filed with ROC, the documentary evidence showing that subscription money has been received by the Company before certification of Form INC-20A. Thereby, it is apparent that the Respondent has not exercised required due diligence in certifying Form INC-20A in respect of both the subject Companies.

7.8 In view of the above, 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.

7.9 While arriving at its Findings, the Committee also observed that in the background of the instant case the Complainant Department informed that the Company was registered with ROC, 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 INC-20A which has been examined by the Committee.

8. **Conclusion:**

In view of the findings stated in the above paras, vis-à-vis material on record, the Committee gives its charge-wise findings as under:

Charges (as per PFO)	Findings	Decision of the Committee
Para 2.1 as above	Para 7.1 to 7.8 as above	GUILTY- Item (7) of Part I of the Second Schedule

9. In view of the above observations, considering the oral and written submissions of the parties and material 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.

Sd/-

(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

Sd/-

(SHRI JIWESH NANDAN, IAS {RETD.})
GOVERNMENT NOMINEE

Sd/-

(CA. MANGESH P KINARE)
MEMBER

DATE: 16/10/2024

PLACE: New Delhi

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

मीनू गुप्ता / Meenu Gupta
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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