



# 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/264/22-DD/161/2022/DC/1783/2023**

**Clubbed Files: PR/G/265/2022 & PR/G/307/2022]**

**In the matter of:**

**Ms. Kamna Sharma**

Deputy ROC,

O/o Registrar of Companies,

NCT of Delhi and Haryana,

Ministry of Corporate Affairs

4th Floor, IFCI Tower,

61, Nehru Place,

New Delhi – 110019

...Complainant

Versus

**CA. Shikha Saini (M. No. 546858)**

B-35, St. No.1,

Kunwar Singh Nagar, Nangloi,

Delhi – 110041

...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 : 20<sup>th</sup> January 2025**

**DATE OF ORDER : 08<sup>th</sup> February 2025**

1. That vide Findings dated 04.12.2024 under Rule 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases)



**भारतीय सनदी लेखाकार संस्थान**  
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Rules, 2007, the Disciplinary Committee was inter-alia of the opinion that **CA. Shikha Saini (M. No. 546858)** (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.

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 her thereby granting an opportunity of being heard in person/ through video conferencing and to make representation before the Committee on 20<sup>th</sup> January 2025.

3. The Committee noted that on the date of the hearing on 20<sup>th</sup> January 2025, the Respondent was present through video conferencing. Thereafter, the Committee asked the Respondent to make submissions in the matter. During the hearing, the Respondent stated that she had already submitted his written representation dated 21<sup>st</sup> December 2024 on the Findings of the Committee. She made oral submissions and admitted her mistake that that there were lapses in incorporation Forms of the Companies certified by her. She further submitted that no loss has been incurred to any individual or exchequer, and the Company involved in the instant matter has no business and also applied for a strike-off of its name from the record of Registrar of Companies. She requested the Committee to take a lenient view in the matter. The Committee also noted the written representation of the Respondent dated 21<sup>st</sup> December 2024 on the Findings of the Committee, which, inter alia, are given as under:-

- (a) There were no fraudulent and sham transactions in involved Companies.
- (b) The Respondent placed her reliance upon the Order dated 09<sup>th</sup> November 2006 in the matter of "Institute of Chartered Accountants of India Vs. Somnath Basu". As per the said Order, the Hon'ble High Court of Calcutta observed that even if there is any negligence in the performance of duties or errors of judgments in discharging such duties, the same cannot constitute misconduct unless there is an ill motive



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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.

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 Form DIR-2 related to consent to act as Director of the Company, which had been filed along with Spice+ Form INC-32 of 'M/s State Elephant Fintech Private Limited' certified by the Respondent, was not signed by the Director. The Committee observed that in Form DIR-2, the consent to act as a director of the Company is to be taken along with other declaration as required under the law, but in this case, this was not there, and the Respondent had certified incorporation Form of the Company without exercising due diligence. Further, the Committee noted that the Respondent had certified SPICe+ Form INC-32 of 'M/s. Empire Cornerstone Finance Private limited' and required document(s); viz. rent/lease agreement was not attached along with the said Form at the time of certification of SPICe+ Form INC-32, which was a violation of Rule 25 of the Companies (Incorporation) Rules 2014.

6. Hence, the Professional Misconduct on the part of the Respondent is clearly established as spelt out in the Committee's Findings dated 04.12.2024 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 her in commensurate with her Professional Misconduct.

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8. Thus, the Committee ordered that the Respondent i.e. CA. Shikha Saini (M. No. 546858), 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

प्रमाणित सत्य प्रतिलिपि / Certified True Copy

*Anju Grover*

अंजू ग्रोवर / ANJU GROVER  
सहायक सचिव / Assistant Secretary  
अनुशासनात्मक निदेशालय / Disciplinary Directorate  
भारतीय सनदी लेखाकार संस्थान  
The Institute of Chartered Accountants of India  
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110002  
ICAI Bhawan, Vistwas Nagar, Shahdara, Delhi-110002

**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/264/22-DD/161/2022/DC/1783/2023**  
**Clubbed Files: PR/G/265/2022 & PR/G/307/2022]**

**In the matter of:**

**Ms. Kamna Sharma**  
Deputy ROC,  
O/o Registrar of Companies,  
NCT of Delhi and Haryana,  
Ministry of Corporate Affairs  
4th Floor, IFCI Tower,  
61, Nehru Place,  
New Delhi – 110019

**...Complainant**

**Versus**

**CA. Shikha Saini (M. No. 546858)**  
B-35, St. No.1,  
Kunwar Singh Nagar, Nangloi,  
Delhi – 110041

**...Respondent**

**MEMBERS PRESENT:**

**CA. Ranjeet Kumar Agarwal, Presiding Officer (in person)**  
**Shri Jiwesh Nandan, I.A.S (Retd), Govt. Nominee (in person)**  
**CA. Mangesh P. Kinare, Member (through VC)**

**DATE OF FINAL HEARING : 18<sup>th</sup> June 2024**

**DATE OF DECISION TAKEN : 09<sup>th</sup> August 2024**

**PARTIES PRESENT:**

**Complainant : Mr. Gaurav, Dy. ROC Delhi (Authorised Representative of the Complainant)**

**Respondent : CA. Shikha Saini (In person)**

**Counsel for the Respondent: Mr. Shivam Gautam (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 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.
- 1.5. In the instant matter, the Respondent was associated with the Companies namely M/s State Elephant Fintech Private Limited, and M/s Empire Cornerstone Finance Private Limited at the time of their incorporation. The Respondent had certified incorporation i.e., Spice+ Form INC-32 of both Companies.

## 2. Charges in brief:

### 2.1. M/s State Elephant Fintech Private Limited-

One of the Directors, Mr. Ashish Kumar Singh had not filed his consent in Form DIR-2 to act as the Director of the subject Company as the said Form DIR-2 submitted along with Spice+ Form INC-32 Form was unsigned. Thus, it is alleged that the Respondent had made wrong declaration in Spice+ Form INC-32.

### 2.2. M/s Empire Cornerstone Finance Private Limited-

In Form INC-32 filed vide SRN dated 19.06.2020, NOC was provided by M/s Xpanse Services LLP to the subject Company to use the premises situated at GF, Tower-B, Building No.5, DLF Cyber City, Phase-III, Gurgaon as its registered office but no ownership documents / Rent

Agreement / Conveyance Deed / Lease Agreement were attached with the said Spice+ Form INC-32.

**3. The relevant issues discussed in the Prima Facie Opinion dated 15<sup>th</sup> November 2022 formulated by the Director (Discipline) in the matter, in brief, are given below:**

- 3.1. It was noted that after filing Complaint bearing reference number PR/G/264/2022, two separate complaints (PR/G/265/2022) and (PR/G/307/2022) in Form 'I' both dated 15.03.2022 along with Annexures filed by the same Complainant and Sh. Nitin Phartyal (from same complainant department) respectively against the Respondent were also received. However, since the subject matter of said two complaints was found to be substantially the same as of the instant complaint filed by the Complainant, the said two complaints bearing reference Number PR/G/265/2022 and PR/G/307/2022 were decided to be clubbed with the instant complaint filed by the Complainant in terms of the provisions of Rule 5(4)(a) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 and the Complainant along with the Respondent and Sh. Nitin Phartyal were informed accordingly vide Directorate's letters dated 18.04.2022 and 11.05.2022
- 3.2. As regards the first charge, it was noted that the Complainant has provided the copy of Form DIR-2 (consent to act as the director) in the name of one of the directors, Mr. Ashish Kumar Singh which had been filed / attached along with / to the Spice+ Form INC-32 certified and filed by the Respondent, however the said Form DIR-2 is found to be unsigned by the said Director. In this regard, the Respondent has stated that while the other forms viz., declaration filed pursuant to proviso of Rule 12 of Companies (Incorporation) Rules 2014, Form No. INC-9 were signed by Mr. Ashish Kumar Singh, Form DIR-2 somehow remained unsigned by him which is stated to be unintentional.
- 3.3. However, the filing of an unsigned Form DIR-2 along with Spice+ Form INC-32 at the time of incorporation of the Company shows that the required due diligence was not exercised at the time of certification and filing of said Form by the Respondent and thus, no benefit can be given to the Respondent at prima facie stage. 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 Accountant Act, 1949 for not exercising required due diligence at the time of certifying and filing of Spice+ Form INC-32 and Form DIR-2 in respect of subject Company.
- 3.4. As regards the second charge, it was noted that the Respondent had not attached the copy of lease / rent agreement entered between the subject Company and the lessor which it was required to be attached at the time of filing Spice+ Form INC-32 of the subject Company. In

this regard, the submissions of the Respondent as made in her Written Statement that she tried to attach the alleged lease agreement made between the subject Company and M/s Xpanse Services LLP but the same could not be done / attached due to technical glitches, appears to be just an afterthought and hence, cannot be accepted at the prima facie stage. In this regard, it was noted that while certifying the said Spice+ Form INC-32 of the Company, the Respondent had declared that she has verified the information contained in the said Form including attachments and found them to be correct and complete.

- 3.5. Accordingly, even though the Respondent had brought the copy of lease / rent agreement made between the subject Company and M/s Xpanse Services LLP on record but in view of the reasoning given above, it was viewed that no benefit could have been given to the Respondent at this stage. Further, on perusal of said lease agreement brought on record by the Respondent, it was noted that the monthly / annual amount of rent which has been decided to be paid by the subject Company to M/s Xpanse Services LLP was not mentioned in the said agreement.
- 3.6. The clauses of lease agreement raised a doubt that the said premises was taken by the subject Company just for ROC compliance rather than doing any legitimate business. Thus, it was viewed that the Respondent must have been extra cautious while certifying the incorporation related documents of the subject company. Accordingly, 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 Accountant Act, 1949 for not exercising required due diligence in the instant matter.
- 3.7. The allegations contained in paras 8.1 and 8.2.2 of Prima Facie Opinion relate to affixing sign board of the company under Section 12 of the Companies Act 2013, and authentication of lease/ rent agreement entered into by the Company. On consideration, the Committee was of the view that the grounds on which the Respondent has been held prima facie guilty in respect of above two charges were not acceptable; as the role and responsibility of the Respondent was limited upto the date of certification.
- 3.8. Accordingly, the Director (Discipline) in his Prima Facie Opinion dated 15<sup>th</sup> November 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:

x                    x                    x                    x                    x                    x

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

3.9. 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 considered the allegation contained in paras 8.1 and 8.2.2 of the Prima Facie Opinion and was of the view that the grounds on which the Respondent has been held Prima Facie Guilty in respect of said two charges were not acceptable as the role and responsibility of the Respondent was limited up to the date of certification. In view of these grounds, the Committee held the Respondent NOT GUILTY of Professional Misconduct falling within the meaning Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 in respect of allegations contained in paras 8.1 and 8.2.2 of the Prima Facie Opinion. However, the Committee concurred with the Prima Facie Opinion as regards reasons given in paras 8.2 and 8.3 holding the Respondent GUILTY in respect of allegations contained in paras 8.2 and 8.3 of the prima facie opinion (given in Paras 2.1 and 2.2 hereinabove).

3.10. In conclusion, the Committee, accepted the Prima Facie Opinion of the Director (Discipline) that the Respondent is GUILTY of Professional Misconduct falling within the meaning Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 (in respect of charges contained in paras 8.2 and 8.3 of the Prima Facie Opinion) 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 in Form 'I' filed by the Complainant	15 <sup>th</sup> March 2022
2.	Date of Written Statement filed by the Respondent	13 <sup>th</sup> May 2022 and 20 <sup>th</sup> July 2022
3.	Date of Rejoinder filed by the Complainant	---

4.	Date of Prima Facie Opinion formed by Director (Discipline)	15 <sup>th</sup> November 2022
5.	Written Submissions filed by the Respondent after PFO	12 <sup>th</sup> August 2023
6.	Written Submissions filed by the Complainant after PFO	---

**5. Written submissions filed by the Respondent: -**

5.1 The Respondent vide letter dated 12<sup>th</sup> August 2023 had, inter alia, made the submissions which are given as under –

(i) Submissions in respect of first charge related to 'M/s State Elephant Fintech Private Limited':-

(a) In the instant case, Form DIR-2 in respect of Mr. Ashish Kumar Singh (one of the First Directors of the Company) was somehow left unsigned (a fact which came into notice only after being pointed out by the ROC, under this complaint). However, Mr. Singh has duly signed other two declarations, in the capacity of the first director of the company, and has signed his PAN, Adhaar (enclosures to DIR-2) all annexed to e-form SPICE+, and then e-form SPICE+ was also digitally signed by the director.

(b) It is noted that all three forms (DIR-2, INC-9, and declaration pursuant to Rule 12) were part of the same pdf. It is hard to understand why would a person not sign "Consent to become Director".

(c) The omission of form DIR-2 from being signed by Mr. Ashish Singh and detection thereof by the Respondent while certifying the document was unintentional and was not at all deliberate, as it did not have any bearing on any other thing, including the status of Mr. Ashish Kumar Singh, as he has always acted as first director at the time of incorporation till filling of strike off the Company.

(ii) Submissions in respect of second charge related to 'M/s Empire Cornerstone Finance Private Limited':-

(a) The Respondent referred to the Attachment list in the e- form SPICE+, where only the first three items are mandatory as marked (\*), whereas the rest are not, which means the applicant is at the liberty to choose any documents from the given groups.

(b) In this list, item no. 4 (non-mandatory) reads as follows - "Proof of office address (conveyance deed / Lease deed/ Rent agreement etc. along with rent receipts). Here the word "etc." is noteworthy, which suggests that the Conveyance deed, lease deed or rent deed are not the only documents, there may be other documents also.

- (c) By plain reading of the FAQ point 57 (f) i.&ii &iii read with item 4 of the list of attachments of e-form SPICe+, it is clear that for the purpose of the registered office clause NOC from the landlord, Lease Deed, Rent Agreement are alternatives i.e., either NOC from the landlord or lease deed or rent agreement may be provided as the proof of address.
- (d) The Respondent has filed the e-form SPICe+ for the incorporation of the Company with the NOC of the landlord as primary evidence of the proof of office address and the utility bill, which were sufficient documents for the incorporation of the company.
- (e) The Respondent also tried to attach the Rent deed as an additional document, although it was not necessary to be attached, but she could not do it due to File Size limitation.
- (f) In the instant case, the Form has been returned for resubmission vide email dated 30.06.2020, whereby the Honorable ROC has demanded another additional document, the "business visa of the foreign subscriber or foreign authorized representative" (copy of the e-mail enclosed). The form was resubmitted along with the said additional documents. Thereafter the form was approved, and the company was incorporated by the Honorable ROC.
- (g) The Honorable ROC has sent the form for resubmission as "business visa of the foreign subscriber or foreign authorized representative" was not attached but did not mention anything about the rent agreement /lease deed.
- (h) She had exercised complete due diligence, undertaken all necessary precautions, and followed all necessary procedures as prescribed under the law or followed by her fellow professionals while carrying out her assignments as a certifying professional.

**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 <sup>st</sup> hearing	18 <sup>th</sup> August 2023	Part heard and adjourned
2 <sup>nd</sup> hearing	28 <sup>th</sup> May 2024	Part heard and adjourned
3 <sup>rd</sup> hearing	18 <sup>th</sup> June 2024	Hearing Concluded and Judgment Reserved
	09 <sup>th</sup> August 2024	Decision taken

- 6.2. On the day of First hearing on 18<sup>th</sup> August 2023, the Committee noted that the Respondent along with Counsel were present in person before it. The office apprised the Committee that the Complainant was not present and notice of listing of the case has been served upon him.
- 6.3. Being first hearing of the case, the Respondent was put on oath. Thereafter, the Committee enquired from the Respondent as to whether she was aware of the charges and then charges against the Respondent were read out. On the same the Respondent replied that she was aware of the charges and pleaded Not Guilty to the charges levelled against her. In the absence of the Complainant and 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.
- 6.4. On the day of hearing on 28<sup>th</sup> May 2024, the Committee noted that the Respondent along with Counsel were present and appeared before it. The Complainant was not present and the notice of listing of subject case was duly served upon the Complainant.
- 6.5. Thereafter, the Committee asked the Counsel for the Respondent to make submissions. The Counsel submitted that as per SPICe+ instruction KIT, rent agreement is optional and not mandatory attachment. He further submitted that NOC from landlord was given with utility bill, which is mandatory requirement. Form DIR – 2 was unintentionally left unsigned, which is an admitted fact. The Respondent submitted that the Company did not get the necessary FDI approval for conduct of the business and therefore the Company was closed.
- 6.6. The Committee noted the submissions of the Counsel for the Respondent and in the absence of the Complainant, decided to adjourn the captioned case.
- 6.7. On the day of hearing on 18<sup>th</sup> June 2024, the Committee noted that the authorized representative of the Complainant 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 admitted that there was an inadvertent mistake as Form DIR - 2 related to M/s. State Elephant Fintech Private Limited was not signed by the Director. However, the Director had signed Form INC - 9 related to declaration by subscribers and first Director which was submitted along with SPICe Form at the time of incorporation.
  - (ii) The Respondent submitted that in case of M/s. Empire Cornerstone Finance Private Limited, no objection certificate and utility bill were attached with Form INC - 32. SPICe+

instruction KIT of Registrar of Companies mentioned that attachment of rent agreement along with incorporation form is optional and not mandatory.

- (iii) The Companies (M/s. State Elephant Fintech Private Limited and M/s. Empire Cornerstone Finance Private Limited) had filed application for striking off name with Registrar of Companies.

6.8. The Committee asked the authorised representative of the Complainant to make submissions. The authorized representative of the Complainant Department submitted that Registrar of Companies can point out any discrepancy in the incorporation Forms and documents filed with Registrar of Companies at any point of time and even after registration of the Company by Registrar of Companies. 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.

6.9. Based on the documents and material available on record and after considering the oral and written submissions made by both the parties, the Committee concluded the hearing in the matter and judgment was reserved.

6.10. Thereafter, on 09<sup>th</sup> August 2024, the subject case was fixed for taking decision. After detailed deliberations, and on consideration of the facts of the case, various documents on record as well as oral and written submissions made by the parties before it, the Committee took decision 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 the Respondent, documents/ material on record and gives its findings as under: -

- 7.1. As regards the **first charge** related to Form DIR-2 which was unsigned by one of the Directors of the Company, the Committee noted that the Respondent had certified Spice+ Form INC-32 in respect of 'M/s State Elephant Fintech Private Limited' on 16<sup>th</sup> April 2020 and the Respondent while certifying the said form, had given the declaration which stated as under: -

*"I Shikha Saini, "Who is engaged in the formation of the company declare that I have been duly engaged for the purpose of certification of this form. It is hereby also 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 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;*

- (i) the draft memorandum and articles of association have been drawn up in conformity with the provisions of sections 4 and 5 and rules made thereunder; and*
- (ii) all the requirements of Companies Act, 2013 and the rules made thereunder relating to registration of the company under section 7 of the Act and matters precedent or incidental thereto have been complied with. 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;*
- (iii) **I have opened all the attachments to this form and have verified these to be as per requirements, complete and legible;***
- (iv) I further declare that I have personally visited the premises of the proposed registered office given in the form at the address mentioned herein above and verified that the said proposed registered office of the company will be functioning for the business purposes of the company (wherever applicable in respect of the proposed registered office has been given).*
- (v) 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."*

7.2. On perusal of Spice+ Form INC 32, the Committee observed that Mr. Ashish Kumar Singh was appointed as the Director of the Company and his details were mentioned in Point 8(d) of the Form i.e. "Particulars of directors (other than first subscribers). The Committee noted the submissions of the Counsel for the Respondent that there was an inadvertent mistake as Form DIR-2 related to M/s. State Elephant Fintech Private Limited was not signed by the Director. However, the Director had signed Form INC – 9 related to declaration by subscribers and first Director which was submitted along with Spice+ Form INC 32 at the time of incorporation.

7.3. In this regard, the Committee noted that Form DIR-2 related to consent to act as the director of the Company, in the name of one of the directors (viz. Mr Ashish Kumar Singh) which had been filed along with Spice+ Form INC 32 certified and filed by the Respondent was not signed by the said Director. The Committee observed that in Form DIR-2, the consent to act as a director of the company is taken along with other declaration as required under the law. The Committee further observed that the name of Mr Ashish Kumar Singh was included in the particulars of Directors in Spice+ Form INC 32 as Director; whereas the consent to be given by such Director to act as director of the said company in Form DIR-2 which was an attachment to Spice Form remained unsigned by the said Director. The Committee was of the view that

the filing of an unsigned Form DIR-2 along with Spice Form showed that required due diligence was not exercised by the Respondent at the time of certification and filing of said Form, especially considering the stipulated declaration given by the Respondent as mentioned in para 7.1 above.

- 7.4. The Committee noted the admission of the Respondent that there was an inadvertent mistake as Form DIR – 2 of one of Directors of M/s. State Elephant Fintech Private Limited remained unsigned. In view of this admitted fact by the Respondent, 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 this charge.
- 7.5. As regards **second charge** related to non-attachment of ownership documents / Rent Agreement / Conveyance Deed / Lease Agreement with the Spice+ Form INC-32, the Committee noted that the Respondent had certified Spice+ Form INC-32 in respect of 'M/s Empire Cornerstone Finance Private Limited' on 03<sup>rd</sup> July 2020 and the Respondent while certifying the said form, had given the declaration which stated as under:-

*"I Shikha Saini, "Who is engaged in the formation of the company declare that I have been duly engaged for the purpose of certification of this form. It is hereby also 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 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;*

*(i) the draft memorandum and articles of association have been drawn up in conformity with the provisions of sections 4 and 5 and rules made thereunder; and*

***(ii) all the requirements of Companies Act, 2013 and the rules made thereunder relating to registration of the company under section 7 of the Act and matters precedent or incidental thereto have been complied with. 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;***

***(iii) I have opened all the attachments to this form and have verified these to be as per requirements, complete and legible;***

(iv) I further declare that I have personally visited the premises of the proposed registered office given in the form at the address mentioned herein above and verified that the said proposed registered office of the company will be functioning for the business purposes of the company (wherever applicable in respect of the proposed registered office has been given).

(v) 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."

7.6. On perusal of Spice+ Form INC 32, the Committee observed that ownership documents / Rent Agreement / Conveyance Deed / Lease Agreement was not attached with the said form. In this regard, the Committee perused the relevant extracts of Section 12 of the Companies Act, 2013 read with Rule 25 of the Companies (Incorporation) Rules 2014 and the same are given hereunder:

**"Section 12 of the Companies Act, 2013**

- (1) A company shall, within thirty days of its incorporation and at all times thereafter, have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it."
- (2) The company shall furnish to the Registrar verification of its registered office within a period of thirty days of its incorporation in such manner as may be prescribed

**"25 Verification of Registered Office**

- 1) The verification of the registered office shall be filed in Form No.INC.22 along with the fee, and
- (2) There shall be attached to said Form, any of the following documents, namely:-
  - (a) the registered document of the title of the premises of the registered office in the name of the company; or
  - (b) the notarized copy of lease or rent agreement in the name of the company along with a copy of rent paid receipt not older than one month;
  - (c) the authorization from the owner or authorized occupant of the premises along with proof of ownership or occupancy authorization, to use the premises by the company as its registered office; and
  - (d) the proof of evidence of any utility service like telephone, gas, electricity, etc. depicting the address of the premises in the name of the owner or document, as the case may be, which is not older than two months."



- 7.7. The Committee further noted that the Respondent had brought the copy of rent agreement on record at the time of filing of written statement in response to the instant complaint. The Committee noted that the Counsel for Respondent submitted that in terms of the requirement of Spice+ Instruction Kit of ROC, the rent agreement was an optional document to be attached along with Form INC-32 and it was not a mandatory document. The Committee further noted the submission of Counsel for Respondent that the rent agreement was attempted to be attached at the time of filing of Form INC-32; however, the same could not be done due to technical glitches.
- 7.8. In this regard, the Committee noted the provisions of Rule 25 of the Companies (Incorporation) Rules 2014 related to verification of registered office which stipulated the following documents that are required to be attached with the incorporation form of the company:
- a) the registered document of the title of the premises of the registered office in the name of the company; or
  - (b) the notarized copy of lease or rent agreement in the name of the company along with a copy of rent paid receipt not older than one month;
  - (c) the authorization from the owner or authorized occupant of the premises along with proof of ownership or occupancy authorization, to use the premises by the company as its registered office; and
  - (d) the proof of evidence of any utility service like telephone, gas, electricity, etc. depicting the address of the premises in the name of the owner or document, as the case may be, which is not older than two months.
- 7.9. The Committee observed that sub-rule (2) of Rule 25 mentioned four documents at (a) to (d) as attachments to the Form. The Committee, after detailed consideration of provisions of Section 12 of the Companies Act 2013 and Rule 25 of the Companies (Incorporation) Rules 2014, was of the view that either one of the documents mentioned at (a) or (b) under sub-rule (2) of Rule 25 is a mandatory document required to be attached with the Form. The Committee was further of the view that in addition to the above document, both the documents mentioned at (c) and (d) of sub-rule (2) of Rule 25 are also mandatorily required to be attached with the incorporation Form. In other words, the ownership papers of the premises i.e. either (a) the registered document of the title of premises of the registered office in the name of the company, or (b) the notarised copy of lease or rent agreement in the name of the company along with copy of rent paid receipt not older than one month, was a mandatory document to be attached with the incorporation Form. Additionally, the documents mentioned at (c) and (d) under sub-rule (2) of Rule 25 are required to be attached along with ownership papers.

7.10. The Committee noted the submission of the Respondent that the rent agreement was not mandatorily required to be attached with incorporation Form as per Spice+ instruction kit. This statement of the Respondent itself shows that the rent agreement was not attached with the incorporation Form. However, in view of observations as given in preceding paragraphs, the Committee was of the view that the attachment of rent agreement was a mandatory requirement while certifying incorporation Form, in the view of Rule 25 of the Companies (Incorporation) Rules 2014 as mentioned above. Hence, 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.

7.11. While arriving at its Findings, the Committee also observed that in the background of the instant case the Complainant Department informed that the Company was registered with ROC, NCT of Delhi & Haryana by engaging dummy persons as subscribers to MOA & Directors by furnishing forged documents with falsified addresses / signatures, Director Identification Number (DIN) to MCA. Further, certain professionals in connivance with such individuals/directors/subscriber to MOA assisted in incorporation and running of these Companies for illegal/suspicious activities in violation of various laws by certifying e-forms/various reports etc. on MCA portal with false information concealing the real identities of such individuals. However, no evidence of the involvement of the Respondent to that effect had been brought on record by the Complainant Department in the instant case. As such, the role of the Respondent was limited to certification of incorporation form (SPICe+ Form INC 32) which has been examined by the Committee.

8. **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 (as per PFO)	Findings	Decision of the Committee
Para 2.1 as above	Para 7.1 to Para 7.4 as above	GUILTY as per Item (7) of Part I of Second Schedule
Para 2.2 as above	Para 7.5 to Para 7.10 as above	GUILTY as per Item (7) of Part I of Second Schedule

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9. In view of the above observations, considering the oral and written submissions of the Respondent 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, I.A.S. {RETD.})  
GOVERNMENT NOMINEE

Sd/-  
(CA. MANGESH P KINARE)  
MEMBER

DATE: 04/12/2024

PLACE: New Delhi

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

निशा शर्मा / Nisha Sharma  
परिष्कार कार्यकारी अधिकारी / Sr. Executive Officer  
अनुशासन विभाग / Disciplinary Directorate  
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