



# भारतीय सनदी लेखाकार संस्थान

(संसदीय अधिनियम द्वारा स्थापित)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

PR/G/119/2022/DD/235/2022/DC/1725/2023

[DISCIPLINARY COMMITTEE [BENCH-II (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/119/2022/DD/235/2022/DC/1725/2023]**

**In the matter of:**

**Ms. Seema Rath**

Registrar of Companies, UP, Kanpur,  
'Government of India  
Ministry of Corporate Affairs  
Office of the Registrar of Companies,  
37/17, Westcott Building,  
The Mall,  
Kanpur-208001.

.....Complainant

**Versus**

**CA. Herry Sikri (M. No. 549395)**

A - 402, Sector 47,  
Gautam Buddha Nagar,  
NOIDA 201303.

.....Respondent

**Members Present: -**

**CA. Ranjeet Kumar Agarwal, Presiding Officer (in Person)**

**Mrs. Rani S Nair, I.R.S. (Retd.), Government Nominee (in Person)**

**CA. Sanjay Kumar Agarwal, Member (in Person)**

**CA. Cotha S Srinivas, Member (through VC)**

**Date of Hearing : 3<sup>rd</sup> February 2025**

**Date of Order : 8<sup>th</sup> February 2025**

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



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2007, the Disciplinary Committee was, inter-alia, of the opinion that **CA. Herry Sikri (M. No. 549395), Noida** (hereinafter referred to as the '**Respondent**') is GUILTY of Professional Misconduct falling within the meaning of Item (7) of Part-I of the Second Schedule to the Chartered Accountants Act, 1949.

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 opportunity of being heard in person / through video conferencing and to make representation before the Committee on 03<sup>rd</sup> February 2025.
3. The Respondent was present before the Committee on 03<sup>rd</sup> February 2025 through video conferencing and made his verbal representation on the Findings of the Disciplinary Committee, inter-alia, stating as under:
  - (a) He exercised adequate level of due diligence as a professional while carrying out his duties.
  - (b) The grounds for proving him guilty are merely technical in nature.
  - (c) There was no ill-motive involved on his part, and he did not make any kind of unlawful gain.
  - (d) Specific to the first charge, related to INC 20A, at that point in time, he was more focused on ensuring that companies' compliances are in shape. So, he reached out to ROC through e-mails and through calls, but he did not get any revert from the ROC. So, in that scenario, he went ahead and did the filing.
  - (e) In relation to second charge for INC-22, which is related to change of registered office, there is no legal provision which requires that the Lease Deed should be witnessed by 2 people. He followed all the regulatory requirements as per Companies Act 2013 while doing the INC 22 certification.
  - (f) With respect to the third charge related to Spice Forms, whatever Findings which are being highlighted are minor irregularities and there is nothing like gross negligence on his part. None of the Companies are involved in any kind of scam or they have not collected any public money in fraudulent way.
  - (g) He was a young professional at that point of time and belonged to a middle-class family and have no history of misconduct.
  - (h) He requested the Committee to revisit its decision.



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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 verbal representation of the Respondent.
5. As regard the request of the Respondent to revisit the Findings of the Committee, the Committee held that it has arrived at its Findings after hearing the parties to the case, examining all facts of the case and after due deliberation. It was further of the view that there is no provision under the Chartered Accountants Act 1949 and/or the Rules framed thereunder to review or revisit the Findings arrived at by the Committee. As regard the other submissions of the Respondent, the Committee was of the view that the same were basically a reiteration of the submissions made by the Respondent during the course of hearing, due cognizance of which has already been taken by the Committee before arriving at its Findings in the instant case.
6. Thus, keeping in view the facts and circumstances of the case and material on record including verbal representation of the Respondent on the Findings, the Committee noted the following as per its Findings dated 31<sup>st</sup> January 2025: -

Charge No.	Charge(s)	View of the Committee	Item of the Schedule in which Respondent held Guilty
1.	Charges relating to the certification of INC-20A- There is no actual proof of payment of subscription money No FDI approval for making investment (in respect of M/s. Yijie Technology Private Limited and M/s. Xinpoming Technology Private Limited)	Guilty	Item (7) of Part I of Second Schedule
2.	Charge relating to certification regarding INC-22- The Respondent has witnessed the rent agreement who was also the certifying professional. (in respect of M/s. Tianma Technology Private Limited)	Guilty	Item (7) of Part I of Second Schedule



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3.	Charges relating to certification regarding SPICE Form- (in respect of M/s. YIJIE Technology Private Limited, M/s. EUEB India Private Limited, M/s BESTLY Precision Technology Private Limited and M/s. XINPOMING Technology Private Limited and M/s. TIANMA Technology Private Limited)	GUILTY	Item (7) of Part I of Second Schedule
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6.1 First Charge: (relating to certification of INC-20A, declaration for commencement of business in respect of M/s. Yijie Technology Private Limited and M/s. Xinpoming Technology Private Limited): The Committee noted that the Respondent was aware that no payments had been made by the subscribers to the Memorandum of Association (MOA) and Articles of Association (AOA), and that no entries had been recorded in the Company's bank accounts. Despite this knowledge, the Respondent with an incorrect attachment certified the Form INC-20A which defeated the very purpose for which the Form is required to be filed. Consequently, the Committee concluded that the Respondent did not exercise due diligence while certifying Form INC 20A. Thus, the Committee held the Respondent Guilty of Professional Misconduct as defined in Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

6.2 Second Charge: (relating to certification regarding INC-22 of M/s. Tianma Technology Private Limited): The Committee noted that the Respondent in his written statement submitted at Prima Facie Opinion stage stated that inadvertently signatures of the 2<sup>nd</sup> witness were not captured in the uploaded version of the rent agreement. However, during the course of hearing in the Written Statement dated 18<sup>th</sup> March 2023, the Respondent admitted his unintended mistake that a second witness was missing in the rent agreement. Thus, the Committee observed that true facts were not stated by the Respondent at Prima Facie Opinion stage as if the signatures of the 2<sup>nd</sup> witness were not captured in the uploaded version of the rent agreement, then, he should have brought on record, the original of the said rent Agreement. However, he later on during the hearing admitted missing of the signature of the 2<sup>nd</sup> witness on the rent agreement to be his unintended mistake.

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The Committee was also of the view that the Respondent was casual in his approach while certifying Form INC 22 and did not ensure whether the intent of law was met while certification of the said Form INC 22 and just submitted the Form alongwith its attachments without even verifying the purpose of it. The Committee further held that in the absence of proper witness in the said Lease Deed, the e-Form cannot be said to be complete. On the contrary, the Respondent in this certification had mentioned that the said Form is complete. Thus, it is evident that the Respondent was casual while certification of the said Form INC 22. Accordingly, the Committee held the Respondent Guilty of Professional Misconduct within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

6.3 Third Charge: (Charge relating to certification regarding SPICE Form of M/s. YIJIE Technology Private Limited, M/s. EUEB India Private Limited, M/s BESTLY Precision Technology Private Limited and M/s. XINPOMING Technology Private Limited and M/s. TIANMA Technology Private Limited):

- (i) The Committee noted that with respect to M/s YIJIE Technology Private Limited, the copy of the rent agreement dated 4<sup>th</sup> December 2019 executed by Mr. Himanshu Kapoor, Director, on behalf of M/s YIJIE Technology Private Limited (Company) has been attached to SPICE Form. The Committee noted that as per ROC records, Mr. Himanshu Kapoor was the director (other than first subscribers) of the Company from 17<sup>th</sup> December 2019 i.e. since its incorporation. Thus, the rent agreement ought to have been executed by Mr. Himanshu Kapoor in the capacity of the director of the Company on or after 17<sup>th</sup> December 2019 only. Further, the Respondent being the certifying professional ought to have been more particular while certification of the said Form.
- (ii) The Respondent certified SPICE Form of three companies i.e. M/s TIANMA Technology Private Limited, M/s EUEB India Pvt Ltd, and M/s Yijie Technology Pvt Ltd with Mr. Himanshu Kapoor as a common Director within a period of three months. Thus, the fact that Mr. Himanshu Kapoor was a common director in the said Companies, ought to be in the knowledge of the Respondent.
- (iii) The Committee was also of the view that although a director is primarily liable for disclosure of his interest in other entities, however, looking into the fact that certification of the SPICE Form of all these Companies had been carried out by the Respondent only together with admission of lapse on the part of the Respondent, it is evident that required diligence was not exercised by the Respondent.
- (iv) Accordingly, in view of the aforesaid observations, the Committee held the Respondent Guilty of Professional Misconduct under Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 in this respect.

6.4 Hence, Professional Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 on the part of the Respondent



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is clearly established as held in the Committee's Findings dated 31<sup>st</sup> January 2025 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 ends of justice will be met if punishment is given to the Respondent in commensurate with his professional misconduct.
8. Thus, the Committee keeping in view the facts and circumstances of the case, material on record and representation of the Respondent before it, ordered that a Fine of Rs.75,000/- (Rupees Seventy Five Thousand only) be imposed upon CA. Herry Sikri (M. No. 549395), Noida payable within a period of 60 days from the date of receipt of the Order.

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

**Sd/-**  
**(MRS. RANI S NAIR, I.R.S. (RETD.))**  
**GOVERNMENT NOMINEE**

**Sd/-**  
**(CA. SANJAY KUMAR AGARWAL)**  
**MEMBER**

**Sd/-**  
**(CA. COTHA S SRINIVAS)**  
**MEMBER**

सही प्रतिलिपि होने के लिए प्रमाणित  
Certified to be true copy

*[Signature]*  
गीता अनिरुध कुमार / GEETHA ANIRUDHA KUMAR  
कार्यकारी अधिकारी / Executive Officer  
अनुशासन-मालक विदेशालय / Disciplinary Directorate  
भारतीय सनदी लेखाकार संस्थान  
The Institute of Chartered Accountants of India  
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032  
ICAI Bhaswan, Vishwas Nagar, Shahdara, Delhi-110032

CONFIDENTIAL

**DISCIPLINARY COMMITTEE [BENCH – II (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/119/2022/DD/235/2022/DC/1725/2023**

**In the matter of:**

**Ms. Seema Rath**

Registrar of Companies, UP, Kanpur,  
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A - 402, Sector 47,  
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.....Respondent

**Members Present:**

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

**DATE OF FINAL HEARING** : 14<sup>th</sup> June 2024

**DATE(s) OF SUBSEQUENT MEETING  
IN WHICH CASE CONSIDERED** : 29<sup>th</sup> August 2024 and 18<sup>th</sup> September 2024

**DATE OF DECISION TAKEN** : 03<sup>rd</sup> January 2025

**PARTIES PRESENT:**

**Respondent: CA. Herry Sikri, (M. No. 549395), (Through VC)**  
**Counsel for the Respondent: Mr. Puneet Rath Sharma, Advocate (Through VC)**

## 1. BACKGROUND OF THE CASE:

- 1.1 It was stated by the Complainant Department that it has come to the knowledge of the Central Government that certain Chinese Director or individuals/Shareholders/entities in the involved Companies had engaged dummy persons as subscriber's to MOA and as Directors and they got registered these Companies with ROC, Kanpur by using forged documents/falsified addresses/signatures, Director identification Number (DIN) obtained by furnishing false/forged document to MCA. The Companies / Chinese individuals or entities directly or indirectly connected with these Companies found to be engaged in illegal/ suspicious activities, money laundering, tax evasion and non-compliance of various provisions of laws.
- 1.2. Further, certain professionals have connived with these Companies/their directors/subscribers to MOA and Chinese individuals who were acting behind these Companies. The professionals, despite having knowledge of the aforesaid facts incorporated these Companies and were also assisting in running of these Companies for illegal/ suspicious activities in violation of various laws.
- 1.3. They also certified various Reports/ E-Forms filed with Ministry of Corporate Affairs on MCA 21 Portal with false information or by concealing the material facts/ information to hide the real identity of Chinese person behind the Companies particularly at the time of incorporation. They also allegedly filed financial statements without attaching the annexure of Borrowing/ Loan & Advances/Investments/Inventories and Notes to Accounts for hiding material information.
- 1.4. The Professionals failed to discharge their duties and willfully connived with directors/ company/ shareholders/ Chinese individuals in certifying e-Forms knowingly with false information/ documents/ false declaration/ omitting material facts or information in said Companies.

## 2. CHARGES IN BRIEF:

- 2.1 In view of the aforesaid background, the Committee noted that the Respondent was engaged in certification of the following e-Forms with respect to the respective Companies as stated hereunder:

S.No.	Allegation(s)	Prima Facie Opinion of DD	Companies in respect of which the said allegation is made
1.	Charges relating to the certification of INC-20A- <ul style="list-style-type: none"> <li>• There is no actual proof of payment of subscription money</li> <li>• No FDI approval for making investment</li> </ul>	Guilty, Item (7) of Part I of Second Schedule	<ul style="list-style-type: none"> <li>• M/s YIJIE Technology Private Limited</li> <li>• M/s XINPOMING Technology Private Limited</li> </ul>



2.	Charge relating to certification regarding INC-22- The Respondent has witnessed the rent agreement who was also the certifying professional.	Guilty, Item (7) of Part I of Second Schedule	• M/s Tianma Technology Private Limited
3.	SPICE Form-In the proof of ID and address of Mr. Xie Zehua, the signature and address of the foreign director have not been apostilled in accordance with the Hague Convention	Guilty, Item (7) of Part I of Second Schedule	• M/s XINPOMING Technology Private Limited
4.	Charges relating to certification regarding SPICE Form- Incorporated all five companies and the incorporation of four out of five companies were at same Registered Office Address	GUILTY, Item (7) of Part I of Second Schedule and Item (2) of Part IV of First Schedule	<ul style="list-style-type: none"> <li>• M/s Eueb India Private Limited</li> <li>• M/s Tianma Technology Private Limited</li> <li>• M/s Yijie Technology Private Limited</li> <li>• M/s Bestly Precision Technology Private limited</li> <li>• M/s XINPOMING Technology Private Limited</li> </ul>

2.2 The Committee also noted the below-mentioned date(s) of certification of the relevant Forms by the Respondent of the subjected Companies: -

S.No.	Name of the company	Name of the e-Form	Date of certification by the Respondent
1	M/s YIJIE Technology Private Limited	SPICE Form	15.12.2019
		INC-20A	30.11.2021 (with additional fees of 6000/-)
2	M/s EUEB India Private Limited	SPICE Form	01.10.2019
3	M/s BESTLY Precision Technology Private Limited	SPICE Form	23.01.2020
4	M/s XINPOMING Technology Private Limited	SPICE Form	10.01.2020
		INC-20A	30.11.2021 (with additional fees of 4800/-)
5	M/s TIANMA Technology Private Limited	SPICE Form	08.09.2019
		INC-22	12.03.2020

3. The relevant issues discussed in the Prima Facie Opinion dated 23<sup>rd</sup> December 2022 Formulated by the Director (Discipline) in the matter in brief, are given below:

**3.1 With respect to Charge relating to certification of INC-20A:**

3.1.1 In respect of **M/s YIJIE Technology Private Limited**, it is noted that the Company was incorporated on 17/12/2019 and the subscribers to MOA/ AOA are required to bring the value of shares agreed by them on the date of making such declaration. Upon perusal of E-Form INC-20A, it is noted that Mr. Liang Zhizhong digitally signed the said e-Form declaring that he was authorized by the Board of Directors of the Company vide resolution number 003 dated 09/01/2020 to sign the Form and declare that all the requirements of Companies Act, 2013 and the Rules made thereunder in respect of the subject matter of the Form and matters incidental thereto have been complied with. He further declared as under:

*"1. Whatever is stated in this Form and in the attachments thereto is true, correct and complete and no information material to the subject matter of this Form has been suppressed or concealed and is as per the original records maintained by the company.*

*2. All the required attachments have been completely and legibly attached to this Form.*

*3. Every subscriber to the MOA has paid the value for shares agreed to be taken by him.*

*4. The company has filed with the registrar a verification of its registered office as provided in subsection (2) of section 12."*

3.1.2 The Respondent filed the said E-Form No. INC-20A with the ROC office/ MCA Portal on 30/11/2021 with an additional fee of Rs. 6,000/- due to delay in e-filing.

3.1.3 In respect of **M/s XINPOMING Technology Private Limited**, it was noted that the Company was incorporated on 13/01/2020 and the Respondent filed the said E-Form No. INC-20A with the ROC office/ MCA Portal on 30/11/2021 with additional fee of Rs. 4,800/- due to delay in e-filing.

3.1.4 The Respondent referred the FDI Policy dated 17 April 2020 in his written statement and stated that as per Press Note 3 (2020 Series), *"If the beneficial owner of the Indian company is citizen of country sharing land border with India, then they can invest in the Indian company only under Government route and require Government approval."* Further, it stated that e-Form INC-20A was required to be filed by the Company along with the proof of payment of subscription money. Therefore, as the company's beneficial owner was Chinese Citizen, the company was required to obtain the Government approval for payment of subscription money. As the Government approval system was newly introduced regulation, the company was deliberating on applying for investment approval. Clarification was sought by the Respondent through

email dated 16/08/2021 from ROC, Kanpur which was followed by reminder email dated 30/11/2021 and delayed filing of E-Form No. INC-20A with ROC i.e. on 30/11/2021. It is viewed that the clarifications/ explanations provided by the Respondent lacks credibility.

- 3.1.5 It is further viewed that if both the companies have not opened their Bank Account and are not planning to establish their business activities then what was the need to submit such E-Form No. INC-20A at such a belated stage and that too with the amount of additional fees. Further, if the subscribers had not paid the value for shares which they had agreed to pay, then what was the need to certify the said E-Form without receipt of such payment in the concerned bank account of the Company and certification of the same just to ensure that the company is regular and active. This clearly points out at misconduct on the part of certifying professional i.e., the Respondent. Moreover, both the undertakings attached to the E-Form No. INC-20A were undated and unsigned “-sd-” copies and mention about non commencement of operations until the Company receives FDI approval from Government which supports the version of the Complainant.
- 3.1.6 It is further viewed that the Respondent had due knowledge of the said fact that no payment was made by the subscribers to MOA and AOA and no entry was entered in the bank accounts of the Company and despite this fact he had facilitated the said Companies by certifying concerned E-Form. The same also points out at misconduct as one cannot be expected to file the E-Forms only for the sake of compliance of Companies Act by making false / incorrect claim without holding necessary documents/ attachments to support the said claim.
- 3.1.7 Accordingly, it is viewed that the said explanation/ clarification raises serious doubt on the conduct of the Respondent and also the due diligence being performed by him while certifying the E-Form. Thus, the Respondent is Prima Facie **Guilty** of Professional Misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

### **3.2 Charges relating to certification regarding INC-22**

- 3.2.1 With regard to the allegation that in E-Form No. INC-22 filed by **M/s. TIANMA Technology Private Limited**, only one person i.e., the Respondent has witnessed the rent agreement who was also the certifying professional, the Respondent in his written statement stated that Form INC-22 filed by the Company was certified by him after exercising due diligence and verification of documents. Further, the Respondent witnessed the rent agreement being signed between the Company and the landlord. However, inadvertently the signatures of the 2nd witness were not captured in the uploaded version of the rent agreement. Barring this, other documents pertaining to the said Form INC-22 were in good shape and were duly verified before the certification.

- 3.2.2 The Complainant in her rejoinder reiterated her submissions and further stated that Respondent has certified Form INC-22 and only he has witnessed the rent agreement. The Respondent himself admitted that the signatures of 2nd witness were not captured in the uploaded version of the rent agreement. The said facts show that despite the wrong attachments and improper documentation in the Form, the Respondent has certified Form INC-22 and hence, the Respondent is liable under provisions of Section 448 and 449 of the Companies Act, 2013.
- 3.2.3 The Respondent in his additional submissions stated that as informed by the respective management of the companies, they had not commenced operations in India since incorporation and due to COVID-19 and unfavorable government regulations. Further no rent was received by landlord, or the Respondent and the said rent agreement was also not revoked.
- 3.2.4 In this regard, it is noted that E-Form INC-22 is required to be filed pursuant to Section 12(2) & 12(4) of the Companies Act, 2013 and rule 25 & 27 of the Companies (Incorporation) Rules, 2014 which are reproduced as under:

**Section 12:**

(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.*

...

(4) *Notice of every change of the situation of the registered office, verified in the manner prescribed, after the date of incorporation of the company, shall be given to the Registrar within fifteen days of the change, who shall record the same.*

**Rule 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 / 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*

*A*

*A*

*the owner or document, as the case may be, which is not older than two months.*

**Rule 27: Notice and verification of change of situation of the registered office.-**

*The notice of change of the situation of the registered office and verification thereof shall be filed in Form No. INC-22 along with the fee and shall be attached to said Form, the similar documents and manner of verification as are prescribed for verification of Registered office on incorporation as above in terms of sub-section (2) of section 12.3.2.5 It is further noted that the Respondent while certifying the E-Form No. INC-22 with respect to change of registered office of the Company, in his certification has declared as under: -*

*"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. I further certify that:*

- 1. 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;*
- 2. All the required attachments have been completely and legibly attached to this Form;*

*I further declare that I have personally visited the registered office given in the Form at the address mentioned herein above and verified that the said registered office of the company is functioning for the business purposes of the company."*

- 3.2.5 Considering the submissions of the parties and documents placed on record, it is viewed that "Signature and Attestation Clause" in an agreement is essential for its execution. Attestation should be done by at least two witnesses who should have seen the executant signing the deed or should have received from the executant personal acknowledgement to his signatures. It is not necessary that both the witnesses should be present at the same time. There is no particular Form of attestation, but it should appear clearly that witnesses intended to sign is attesting the executor of document. The Respondent, in this regard, admitted his mistake in his written statement. It is

noted that in absence of proper witness in the said Form, the Form cannot be said to be complete. On the contrary, the Respondent in this certification had mentioned that the said Form is complete. Accordingly, the Respondent is Prima Facie Guilty of Professional Misconduct within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

**3.3 Violation of Rule 13(5)(b) of Companies (Incorporation) Rules, 2014 with respect to SPICE Form for incorporation: -**

3.3.1 It is noted that Rule 13(5) the Companies (Incorporation) Rules, 2014 provides as under:

*"Rule 13 - Signing of memorandum and articles*

*(5) Where subscriber to the memorandum is a foreign national residing outside India-*

*(a) in a country in any part of the Commonwealth, his signatures and address on the memorandum and articles of association and proof of identity shall be notarized by a Notary (Public) in that part of the Commonwealth.*

*(b) in a country which is a party to the Hague Apostille Convention, 1961, his signatures and address on the memorandum and articles of association and proof of identity shall be notarized before the Notary (Public) of the country of his origin and be duly apostilled in accordance with the said Hague Convention.*

*(c) in a country outside the Commonwealth and which is not a party to the Hague Apostille Convention, 1961, his signatures and address on the memorandum and articles of association and proof of identity, shall be notarized before the Notary (Public) of such country and the certificate of the Notary (Public) shall be authenticated by a Diplomatic or Consular Officer empowered in this behalf under section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (40 of 1948) or, where there is no such officer by any of the officials mentioned in section 6 of the Commissioners of Oaths Act, 1889 (52 and 53 Vic.C.10), or in any Act amending the same;*

*(d) visited in India and intended to incorporate a company, in such case the incorporation shall be allowed if, he/she is having a valid Business Visa.*

*Explanation- For the purposes of this clause, it is hereby clarified that, in case of Person is of Indian Origin or Overseas Citizen of India, requirement of business Visa shall not be applicable."*

3.3.2 With regard to the allegation that Respondent certified SPICE Form for incorporation of **M/s XINPOMING Technology Private Limited** wherein in the proof of ID and address

of Mr. Xie Zehua, the signature and address of the foreign director have not been apostilled in accordance with the Hague Convention, the Respondent in his written statement submitted that Mr. Xie Zehua, Director of M/s. XINPOMING Technology Private Limited was holding eBusiness Visa for the period (08/11/2019 to 06/11/2020) and also visited India during the said period for incorporation (i.e., December 2019 to January 2020) and in compliance of Rule 13(5)(d), the Respondent certified concerned SPICE Form for incorporation of the Company.

- 3.3.3 Both India and China are party to the Hague Convention of 1961 (Apostille Process) and the above Rules require compliance of both the provisions i.e., Rule 13(5)(b) and Rule 13(5)(d) being exclusive to each other. Thus, the contention of Respondent regarding non-applicability of Rule 13(5)(b) is not maintainable. It is hence viewed that the Respondent has not followed the procedure prescribed under the Companies (Incorporation) Rules, 2014 while certifying the related ROC Form.
- 3.3.4 Further, upon perusal of the copy of passport to prove the arrival and departure of Mr. Xie Zehua in/ from India as submitted by the Respondent, it is viewed that the name of the Director of Mr. Xie Zehua was not mentioned on the same and the copy of first page of passport was also not provided. On perusal of the same, it cannot be ascertained from the documents brought on record by the Respondent that Mr. Xie Zehua was present in India when the said SPICE Form was submitted with the Complainant Department as the said SPICE Form was digitally signed by Mr. Himanshu Kapoor other director of the Company. Further, the proof of entry submitted by the Respondent mentions about the tourist VISA which was issued on 16/05/2019 and would expire on 28/04/2020 whereas Electronic Travel Authorization (ETA) submitted by the Respondent provides that eBusiness Visa was issued on 08/11/2019 and would expire on 06/11/2020 which being contradictory to each other raise doubt on the submissions of the Respondent.
- 3.3.5 The Respondent certified SPICE Form for incorporation of M/s XINPOMING Technology Private Limited. The said SPICE Form was digitally signed by Mr. Himanshu Kapoor on 10/01/2020 on behalf of the Company and the Company was incorporated on 13/01/2020.
- 3.3.6 The Respondent has declared and certified as Professional in the said SPICE Form as under:

*"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."**

- 3.3.7 Accordingly, it is viewed that the Respondent has not submitted plausible explanation/clarification with respect to the issues raised by the Complainant for compliance of Rule 13(5)(b) and Rule 13(5)(d) of Companies (Incorporation) Rules, 2014. Further, it is not expected from the professional to certify the SPICE Form with respect to incorporation of a company carelessly and without properly following the procedures prescribed with respect to apostilled proof of ID and address of Mr. Xie Zehua in accordance with the Hague Convention. Thus, it is viewed that the Respondent is **Prima Facie Guilty** of Professional misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949 for not adhering to the provisions of the Companies Act, 2013 and Rules framed thereunder.

### **3.4 Charges relating to certification regarding SPICE Form**

- 3.4.1 The Respondent in his written statement admitted that he has incorporated all the above five companies and the incorporation of four out of five companies were at same Registered Office Address (A-402, Sector 47, NOIDA Gautam Buddha Nagar UP 201303). The said premises belong to the parents of the Respondent and the Respondent himself witnessed the Rent Agreement executed between his parents and Sh. Himanshu Kapoor (Common promoter/First Director in all the above five companies).



- 3.4.2 The documents submitted by the Respondent at Rule 8(5) stage also point out at irregularities as the documents are itself contradictory to the certification of the Respondent in SPICE Form filed for and on behalf of M/s. YIJIE Technology Private Limited. The Respondent has attached rent agreement executed between Mr. Himanshu Kapoor, Director on behalf of M/s YIJIE Technology Private Limited (Company) and has certified two Chinese Director of the said Company as subscriber to MOA/AOA, it further raises question that if the person is not proposed to be director of a Company, how he can assume and enter into rent agreement on behalf of the Company. The said AOA and MOA was signed and subscribed by two Chinese nationals Mr. Liang Zhinhong and Ms. Zhou Zhan and witnessed by the Respondent on 18/11/2019 at Hong Kong. Further the name of Mr. Himanshu Kapoor was mentioned on page 15 of the Articles of Association of the Company as First Directors of the Company, however, he was not the subscriber to the Memorandum of Association and Articles of Association of the Company. The said documents when read with the SPICE Form for incorporation of Company certified by the Respondent, it surfaced that the Respondent has mentioned in the said SPICE Form that Mr. Himanshu Kapoor has no interest in any other entity as "Number of entities in which director have interest" was shown as "0" on 17/12/2019. However, Mr. Himanshu Kapoor was already director in two Companies i.e., M/s EUEB India Private Limited (incorporated on 03/10/2019) and M/s TIANMA Technology Private Limited (incorporated on 12/09/2019). Keeping in view the facts and documents placed on record, it is viewed that the Respondent was well aware of said facts and has deliberately certified wrong particulars in the said SPICE Forms.
- 3.4.3 Upon perusal of rent agreements executed between Mr. Himanshu Kapoor on behalf of concerned companies and the parents of the Respondent and submitted along with the SPICE Forms certified by the Respondent, it is noted that the period of rent agreements overlaps among the agreements executed on different dates for different companies for the same premise. Further, the common floors were used by the Companies to carry out their operations. The Respondent was a certified professional of SPICE Form as well as witness to rent agreements and hence such negligence cannot be accepted from him.
- 3.4.4 Upon perusal of the Memorandum of Association of all the above five companies, it was noted that all the companies were incorporated with almost similar objects. The Respondent himself incorporated all the companies during the period 12/09/2019 to 30/01/2020 i.e. (during interval of four months). All the companies had Chinese directors on their Board who hold majority of shares i.e., 99% or 100% shareholding.
- 3.4.5 It was further noted that Mr. Himanshu Kapoor, common director has also resigned/ removed from the management of the Company after short span of time which shows that he was inducted only to execute rent agreements on behalf of the Company and just to facilitate the incorporation of the said companies with the help of the Respondent and he has no further role to play.

3.4.6 The said irregularities/ points clearly indicate at misconduct on the part of the Respondent as possible connivance can be depicted from the above findings among the Respondent, Mr. Himanshu Kapoor and other Chinese Directors in incorporation of alleged companies by execution of rent agreements and filing/ certification of E-Forms. Accordingly, it is viewed that the Respondent has helped the Chinese Directors in incorporation of abovementioned companies and has submitted rent agreement executed between his parents and Mr. Himanshu Kapoor (common director in abovementioned companies) by circumventing the provisions of applicable laws. The Respondent has further informed that due to unfavorable government regulations, the companies had not been able to commence its business activities and further no rent was received by landlord or the Respondent. He has further informed that the said rent agreements executed between the Director on behalf of the respective Company and the parents of the Respondent (Mr. Rakesh Sikri and Mrs. Poonam Sikri) which were witnessed by the Respondent himself and his sister Ms. Vrinda Sikri were also not revoked. This clearly shows that the Respondent has helped the Chinese Nationals to incorporate the shell companies with illicit motive by circumventing the provisions of law of land which is highly unbecoming of a Chartered accountant too. In view of the above, the Respondent is prima facie **Guilty** for Professional and Other Misconduct within the meaning of Item (7) of Part I of Second Schedule and Item (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949.

3.4.7 Accordingly, the Director(Discipline) in his Prima Facie Opinion dated 23<sup>rd</sup> Dec 2022 held the Respondent **GUILTY** of Professional and Other Misconduct falling within the meaning of Item (7) of Part I of Second Schedule and Item (2) of Part IV of First 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

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

**Item (2) of Part IV of First Schedule**

*"Other misconduct in relation to members of the Institute generally*

X X X X

*(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."*

3.5 The Prima Facie Opinion Formed by the Director (Discipline) was considered by the Disciplinary Committee at its meeting held on 25<sup>th</sup> 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 and Other Misconduct falling within the meaning of Item (7) of Part I of Second Schedule and Item (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949 and accordingly, decided to proceed further under Chapter V of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

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

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

S. No.	Particulars	Dated
1.	Date of Complaint in Form 'I' filed by the Complainant	29 <sup>th</sup> April, 2022
2.	Date of Written Statement filed by the Respondent	09 <sup>th</sup> June 2022 30 <sup>th</sup> September 2022
3.	Date of Rejoinder filed by the Complainant	4 <sup>th</sup> August, 2022
4.	Date of Prima Facie Opinion Formed by Director (Discipline)	23 <sup>rd</sup> December 2022
5.	Written Submissions filed by the Respondent after Prima Facie Opinion.	18 <sup>th</sup> March 2023, 18 <sup>th</sup> April 2024, 3 <sup>rd</sup> May 2024, 25 <sup>th</sup> June, 2024
6.	Written Submissions filed by the Complainant Department after Prima Facie Opinion.	26 <sup>th</sup> November 2024

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

- 5.1 The Respondent in his submissions dated 18<sup>th</sup> March 2023 and 18<sup>th</sup> April 2024, inter-alia, stated as under: -
- 5.1.1 No legal wrong has been identified by the ROC or the Disciplinary Committee. Except for broad accusations for breaching Section 448 and Section 449 of Companies Act, 2013, the contraventions identified by the Registrar of Companies are not violations under Companies Act, 2013 or Rules framed thereunder.
- 5.1.2 The Respondent had helped in incorporating the entities and assisting with certain Form filings. Not a shred of evidence is on record that he was involved in the day-to-day running of the entities. Even if the Chinese individuals had intended to run illegal operations in India, he had no knowledge of such plans.

- 5.1.3 As a professional, he had no connection or linkages, either directly or indirectly, with the impugned individuals. He had helped clients to incorporate entities in India. There was no bar under Indian law to deny help or assist businesses from China. He was neither a shareholder nor a director in any of the entities. He has not received any additional compensation (either in cash or kind). There is not a shred of evidence (either direct or circumstantial) to indicate that he had willfully connived with Chinese individuals to omit material facts.
- 5.1.4 The Electronic Travel Authorization (ETA) was issued to passport number EF8847887, belonging to Mr. Xie Zehua. Under this ETA, Mr. Xie Zehua was granted a business visa, which was valid for the period between 8<sup>th</sup> November 2019 to 6<sup>th</sup> November 2020. While the first page of the passport, containing details of the passport holder, wasn't submitted, the passport number, EF8847887, can clearly be ascertained. The copy of the passport read with the ETA provides sufficient evidence that the copy of the passport so submitted belongs to Mr. Xie Zehua. It was evidenced from the arrival stamp on the passport that Mr. Xie Zehua arrived in India on 17<sup>th</sup> November 2019, while Xinpoming was incorporated on 13<sup>th</sup> January 2020.
- 5.1.5 The difference in date set out on page 157 of the prima facie opinion is because Mr. Xie Zehua had two different visas – for tourism and for business. It is possible for one person to be granted two types of visas, and the Respondent had no reason to believe otherwise. Nothing in the General Policy Guidelines related to Indian Visa, available on the website of the Ministry of Home Affairs, bars a foreign national from being granted two visas.
- 5.1.6 With respect to the Form INC-22, the Respondent admitted the unintended mistake in the Written Statement that a second witness was missing in the rent agreement. Basis this unintended mistake, he certified Form INC 22. This minor oversight has been ruled as a contravention of the provisions of the Companies Act, 2013. This is a mistake on multiple levels. The mere admission that a signature was missing is not a contravention of the law. Neither the Registrar of Companies nor the Disciplinary Committee has set out or identified or even referred to a single statutory provision or legal requirement which mandates that a lease deed needs to be witnessed under Transfer of Property, 1882 by 2 separate witnesses. The absence of a second witness does not by itself invalidate the lease deed.
- 5.1.7 Signature by 2<sup>nd</sup> witness has been inadvertently omitted in the rent agreement. Neither the rights of the parties are affected, nor the registered office is altered on account of this. He certified Form INC - 22 as an honest mistake and there is nothing on record to prove mala fide intention. There has been no wrongful loss to the public or wrongful gain to my account. In such event of mere absence of proper witness in the rent agreement, which makes the Form incomplete, the Committee cannot attribute *mens rea* or guilty mind. The omission is minutiae and there is not a shred of evidence to indicate that Section 448 would be applicable.

- 5.1.8 Further with respect to the rent agreements entered by M/s YIJIE Technology Private Limited, M/s Eueb India Private Limited, M/s Bestly Precision Technology Private limited and M/s Tianma Technology Private Limited for premises owned by the parents of the Respondent, the Respondent stated that the rental agreements have been entered into by his parents, Mrs. Poonam Sikri and Mr. Rakesh Sikri, in their independent legal capacity and duly recorded in the respective rent agreements. In this instance, given that the lease deeds and rent agreements were for a period of 11 months, it was not even required to be registered. He certified the SPICE Forms in the capacity of a Chartered Accountant duly registered under the Chartered Accountants Act, 1949, independent and separate from that of a witness to the rent agreements.
- 5.1.9 The entities were supposedly shell companies, unknown to him at that time. The Companies Act, 2013 does not even define 'Shell Company', and it is not possible for a professional to determine during incorporation if the subscribers and directors intend to use such entity for unlawful purposes in the future – assuming these entities are being used for unlawful purposes.
- 5.1.10 The amendments brought in by Press Note 3 (2020) were enforced through Foreign Exchange Management (Non-Debt Instruments) Amendment Rules, 2020 dated 22<sup>nd</sup> April 2020 and these SPICE Forms were signed much before. The regulatory prohibitions against Chinese individuals came in much later and as set out above, most of the facts and events being scrutinized relate to a period before the introduction of Press Note 3.
- 5.1.11 There are no restrictions under the provisions of Companies Act 2013 and relevant rules therein, which prohibit common address for multiple companies. As on date, many co-working spaces across urban conglomerates specifically allow hundreds of start-ups to use the same address for their registered office – which is not unlawful. It is quite common for early-stage companies to have a common registered office in the early days of incorporation to avoid paying higher rental amounts. By itself, there is nothing wrong if two corporate entities have the same registered office.
- 5.1.12 The Disciplinary Committee has implicated him to have certified wrong particulars (regarding interest in other entities) regarding Mr. Himanshu Kapoor with respect to SPICE Forms of M/s YIJIE Technology Private Limited, M/s EUEB India Private Limited, M/s Tianma Technology Private Limited, with mala fide intention. He admitted that there was an inadvertent lapse regarding such information in the SPICE Forms regarding Mr. Himanshu Kapoor's interest in other companies. He relied on data and documents from Mr. Kapoor. While he should have double checked this data, inadvertently missed doing so. This was not deliberate and did not cause any harm to any stakeholder. In any event, most of this information was publicly available on the web portal of Ministry of Corporate Affairs. That was an avoidable mistake which does not equate to professional misconduct.




5.1.13 With respect to charge relating to certification of INC-20A in respect of M/s YIJIE Technology Private Limited and M/s Xinpoming Technology Pvt. Ltd., the Respondent clarified that the payment of subscription money could not be completed for want of government approval, and due to the multiplicity of challenges posed by the Covid-19 pandemic and the resulting delays affecting both the Government of India and the management of the companies, the requisite compliances were on hold. In this regard, the Respondent wrote to the Registrar of Companies highlighting the problem. There was no response. This was a technical challenge, and the explanation lay bare all facts.

5.2 The Respondent vide letter dated 3<sup>rd</sup> May 2024 and vide email dated 25<sup>th</sup> June 2024, inter-alia, made the following submissions: -

5.2.1 While certifying the incorporation Forms, Respondent followed the requirements set out in Rule 13(5) and Rule 13(5)(d) of the Companies (Incorporation) Rules, 2014.

- I. Rule 13(5)(b) applies where an incorporating director is a resident of a country which is a party to the Hague Apostille Convention, 1961 ("Hague Convention") and not present in India during incorporation – in such event, the signatures and address on the memorandum and articles of association are required to be notarized and apostilled in accordance with the Hague Convention. In compliance with law, he referred to duly notarized and apostilled documents (i) MOA; (ii) AOA; (ii) proof of identity of the foreign subscribers Liang Zhizhong and Zhou Zhan, who were directors of Yijie Technology Private Limited and not present in India at the time of incorporation. In relation to Yijie Technology Private Limited, he referred to the duly apostilled documents (i) MOA; (ii) AOA; (ii) proof of identity of the foreign subscribers Liang Zhizhong and Zhou Zhan, for incorporation as prescribed under the Companies (Incorporation) Rules, 2014 Limited.
- II. Rule 13(5)(d) applies where the foreign director is present in India during incorporation – in such cases a valid business visa would be required. To comply with the law and ensure that the directors' presence in India during incorporation, he referred to the valid business visas and date of entry on passport for each foreign director in Bestly Precision Technology Private Limited, Tianma Technology Private Limited, EUEB India Private Limited and Xinpoming Technology Private Limited.
  - a) In relation to Bestly Precision Technology Private Limited, the MOA was signed on 23<sup>rd</sup> January 2020. While certifying the SPICE Form, Respondent referred to the (i) valid business visa of the director Wenlong Wang issued on 01 May 2019 and date of entry on the passport as 20 November 2019, (ii) the company's AOA and MOA and (iii) notarized and apostilled proof of identity for Wenlong Wang.

- b) In relation to Tianma Technology Private Limited, the MOA was signed on 11<sup>th</sup> September 2019. While certifying the SPICE Form, he referred to the (i) valid business visa of the subscriber Wu Jiao issued on 07<sup>th</sup> June 2019 and date of entry on the passport as 15<sup>th</sup> August 2019; The company's AOA and MOA; and (iii) notarized proof of identity for Wu Jiao such as the copy of passport, electricity bill and identity card.
- c) In relation to EUEB India Private Limited, the MOA was signed on 03 October 2019. While certifying the SPICE Form, he referred to the (i) valid business visa of the foreign subscriber Wang Ke issued on 12 April 2019 and date of entry on the passport as 14 September 2019, (ii) company's AOA and MOA; and (iii) notarized proof on identity for Wang Ke such as the copy of passport and electricity bill.
- d) In relation to Xinpoming Technology Private Limited, the MOA was signed on 10 January 2020. While certifying the SPICE Form, he referred to the (i) valid business visa of the foreign subscriber Xie Zehua issued on 08 November 2019 and date of entry on the passport as 17 November 2019, (ii) company's AOA and MOA; and (iii) notarized proof on identity and address for Xie Zehua such as the copy of passport and gas supply bill.
- III. The Indian director was available when he certified the incorporation Forms. He referred to the valid business visa and copies of the foreign subscriber's passport to satisfy and evidence their presence in India while certifying the incorporation Forms.
- IV. In the course of business and as a means of undertaking his professional due diligence before certifying the incorporation of the entities, he met some of the foreign directors/subscribers such as Wenlong Wang, Wu Jiao, Wang Ke, Xie Zehua, in person.
- V. The Respondent had collected and referred to apostilled and notarized copies of identity and address documents of all foreign directors.
- VI. Liability under Section 448 has been foisted on him on the grounds that he incorrectly certified the companies' incorporation Forms in the absence of 2nd witness signature in the rent agreement. To state the correct legal position, there is neither any law prescribing 2 witness signatures to validate a lease / rental agreement nor such mistake materially alters the incorporation Form as the vital details such as the address, name of lessee remains consistent and unchanged. Prosecution under Section 448 is bad in law for the present factual matrix does not meet the ingredients of Section 448 and 449. Indian law is clear that simple assertions or references to the law without establishing the ingredients is not adequate. The ROC had neither refused these statements nor presented any evidence demonstrating that the companies in question have been prosecuted by any statutory authority.

- VII. Another plank of ROC's allegations is based on the issue of common registered offices of the companies in question. There are no legal provisions which prohibit utilization of common premises as registered office for multiple companies, and it is inconceivable as to how such commonality of address can attribute mala fide on the person providing professional services to incorporate a company. On the contrary, 12(1) of the Companies Act just provides for the requirement of a registered office which is capable of receiving and acknowledging all communications and notices. The office was suitable in this regard and communication and notices could have been received.
- VIII. The rental agreements were entered between the companies and Respondent's parents in their independent legal capacity. There are no laws prohibiting such an arrangement. In any event, this fact in itself without any additional evidence cannot be extrapolated to draw a conclusion that there was professional misconduct.
- IX. The ROC has failed to identify any legal contravention on his part except for the (i) broad and misconceived allegations of breach of Section 448 and 449 (refuted under Para 3 of this letter); (ii) non-compliance basis erroneous interpretation of provisions under Companies (Incorporation) Rules, 2014 (detailed under Para 2 of this letter) and (iii) vague allegations of mala fide basis conjectures, speculations, and suppositions. These are clearly inadequate grounds for contemplating grave findings against a professional.
- X. He acted in his professional capacity and in general course of business, and his actions are limited to certification of certain documents majorly for incorporation of the companies. He was neither a director and shareholder, nor an auditor for any of the companies – which clearly evidences extremely limited involvement in the companies' affairs. It is impossible for a professional to determine during incorporation if subscribers and directors intend to use such an entity for unlawful purposes in the future.
- XI. There are no Indian laws which prevent helping or assisting Chinese nationals to incorporate companies in India. The requirement of any additional scrutiny, beyond reasonable professional standards, while incorporating Chinese companies (if assumed for sake of argument) came only after issuance of Press Note 3 (2020 Series) by the Indian Government on 17 April 2020, which was much after the companies were incorporated between September 2019 and January 2020.
- XII. There is nothing to indicate that he was hand-in-glove with the Chinese directors to incorporate 'shell companies' in India. Separately, ROC has not taken any action or struck off any of these alleged 'shell companies'.



XIII. In the course of the oral proceedings, the ROC categorically mentioned that there has been no criminal proceedings or prosecution under Companies Act, 2013 instituted against the companies or its directors/ shareholders under any jurisdiction in India.

5.3 **Submissions made by the Complainant Department vide letter dated 26<sup>th</sup> November, 2024: -**

5.3.1 The Complainant Department submitted Complete Inquiry Report vide email dated 26.11.2024 for four Companies. Thereafter, the Inquiry Report of the remaining Company i.e., M/s Tianma Technology Pvt. Ltd. was again sought and the same was received vide an email dated 13.12.2024. It is noted that the relevant observation in the Inquiry Report is same for all the alleged Companies. Therefore, the relevant extract of Inquiry Report M/s. Bestly Precision Technology Private Limited is reproduced below and the same may be read as part and parcel of all the Companies:-

Date(s)	Particulars
30.01.2020	Company was Incorporated.
24.12.2021	The Inquiry Officer sought Information and documents from the Company under section 206(1) of the Companies Act, 2013 within 10 days of issuance of the letter.
28.12.2021	The above letter was sent to the respective directors through speed post/as well as email. However, the letter which was sent through speed post to the Company returned undelivered with the postal remark "Is pate par is firm ya company ka koi nahi atah preshak ko wapas."
05.01.2022	The Company submitted the reply.
10.01.2022	The Complainant Department received a letter from one of the directors of the Company, Mr. Wenlong Wang asking for the extension of time to submit the reply to the Inquiry letter.
04.01.2022	As the letter to the Company at its registered office was undelivered another letter was sent through speed post and email informing the Company about the visit to the Registered Office of the Company.
10.01.2022	An intimation was sent to the Company vide email dated 10.01.2022 informing them that the visit will be conducted on 12.01.2022 at 10:30 AM of the Registered Office by the IO.
12.01.2022	The Inquiry Officer had visited the registered office of the Company on 12.01.2022 but no such company was found at the address A-402, Sector-47, Noida, Gautam Budh Nagar, U.P. 201303 and the house was rented by the parents of CA. Herry Sikri to the subjected Company, who has witnessed the Form filed by Company. <b>It seems that CA. Herry Sikri is into the business of renting his parental property for Forming shell Companies in India.</b>
13.01.2022 & 14.01.2022	Emails were received from Mr. Wnlong Wang, director of the Company in reference to submitting the reply to the Inquiry letter dated 24.12.2021.

19.01.2022 C	The Complainant Department filed a police complaint against the Company and its directors in Thana Kotwali, Meison Road, Kanpur.
24.01.2022 n c	Summons were also issued to the directors of the Company through speed post was also sent through email to the respective directors on 25.01.2022 to appear on 11.02.2022.
11.02.2022 C	Only one of the directors, Mr. Himanshu Kapoor, Director appeared before the IO and his statement on oath was recorded.
25.02.2022 n c l	A Show Cause Notice under Section 206(4) of the Companies Act, 2013 was issued to the Company and its directors through speed post. The same letter was also sent to the respective directors through e-mail dated 25.02.2022.
03.03.2022 s	Reply of the Company to the show-cause notice received.

### CONCLUSION:

The Company is fit for striking off under Section 248(1)(a) and (c) of the Companies Act, 2013. Only one director, Mr. Himanshu Kapoor appeared for recording of statement on oath and this director is involved as dummy director in other such Companies. It is not possible to know as to whether the subjected Company is involved in Power Bank Scam or has collected money in fraudulent way from public. Keeping this in view, it is recommended to **initiate Winding Up action** under Section 271(c) and (e) r/w 272 (e) of Companies Act, 2013 as neither the Company has commenced its business nor got the FDI approval and also nor maintained the registered office.

### 6. Brief facts of the Proceedings:

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

S. No.	Particulars	Date of meeting(s)	Status
1.	1 <sup>st</sup> Hearing	20 <sup>th</sup> April 2023	Part heard and adjourned.
2.	2 <sup>nd</sup> Hearing	23 <sup>rd</sup> April 2024	Part heard and adjourned.
3.	3 <sup>rd</sup> Hearing	17 <sup>th</sup> May 2024	Adjourned on the request of Complainant Department.
4.	4 <sup>th</sup> Hearing	28 <sup>th</sup> May 2024	Adjourned on the request of Respondent.
5.	5 <sup>th</sup> Hearing	14 <sup>th</sup> June 2024	Hearing concluded. Decision on conduct of the Respondent was reserved.
6.	----	29 <sup>th</sup> August 2024	The Committee decided to seek certain documents.
7.	----	18 <sup>th</sup> September, 2024	The Committee advised the office to ask the Complainant Department to provide the requisite documents/information.
8.	----	3 <sup>rd</sup> January 2025	Decision on conduct of the Respondent taken.

- 6.2 On the day of first hearing on 20<sup>th</sup> April 2023 the Committee noted that the Respondent along with his Counsel Mr. Puneet Sharma were present in person. However, the Complainant was not present.
- 6.3 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 in the affirmative and pleaded Not Guilty to the charges levelled against him. The Committee also directed the Respondent to submit further submissions, if any, within the next 7 days, with a copy to the Complainant. The Committee, looking into the absence of the Complainant and the fact that this was the first hearing, decided to adjourn the hearing to a future date.
- 6.4 On the day of hearing held on 23<sup>rd</sup> April 2024, the Committee noted that the Authorized representative of the Complainant Department and the Respondent along with his Counsel was present before it through video conferencing. There had been a change in the composition of the Committee which was duly intimated to the Authorized Representative of the Complainant Department and the Respondent who were present before the Committee. Thereafter, the case was taken up for hearing. On being asked by the Committee to substantiate their case, the authorized representative of the Complainant Department referred to the contents of their Complaint in Form 'I' and confirmed that they have nothing more to add in this case. Subsequently, the Counsel for the Respondent presented the Respondent's line of defence, inter-alia, reiterating the written submissions made by him on the Prima Facie Opinion. He emphasized that the Respondent did not had any role to play in the running of the business operations of the alleged Companies under question. His role was limited to render professional help to set up entities in India and/or to certify various ROC Form(s) in the said respect. On consideration of the submissions made by the authorized representative of the Complainant Department and the Counsel for the Respondent, the Committee posed certain questions to them which were responded by them. Thus, on consideration of the submissions and documents on record, the Committee directed both the parties to the case to provide the following documents/ information within next 10 days with a copy to the other party to the case to provide their comments thereon, if any: -

**Complainant:**

A brief synopsis on the inquiry conducted by them against the alleged Company.

**Respondent:**

1. Copy of his working papers for alleged certification in the instant case.
2. A tabular Chart containing the following details:
  - a. name of the Company
  - b. their directors

- c. their Shareholders together with their shareholding pattern
  - d. the date of certification of the relevant Form(s) by the Respondent
  - e. the date of the Memorandum of Association
3. the proof of presence of the directors in India on the date when the Respondent signed as the witness to the subscribers of the Memorandum of Association of the alleged Companies.

With this, hearing in this case was part heard and adjourned.

- 6.5 On the day of hearing held on 17<sup>th</sup> May 2024, the Committee granted adjournment on request of the Complainant Department.
- 6.6 On the day of hearing held on 28<sup>th</sup> May 2024, the Committee granted adjournment on request of the Respondent.
- 6.7 On the day of the hearing held on 14<sup>th</sup> June 2024 the Committee noted that the Complainant vide email dated 13<sup>th</sup> June 2024 mentioned that due to her pre-occupation on 14<sup>th</sup> June 2024, she is unable to attend the hearing. Moreover, her stand remains the same in the matter of complaint made against CA. Herry Sikri i.e. the Respondent in the instant case. Accordingly, the Committee decided to proceed ahead with the hearing in the case. The Committee asked the Counsel for the Respondent to make their final submissions to defend their case. The Counsel for the Respondent presented the Respondent's line of defence, inter-alia, drawing attention to the checks exercised by the Respondent at the time of certification of Company's incorporation Forms. He stated that the alleged Chinese Directors were there in India at the time of incorporation of the Companies. He met the said Chinese Directors and his basis of certifying the Forms were copy of passport, ID, bank statements and electricity bills. He further added that there was no legal wrong in leasing out the premises to the alleged Companies and the role of Respondent as per engagement letter was limited to certification of incorporation Forms only. On consideration of the submissions made by the Counsel for the Respondent at length, the Committee posed certain questions to him which were responded to by him.
- 6.7.1 Thus, on consideration of the submissions and documents on record, the Committee decided to conclude the hearing in the case with the directions to the Respondent to provide the following within next 10 days with a copy to the Complainant Department to provide their comments thereon, if any: -
- a) A tabular chart showing the names of the alleged five Companies, registered office address of the alleged Companies and its directors at the time of misconduct together with the change thereof and the association (professional or otherwise) of the Respondent with the said Companies.
  - b) The details of the rent agreement entered into by the alleged Companies with the relatives of the Respondent, the amount of rent received, mode of payment of rent, whether the agreement had been renewed and if so, the terms thereof.

- c) Details of arrival of Chinese promoters/directors of the alleged Companies in India, the period of their stay and return from India.
- d) The details of the apostille authorities in the country of origin of the Chinese promoters/directors of the alleged Companies.

With this, hearing in the case was concluded and a decision on the conduct of the Respondent was reserved.

- 6.7.2 Thereafter, the Committee at its meeting held on 29<sup>th</sup> August 2024 advised the office to send a separate communication to the concerned ROC(s) with a copy to the office of DGCoA to provide a copy of the complete Investigation/Inquiry report so that the Committee can arrive at a logical conclusion in the said case.
- 6.7.3 Thereafter, the Committee at its meeting held on 18<sup>th</sup> September 2024 noted that Complete Investigation report was sought from the Complainant Department vide email dated 09.09.2024. The Department vide email dated 09.09.2024 informed that that the Inquiry report is confidential in nature, and the same was submitted to the Ministry. It cannot be shared and the same was stated during the hearing also. For all such issues you may refer the matter to the O/DGCoA. Accordingly, the Committee advised the office to ask the Complainant Department to provide the requisite documents/information within 7 days of the receipt of the Communication. Also, a copy of the said communication be sent to the DGCoA office with a request to ensure compliance within the stipulated time period. With this, the consideration of the case was deferred by the Committee.
- 6.7.4 The Complete Inquiry Report was again sought from the Complainant Department vide email 21<sup>st</sup> November 2024. The Complainant Department in response to this reverted vide email dated 22<sup>nd</sup> November 2024 stating that the report cannot be shared directly to any authority without approval of the MCA. Thereafter, the Complainant Department vide email dated 26<sup>th</sup> November 2024 submitted its Complete Inquiry Report with the following disclaimer:

*"being a confidential matter, the secrecy of the reports should be maintained by the Institute. The reports should not be shared with any public, the onus of illegal sharing/disclosure of facts given in the reports lies on the Institute, if anything happens so."*

Thereafter, the Directorate vide email dated 27<sup>th</sup> November 2024 requested the Complainant Department to kindly permit to share the attached documents with the Respondent. In response to same, the Complainant Department vide email dated 28<sup>th</sup> November 2024 informed that they have sought clarification from ministry regarding the same and until the permission for the same is not provided by the Ministry the documents shall not be shared. The Complainant Department vide email dated 11<sup>th</sup> December 2024 informed that the Ministry letter only mentions to share the report with the disciplinary committee. As such, in the interest of justice as well as for fairness in

the disciplinary proceedings, disciplinary committee may take call in the matter and share accordingly which deems fit.

- 6.8 Thereafter, at its meeting held on 3<sup>rd</sup> January 2025, the Committee perused the copy of the complete Inquiry Report as received from the Complainant Department. On perusal of the same, the Committee was of the view that no new observation/fact to establish the conduct of the Respondent is brought on record. The relevant observations from the same on the basis of which complaint has been made by the Complainant Department against the Respondent already Forms part of the complaint in Form 'I' together with the rejoinder of the Complainant which have already been shared with the Respondent as per Rules. Accordingly, the same need not be shared with the Respondent. Thus, the Committee duly considered the submissions and documents on record and decided on the conduct of the Respondent.

## 7. Findings of the Committee: -

- 7.1 At the outset, the Committee noted the following was alleged against the Respondent with respect to five Companies namely M/s YIJIE Technology Private Limited, M/s EUEB India Private Limited, M/s BESTLY Precision Technology Private Limited, M/s. Xinpomng Technology Private Limited and M/s. Tianma Technology Private Limited: -

- a) Charges relating to the certification of INC-20A, declaration for commencement of business in respect of M/s. Yijie Technology Private Limited and M/s. Xinpomng Technology Private Limited,
- b) Charges relating to certification regarding INC-22 of M/s. Tianma Technology Private Limited
- c) Charges related to violation under Rule 13(5)(b) of Companies (Incorporation) Rules, 2014 with respect to SPICE Form for incorporation of M/s. Xinpomng Technology Private Limited
- d) Charges relating to certification regarding SPICE Form-Incorporated all five companies and the incorporation of four out of five companies were at same Registered Office Address and self-witnessing the Rent Agreement through which premises of parents of the Respondent were rented out to the companies (M/s. Xinpomng Technologies Private Limited was incorporated at a different address)

## 7.2 First Charge - Charges relating to certification of INC-20A, declaration for commencement of business in respect of M/s. YIJIE Technology Private Limited and M/s. Xinpomng Technology Private Limited.

- 7.2.1 The Committee noted that the requirement/purpose to file Form INC-20-A is defined under Section 10A(1)(a) of the Companies Act, 2013 and Rule 23A of the Companies (Incorporation) Rules, 2014 and the same is reproduced below: -

*"Section 10A(1)*

*"A company incorporated after the commencement of the Companies (Amendment) Act, 2019 and having a share capital shall not commence any business or exercise any borrowing powers unless—*

*(a) a declaration is filed by a director within a period of one hundred and eighty days of the date of incorporation of the company in such Form and verified in such manner as may be prescribed, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration; "*

**Rule 23A: Declaration at the time of commencement of business-**

*"The declaration under section 10A by a director shall be in Form No, INC-20A and shall be filed as provided in the Companies (Registration Offices and Fees) Rules, 2014 and the contents of the said Form shall be verified by a company Secretary or a chartered Accountant or a cost Accountant. in practice: Provided that in the case of a company pursuing objects requiring registration or approval from any sectoral regulators such as the Reserve Bank of India, Securities and Exchange Board of India, etc., the registration or approval, as the case may be from such regulator shall also be obtained and attached with the declaration."*

It is noted that as per the above requirement a declaration within 180 days of the incorporation has to be filed by the director of the company to the registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such a declaration. The declaration shall be filed in Form INC-20A along with mandatory attachments i.e., proof of payment and bank statements.

- 7.2.2 The Committee noted that the Respondent with respect to M/s. YIJIE Technology Private Limited and M/s. XINPOMING Technology Private Limited certified and filed the e-Form INC-20A with late fee and the proof of payment was not attached. The reason given by the Respondent was COVID and as the company's beneficial owner was Chinese Citizen, the company was required to obtain the government approval for payment of subscription money. Also, since the Government approval system was newly introduced regulation, the company was deliberating on applying the investment approval.
- 7.2.3 The Committee also noted that the Company had not commenced operations since incorporation and did not carry out any single transaction due to want of Government approval. The Committee also noted that both the undertakings attached to the e-Form No. INC-20A were undated and unsigned "-sd-" copies and mention about non




commencement of operations until the Company receives FDI approval from government.

- 7.2.4 The Committee also noted that the Respondent communicated with ROC via email dated 16<sup>th</sup> August 2021 as under:

*"Notably, the beneficial owners of the said company are of Chinese origin. Accordingly, the company is required to obtain Government FDI Approval before making an investment in India. The company applied for the FDI approval government with the Government, however, the same got rejected.*

*Please note that the company has not carried out any operations since incorporation and subsequently the FDI approval got rejected. In this regard, the company is not able to file Form INC20A because the form requires "Subscribers Proof of Payment for the value of shares" as a mandatory attachment.*

*Presently, the Company is deliberating to apply afresh for the government FDI approval. In the meanwhile, the Company wants to adhere to the annual compliances by filing Forms with the MCA. However, the Company is not able to file any other Form on the MCA website as the e-Forms are prompting errors to file INC-20A first before filing any other Form.*

*Given the above practical difficulties, please suggest the way forward so that the Company adheres to the annual compliances. In case your good self requires any further information or clarification, please let us know."*

- 7.2.5 A reminder to that effect was also sent to ROC vide email dated 30<sup>th</sup> November, 2021 by the Respondent, the relevant text of which is as under:

*"Request your reply on trailing mail."*

- 7.2.6 Thereafter, the Form INC -20A was certified by the Respondent and filed with ROC on 30<sup>th</sup> November 2021 with late fee.

- 7.2.7 The Committee noted that as per the Instruction kit INC -20A, the following is required to be attached:

*A certificate of business commencement has to be obtained within 180 days from the date of incorporation and an e-Form has to be filed with the concerned ROC (Registrar of Companies) regarding the same.*





*A declaration under section 10A from the directors has to be provided in the form of a Board Resolution in the e-Form itself.*

*In addition to this, a proof of deposit of the paid-up share capital by the subscribers also needs to be attached in the e-Form.*

*If a company pursues objects requiring registration or approval from any sectoral regulators such as The Reserve Bank of India and Securities and Exchange Board of India etc, then it shall obtain such registration or approval along with the attached declaration.*

*The e-Form has to be verified and certified by a practising professional before filing with the ROC (Registrar Of Companies).*

However, the only attachment to the said form was an undated '-sd'- letter marked to the Officer-in charge with the following contents:

*"As per the Press Note No. 3 (2020 Series) FDI Policy, an entity of a country, which shares a land border with India or where the beneficial owner of investment into India is situated in or is a citizen of any such country, can invest only under the Government Approval Route.*

*Notably, the beneficial owners of the company are of Chinese origin. Accordingly, the company is required to obtain Government FDI Approval before making an investment in India. The company is in process of applying the FDI approval with the Government of India.*

*In the meanwhile, the company wants to adhere to the requirements of the Companies Act, 2013. However, due to non-filing of Form INC-20A, the company is not able to ensure other compliances practically, as the MCA portal is not allowing to make other filings due to want of Form INC-20A. The company has made sincere efforts to understand the alternative to the situation but to no avail. Accordingly, the company is filing Form INC-20A, to ensure other compliances are duly completed. Notably, the company confirms that it will not commence operations until it gets FDI approval from government and it submits the Subscriber proofs of payment."*

7.2.8 Thus, the Committee noted that the mere reason for submission of Form INC-20A was to ensure other compliances are duly completed. The company confirmed that it will not commence operations until it gets FDI approval from Government and submits the proofs of payment of Subscriber.

7.2.9 The Committee noted that the Respondent was aware that no payments had been made by the subscribers to the Memorandum of Association (MOA) and Articles of Association (AOA), and that no entries had been recorded in the Company's bank accounts. Despite this knowledge, the Respondent with an incorrect attachment certified the Form INC-20A which defeated the very purpose for which the Form is

required to be filed. Consequently, it is concluded that the Respondent did not exercise due diligence while certifying Form INC 20A. Thus, the Committee held the Respondent **Guilty** of professional misconduct as defined in Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

**7.3 Second Charge- Charges relating to certification regarding INC-22 of M/s Tianma Technology Private Limited.**

7.3.1 The Committee noted that the registered office at the time of incorporation of the alleged Company was "A-402, Sector-47, Gautam Buddha Nagar, Noida UP-201303" which was an address owned by the parents of the Respondent. The SPICE Form in respect of the same had been certified by the Respondent on 8<sup>th</sup> September 2019. Thereafter, there was a change in the registered office of the alleged Company for which the Form INC 22 had been certified by the Respondent on 12<sup>th</sup> March 2020.

7.3.2 The Committee further noted that the Respondent not only certified and filed e-Form INC-22 with respect to M/s. Tianma Technology Private Limited for change in its registered office but also witnessed the rent agreement signed between the Company and the landlord in which the signatures of the second witness was missing. The Committee noted that a witness signature can be valuable for evidentiary purposes. If a party to the agreement later claims they did not sign, the witness who observed the signing can confirm it. However, in this case, the Respondent, who is the certifying professional, also signed as a witness, which undermines the significance of their testimony. Additionally, it has been noted that the signature of the second witness is missing.

7.3.3 The Committee also noted that as per Instruction Kit for e-Form INC-22 issued by MCA, the following two attachments are mandatory in all cases:

- a) Proof of Registered Office address (Conveyance/Lease deed/ Rent Agreement etc. along with the rent receipts).
- b) Copies of the utility bills (proof of evidence of any utility service like telephone, gas, electricity etc. depicting the address of the premises not older than two months is required to be attached).
- c) Altered Memorandum of association. This is mandatory to attach in case of shifting of Registered Office from one state to another within the jurisdiction of same ROC or from one state to another outside the jurisdiction of existing ROC.
- d) A proof that the Company is permitted to use the address..... Authorization from the owner or occupant of the premises along with proof of ownership or occupancy and it is mandatory if Registered Office is owned by any other entity/person (not taken on lease by company).
- e) Certified copy of order of competent authority. It is mandatory to attach in case of shifting of Registered Office from one ROC to another within the same state or from one state to another within the jurisdiction of same ROC or from one state to another outside the jurisdiction of existing ROC.

- f) List of all the companies (specifying their CIN) having the same Registered Office address, if any.

Any other information can be provided as an optional attachment(s).

- 7.3.4 The Committee further noted that the Respondent in his written statement submitted at Prima Facie Opinion stage stated that inadvertently signatures of the 2<sup>nd</sup> witness were not captured in the uploaded version of the rent agreement. However, during the course of hearing in the Written Statement dated 18<sup>th</sup> March 2023, the Respondent admitted his unintended mistake that a second witness was missing in the rent agreement. Thus, the Committee observed that true facts were not stated by the Respondent at Prima Facie Opinion stage as if the signatures of the 2<sup>nd</sup> witness were not captured in the uploaded version of the rent agreement, then, he should have brought on record, the original of the said rent Agreement. However, he later on during the hearing admitted missing of the signature of the 2<sup>nd</sup> witness on the rent agreement to be his unintended mistake.
- 7.3.5 The Committee also on further perusal of the Lease Deed dated 8<sup>th</sup> November 2019 executed between M/s Tianma Technology Pvt Ltd(as lessee) and the Lessor noted that the same,inter-alia, provided as under:

*"...The premise is leased for Ms. Jiao Wu who is a foreign national(PRC) and is the Chinese Director of the Lessee Company.....called the "Residential Premises" and measuring 1415 square feet super area...*

*This deed shall be for a period of....for exclusive use of lessee and the employees of the Company that has leased it.The premises is purely for residential use.*

*2. That the Lessee shall pay to Lessor for the **Residential Premises** Rs 25000/- (**Rupees Twenty Five Thoudand only**) towards monthly rent before the 22<sup>nd</sup> day of each .....*

*6. That the Lessee shall maintain the interior of the Residential Premises and the open areas.....will be used only for its Bonafide residential purpose only."*

*9. Further, a list of fittings and fixtures at the Residential Premises was attached as Annexure A to this Agreement."*

From the above, the Committee noted that the word 'Residential' has been used in the terms of lease Deed which indicates that the premises was rent out for residential purpose. Also, a copy of the No Objection Certificate dated 8<sup>th</sup> November 2019 issued by the lessor was attached to Form INC 22, wherein it was stated that they have allowed the Company to operate and conduct their business from the said address and

that they have no objection if the Company uses the address of the said premises as their mailing address.

7.3.6 Thus, the Committee was of the view that the Respondent was casual in his approach while certifying Form INC 22 and did not ensure whether the intent of law was met while certification of the said Form INC 22 and just submitted the Form alongwith its attachments without even verifying the purpose of it. The Committee further held that in the absence of proper witness in the said Lease Deed, the e-Form cannot be said to be complete. On the contrary, the Respondent in this certification had mentioned that the said Form is complete. Thus, it is evident that the Respondent was casual while certification of the said Form INC 22. Accordingly, the Committee held the Respondent **Guilty** of Professional Misconduct within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

7.4 **Third Charge- Related to violation under Rule 13(5)(b) of Companies (Incorporation) Rules, 2014 with respect to SPICE Form for incorporation of M/s. Xinpomong Technology Private Limited**

7.4.1 The Committee noted that the Respondent certified SPICE Form for incorporation of M/s Xinpomong Technology Private Limited wherein Mr. Xie Zehua was one of the proposed directors of the above stated Company. Rule 13(5)(b) and 13 (5) (d) of the Companies (incorporation) Rules, 2014 are reproduced below: -

***“Rule 13 - Signing of memorandum and articles.***

***(5) Where subscriber to the memorandum is a foreign national residing outside India-***

*(b) in a country which is a party to the Hague Apostille Convention, 1961, his signatures and address on the memorandum and articles of association and proof of identity shall be notarized before the Notary (Public) of the country of his origin and be duly apostilled in accordance with the said Hague Convention.*

.....

*(d) visited in India and intended to incorporate a company, in such case the incorporation shall be allowed if, he/she is having a valid Business Visa.*

*Explanation- For the purposes of this clause, it is hereby clarified that, in case of Person is of Indian Origin or Overseas Citizen of India, requirement of business Visa shall not be applicable.”*

7.4.2 It was noted that as per Rule 13(5), it has two requirements As per Rule 13(5)(b):- Where subscriber to the memorandum is a foreign national residing outside India residing in a country which is a party to the Hague convention, then such documents will have to be notarized before the notary public and duly apostilled in accordance with the Hague convention. Further, as per Rule 13(5)(d), if he's visited India intending

to incorporate a company, the incorporation shall be allowed if, he/she is having a valid business visa.

7.4.3 The Committee noted that in relation to Xinpoming Technology Private Limited, the MOA was signed on 10<sup>th</sup> January 2020. While certifying the SPICE Form on 10<sup>th</sup> January 2020, Respondent referred to the following:

- a) valid business visa of the foreign subscriber Xie Zehua issued on 08<sup>th</sup> November 2019 and date of entry on the passport as 17<sup>th</sup> November 2019,
- b) company's AOA and MOA; and
- c) notarized proof on identity and address for Xie Zehua such as the copy of passport and gas supply bill.

The Indian director was available when he certified the incorporation Forms. He also referred to the valid business visa and copies of the foreign subscriber's passport to satisfy and evidence his presence in India while certifying the incorporation Forms.

7.4.4 Based on the documents provided by the Respondent, the Committee noted that Mr. Xie Zehua had a valid e-business visa, and he was present in India on several occasions including at the time of certification of SPICE form as per following details: -

Name of the Foreign Director.		Date of Arrival in India.	Date of Departure from India
<b>XIE ZEHUA</b>		16.05.2019.	13.06.2019.
Passport No. EF8847887.		15.08.2019.	26.9.2019
Date of Issue of Electronic Travel Authorisation (ETA) on e-business visa :	08.11.2019	17.11.2019.	Not available as per copy of his passport on record
Date of expiry of Electronic Travel Authorisation (ETA) on e-business visa:	06.11.2020		
Date of Certification:	10.01.2020		

7.4.5 The Committee also noted that on the e-business visa of Mr. XIE ZEHUA, the foreign director of the Company, the activity of attending technical/business meetings was permitted. Further, no stamp was available for date of departure from India after 17<sup>th</sup> November 2019 on his passport.

7.4.6 The Committee also noted that the Respondent in his written submissions asserted that in the course of business and as a means of undertaking his professional due diligence before certifying the incorporation of the entities, he met some of the foreign

directors/subscribers such as Wenlong Wang, Wu Jiao, Wang Ke, **Xie Zehua**, in person.

7.4.7 From the above facts, it was noted that foreign director i.e. XIE Zehua was having a valid business e-visa and also present in India at the time of certification of the said Spice Form.

7.4.8 Thus, the Committee was of the view that the Respondent has provided sufficient documents to support and corroborate his stand. The Committee also held that the case of the Respondent was within the requirements of Rule 13(5)(d) of the Companies (Incorporation) Rules, 2014 and its compliance has been ensured by the Respondent. Accordingly, the Committee held the Respondent **Not Guilty** of Professional Misconduct under Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 in respect of the said charge.

**7.5 Fourth Charge- Charges relating to certification regarding SPICE Form of M/s. YIJIE Technology Private Limited, M/s. EUEB India Private Limited, M/s BESTLY Precision Technology Private Limited and M/s. XINPOMING Technology Private Limited and M/s. TIANMA Technology Private Limited**

7.5.1 The Committee upon perusal of rent agreements executed between Mr. Himanshu Kapoor (on behalf of concerned companies) and the parents of the Respondent and submitted alongwith the SPICE forms certified by the Respondent, noted as under: -

Company	Date of Incorporation	Date of Rent Agreement and details of Property mentioned in the Agreement	Period of Rent Agreement
M/s TIANMA Technology Private Limited	12/09/2019	05/09/2019 for Second Floor of A-402, Sector-47, Noida, Distt. Gautam Budh Nagar, Uttar Pradesh	For 11 months – 05/09/2019 to 04/08/2020
M/s EUEB India Private Limited	03/10/2019	19/09/2019 for Second Floor of A-402, Sector-47, Noida, Distt. Gautam Budh Nagar, Uttar Pradesh	For 11 months – 19/09/2019 to 18/08/2020
M/s YIJIE Technology Private Limited	17/12/2019	04/12/2019 for First Floor of Property No. A-402, Sector-47, Noida, Distt. Gautam Budh Nagar, Uttar Pradesh	For 11 months – 04/12/2019 to 03/11/2020
M/s BESTLY Precision Technology Private Limited	30/01/2020	20/01/2020 for A-402, Sector-47, Noida, Distt. Gautam Budh Nagar, Uttar Pradesh	For 11 months – 10/01/2020 to 09/12/2020

Thus, the Committee noted that the same Registered Office address has been used for four companies and the said premises belong to the parents of the Respondent and the Respondent himself witnessed the Rent Agreement executed between his parents and Sh. Himanshu Kapoor (Common promoter/ First Director in all the above mentioned companies).

7.5.2 The Committee also noted the following details of directorship of Mr. Himanshu Kapoor as Director in the following Companies:

Company	Date of appointment as Director	Date of Resignation
M/s TIANMA Technology Private Limited	12/09/2019	01/01/2021
M/s EUEB India Private Limited	03/10/2019	29/07/2021
M/s YIJIE Technology Private Limited	17/12/2019	15/11/2021
M/s BESTLY Precision Technology Private Limited	30/01/2020	25/03/2022

7.5.3 The Committee also noted that with respect to M/s YIJIE Technology Private Limited, the copy of the rent agreement dated 4<sup>th</sup> December 2019 executed by Mr. Himanshu Kapoor, Director, on behalf of M/s YIJIE Technology Private Limited (Company) has been attached. Although, Mr. Himanshu Kapoor was named as one of the first director in the Company, the signatures of only 2 Chinese directors had been shown as subscriber to MOA/AOA and the Respondent was witness to the subscriber to the MOA/AOA of the said Company. The Committee noted that as per ROC records, Mr. Himanshu Kapoor was the director (other than first subscribers) of the Company from 17<sup>th</sup> December 2019 i.e. since its incorporation. Thus, the rent agreement ought to have been executed by Mr. Himanshu Kapoor in the capacity of the director of the Company on or after 17<sup>th</sup> December 2019 only. Further, the Respondent being the certifying professional ought to have been more particular while certification of the said Form.

7.5.4 Further, it was also noted from Spice Form of M/s Yijie Technology Pvt Ltd that it was specified therein that Mr. Himanshu Kapoor had no interest in any other entity as "Number of entities in which director have interest" was shown as "0" on 17/12/2019. However, Mr. Himanshu Kapoor was already director in two Companies i.e., M/s EUEB India Private Limited (incorporated on 03/10/2019) and M/s TIANMA Technology Private Limited (incorporated on 12/09/2019) and the certification of their SPICE Form had been carried out by the Respondent only.

7.5.5 Similarly, while reviewing the Spice Form certified by Respondent for M/s EUEB India Pvt Ltd, the Committee noted that it was specified therein that Mr. Himanshu Kapoor had no interest in any other entity as "Number of entities in which director have interest" was shown as "0" on 3/10/2019. However, he was director in M/s TIANMA

Technology Private Limited (incorporated on 12/09/2019). The Committee noted that the Respondent admitted that there was an inadvertent lapse regarding such information in the SPICE Forms in view of Mr. Himanshu Kapoor's interest in other companies. He totally relied on data and documents received from Mr. Himanshu Kapoor.

- 7.5.6 Considering the facts mentioned above and documents on record, the Committee noted that the Respondent certified SPICE Form of three companies i.e. M/s TIANMA Technology Private Limited, M/s EUEB India Pvt Ltd, and M/s Yijie Technology Pvt Ltd with Mr. Himanshu Kapoor as a common Director within a period of three months. Thus, the fact that Mr. Himanshu Kapoor was common director in the said Companies, ought to be in the knowledge of the Respondent.
- 7.5.7 The Committee was also of the view that although a director is primarily liable for disclosure of his interest in other entities, however, looking into the fact that certification of the SPICE Form of all these Companies had been carried out by the Respondent only together with admission of lapse on the part of the Respondent, it is evident that required diligence was not exercised by the Respondent.
- 7.5.8 Accordingly, in view of the aforesaid observations, the Committee held the Respondent **Guilty** of Professional Misconduct under Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 in this respect.
- 7.5.9 As regard the charge of facilitation in incorporation of the aforesaid 5 companies, the Committee further noted that the rent agreements had been entered into by Yijie, M/s. EUEB India Private Limited, M/s. BESTLY Precision Technology Private Limited and M/s. TIANMA Technology Private Limited with the parents of the Respondent, Mrs. Poonam Sikri and Mr. Rakesh Sikri, in their independent legal capacity. The Committee noted that the Director(Discipline) in his Prima Facie Opinion had observed as under:
- a) the period of rent agreements overlaps among the agreements executed on different dates for different companies for the same premise. (in respect of 4 Companies)
  - b) Common floors were used by the Companies to carry out their operations.(in respect of 4 Companies)
  - c) The Respondent was certifier of SPICE Form as well as witness to rent agreements.
  - d) All the companies were incorporated with almost similar objects as per their Memorandum of Association.
  - e) The Respondent himself incorporated all the companies during the period 12/09/2019 to 30/01/2020 i.e. (during interval of four months).
  - f) All the companies have Chinese directors on their Board who hold majority of shares i.e., 99% or 100 % shareholding.
  - g) Mr. Himanshu Kapoor, common director resigned/ removed from the management of the Company after a short span of time



7.5.10 In the said context, the Committee also noted the below mentioned details of the status of the Company and the last date of filing:-

S. No.	Name of Companies	Status of Companies	Last date of Filing
1	M/s. YIJIE Technology Private Limited.	Active	29.01.2024
2	M/s. EUEB India Private Limited.	Active	NA
3	M/s. BESTLY Precision Technology Private Limited.	Active	16.02.2024
4	M/s. XINPOMING Technology Private Limited.	Active	NA
5	M/s. TIANMA Technology Private Limited.	Active	17.01.2024

7.5.11 The Committee also noted the below mentioned details of the Registered Office Address of the Companies: -

S. No.	Name of Companies	Registered Office Address at the time of Incorporation.	Registered Office Address currently
1.	M/s. YIJIE Technology Private Limited.	A-402, Sector-47, Noida, U.P. 201301.	B-21, GF, Omaxe NRI City Centre, Omega 2, Greater Noida, Uttar Pradesh - 201308, Alpha Greater Noida – 201310, Uttar Pradesh
2.	M/s. EUEB India Private Limited.	A-402, Sector-47, Noida, U.P. 201301.	A-402, Sector 47, Noida, - 201303, Uttar Pradesh
3.	M/s. BESTLY Precision Technology Private Limited.	A-402, Sector-47, Noida, U.P. 201301.	A-402, Sector 47, Noida, - 201303, Uttar Pradesh
4.	M/s. XINPOMING Technology Private Limited.	Flat No.2010, Verona Tower, Mahagun Moderne, Sector-78, Gautam Budh Nagar, Noida, U.P. 201301.	Flat No.2010, Verona Tower, Mahagun Moderne, Sector-78, Gautam Budh Nagar, Noida, U.P. 201301.
5.	M/s. TIANMA Technology Private Limited.	A-402, Sector-47, Noida, U.P. 201301.	Office No. Rtb - 048, Royal Tower Market, Shipra Suncity, Indirapuram, Ghaziabad – 201014, Uttar Pradesh

7.5.12 The Committee observed that the Complainant Department has not brought on record any convincing evidence to establish that the Respondent's role was a facilitator in incorporation of the aforesaid 5 companies with nefarious designs. His role was limited to certification of incorporation Forms with respect to the said Companies and was neither a director/shareholder or auditor of the said Companies. Further, the

Committee noted that the property (in respect of 4 Companies) was rented out by the parents of the Respondent who have separate legal entity and there is no evidence to indicate that they acted at the instance of the Respondent. Thus, the Committee held the Respondent **Not Guilty** of Other Misconduct falling within the meaning of Item (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949.

## 8. Conclusion:

8.1 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
S.no. 1 of Para 2.1 as above	Para 7.2.1 to Para 7.2.9 as above	<b>Guilty</b> - Item (7) of Part I of the Second Schedule
S.no. 2 of Para 2.1 as above	Para 7.3.1 to Para 7.3.6 as above	<b>Guilty</b> - Item (7) of Part I of the Second Schedule
S.no. 3 of Para 2.1 as above	Para 7.4.1 to Para 7.4.8 as above	<b>Not Guilty</b> - Item (7) of Part I of the Second Schedule
S.no. 4 of Para 2.1 as above	Para 7.5.1 to Para 7.5.8 as above	<b>Guilty</b> - Item (7) of Part I of Second Schedule
	Para 7.5.9 to Para 7.5.12 as above	<b>Not Guilty</b> - Item (2) of Part IV of First 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 the Second Schedule to the Chartered Accountants Act, 1949.

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

Sd/-  
(Mrs. RANI S. NAIR, I.R.S. (Retd.))  
GOVERNMENT NOMINEE

Sd/-  
(SHRI ARUN KUMAR, I.A.S. (Retd.))  
GOVERNMENT NOMINEE

Sd/-  
(CA. SANJAY KUMAR AGARWAL)  
MEMBER

DATE: 31<sup>st</sup> January 2025

PLACE: NEW DELHI

प्रमाणित सत्य प्रतिलिपि / Certified True Copy

  
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