

CONFIDENTIAL

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

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

Findings under Rule 18(17) and Order under Rule 19(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

File No.:- [PR/G/96/22-DD/417/2022-PR/G/97/2022(Clubbed)/DC/1800/2023]

In the matter of:

Shri. Alpesh Maniya,

Dy. Registrar of Companies,

On behalf of the Registrar of Companies,

Ministry of Corporate Affairs,

100, Everest, Ground Floor,

Marine Drive,

Mumbai - 400002

.....Complainant

Versus

CA. Abhishek Agarwal (M. No. 521991),

112A, 1st Floor, PP Trade Centre,

Netaji Subhash Palace,

Above Kalyan Jewellers,

Delhi - 110052

.....Respondent

MEMBERS PRESENT:

Shri Jiwesh Nandan, IAS (Retd.) Government Nominee (in person)

Ms. Dakshita Das, IRAS (Retd.), Government Nominee (Through VC)

CA. Mangesh P Kinare, Member (in person)

CA. Abhay Chhajed, Member (Through VC)

DATE OF FINAL HEARING : 21st August 2024

DATE OF DECISION TAKEN : 06th January 2025

PARTIES PRESENT:

Authorized representative of the Complainant : Mr. Rajiv Kadam(Through VC)

Respondent : CA. Abhishek Agarwal (Through VC)

Counsel for Respondent : Mr. CV Sajan (Through VC)



1. **Background of the Case:**

- 1.1. In the instant matter, the Respondent had certified e-Form INC 22 of M/s Litaibai Technology Private Limited on 11.07.2020 and certified incorporation documents and e-form INC 22 in respect of M/s. Surging Spring Technology Private Limited.

2. **Charges in brief:**

Charge in case of M/s Litaibai Technology Private Limited

- 2.1. The Complainant stated that e-Form INC-22 was certified by the Respondent wherein the registered office was shown to be situated at 'Unit no. Ghodbandar Road, Vartak Nagar Division, Hypercity & Big Mall, Thane400607, Mumbai Maharashtra' however, during the physical verification by the officials of the Complainant department, it was seen that said registered office was not maintained. Further, as stated, on visiting the registered office it was found that name of the Company (M/s Litaibai) was pasted on a piece of paper on a wall and the picture uploaded on the website of the registered office was giving a deserted look which certainly was not a registered office and therefore, the Respondent in connivance with the Indian and foreign directors, knowingly submitted a false statement.

Charge in case of M/s Surging Spring Technology Private Limited

- 2.2. The Complainant department alleged that the Respondent has facilitated/ help the directors of foreign nationals in opening the Company (M/s Surging) in India. Further, they had joined hands with the Indian Directors to open the Company (M/s Surging) on behalf of foreign directors. Further, the Respondent had provided all logistics for opening the Company (M/s Surging Spring) and certified the documents which were required for filing by the said Company. That during the examination of the documents, it was found that the company (M/s Surging) was incorporated on 04.06.2020 wherein the first subscribers and witness were as under:-

| S. No | Name, address, occupation and description of each subscriber | No. of equity shares taken by each subscribers | Signature of witness, his name, address, description and occupation |
|-------|--|--|---|
| 1 | CYMO PTE LTD. Address: 60, Paya Lebar Road # 08-55, Paya Lebar Square, Singapore 409051, Occupation- Business | 9990 | Name- Abhishek Agarwal Witness to both Office No. 607, 6th |

| | | | |
|---|---|----|---|
| 2 | Mr. Chen Song Address: RM 2501 Block 10 Gubei Ruishi Garden Lane 500 Gold City Ave. Changning District Shanghai China. Occupation-self employed | 10 | Floor, Best Business Park, Netaji Subhash Place, Delhi-110034 |
|---|---|----|---|

2.3. That, e-Form INC-22 was certified by the Respondent and filed on 07.06.2020 with the Complainant department wherein the registered office was shown to be situated at Unit no. 4th Floor, MBC IT Park, NR Wadawali Police Station Ghodbunder Road, Kasarwadavli Mumbai Thane Maharashtra 400615. However, during the physical verification by its officials it was seen that said registered office was not maintained. Further, on visiting the registered office it was found that the Company (M/s Surging) was not maintained at its registered office address and the Respondent in connivance with the Indian Directors and foreign directors had knowingly submitted a false statement. The Complainant further alleged that modus operandi revealed that the Respondent who incorporated the Company (M/s Surging) had mens rea to bypass the robust system of incorporation and to allow the Chinese nationals to become the directors.

2.4. It is alleged that certain Chinese Directors or individuals/Shareholders/entities in the involved Companies had engaged dummy persons as subscribers to MOA and Directors and registered these Companies with ROC Mumbai by using forged documents/falsified addresses/signatures and certain professionals have connived with these companies/their directors/subscriber to MOA and Chinese individuals who are acting behind these companies and have incorporated these companies for illegal/ suspicious activities in violation of various laws and further 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. Accordingly, inquiry under Section 206(4) of the Companies Act, 2013 was initiated into the affairs of the Company.

3. **The relevant issues discussed in the Prima Facie Opinion dated 21st February 2023 Formulated by the Director (Discipline) in the matter in brief, are given below:**

3.1. It was noted that after filing of the Complaint bearing reference no PR/G/96/2022, one more complaint dated 16th August 2022 was filed by the same Complainant Department against CA. Abhishek Agarwal (M. No. 521991) with respect to the allegations related to the Company namely, M/s Surging Spring Technology Private Limited (Ref no.PR/G/97/2022). Since the Complainant and the Respondent were same in both the Complaints, they were

examined for the purpose of clubbing in terms of Rule 5(4)(a) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of cases) Rules 2007. Upon examination it was noted that the subject matter of both the Complaints were substantially the same and hence, it was decided to club the second complaint dated 16th August, 2022 with the first complaint in terms of aforesaid Rule 5(4) (a). Accordingly, the parties were informed about clubbing of the cases vide letter/email dated 25th August, 2022.

- 3.2. In respect of first charge in case of M/s Litaibai Technology Private Limited, it was noted that the Respondent had filed with the Complainant Department e-Form INC-22 (Notice of situation or change of situation of registered office) pursuant to Section 12(2) & (4) of the Companies Act, 2013 and Rule 25 and 27 of The Companies (Incorporation) Rules, 2014 on 11.07.2020 wherein he certified the registered office address of the Company as '4th Floor, MBC Infotech Park, Ghodbunder Road, Kasarvadavli Mumbai'. The Complainant has alleged that during physical verification of such address by its officials, it was seen that said registered office was not maintained.
- 3.3. It was observed that the Respondent before certifying INC-22 of the Company had not visited its registered office address situated in Mumbai and sent his associate for its verification and relied on his associate's verification. He certified the Form INC-22 of the Company (M/s Litaibai) inspite of declaring that he personally visited such address and verified that it would be functioning for the business purpose of the Company. In the extant case though the Respondent vide his letter dated 16-11-2022 had submitted all the documents which in compliance with Rule 25 of the Companies (Incorporation) Rules, 2014 were mandatory to be submitted to the Complainant department and to which he relied upon while certifying Form INC-22 ,like No Objection Certificate, Copy of Electricity bill, copy of the bill and copy of the agreement entered into between 'Access Work' and Mr. Chen Song, the subscriber to the MOA/AOA however, in the light of the fact that the Respondent did not visit the premises and verified it personally to ensure the requirement of having a registered office by the Company in form as well as in its substance in compliance with Section 12 of the Companies Act, 2013 while he declared so in INC-22, it was viewed that the Respondent has not performed due diligence while certifying the INC -22 form of the Company with the Complainant department.
- 3.4. Further, on perusal of rent agreement attached with INC-22, it was noted that the agreement was executed between the Company and M/s Access Work even before the date of incorporation of the Company i.e., 01-04-2020 and the word 'Private Limited' is used even before the said Company was incorporated/in existence on 18-05-2020 in violation of

Section 453 of Companies Act, 2013 and this instance further signifies that the Respondent has not performed his assignment of certifying INC-22 with due diligence Accordingly, the Respondent was held Prima Facie held **Guilty** of Professional Misconduct falling within the meaning of Item (7) of Part-I of Second Schedule to the Chartered Accountants Act, 1949.

- 3.5. In respect of **second charge** in case of 'M/s Surging Spring Technology Private Limited' that the Respondent had facilitated the directors of foreign nationals in opening the Company (M/s Surging) in India and that the Respondent had provided all logistics for opening the Company (M/s Surging), it was noted that the subscribers to memorandum are foreign national viz. M/s Cymo PTE. Ltd through Ms. Chen Ping and Mr. Chen Song and were residing outside India in a country which is party to Hague Apostille Convention, 1961 i.e., Hong Kong, China, a Notarial Certificate dated 22-04-2020 issued by notary public of Honkong, China to which the subscribers belonged to, is submitted along with the MOA and AOA however, the subscriber sheet to such MOA and AOA is neither signed by such Notary nor any reference of such notarial certificate is given on such subscriber sheet to the MOA and AOA in violation of Section 4 and 5 of the Companies Act, 2013.
- 3.6. Further, on perusal of such Notarial Certificate, it was noted that only the signatures of the subscribers have been verified by the Notary public and neither the verification of addresses of the Subscribers nor their identification is notarized in violation of Rule 13 of Companies (Incorporation) Rules, 2014 and he Respondent while certifying SPICe form has given the clear declaration that draft MOA and AOA being submitted along with such SPICe form were in accordance with Section 4 and 5 of Companies Act, 2013 and Rules made thereunder and he had opened and verified all the attachments, it is clear that the Respondent has been grossly negligent while performing his duty of certification of incorporation application of the Company in SPICe form. Accordingly, the Respondent was held 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.
- 3.7. In respect of **third charge** in case of 'M/s Surging Spring Technology Private Limited' that during physical verification by the Complainant department, the Company was not found being maintained from its registered office address given in Form INC-22 certified by the Respondent, it was noted that the Respondent in response to the allegation has stated that at the time of the physical inspection by his associate (before certifying INC-22 by him) the Company had duly affixed the Board with its name, address and CIN outside such registered office premises he certified in INC-22. Further, the Complainant in his Rejoinder had given some part of the statement on oath of the Respondent taken by the Complainant

Department during its enquiry and it is noted that he (Respondent) had taken the same stand before the Complainant department as he did before this in the following words :

"Q11. Have you visited the registered office of the Company?"

Ans: We have received the documents of the registered office of the Company on email but not visited the registered office physically."

- 3.8. Thus, it was clear that the Respondent before certifying INC-22 (form to notify to the Complainant department the registered office address of the Company) of the Company did not personally visit such address for its verification. In the extant case though the Respondent vide his letter dated 16-11-2022 had submitted all the documents which in compliance with Rule 25 of the Companies (Incorporation) Rules, 2014 were mandatory to be submitted to the Complainant department and to which he relied upon while incorporating the Company like No Objection Certificate, Copy of Electricity bill, copy of the bill, and copy of the agreement. however, in the light of the fact that the Respondent did not visit the premises and verified it personally to ensure the requirement of having a registered office by the Company in form as well as in its substance in compliance with Section 12 of the Companies Act, 2013 while he declared so in INC-22 it was viewed that the Respondent had not performed due diligence while certifying the INC -22 form of the Company with the Complainant department.
- 3.9. Further, on perusal of such Rent agreement, it was further noted that the agreement was executed between the Company and M/s Access Work even before the date of incorporation of the Company i.e., 01-06-2020 and the word 'Private Limited' is used even before the said Company was incorporated / in existence on 04-06-2020 in violation of Section 453 of Companies Act, 2013 and this instance further signifies that the Respondent has not performed his assignment of incorporation of the Company with due diligence. Accordingly, he is held Prima Facie held **Guilty** of Professional Misconduct falling within the meaning of Item (7) of Part-I of Second Schedule to the Chartered Accountants Act, 1949.
- 3.10. With regard to **fourth charge** that certain professionals connived with the Chinese subscriber/directors of the Companies found involved in fraudulent activities, it was noted that though the Complainant in support of this allegation has not brought on record even a single piece of detail or evidence against the Respondent however, it was noted that in his Rejoinder dated 18-10-2022 he has mentioned that the Respondent during enquiry by the Complainant department had stated in his statement on oath that one Indian director Ms. Mansi Jain in the Company at the time of its incorporation happened to be his wife and he (Respondent) further admitted that she was introduced as non-executive director of the

Company due to the mandatory requirement of having an Indian director in a foreign subsidiary company and she did not know the other director of the Company i.e. Mr. Chen Song. In this regard it was noted that though the Complainant department in respect of this statement has not put forth either the copy of Respondent's Statement on oath on record or any evidence to show that Ms. Mansi Jain, one of the first directors in the Company whose name was mentioned in SPICe form certified by the Respondent, was the wife of the Respondent. However, from the perusal of Company's account on public domain, it was noted that Ms. Mansi Jain's address is mentioned as 'J-89, ASHOK VIHAR, PHASE-1, NORTH WEST DELHI, DELHI – 110052' which was noted to be the same as that of found in the members data base of the Respondent with ICAI as his residential address. The Respondent in this respect has been noted to be silent in his Written Statement to this Directorate.

3.11. From the above fact on record, it appeared that the Respondent did not come with this Directorate with complete facts and his involvement with the Subscribers of the Company to help them in incorporating the Company with dummy director cannot be denied at this stage. Therefore, the act of the Respondent was viewed as unbecoming of a Chartered Accountant and accordingly, the Respondent was Prima Facie held **Guilty** with respect to this charge, of other misconduct falling within the meaning of Item (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949.

3.12. Accordingly, the Director (Discipline) in his Prima Facie Opinion dated 21st February 2023 opined that the Respondent was Prima Facie **Guilty** of Professional and Other Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949. The said items of the Schedule to the Act, states as under:

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

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

x x x x x x x

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

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

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

X X 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."

3.13. The Prima Facie Opinion formed by the Director (Discipline) was considered by the Disciplinary Committee in its meeting held on 11th July 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 Prima Facie **GUILTY** of Professional and Other Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule and Item (2) of Part IV of the 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. **Dates of Written Submissions/ Pleadings by the Parties:**

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

| S. No. | Particulars | Dated |
|--------|---|---|
| 1. | Date of Complaint in Form 'I' filed by the Complainant | 16 th August 2022 |
| 2. | Date of Written Statement filed by the Respondent | 17 th September 2022 |
| 3. | Date of Rejoinder filed by the Complainant | 18 th October 2022 |
| 4. | Date of Prima Facie Opinion formed by Director (Discipline) | 21 st February 2023 |
| 5. | Written Submissions filed by the Respondent after PFO | 23 rd May 2024, 08 th June 2024, 13 th June 2024 and 28 th August 2024. |

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

The Respondent vide letter dated 23rd May 2024, 08th June 2024, 13th June 2024 and 28th August 2024 had, inter alia, made the submissions which are given as under –

5.1. **Respondent's submissions vide letter dated 23rd May 2024:-**

In respect of Litaibai Technologies Pvt. Ltd.

- (a) The charge is misconceived because the clause of physical verification in the INC 22 was not to be literally interpreted. Physical verification was achieved through the representative of the Respondent. It was as good as personal verification because no law insists that an attesting CA shall do every act on his own, which is an 'impossible to achieve' proposition at all times.
- (b) The reason for delegating the job of physical visit to a person available at that locality at that point of time (Mumbai) (i.e., the Corona-induced lockdown period with severe travel restrictions) should be considered.
- (c) The error in the rent agreement was a nonconsequential and apparently inadvertent one, for which the Respondent was not to be held liable, being an unconnected party.

In respect of Surging Spring Technologies Pvt. Ltd

- (a) No instance of violation of Section 4 or Section 5 of the Companies Act is made out against the Respondent with respect to the attestation of the Form SPICe+.
- (b) The requirement in Rule 13(1) is to record in the subscriber's page in MOA/AOA by the witness with a certification that he witnessed the signing by subscribers of MOA/AOA, verified the subscriber's identity, and also to enter his personal details, apart from putting his signature.
- (c) Where the subscribers to MOA/AOA are foreign nationals, and in whose case the requirement of witness attestation is to be through a Notary certification falling within the scope of Rule 13(5)(b), it is not practical to achieve the requirement of recording all the information by witnessing the subscribers page of MOA/AOA as per Rule 13(1), because a Notary Certificate is a separate document.
- (d) Further verbatim compliance of Rule 13(1) is not possible where Rule 13(5)(b) also has application. In such cases, both rules must be harmoniously analysed to test whether the objective of Rule 13 was achieved or defeated in the attestation of MOA/AOA by the witness (notary).

- (e) The Complainant has not substantiated the allegation that the appointment of Ms. Mansi Jain was in violation of any law or was for achieving any illegal objectives. There was no violation of any law because Ms. Mansi Jain was appointed as a director. That had not affected the attestation of the SPICE+ form by the Respondent, as this was only a certification of facts.
- (f) The Complainant has not made out any case that by incorporating the company, any kind of offense was committed.

5.2. Respondent's submissions vide letter dated 08th June 2024:-

- (a) He had examined the genuineness and authenticity of the Notary attestation of the documents that were filed along with the Spice+ form filed for the incorporation of the company Surging Spring Technology P Ltd, from the official websites operated by the judiciary department of Hong Kong.
- (b) He had also verified whether the subscriber company CYMO Pte Ltd was a genuine company, and the details of the company were verified from the website of the Accounting and Corporate Regulatory Authority (ACRA).

5.3. Respondent's submissions vide letter dated 13th June 2024:-

- (a) In the case of M/s Surging Spring Technology Private Limited and M/s Litaibai Technology Company Private Limited, both the companies failed to get the FDI Approval, and bank accounts were closed, thus these Companies had therefore a natural death without any activities. However, as per the MCA portal, both companies are showing active as on date.
- (b) Mansi Jain resigned from the Company on 11th Feb 2021 and Form DIR-11 has been self-certified by Mansi Jain as it does not require any certification by any professional.

5.4 Respondent's submissions vide letter dated 28th August 2024:-

- (a) He deputed a Company Secretary, Shri Shanu Mata, his professional friend who was placed in Mumbai, to visit the registered office premises of both Companies.
- (b) It was not possible for the Respondent to personally visit the registered office premises due to the lock down in covid-19 pandemic.
- (c) That EoW of Maharashtra Police made an inquiry against the Companies, CS Shanu Mata was contacted, and he confirmed to the Police that he had visited the registered Office personally.



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

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

| S.No | Date of Meeting(s) | Status |
|------|---------------------------------|--|
| 1. | 14 th September 2023 | Adjourned at the request of the Respondent. |
| 2. | 23 rd April 2024 | Part heard and adjourned. |
| 3. | 28 th May 2024 | Deferred due to paucity of time. |
| 4. | 03 rd June 2024 | Part heard and adjourned. |
| 5. | 20 th June 2024 | Deferred due to paucity of time. |
| 6. | 15 th July 2024 | Adjourned in the absence of the Complainant. |
| 7. | 21 st August 2024 | Hearing Concluded and Judgment Reserved. |
| 8. | 23 rd September 2024 | Deferred due to paucity of time. |
| 9. | 11 th December 2024 | Deferred |
| 10. | 06 th January 2025 | Decision taken |

- 6.1 On the day of the first hearing on 14th September 2023, the Committee noted that the Respondent vide email dated 09/09/2023 has sought adjournment stating that due to some professional commitments in the month of September, he would not be able to attend the hearing. The Committee noted that the Complainant was not present and notice of listing of the case has been served upon him. The Committee acceded to the request of the Respondent and in the absence of the Complainant, adjourned the matter to a later date.
- 6.2 On the day of hearing on 23rd April 2024, the Committee noted that the Respondent was present through Video conferencing mode. Thereafter, he made a declaration that there was nobody present except him from where he was appearing and that he would neither record nor store the proceedings of the Committee in any form. Being first hearing of the case, the Respondent was put on Oath. Thereafter, the Committee enquired from the Respondent as to whether he was aware of the charges against him and then the charges as contained in prima facie opinion were read out. On the same, the Respondent replied that he is aware of the charges and pleaded 'Not Guilty' to the charges levelled against him. In view of Rule 18(9) of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee adjourned the case to a later date.
- 6.3 On the day of hearing on 28th May 2024, the consideration of subject case was deferred by the Committee due to paucity of time.

6.4 On the day of hearing on 03rd June 2024, the Committee noted that the Respondent along with Counsel were present and appeared before it. The Complainant was not present and the notice of listing of subject case was duly served upon the Complainant. Thereafter, the Committee asked the Counsel for the Respondent to make submissions. The Committee noted the submissions of the Counsel for the Respondent which, inter alia, are given as under –

- (i) The Respondent had certified Form INC- 22 related to M/s Litaibai Technology Private Limited and M/s Surging Spring Technology Private Limited.
- (ii) The Respondent had sent his associate based upon Mumbai to visit the registered office of M/s Litaibai Technology Private Limited and M/s Surging Spring Technology Private Limited.
- (iii) That both the subject Companies are closed.
- (iv) The Respondent has not received professional fees from the Companies.
- (v) There is no connivance of wife of the Respondent with Chinese Nationals/Directors.
- (vi) There was notarial certification of passport(s) of the Directors of the Companies.
- (vii) The Respondent received hard copy as well as soft copy of documents for certification.

6.5. The Committee after considering the arguments of the Counsel for the Respondent, adjourned the hearing to a later date and directed the Respondent to provide the following documents/information:

- (i) Current status of the Companies.
- (ii) Date on which the wife of the Respondent resigned from Directorship of the Company and the name of the professional who certified the resignation Form and to provide copy of resignation Form.
- (iii) Whether wife of the Respondent, being Director, had received any sitting fees from the Company.
- (iv) To submit proof/evidence of identity verification undertaken by the Respondent regarding passport etc. of foreign Director.

6.6. The Committee noted that, in response to the directions given on 03.06.2024, the Respondent vide letters dated 08.06.2024 and 13.06.2024 has filed written submissions, which have been mentioned at paras 5.2 and 5.3 above.

6.7. On the day of hearing on 20th June 2024, the consideration of the subject case was deferred by the Committee due to paucity of time.

- 6.8. On the day of hearing on 15th July 2024, the Committee noted that the Complainant was not present for the hearing and notice of listing of the case has been served upon him. The Committee adjourned the case to a future date with a view to extend one final opportunity to the Complainant to substantiate the charges. The Committee directed the office to inform the Complainant to appear before it at the time of next listing and in case of failure to appear, the matter would be decided ex-parte based upon the documents and materials available on record.
- 6.9. On the day of hearing on 21st August 2024, the Committee noted that the authorized representative of the Complainant and Respondent along with Counsel were present through VC and appeared before it. Thereafter, the Committee asked the Counsel for the Respondent to make submissions. The Committee noted the submissions of the Counsel for the Respondent which, inter alia, are given as under -
- (i) The Respondent accepted that he had not visited the Registered office of M/s. Litaibai Technology Private Limited and M/s. Surging Spring Technology Private Limited before certifying Form INC - 22.
 - (ii) The Respondent had engaged his associate from Mumbai to visit the registered office of the Companies as there were COVID restriction on those days in Country.
 - (iii) The Respondent had examined the genuineness and authenticity of the Notary attestation of the documents that were filed along with Form Spice+ for the incorporation of the Company (Surging Spring Technology Pvt. Ltd.) from the official websites operated by the Judiciary Department of Hong Kong.
 - (iv) The Respondent had not certified the incorporation documents of Litaibai Technology Pvt. Ltd. Only INC-22 regarding registered office was certified by him.
 - (v) Both the Companies failed to get the FDI approval and their business was closed. However as per the MCA portal, both Companies are showing active as on date.
 - (vi) Ms. Mansi Jain (wife of the Respondent) resigned from the Company (Surging Spring Technology Private Limited) on 11th February 2021 and Form DIR-11 had been self-certified by Ms. Mansi Jain, and this Form does not require any certification by any professional.
 - (vii) Ms. Mansi Jain (wife of the Respondent) has not received any sitting fees from the Company.
- 6.10. Thereafter, the Committee asked the authorised representative of the Complainant to make submissions. The authorized representative of the Complainant submitted that he had

already provided all the documents and has nothing more to submit in this case and Committee may decide the case on merits.

- 6.11. Based on the documents and material available on record and after considering the oral and written submissions made by both parties, the Committee concluded the hearing in the matter, and judgment was reserved. The Committee directed the Counsel for the Respondent to provide the name of an associate of the Respondent, who had visited the registered office of the Companies with relevant documents within 07 days.
- 6.12. The Committee noted that, in response to the directions given on 21.08.2024, the Respondent vide letters dated 28.08.24 has filed written submissions, which have been mentioned at para 5.4 above.
- 6.13. On 23rd September 2024 and 11th December 2024, the consideration of the subject case was deferred by the Committee due to paucity of time.
- 6.14. Thereafter, on 06th January 2025, the subject case was fixed for taking decision. After detailed deliberations, and on consideration of the facts of the case, various documents on record as well as oral and written submissions made by the parties, the Committee took the decision on the conduct of the Respondent.

7. **Findings of the Committee:**

- 7.1. The Committee noted that the **first charge** against the Respondent was that Form INC-22 in respect of M/s Litaibai Technology Private Limited was certified by the Respondent showing the registered office as "4th Floor, MBC Infotech Park, Ghodbander Road, Kasarvadavli, Mumbai" however during the physical verification by the Complainant Department, it was not found to be maintained. In this regard, the Director (Discipline) while giving his prima facie opinion has made the Respondent prima facie Guilty of Professional Misconduct on the ground that the above address was not physically verified by the Respondent himself though the requirements of Rue 25 of the Companies (Incorporation) Rules, 2014 were complied with. It was also noted that the rent agreement was executed between the Company and M/s Access Work on 01.04.2020, which was even before the date of incorporation of the Company i.e., 18.05.2020, and the word 'Private Limited' was used even before the said Company was incorporated on 18-05-2020, which was in violation of Section 453 of Companies Act, 2013.



- 7.2. In this regard, the Respondent vide his letter dated 28th August 2024 has stated that he deputed a Company Secretary named Shri Shanu Mata who was his professional colleague placed in Mumbai to visit the registered office of the Company as it was not possible for him to visit Mumbai due to lock down on account of Covid 19 pandemic. The Respondent, in response to the direction of the Committee, submitted that CS Shanu Matu has visited the registered office of the Company on his behalf. The Respondent further stated that EoW of Maharashtra Police had made an enquiry against the Company, CS Shanu Mata who was contacted had confirmed to the Police that he had visited the registered Office of the Company personally. The Committee also noted the submissions of the Respondent that the execution of the rent agreement was a matter between the Company and M/s Access Work and the Respondent had no role to play in it.
- 7.3. In view of the above, the Committee noted that although the Respondent had not personally visited the registered office of the Company as declared in e-Form INC-22; however, the assignment of personal visit was given to his associate based at Mumbai, (viz. CS Shanu Matu) who had undertaken physical verification of registered office address of the Company. The Committee further noted that the said premises of the Company were also supported by agreement with the owner of premises, Utility Bill, and No Objection Certificate in respect of said premises as registered office of the Company. The Committee opined that sufficient evidence was laid before the Committee about the physical verification of the registered office of the Company as undertaken by the associate of the Respondent and accordingly, the Respondent was held **Not Guilty** of Professional Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountant Act 1949.
- 7.4. The Committee noted that the **second charge** against the Respondent was that the Respondent has facilitated/ help the directors of foreign nationals in opening the Company (M/s Surging Spring Technology Private Limited) in India and he had joined hands with the Indian Directors to open the Company (M/s Surging) on behalf of foreign directors. Further, the Respondent had provided all logistics for opening the Company and certified the documents which were required for filing by the said Company. In this regard, the Director (Discipline) while giving his Prima Facie Opinion has made the Respondent Prima Facie Guilty of Professional Misconduct on the ground that the witness/ Notary is required to verify not only the signatures of subscribers rather the address and the identification of those subscribers too.

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7.5. In this regard, on perusal of the documents brought on record by the Respondent, it is noted that the following foreign Nationals were subscribers, and the details were notarized as under: -

| Name of Subscriber | Document Name | Apostille No. | Date | Whether Notarial Certificate on record | Whether Verification result available |
|---|-----------------------|---------------|------------|--|---------------------------------------|
| M/s Cymo Pte Limited, a Singapore based Company through its Authorized Representative, Ms. Cheng Ping Passport No. EJ2183825 Address: D/O Mr. Chen Jingmei, R/O Room 201, Block 16, Sunshine, Jingcheng, Baitian Road, Yangzhou City, Jiangsu Province, China | MOA, AOA, Declaration | 14769/2020 | 24.04.2020 | Yes | Yes |
| Mr. Cheng Song Passport No. E48587116 RO Room 2501, Block 10, Gubei, Ruishi Garden, Lane 500 Gold City Ave., Changning District, Shanghai, China | MOA, AOA, Declaration | 14769/2020 | 24.04.2020 | Yes | Yes |

7.6. From the above table, it is amply clear that the above MOA, AOA and declaration which contains all i.e., the identity of the subscribers in form of their passport numbers, their address as well as their signatures were duly notarized by the Notary Public. It is also noted that the Notarial Certificate brought on record read as under: -

“ 1. Copy of Memorandum of Association subscriber sheets consisting of two pages and bearing the signatures of MS. CHEN PING for and on behalf of CYMO PTE. LTD and MR. CHEN SONG;
2. copy of Articles of Association subscriber sheets consisting of two pages and bearing the signatures of MS. CHEN PING for and on behalf of CYMO PTE LTD. and MR. CHEN SONG;
3. copy of Declaration consisting of one page and bearing the signatures of MS. CHEN PING and MR. CHEN SONG;”

7.7. The Committee also noted the submissions of the Respondent that he has also examined the authenticity of the notarial certificate of passport and credit card statement/ electricity invoice of subscribers to establish their identity. Thereafter, the Committee considering the documents brought on record by the Respondent, was of the view that the Respondent has examined sufficient documents to verify the identity of the subscribers.

7.8. As regards the witnessing of the above forms is concerned, it is noted that Sub-rule (1) and (5)(b) of Rule-13(1) of Companies (Incorporation) Rules, 2014 which mention about 'Signing of memorandum and articles' reads as follows:

“The Memorandum and Articles of Association of the company shall be signed in the following manner, namely:-

*(1) **The memorandum and articles of association of the company shall be signed** by each subscriber to the memorandum, who shall add his name, address, description and occupation, if any, **in the presence of at least one witness who shall attest the signature and shall likewise sign and add his name, address, description and occupation, if any and the witness shall state that “I witness to subscriber/subscriber(s), who has/have subscribed and signed in my presence (date and place to be given); further I have verified his or their Identity Details (ID) for their identification and satisfied myself of his/her/their identification particulars as filled in”***

“(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.”

7.9. From the above, it is observed that in case the subscribers are foreign nationals residing outside India, there is a requirement on the part of the certifying professional to verify that the signatures, address, and proof of identity of the subscribers to Memorandum and Articles of Association have been notarized by the Notary Public of his origin, which has already been done by the Respondent in this case as mentioned above. Accordingly, the Committee was of the view that the Respondent has taken due care and held the Respondent **Not Guilty** of Professional Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountant Act 1949.

7.10. The Committee noted that the **third charge** against the Respondent was that Form INC-22 in respect of M/s Surging Spring Technology Private Limited was certified by the Respondent showing registered office as “4th Floor, MBC IT Park, NR Wadawali Police Station, Ghodbunder Road, Kasarwadvli, Mumbai, Thane, Maharashtra, 400615”, however during the physical verification by the Complainant Department, it was not found to be maintained. In this regard, the Director (Discipline) while giving his prima facie opinion has made the Respondent prima facie Guilty of Professional Misconduct on the ground that the above address was not physically verified by the Respondent himself though the requirements of Rule 25 of the Companies (Incorporation) Rules, 2014 were complied with. It was also noted that the rent agreement was executed between the Company and M/s Access Work on 01.06.2020, which was even before the date of incorporation of the Company i.e., 04.06.2020, and the word ‘Private Limited’ was used even before the said Company was incorporated on 04.06.2020, which was in violation of Section 453 of the Companies Act, 2013.

7.11. In this regard, the Respondent vide his letter dated 28th August 2024 has stated that he deputed a Company Secretary named Shri Shanu Mata who was his professional colleague placed in Mumbai to visit the registered office of the Company as it was not possible for him to visit Mumbai due to lock down on account of Covid 19 pandemic. The Respondent, in

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response to the direction of the Committee, submitted that CS Shanu Matu has visited the registered office of the Company on his behalf. The Respondent further stated that EoW of Maharashtra Police had made an enquiry against the Company, CS Shanu Mata who was contacted had confirmed to the Police that he had visited the registered Office of the Company personally. The Committee also noted the submissions of the Respondent that the execution of the rent agreement was a matter between the Company and M/s Access Work and the Respondent had no role to play in it.

7.12. In view of the above, the Committee noted that although the Respondent had not personally visited the registered office of the Company as declared in e-Form INC-22; however, the assignment of personal visit was given to his associate based at Mumbai, (viz. CS Shanu Matu) who had undertaken physical verification of registered office address of the Company. The Committee further noted that the said premises of the Company were also supported by agreement with the owner of premises, Utility Bill, and No Objection Certificate in respect of said premises as registered office of the Company. The Committee opined that sufficient evidence was laid before the Committee about the physical verification of the registered office of the Company as undertaken by the associate of the Respondent and accordingly, the Respondent was held **Not Guilty** of professional misconduct falling within the meaning of item (7) of Part I of the Second Schedule to the Chartered Accountant Act 1949.

7.13. The Committee noted that another charge against the Respondent was that he connived with the Chinese subscriber/directors of the Companies was involved in fraudulent activities, it is noted that though the Complainant in support of this allegation has not brought on record even a single piece of detail or evidence against the Respondent however, it is noted that in his Rejoinder dated 18-10-2022 he has mentioned that the Respondent during enquiry by the Complainant Department had stated in his statement on oath that one Indian director Ms. Mansi Jain in the Company at the time of its incorporation happened to be his wife and he (Respondent) further admitted that she was introduced as a non-executive director of the Company due to the mandatory requirement of having an Indian director in a foreign subsidiary Company and she did not know the other director of the Company i.e. Mr. Chen Song.

7.14. In this regard, the Committee observed that the Complainant did not bring on record any evidence wherein it can be proved that either the Respondent or his wife has derived any benefit from the said directorship of his wife in the Company. The Committee noted the submission of the Respondent that Ms. Mansi Jain (wife of the Respondent) was the non-executive director of the Company, and she has not received any sitting fees from the

Company. Further, she has even resigned from the post of director on 11th February 2021. The Committee was of the view that in the extant case, the role of the Respondent was limited to the certification of relevant documents of the Company (i.e., incorporation form Spice + Form INC-32 and Form INC-22), and the Complainant did not cite any specific law that prohibits the appointment of Mansi Jain (wife of the Respondent) as the director of the Company. Since there is no evidence of any malafide intent of the Respondent, the Committee decided to extend the benefit of doubt to the Respondent, and accordingly, 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 Accountant Act 1949.

8. Conclusion

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

| Charges (as per PFO) | Findings (Para ref.) | Decision of the Committee |
|---------------------------------|---------------------------------|--|
| Para 2.1 as above | Para 7.1 to 7.3 as above | Not Guilty as per Item (7) of Part I of Second Schedule |
| Para 2.2 as above | Para 7.4 to 7.9 as above | Not Guilty as per Item (7) of Part I of Second Schedule |
| Para 2.3. as above | Para 7.10 to 7.12 as above | Not Guilty as per Item (7) of Part I of Second Schedule |
| Para 2.4 as above | Para 7.13 to 7.14 as above | Not Guilty as per 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 documents on record, the Committee held the Respondent **NOT GUILTY** of Professional and Other Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949

Order

10. Accordingly, in terms of Rule 19(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee passes an Order for Closure of this case against the Respondent.

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


Sd/-
(MS. DAKSHITA DAS, IRAS {RETD.})
GOVERNMENT NOMINEE

Sd/-
(CA. MANGESH P. KINARE)
MEMBER

Sd/-
(CA. ABHAY CHHAJED)
MEMBER

DATE: 30th January 2025
PLACE: New Delhi

प्रमाणित सत्य प्रतिलिपि / Certified True Copy


अंजू ग़ोवर / ANJU GROVER
सहायक सचिव / Assistant Secretary
अनुशासनात्मक निदेशालय / Disciplinary Directorate
भारतीय सनडी कैलकुलर संस्थान
The Institute of Chartered Accountants of India
आईसीएआई भवन, विद्यवात नगर, शाहजहाँ, दिल्ली-110002
IGAI Bhawan, Vidya Vihar, Shahjahan, Delhi-110002