CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2025-26)]
[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

Ref. No. [PR/G/113/2024/DD/187/2024/DC/1913/2024]

In the matter of:

Ms. Seema Rath,
Registrar of Companies,
Ministry of Corporate Affairs
37/17, The Mall
Uttar Pradesh, Kanpur-208001. **...Complainant**

Versus

CA. Mayank Garg (M. No. 547848)
Partner, PSMG & Associates
18A PD Tandon Marg,
Laxman Chowk, Dehradun-248001. **...Respondent**

MEMBERS PRESENT:

CA. Charanjot Singh Nanda, Presiding Officer (in person)
CMA. Chandra Wadhwa, Government Nominee (through videoconferencing)
CA. Mahesh Shah, Government Nominee (in person)
CA. Pramod Jain, Member (in person)
CA. Ravi Kumar Patwa, Member (in person)

DATE OF FINAL HEARING: 19th August 2025

PARTIES PRESENT:

Authorized Representative of the Complainant Department: Shri. Prince, AROC (through video conferencing)
Respondent: CA. Mayank Garg (M.No.547848) (in person)
Counsel for the Respondent: Adv. M. K. Rana (in person)

1. **BACKGROUND OF THE CASE:**

1.1 It is informed by the Complainant Department that the Central Government had found that certain Chinese Directors/individuals/shareholders/entities had dummy persons as subscribers and directors to register companies by submitting forged documents, falsified addresses, signatures, and fake Director Identification Numbers (DINs) to the Ministry of Corporate Affairs (MCA). These individuals and companies are directly or indirectly involved in illegal or suspicious activities, including money laundering, tax evasion and violations of various laws, posing a threat to national interest. Some professionals knowingly assisted these individuals by incorporating such companies, facilitating their operations, and certifying e-forms on the MCA portal with false information, concealed facts, or missing annexures to obscure real identities.

1.2 Against the aforesaid background, it was informed that the Respondent certified e-form DIR-12 for the appointment of Mr. Dawei Qian as Director of Fuhong Tech India Private Limited. As per Rule 10(1) of the Companies (Appointment and Qualification of Directors) Amendment Rules, 2022, individuals from countries sharing a land border with India must obtain Security Clearance from the Ministry of Home Affairs. This clearance was required in the case of the said Director.

2. **CHARGES IN BRIEF:**

S. No.	Charge(s)	Prima Facie Opinion of the Director (Discipline)	Applicable Item of the Schedule to the Chartered Accountants Act 1949
1.	Mr. Dawei Qian was required to obtain Security Clearance in terms of the requirement of Section 152 of the Companies Act, 2013 read with Rule 10(1) of Companies (Appointment and Qualification of Directors) Amendment Rules, 2022 but the same was not obtained by Mr. Dawei Qian. The e-form DIR-12, containing false declaration from Mr. Dawai Qian that he is not required to obtain Security Clearance, was certified	Guilty	Item (7) of Part I of the Second Schedule.

	by the Respondent. Thus, the Complainant alleged that the Respondent certified DIR-12 without exercising due diligence.		

3. **THE RELEVANT ISSUES DISCUSSED IN THE PRIMA FACIE OPINION DATED 20th AUGUST 2024, FORMULATED BY THE DIRECTOR (DISCIPLINE) IN THE MATTER IN BRIEF, ARE GIVEN BELOW: -**

3.1 On perusal of the e-form DIR- 12 certified by the Respondent, it was observed that the nationality of Mr. Dawei Qian was shown as Chinese and his appointment as director of the Company was shown w.e.f. 28.08.2023. Also, in column of Director's Consent and Declaration, Mr. Dawei Qian declared as under:

"I am not required to obtain the Security Clearance from the Ministry of Home Affairs, Government of India under sub-Rule (1) of Rule 10 before applying for director identification number."

3.2 The Respondent had certified that Mr. Dawei Qian was not required to obtain the Security Clearance from the Ministry of Home Affairs, Government of India as required in terms of Rule 10(1) of Companies (Appointment and Qualification of Directors) Rules, 2014 (as amended in 2022).

3.3 Further, Mr. Dawei Qian, who was a Chinese National and China shares land border with India, was required to obtain Security Clearance from Ministry of Home Affairs, Government of India and make it part of the consent to be given by him under Rule 8 of the abovementioned Rule. It was also observed that the Respondent does not appear to have been involved in generation of DIN of Mr. Dawei Qian and accordingly, he cannot be held liable for generation of DIN of Mr. Dawei Qian without obtaining Security Clearance. Moreover, DIN was already generated and mentioned in DIR-12. However, it is apparent that there was nothing on record to show that the Respondent had ensured the compliance of Rule 8 of the Companies (Appointment and Qualification of Directors), 2014 (as amended in 2022). Though the Complainant did not mention the violation of the aforementioned Rule 8, yet he clearly mentioned in his complaint that "*In case the person seeking appointment is a national of a country which shares land border with India, necessary Security Clearance from the Ministry of Home Affairs, Government of India shall also be attached along with the consent*". Mr. Dawei Qian was required to obtain Security Clearance from Ministry of Home Affairs, Government of India. Therefore, it cannot be stated that the issue of violation of the requirement of Rule 8 of

Companies (Appointment and Qualification of Directors), 2014 has not been raised by the Complainant.

3.4 In respect of the allegation, though the Respondent did not submit any written submissions, yet he submitted copy of DIR-2 dated 28.08.2023 of Mr. Dawei Qian wherein no declaration as required in terms of second proviso to the aforementioned Rule 8 was given. Further, the Respondent brought on record a letter dated 01.09.2024 (sic) addressed to the Board of Directors wherein he enquired from the Board of Directors about the Security Clearance and the Company's response dated 05.09.2023 wherein the Company mentioned that the said clearance was not required as Mr. Dawei Qian (DIN 09428363) had been working in India as a director since 2021 in another company and the requirement for the Security Clearance came in June 2022. It was also mentioned that the said director was an Indian Resident with valid PAN and Aadhar and therefore, no Security Clearance was required. From the above, it appears that the Respondent just relied upon the justification submitted by the Company and certified the DIR-12 without ensuring the compliance of the proviso inserted to the Rule (8) of the Companies (Appointment and Qualification of Directors) Rules, 2014 vide Gazette notification dated 01.06.2022 as the consent filed by Mr. Dawei Qian did not contain the declaration as required by the proviso to Rule 8 of the aforementioned Rules, 2014 (as amended in 2022).

3.5 It was observed that the Company's response was not in line with the requirement of the Rule (8) which simply says to obtain Security Clearance if person is a national of a country which shares land border with India. It does not provide any relief even if such person holds an Indian PAN or Aadhar Card. The main criteria was nationality which was required to be verified by the Respondent for ensuring the compliance of Security Clearance. Hence, it the Respondent failed to ensure the compliance of the Rule (8) of the Companies (Appointment and Qualification of Directors) Rules, 2014 (as amended in 2022) read with Section 152(5) of the Companies Act, 2013 and consequently, incorrectly certified that Mr. Dawei Qian was not required to obtain Security Clearance from Ministry of Home Affairs, Government of India despite being Chinese nationals. Thus, the Respondent failed to exercise due diligence while discharging his professional duties.

3.6 Accordingly, the Director (Discipline) in his prima facie opinion 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. The said Item of the Schedule to the Act, states as under:

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

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

X X X X X

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

3.7 The Prima Facie Opinion formed by the Director (Discipline) was considered by the Disciplinary Committee at its meeting held on 18th September 2024. The Committee on consideration of the same, concurred with the reasons given against the charge and thus, agreed with the Prima Facie Opinion of the Director (Discipline) that 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 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:**

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

S. No.	Particulars	Date
1.	Date of Complaint in Form 'I' filed by the Complainant	29.02.2024
2.	Date of Written Statement filed by the Respondent	01.08.2024
3.	Date of Rejoinder filed by the Complainant	09.08.2024
4.	Date of Prima Facie Opinion Formed by Director (Discipline)	20.08.2024
5.	Written submissions by the Respondent after Prima Facie Opinion	12.12.2024
6.	Written submissions by the Complainant Department after Prima Facie Opinion	31.01.2025

4.1 **WRITTEN SUBMISSIONS FILED BY THE RESPONDENT**:

The Respondent vide email dated 12th December 2024 provided his written submissions dated 09th December 2024 wherein he, inter-alia, stated as under:

a) The Director Identification Number (DIN) of Mr. Dawei Qian was allotted prior to the enforcement of the Companies (Appointment and Qualification of Directors) Amendment Rules, 2022, which became effective on 01st June 2022.

b) Despite this, he sought a Security Clearance Certificate via letter dated 01st September 2023. In response, the company clarified on 05th September 2023 that Mr. Qian was already serving as Director in India before the amended Rules came into force, which are not retrospective in nature.

c) As per Rule 9 of the Companies (Appointment and Qualification of Directors) Rules 2014, furnishing the Security Clearance along with Form DIR-2 is the appointee director's responsibility. The Respondent, acting as a certifying professional, duly raised a query about its absence in his letter dated 01st September 2023.

d) Mr. Qian had been appointed as Director in Hye Woo Printing India Pvt. Ltd. on 08th December 2021, and held valid Indian documents, including Aadhaar and PAN. He had also resided in India for over 182 days. Based on this, the Respondent assumed that Security Clearance had already been obtained and did not flag the issue further.

e) The Respondent requested that no adverse action be taken, assuring that such oversight will not be repeated.

4.2 **WRITTEN SUBMISSIONS FILED BY THE COMPLAINANT DEPARTMENT:**

The Complainant Department in its written submissions dated 31st January 2025, inter-alia, stated as under:

a) As per Rule 10(1) of the Companies (Appointment and Qualification of Directors) Amendment Rules, 2022, effective from 01.06.2022, nationals of countries sharing land border with India must obtain Security Clearance from the Ministry of Home Affairs (MHA) before appointment as director.

b) In e-form DIR-12, Mr. Dawei Qian consented to act as director and declared that he was not required to obtain such clearance.

c) However, as per the above Rule, Mr. Dawei Qian was required to obtain MHA Security Clearance. His declaration was thus false, resulting in non-compliance with Section 152 of the Companies Act, 2013, read with Rule 10(1).

d) The DIR-12 Form was digitally signed by Mr. Vicky Bhati (DIN-09770102) and certified by the Respondent indicating that he failed to exercise due diligence while certifying the Form.

e) No Investigation or Inquiry report is there in the said case.

5. **BRIEF FACTS OF THE PROCEEDINGS:**

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

S. No.	Particulars	Date of meeting(s)	Status
1.	1st Hearing	16th December 2024	Part Heard & Adjourned (Oath taken by Respondent)
2.	2nd Hearing	28th July 2025	Adjourned at the Request of the Respondent.
3.	3rd Hearing	19th August 2025	Concluded and decision taken on conduct of the Respondent.

5.1 At the hearing held in the case on 16th December 2024, the Committee noted that the Authorised representative of the Complainant Department was present before it through Video Conferencing and the Respondent was present in person before it. Thereafter, the Respondent was administered on Oath. The Committee enquired from the Respondent as to whether he was aware of the charge(s) alleged against him to which he replied in the affirmative. However, he pleaded Not Guilty to the charge(s) levelled against him. The Committee, looking into the fact that this was the first hearing, decided to adjourn the hearing in the case to a future date. With this, the hearing in the case was part heard and adjourned.

5.2 At the hearing held in the case on 28th July 2025, the Committee noted that the Authorised Representative of the Complainant Department was not present when the case was taken up for hearing. The Committee further noted that the Respondent, vide his email dated 28th July 2025, had also requested an adjournment on the ground that he would be unavailable for the hearing due to travel outside the state for audit purposes, and therefore would be unable to attend the scheduled proceedings. Since the request for adjournment of hearing had been received for the first time, the Committee, keeping in view the principles of natural justice, acceded to the request of the Respondent for adjournment. Accordingly, the hearing in the case was adjourned at the request of the Respondent.

5.3 At the hearing held in the case on 19th August 2025, the Committee noted that the Authorized representative of the Complainant Department was present before it through video conferencing and the Respondent along with his Counsel was present before it in person. Since there had been a change in the composition of the Committee since the last hearing held in the case, it was duly intimated to the Authorized Representative of the Complainant Department and the Respondent who were present before the Committee and were given an option of de-novo. The parties to the case affirmed to continue with the proceedings in the case.

5.4 Thereafter, on being asked by the Committee to further substantiate their case, the authorized representative of the Complainant Department, inter-alia, informed that as per Rule 10, Sub-Section 1 of Appointment and Qualification of Director Amendment Rules 2022 with effect from 1st June 2022, if a person seeking appointment as a director of a Company is a national of the country which boarders with India, he is required to obtain Security Clearance from Ministry of Home Affairs. It doesn't relate to obtaining the DIN. Further, there is a difference between DIR 3 and DIR 12. DIR 3 is for obtaining new DIN and DIR 12 for the appointment of Directors. Had the intention of the law was that if it would have been for getting that DIN then you have to take Security Clearances but not for new appointments, then the same radio button would not have been provided in DIR 12 like it has been provided. There is no requirement to obtain Security Clearance from Ministry of Home Affairs under Sub-Rule 1 of Rule 10 before applying for Director Identification Number.

5.5 Subsequently, the Counsel for the Respondent presented his line of defence, inter-alia, stating that the Companies (Appointment and Qualification of Directors) Amendment Rules, 2022 has been enforced in 2022. Rule 10(1) relates to obtaining DIN. But, the alleged director was already a director in another company holding DIN before 2022. So, he was not required to obtain Security Clearance certificate. Rule 8 relates to appointment of Director which is not even a part of the alleged Form. 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. Thereafter, the Committee, on consideration of the documents on record and the oral and written submissions of the parties to the case vis-à-vis facts of the case, decided to conclude the hearing in the case.

6. **FINDINGS OF THE COMMITTEE: -**

6.1 The Committee noted that the sole charge alleged against the Respondent is that while certifying Form DIR-12 for the appointment of a director i.e. Mr. Dawei Qian in the alleged company i.e. Fuhong Tech India Private Limited , the Respondent failed to ensure compliance with the requirement of obtaining a Security Clearance from the Ministry of Home Affairs, as mandated under Rule 10(1) of the Companies (Appointment and Qualification of Directors) Amendment Rules, 2022, effective 1st June 2022, in the case of nationals of countries sharing land borders with India. It is alleged that the e-form DIR-12, containing false declaration from Mr. Dawai Qian that he is not required to obtain Security Clearance, was certified by the Respondent and he did not exercise due diligence before certifying the said Form DIR-12, thereby committing professional misconduct.

6.2 At the outset, the Committee noted that the Company was incorporated on 19th May 2023 with 2 directors, namely, Mr. Sachin and Mr. Vicky Bhati. Subsequently, Mr. Dawei Qian was appointed as one of the directors of the Company with effect from 28th August 2023, in respect of whose appointment DIR 12 had been certified by the Respondent on 6th September 2023.

6.3 The Committee noted that the Respondent in his submission stated that the director in question was already allotted a DIN prior to the enforcement of the aforesaid Amendment Rules. Therefore, the requirement under Rule 10(1) was not applicable to the case at hand in respect of DIN allotment. He also brought on record a letter dated 1.9.2023 addressed to the Board of Directors of the company seeking a copy of the Security Clearance of Ministry of Home Affairs, GOI. In response to the same, the Company informed vide letter dated 5.9.2023 to the Respondent as under:

"....Security Clearance is not required as Mr. Dawei Qian (DIN-09428363) has been working as director in India since the year 2021 in another company and requirement for Security Clearance came in the month of June 2022.Further to inform you that he is a resident of India and possess a valid PAN and AADHAR allotted by Government of India."

He also brought on record copy of his PAN card, AADHAR card and Stay Visa.

6.4 The Committee observed that the Companies (Appointment and Qualification of Directors), 2014 was amended in 2022 (effective from 01.06.2022) and the amended Rules require as under: -

"Rule 8 - Consent to Act as Director.

Every person ***who has been appointed to hold the office of a director*** *shall on or before the appointment furnish to the company a consent in writing to act as such in Form DIR-2*

Provided that the company shall, within thirty days of the appointment of a director, file such consent with the Registrar in Form DIR-12 *along with the fee as provided in the Companies (Registration Offices and* Fees*) Rules, 2014*

Provided further that in case the person seeking appointment is a national of a country which shares land border with India, necessary Security Clearance from the Ministry of Home Affairs, Government of India shall also be attached alongwith the consent.

"Rule 10 – Allotment of DIN

(1) On the submission of the Form DIR-3 *on the portal and payment of the requisite amount of* fees *through online mode [an application number shall be generated by the system automatically].*

Provided that no application number shall be generated in case of the person applying for Director Identification Number is a national of a country which shares land border with India, unless necessary Security Clearance from the Ministry of Home Affairs, Government of India has been attached alongwith application for Director Identification Number..."

6.5 The Committee on perusal of e-Form DIR -12 certified by the Respondent noted that Mr. Dawei Qian had given his consent to act as a director of the said company and selected the radio button which states as follows:

"I am not required to obtain the Security Clearance from the Ministry of Home Affairs, Govt of India under sub rule (1) of rule 10 before applying for director's identification number".

Further, his Director Identification Number i.e. 09428363 was also stated in the said Form DIR 12. The Committee also noted that the said DIN had been allotted to him on

7th December 2021. The alleged Director was already appointed as an additional director in another Company i.e. Hye Woo Printing India Private limited with effect from 8th December 2021 and was reappointed as a director in the said Company on 30th September 2023.

Further, on perusal of copy of Form DIR 2(consent to act as a Director of Company) dated 28th August 2023 attached to the said Form DIR 12, the Committee noted that the alleged director had clearly provided his DIN therein. However, no specific declaration to the effect of obtaining Security Clearance had been provided therein.

6.6 Further, the Respondent specifically asked the Company via letter dated 01st September 2023 regarding the Security Clearance to which the Company replied that the said clearance was not applicable to them.

6.7 In view of the above observations, the Committee held as under:

i. The requirement of obtaining Security Clearance under Rule 10(1) is limited to applications for DIN under Form DIR-3 and was not applicable in the present case, as the director already held a valid DIN prior to 1st June 2022.

ii. No amendment in the declaration part of Form DIR 2 with respect to security clearance certificate as provided under the Companies (Appointment and Qualification of Directors) Amendment Rules, 2022 had been carried out at the time of certification of Form DIR 12 by the Respondent.

6.8 Based on the above facts and verification of the supporting documents by the Respondent i.e. Passport, VISA Forms, PAN Card of the alleged director, the Committee held that the Respondent exercised the required level of professional diligence while certifying Form DIR-12. Further, no false information/ particulars with respect to Security Clearance from Ministry of Home Affairs in respect of the alleged director Mr. Dawei Qian in the said Form DIR 12 had been certified by the Respondent.

6.9 In view of the above observations, considering the oral and written submissions of the parties and material on record, the Committee held the Respondent **NOT GUILTY** of Professional Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

7. **CONCLUSION:**

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

CHARGES (AS PER PFO)	FINDINGS	DECISION OF THE COMMITTEE
S.no. 1 of Para 2 as above	Para 6.1 to Para 6.9 as above	**Not Guilty**- Item (7) of Part I of the Second Schedule

8. **ORDER:**

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/-
(CA. CHARANJOT SINGH NANDA)
PRESIDING OFFICER

Sd/-
(CMA. CHANDRA WADHWA)
GOVERNMENT NOMINEE

Sd/-
(CA. MAHESH SHAH)
GOVERNMENT NOMINEE

Sd/-
(CA. PRAMOD JAIN)
MEMBER

Sd/-
(CA. RAVI KUMAR PATWA)
MEMBER

DATE : 21.09.2025
PLACE : NEW DELHI