



DISCIPLINARY COMMITTEE [BENCH-III (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/61/2022/DD/85/2022/DC/1679/2022

In the matter of:

**Dy. Registrar of Companies, Karnataka,
Ministry of Corporate Affairs,
Kendriya Sadan,
2nd Floor, E Wing,
Koramangala,
Bengaluru - 560034**

.....Complainant

Versus

**CA. Radhakrishnan AR (M. No. 022921)
B-1002, Sobha Anantha,
7/3 Richmond Road,
Shanthala Nagar,
Bengaluru- 560025**

.....Respondent

MEMBERS PRESENT:

CA. Charanjot Singh Nanda, Presiding Officer (Present in Person)
Smt. Anita Kapur, Government Nominee (Present through Video Conferencing Mode)
Dr. K. Rajeswara Rao, Government Nominee (Present through Video Conferencing Mode)
CA. Piyush S. Chhajed, Member (Present in person)

Date of Hearing: 19th March 2024

Date of Order: 8th May, 2024

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, 2007 dated 5th September 2023, the Disciplinary Committee was, inter-alia, of the opinion that **CA. Radhakrishnan AR (M. No. 022921)** (hereinafter referred to as the "**Respondent**") was **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 charge against the Respondent was that he was grossly negligent in the conduct of his professional duties while certifying SPICE form relating to incorporation of M/s Tencent Fintech Private Limited (hereinafter referred to as "**the Company**"). Further the rental agreement submitted along with such SPICE form for the registered office of the Company was not executed by the owner of the premises but by some other Company namely, M/s Brickspaces Pvt. Ltd.
3. That pursuant to the said findings, an action under Section 21B(3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and a communication was addressed to him thereby granting an opportunity of being heard in person/through video conferencing and to make representation before the Committee on 19th March 2024.

4. The Committee noted that on the date of hearing held on 19th March 2024, the Respondent was present through Video Conferencing Mode and made his verbal submissions on the findings of the Disciplinary Committee. The Committee noted that the Respondent relied on his written representation dated 3rd October 2023, wherein, apart from reiterating his earlier submissions that he had seen the building used for the registered office many times, hence he did not undertake a specific visit before signing SPICE documents, had, inter-alia, submitted as under:

- a. That he accepted his mistake in not physically verifying the registered address; however, he had never assisted in the creation of a fraudulent entity.
- b. That his involvement was limited to the incorporation of the Company.
- c. The Company was incorporated by the competent authority after thorough scrutiny of documents uploaded.
- d. That after the incorporation, if the Company did not keep a proper registered office or had connections with Chinese individuals, the same should not be attributed to him.
- e. That he considered himself a victim of people who involved him in the incorporation of Company.
- f. That he prayed for a lenient view on the matter, considering the insignificance of the procedural error.

5. The Committee considered the reasoning as contained in the findings holding the Respondent Guilty of professional misconduct vis-à-vis written and verbal representation of the Respondent made before it and noted that the Respondent's involvement was limited only to the extent of incorporation of the Company.

6. Keeping in view the facts and circumstances of the case, material on record including verbal and written representations on the findings, the Committee is of the view that the Respondent admitted before the Complainant Department under section 207(3)(b) of the Companies Act, 2013 that he neither verified the original lease/ rent agreement between the owner of the property and M/s Brickspaces Pvt. Ltd. nor he knew anything about the agreement between the subject company and M/s Brickspaces Pvt. Ltd. Further he also admitted before the Complainant Department that he had not personally visited the registered office of the Company before filing its SPICE Form. Further, the Respondent undertook certification work which requires assertion of the accuracy of the facts stated therein, yet he chose to certify the facts of the registered office without actual verification. Accordingly, the Respondent is grossly negligent of Professional Misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

7. The Committee noted that the professional misconduct on the part of the Respondent is clearly established as spelt out in the Committee's Findings dated 5th September 2023 which is to be read in conjunction with the instant Order being passed in the case.

8. The Committee, hence, viewed that the ends of justice will be met if appropriate punishment commensurate with his professional misconduct is given to him.

9. Accordingly, the Committee, upon considering the nature of charges and the gravity of the matter ordered that the name of **CA. Radhakrishnan AR (M.No. 022921) be removed from Register of Members for a period of 2 (Two) months and a fine of Rs. 20,000 (Rupees Twenty Thousand only) be imposed upon him, to be paid within 90 days of the receipt of the order and in case of failure in**



भारतीय सनदी लेखाकार संस्थान

(संसदीय अधिनियम द्वारा स्थापित)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

payment of fine as stipulated, the name of the Respondent be removed for a further period of 30 days from the Register of Members.

Sd/-

(CA. CHARANJOT SINGH NANDA)
PRESIDING OFFICER

Sd/-

(SMT. ANITA KAPUR)
GOVERNMENT NOMINEE

Sd/-

(DR. K. RAJESWARA RAO)
GOVERNMENT NOMINEE

Sd/-

(CA. PIYUSH S CHHAJED)
MEMBER

DATE : 8th May, 2024

PLACE: New Delhi

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – III (2023-24)]
[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

Ref. No. PR/G/61/2022/DD/85/2022/DC/1679/2022

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MEMBERS PRESENT:

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Smt. Anita Kapur, Member (Govt. Nominee)
Dr. K Rajeswara Rao, Member (Govt. Nominee)
CA. Piyush S Chhajer, Member
CA. Sushil Kumar Goyal, Member

Date of Final Hearing: 19th May, 2023 through Video Conferencing

PARTIES PRESENT:

- (i) Smt. B. Bhuvaneshwari, AROC – Representative of Complainant
 - (ii) CA. Radhakrishnan A R – the Respondent
 - (iii) CA. CV Sajjan – Counsel for the Respondent
- (all appeared from their respective personal location)

Charges in Brief:

1. The Committee noted that in the *Prima Facie* Opinion formed by Director (Discipline) in terms of Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Respondent was held *prima facie* guilty of Professional Misconduct falling within the meaning of Item (7) of Part I of Second Schedule. It was noted that Item (7) of Part I of Second Schedule states as under: -

Part I of Second Schedule: Professional misconduct in relation to chartered accountants in practice

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

...

“(7) Does not exercise due diligence, or is grossly negligent in the conduct of his professional duties”

Brief background and the allegations against the Respondent

2. The extant complaint was filed by the Registrar of Companies, Karnataka (hereinafter referred to as **‘the Complainant’ or ‘the Complainant Department’**) wherein it was stated that **Tencent Fintech Private Limited** (hereinafter referred to as **“the Company”**) was incorporated on 12.02.2020 through SPICe Form which was certified by the Respondent who was stated to have facilitated the promoters to incorporate the Company which allegedly had connections with the Chinese individuals.

Keeping in view the aforesaid background, in the instant complaint, it was noted that the Complainant had raised four allegations against the Respondent. However, after due investigation by Director (Discipline) in the matter, the Respondent was held *prima facie* guilty only in respect of allegation in relation to registered office of the Company and accordingly the extant proceedings are limited to that charge.

2.1 In the extant case, the Complainant had alleged against the Respondent who had certified SPICe Form of the Company:

(i) That, in the SPICE form (**C-8 to C-15**), the registered address of the Company was given as “432, Second Floor, 4th Cross, 2nd Block, HRBR Layout, Kalyan Nagar, Bangalore, Karnataka, 560043, India”. However, on physical verification, no company was present at the

given address. It was noted that the photograph of the particular address was also attached along with the Complaint **(C-6 to C-7)**.

(ii) That, the rental agreement submitted along with such SPICe form for the registered office of the Company was not executed by the owner of the premises but by some Company M/s Brickspaces Private Limited.

Hence, it was alleged that the Respondent had incorrectly certified that all the particulars including in regard to the registered office in the incorporation documents were true and correct.

Proceedings

3. During the hearing held on 19th May 2023, the Committee noted that the Complainant's Representative as well as the Respondent along with his Counsel appeared before it through video conferencing for hearing. Thereafter, all of them gave a declaration that there was nobody else present in their respective room from where they were appearing and that they would neither record nor store the proceedings of the Committee in any form.

Being the first hearing, the Respondent was put on oath. Thereafter, the Committee asked the Respondent whether he wished the charge to be read out or it could be taken as read. The Respondent stated before the Committee that he was aware of the allegation raised against him and the same might be taken as read. On being asked as to whether the Respondent pleaded guilty, he replied that he did not plead guilty and opted to defend his case.

The Committee, thereafter, asked the Counsel for the Respondent to make his submissions. The representative of the Complainant Department gave his counter arguments. Based on the documents available on record and after considering the oral and/or written submissions of the parties concerned, the Committee concluded hearing in the matter and the Respondent was directed to submit his written submissions within 7 days of the said hearing.

3.1 On 21st June 2023, the Committee considered the matter and noted that the submissions of the Respondent dated 19th May 2023 were available on record. Accordingly, the Committee considered the documents on record; oral and written submissions made by both parties, and upon consideration of the facts and circumstances of the case, decided the matter.

Findings of the Committee:

4. In extant matter, the allegation made by the Complainant against the Respondent was in relation to registered office of the Company. It was alleged that the Respondent had certified SPICe Form for incorporating the Company stating that all the particulars stated therein were true and correct, though the Complainant Department found the following:

(i) That, in the SPICE form (**C-8 to C-15**), the registered address of the Company was given as “432, Second Floor, 4th Cross, 2nd Block, HRBR Layout, Kalyan Nagar, Bangalore, Karnataka, 560043, India”, however, on physical verification, no company was present at the given address. The Complainant brought on record photograph of the stated address (**C-6 to C-7**) to substantiate the same.

(ii) That, the rental agreement submitted along with said SPICe form for the registered office of the Company was not executed by the owner of the premises but by some Company M/s Brickspaces Private Limited.

Thus, as per the Complainant, the Respondent had failed to exercise due diligence and was grossly negligent in the conduct of his professional duties while certifying alleged SPICe Form.

4.1 The Respondent in his submissions before the Committee admitted that the said omissions were inadvertently made by him. However, he argued that those errors were inconsequential errors and that the Complainant had not alleged that the Company was not occupying the registered office premises at the time of incorporation. As per the Respondent, if after incorporation the promoters of the Company had any wrong intent, that was not in the knowledge of the Respondent at the time of incorporation and he could not be held responsible. He argued that there were procedural errors on his part. However, if the promoters had the intention of abandonment of the registered office or transferring of the Company, once the Company was incorporated, it was unstoppable, regardless of whether he had physically verified the premises or had examined the original lease agreement, or not. In other words, as per him, the post incorporation action of the directors cum shareholders to abandon the registered office and to leave the company, was independent and unconnected to the genuineness of the registered office and genuineness of the lease agreement. Therefore, despite errors on his part while attesting the SPICe Form, those omissions never played any supporting role in the whole issue of alleged crimes committed by the Company promoters, and hence were inconsequential.

4.2 On perusal of information and documents as available on record, it was noted that the Complainant had produced on record a photograph of entrance gate of the address certified as

address of the Registered Office of the Company by the Respondent. It was noted that in the said photograph, such address was mentioned to be address/office to various other Companies/business entities but there was no mention of the subject Company. In this regard, it was noted that the Respondent in his defence submitted that he could not be held responsible if, after incorporation, on physical verification no such company was found at the said address. However, it was viewed that the Respondent was responsible for physical verification of the Registered Office of the Company before certifying alleged SPICe Form for its incorporation. In the extant case, it was noted that the Respondent had failed to physically verify the existence of the registered office of the Company at the said address despite declaring the following in the alleged SPICe Form INC-32 **(C-8 to C-15)**:

“... 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).....

(ii).....

(iii).....

(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) (emphasis added).”

It was evident from the submission of the Respondent before Director (Discipline) when in response to specific query of whether he had verified the registered office, he had denied to have done the same **(D-10)**.

In addition, it was noted that the Complainant had brought on record Statement on oath given before the Complainant Department by the Respondent wherein he again confirmed to have not physically verified the registered office at the given address:

Question No.14	<i>Have you visited the premises of the proposed registered office as certified by you in the incorporation documents in the Company? Whether the address is available. State whether proper documents like rent/lease agreements in original were</i>
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	<i>placed before you to certify the content in SPICE? Submit the proof of visiting the premises. If so, furnish the same.</i>
Ans:	No. <u>Not verified physically the registered office address of the Company or the documents submitted for that purpose.</u>

Therefore, it was viewed that as regards the Respondent role to certification of SPICE Form is concerned, the Respondent had given a wrong declaration in SPICE Form which could not be considered only a procedural error as it was a question of complying with the responsibility delegated to him for certification in his professional capacity.

4.3 Regarding the allegation of execution of rental agreement i.e. Leave and License Agreement for the Registered Office (submitted with the SPICE form) **(C-13)** with M/s Brickspaces Private Limited **(C-28 to C-33)** and not with the owner of the premises, it was noted from the electricity bill submitted along with SPICE form at the time of incorporation that it was in the name of one Mr. Siddique Aleem **(C-24 to C-25)**. Further, there was No Objection Certificate available on record which was also issued by Mr. Siddique Aleem **(C-34)** in the capacity of being the owner of the property. However, rent agreement i.e. Leave and License Agreement was executed between the Director of the subject company and M/s Brickspaces Private Limited (C-28 to C-33), the agreement being a sub-lease agreement (C-28) and as per the terms of such agreement the Licensor (M/s Bricspaces Pvt. Ltd.) was the absolute, legal and beneficial owner of such property.

Further, on perusal of the Respondent's statement on oath given before the Complainant department, it was noted that the Respondent had admitted having not verified the original lease agreement between the owner of the property and M/s Brickspaces Private Limited or the ownership of the property. Further he had also admitted that he didn't know anything about the said agreement as evident from the following relevant statements:

Question No.10	Have you personally seen or spoken to any of the directors/subscribers of this company. Have you verified the original documents of the directors and subscribers? <i>How did you certify the details furnished in the Spice e-form and attachments found to be true and correct and complete, without verifying the original documents of the directors and subscribers like Agreement, NOC from owner, DIR-2 of the directors, Declaration?</i>
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Ans:	<i>YES. I have seen Saurav and Gaurav Kumar. Yes, they showed the original PAN and Aadhar to me. I have verified only Aadhar and PAN. By oversight I have omitted to verify the original lease agreement, consent to be director, ownership of the registered office, it was a mistake and I regret that."</i>
Question No.15	<i>The Lease and License agreement dt. 17.01.2020 attached to the SPICE form is between this Company and BRICSPACES Private Limited, which states that Bricspaces is the beneficial owner of the property mentioned as registered office of the Company. Have you seen the agreement?</i>
Ans:	<i>I do not know anything about the agreement. No."</i>

4.4 In this regard, the Respondent in his defence was noted to have submitted that the impact of the error of the Respondent in the certification was just that it was a procedural error as the Complainant had not raised issue that the lease agreement was not genuine. Thus, he contended that when the investigation report of the Complainant Department had not disputed the genuineness of the lease agreement, the impact of the error of the Respondent in the certification was just that it was a procedural error. He argued that irrespective of the said procedural error, the incorporation of the company was not disputable because the registered office was in existence, and it was occupied on the strength of a valid lease agreement. Accordingly, he reiterated that post incorporation, action of the directors cum shareholders to abandon the registered office and to leave the company, was independent and unconnected to the genuineness of the registered office and genuineness of the lease agreement.

4.5 From the above facts on record, the Committee noted that though as per the purported lease agreement M/s Bricespaces Pvt. Ltd. had absolute and beneficial right to further lease out the property to the subject Company however, from his (Respondent) admission before the Complainant department under Section 207(3)(b) of the Companies Act, 2013 it was evident that the Respondent had neither verified the original lease/rent agreement between the owner of the Property i.e. Mr. Siddique Aleem and M/s Bricespaces Pvt. Ltd. nor did he know anything about the agreement between the subject Company and M/s Bricespaces Private Limited. The Committee viewed that the Respondent had admitted to have not verified either the agreements or personally visited the registered office before filing SPICe Form which was pre-requisition for certification of SPICe Form. It was noted that the Respondent had argued said lapses to be only

procedural error, but it could not be denied that when the Respondent had undertaken to certify alleged SPICe Form for incorporation of the Company, he had undertaken to certify the accuracy of the facts stated therein. However, he chose to certify the facts of registered office without due verification. Accordingly, it was viewed that the Respondent was grossly negligent not only in failing to visit the office but also in verifying the rental agreement for the purpose of incorporation of the subject Company. Accordingly, 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.

Conclusion

5. Thus in conclusion, in the considered opinion of the Committee, the Respondent is GUILTY of Professional Misconduct falling within the meaning of Item (7) of Part-I of Second Schedule to the Chartered Accountants Act, 1949.

Sd/-
[CA. Aniket Sunil Talati]
Presiding Officer

Sd/-
[Smt. Anita Kapur]
Member (Govt. Nominee)

Sd/-
[Dr. K Rajeswara Rao]
Member (Govt. Nominee)

Sd/-
[CA. Sushil Kumar Goyal]
Member

Sd/-
[CA. Piyush S Chhajed]
Member

Date: 5th September, 2023

Place: New Delhi