



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/620/2022/DD/475/22/DC/1739/2023

In the matter of:

Shri Josekutty V E
Registrar of Companies, Telangana,
Government of India,
Ministry of Corporate Affairs,
Office of the Registrar of Companies,
2nd Floor, Corporate Bhawan, Thattianaram,
GSI post, Bandlaguda, Nagole, Hyderabad
Andhra Pradesh - 500068

.....Complainant

Versus

CA. Lakshmi Narayana Reddy V (M.No. 230138)
Chartered Accountants,
Room No 29,
JCNRM Complex,
CB Road, Tadipatri
Andhra Pradesh - 515411

.....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 25th July 2023, the Disciplinary Committee was, inter-alia, of the opinion that **CA. Lakshmi Narayana Reddy V (M.No. 230138)** (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 had certified e-form INC-22 for shifting of registered office of the M/s Onion Credit Private Limited (hereinafter referred to as “**the Company**”) without personally verifying address of the Company. Further, the address of the Company was found merely an address hired by the Company for receiving mail/fax only. Hence, the Respondent is grossly negligent in the conduct of his professional duties while certifying e-form INC-22.

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 reiterated his written submissions, stating as under:

- a. That he had not physically visited the premises. He believed a virtual visit to be equivalent or similar to a personal visit, citing the widespread acceptance of such practices post-COVID by various entities including government bodies, courts, and ICAI.
- b. That he had thoroughly verified all the documents relating to the change of the registered address of the Company.
- c. That he had not violated any requirements.
- d. Only with respect to 'personal visit', his opinion is 'virtual visit' and this aspect is subject to judicial or ICAI's guidance. Until then, the Committee's opinion is not final as to whether 'virtual visit' equals 'personal visit' or not.
- e. The Committee's assessment of misconduct, according to the Respondent, should consider whether the requisite procedures and guidelines were adhered to.

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.

6. Keeping in view the facts and circumstances of the case, material on record including verbal and written representations on the findings, The Committee further noted that the Respondent while certifying e-form INC- 22 had specifically declared that he had personally verified the registered office of the Company whereas he in his submissions before the Complainant Department had admitted his lapses. The Committee further noted that the registered office certified by the Respondent in the instant matter was merely an address hired by the Company for the purpose of incorporation. The Companies Act 2013 never envisaged a registered office being the only address available for receiving the mail/ fax only. Such an arrangement was found to be not in line with the requirements of the Companies Act 2013 which the Respondent failed to evaluate. Further the Respondent went on to give the wrong declaration to have physically verified registered office of the Company.

7. Thus, the Respondent was held accountable for not performing his professional duties with due diligence while certifying form INC-22. Accordingly, the Respondent was held Guilty for Professional Misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.



भारतीय सनदी लेखाकार संस्थान

(संसदीय अधिनियम द्वारा स्थापित)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

8. The professional misconduct on the part of the Respondent is clearly established as spelt out in the Committee's Findings dated 25th July 2023 which is to be read in conjunction with the instant Order being passed in the case.

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

10. Accordingly, the Committee upon considering the nature of charges and the gravity of the matter ordered that the name of **CA. Lakshmi Narayana Reddy V (M.No. 230138)** 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 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/620/2022/DD/475/22/DC/1739/2023

In the matter of:

Shri Josekutty V E
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.....Respondent

MEMBERS PRESENT:

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

Date of Final Hearing: 6th July 2023 through Video Conferencing

PARTIES PRESENT:

- (i) Shri Josekutty V E, Registrar of Companies, Telangana – the Complainant
- (ii) CA. Suneel Kumar Appaji – the Counsel for the Respondent
- ((i) appeared from his personal location & (ii) appeared from Hyderabad Branch of the Institute)

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 to the Chartered Accountants Act, 1949. The said Item to the 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 allegations against the Respondent

2. The extant matter pertains to M/s Onion Credit Private Limited (hereinafter referred to as “**the Company**”) which as per the Complainant was incorporated for the purpose of business of facilitating information flow of financial service providers, however, it was allegedly doing the business of cheating the public by providing operational access of the bank accounts through fraudulent activities which was micro loan app scam. The Respondent had certified e-form INC-22 (**D-8 to D-10**) on 11-10-2021 for shifting the Company's Registered office address. The Complainant further stated that the Respondent, in his statement on oath, had submitted that he had not personally verified the registered office of the Company while certifying the said e-form and that on physical inspection of the premises of registered office of the Company by the Complainant department on 10-01-2022, it had not found the said Company operational on such address. It was noted that on the basis of extant complaint, an FIR was registered against the Respondent by Central Crime Station vide FIR No. 24/2022 dated 31-01-2022 (**C-11 to C-17**).

Proceedings

3. During the hearing held on 6th July 2023, the Committee noted that the Complainant and the Counsel for the Respondent appeared before it for hearing through videoconferencing and that representative of Director (Discipline) was also present. Thereafter, the parties present gave a declaration that there was nobody else present in their respective room(s) from where they were appearing and that they would neither record nor store the proceedings of the Committee in any form.

Thereafter, the Committee asked the Counsel for the Respondent whether he wished the charge(s) to be read out or it could be taken as read. The Counsel for the Respondent stated that he was aware of the allegation(s) raised against the Respondent and the same might be taken as read. On being asked as to whether the Respondent pleaded guilty, the Counsel replied that he did not plead guilty and opted to defend the case against the Respondent.

Thereafter, the Committee asked the Complainant whether he would like to submit any additional evidence or documents in the matter to which he reiterated the facts as available on record. Thereafter, the Counsel for the Respondent was asked to make submissions on the matter. After making certain preliminary objections in the matter, the Counsel for the Respondent made submissions on the merits of the matter. The Committee examined the Counsel for the Respondent on his submissions. The Counsel for the Respondent made final submissions in the matter.

Based on the documents available on record and after considering the oral and/or written submissions of the parties concerned, the Committee concluded a hearing in the matter.

Findings of the Committee:

4. In the extant case, the Respondent (**C-1 to C-25**) was alleged to have certified e-form INC-22 for shifting of registered office of the Company without verification of the same and that on physical verification of the registered office of the Company by the Complainant department, the said Company was not found operational at such address. Thus, the Respondent was alleged of professional misconduct by certifying the premises of proposed registered office of the Company.

5. At the outset, the Committee noted that the Respondent submitted that first Director (Discipline) should make his submission to which the representative of Director (Discipline) responded that for time being they have nothing more to represent other than the material already placed on record with prima facie opinion of the Director (Discipline). Thereafter, the Counsel for the Respondent objected that the said representation be not considered by the Committee as either the Director (Discipline) be present in person or through Joint Director only. The Committee noted Rule 18(6) of the Chartered Accountants (Procedure of Investigations of Professional and other Misconduct and Conduct of cases) Rules, 2007 that provides provisions in relation to appearance of the party through authorised representative which read as under:

“Rule 18(6)

The Presiding Officer of the Committee shall fix a date, hour and place of hearing, which shall not ordinarily be later than 45 days from the date of receipt of prima facie opinion and the committee shall cause a notice to be sent of such date, hour and place to the Director, respondent and complainant and require them to appear before it in person to make oral submissions, if any.

Explanation—For the purpose of this rule, the appearance includes, unless and otherwise directed, appearance by an advocate or through any authorized representative, who may be a Chartered Accountant, Cost Accountant or Company Secretary.

From the above, it was noted that the parties to the Disciplinary proceedings might appear before the Committee through an advocate, or through an authorised representative who could be a Chartered Accountant, Cost Accountant or Company Secretary. It was noted that the said Rule provide for notice to Director (Discipline) too. Thus, the said explanation did not limit its applicability only to the Respondent or Complainant meaning thereby that the appearance of Director (Discipline) through advocate or authorised representative was permissible. It was noted that during the hearing the Director (Discipline) was duly represented by his authorised representative as per the Rules. Accordingly, the said plea of the Respondent did not sustain. Further, the Committee noted that, till then, neither of the parties had placed on record any list of witness nor produced any further document to refer or rely in the matter. Further, it was also noted that neither of the parties placed such request before it at the time of hearing. Hence, the Committee decided to consider the merits of the matter.

6. It was noted that the Respondent in his defence inter-alia stated as under:-
 - a. The Respondent submitted that he had certified Form INC-22 based on video call with one of the Directors of the Company after looking at the premises through video. He further submitted that evidence of such call was not maintained by him.
 - b. He also raised question on applicability of Item (7) of Part I of Second Schedule to the CA Act, 1949 on the matter.
 - c. On merits of the matter, the Respondent stated that he had taken all care that a professional must take including verification of the attachments as required in the form which included the lease agreement by IKEVA with the owner of the premises and paragraph 14 of the lease agreement permitted IKEVA to sublease the premises which was verified by the Respondent.
 - d. In the agreement between IKEVA and M/s Onion Credit Private Limited (Client Company), Point no. 4.1 was also observed by the Respondent and got explanation that the client was permitted by IKEVA to use the address for registered office as well as for all communication purposes as per the addendum 1(b) where it was stated that the client had agreed to pay for 6 months

membership commencing on 03/09/2021 which according to him meant to end in February 2022 and the agreement also provided for renewal of membership.

- e. Referring to Section 12 (1) of the Companies Act, 2013, the Respondent contended that law did not prohibit having registered office in a shared location or having more than one office in same premises. As per him, the law only required NOC or appropriate permission or lease / rental agreement along with utility bills in support of existence of the premises. All these aspects were verified by him.
- f. He submitted that the form was signed by him on 11/10/2021 whereas as per details found in FIR **(C-16)**, the Complainant Department had visited the premises on 10/10/2022 when they found that Company was non-operating from the said premises. He argued that there was a period gap between the two events and that as on the date of issuance of the certificate, the Company had valid permissions.
- g. Regarding the aspect of personal visit to the registered office of the Company, the Respondent stated that when the whole world was moving towards virtual office concept and operating using virtual offices, the Respondent also adopted the same concept and accepted the same was applicable to corporate aspects as well. The meetings of several enterprises, committees, Board and AGM/ EGM were conducted virtually during and post COVID, and MCA had moved from sending hard copies to emails and posting the anomalies on its website, submission of various, all, the form digitally, with it the Respondent formed an opinion that virtual offices and meetings were “order of the day”. Thus, a personal visit in the declaration was made as the Respondent verified the premises, name plate, office space through video call. The Respondent further stated that no law required keeping evidence for personal visit to be attached as well as for virtual visit. Thus, as per him, he had discharged the legal requirement diligently.

7. The Committee noted that the Respondent had certified INC-22 to effect the change in registered office address of the Company to the premise ‘Level 3, Vyshnavi Cynosure, opp. RTTC, Telecom Nagar, Extension, Gachibowli, Hyderabad, Telangana, 500081. It was noted that while certifying the said form, the Respondent had given the following declaration **(D-9)**:

“I declare that I have been duly engaged for the purpose of certification of this form. It is hereby certified that I have gone through the provisions of the Companies Act 2013 and rules thereunder for the subject matter of this form and matters incidental thereto and I have verified the above particulars (including attachments from the original records maintained by the Company which is subject matter of this form

and found them to be true, correct and complete and no information material to this form has been suppressed. I further certify that:

- 1. The said records have been properly prepared, signed by the required officers of the Company and maintained as per the relevant provisions of the Companies Act 2013 and were found to be in order,*
- 2. All the required attachments have been completely and legibly attached to this form:*
- 3. **I further declare that I have personally visited the registered office given in the form at the address mentioned herein above and verified that the said registered office of the Company is functioning for the business purposes of the Company (emphasis added).***

The Committee further noted that the Respondent in his statement on oath dated 31st January 2022 **(C-18 to C-22)** recorded before the Complainant department in the matter had admitted having not visited the registered office as evident from the following abstract:

“Q.10. Whether you verified the registered office of the Company by visiting the premises?”

Ans. No, I have not verified the registered office of the Company by visiting the premises.”

From the above, it was noted that as per facts available on record, the Respondent had given contradictory facts about the verification of alleged registered office of the Company. While certifying he submitted to have personally visited the registered office whereas before the Complainant Department, he submitted to have not verified the registered office by visiting personally. Further, it was noted that before the Committee the Respondent had submitted to have verified the premises through video call. However, the record of the said video call was submitted to be not available with him. The Committee viewed that it was an admitted position of the Respondent that he had not personally visited the registered office before filing INC 22 Form which was pre-requisition for certification of INC 22 Form. It was viewed that when he had undertaken to certify alleged INC 22 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.

8. Further, the Committee noted that the Respondent had, to establish his diligence, claimed to have also verified the registered office of the Company through the following documents:

- a. Copy of the Membership Agreement **(W-9 to W-11 & W-6 to W-7)** dated 23-08-2021 executed between the Company and M/s 'iKeva Venture and Knowledge Advisory Services Pvt. Ltd., the service provider for alleged registered office.
- b. Copy of the NOC given by the authorized person of M/s 'iKeva Venture and Knowledge Advisory Services Pvt. Ltd to the Company for usage of the premises office **(W-3)**.
- c. Copy of the Lease deed dated 01-10-2020 **(W-12 to W-37)** executed between Mr. Ravi Kumar Venigalla, the actual owner of the property building Vaishnavi Cynosure' and M/s 'iKeva Venture and Knowledge Advisory Services Pvt. Ltd., the Service provider authorizing the latter to sub-lease the said property.

On perusal of the Membership agreement read with its invoice **(W-9 to W-11)**, the Committee noted the Company had opted for 'Mail Centre' Membership which entitled the Company just to receive the mails/ fax at the alleged address and the permission to use the address for business correspondence when the agreement stated as follows:

"2.1 Mail Centre: Entitles the Client to receive mail at the Keva Centre specified in this Agreement. The Client can use the address of the chosen Centre for business correspondence. The Client can also receive faxes at the chosen centre."

Further, on perusal of NOC issued by M/s 'iKeva Venture and Knowledge Advisory Services Pvt. Ltd' to the Company, it was again noted that the agreement between the parties was only for using the address as a registered office of the Company when the title of NOC was read with its content, interalia, states as follows:

No Objection for use of address as a registered office of M/s Onion Credit Private Limited

*"...We (iKeva) hereby confirm that we have no objection for using this premise with Registrar of Companies for business registration of company – Onion Credit Private Limited **(emphasis added)**."*

The Committee, accordingly, noted that apparently the Company had executed an agreement with M/s 'iKeva Venture and Knowledge Advisory Services Pvt. Ltd' just to hire the address of the premise and availed the services of collection of its letters and mails by iKeva, the Co working space provider. In other words, there was no formal setup of the Company in such premise with its own dedicated infrastructure and manpower to meet the requirements of *acknowledging* all communications and notices at all times as required under Sec 12 of Companies Act, 2013 read with Rule 25 of Companies

(Incorporation) Rules, 2014 in context of the registered office of the Company. The relevant abstracts of Sec 12 of Companies Act, 2013 were noted to provide as below:

“Sec 12 of Companies Act, 2013

(1) A Company shall, within thirty days of its incorporation and at all times, thereafter, have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it.

(2) ...

(3) ...

(4) ...

(5) Except on the authority of a special resolution passed by a company, the registered office of the company shall not be changed—

(a) in the case of an existing company, outside the local limits of any city, town or village where such office is situated at the commencement of this Act or where it may be situated later by virtue of a special resolution passed by the company; and

(b) in the case of any other company, outside the local limits of any city, town or village where such office is first situated or where it may be situated later by virtue of a special resolution passed by the company:

Provided that no company shall change the place of its registered office from the jurisdiction of one Registrar to the jurisdiction of another Registrar within the same State unless such change is confirmed by the Regional Director on an application made in this behalf by the company in the prescribed manner.

(6) ...

(7) ...

(8) ...

(9) If the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may cause a physical verification of the registered office of the company in such manner as may be prescribed and if any default is found to be made in complying with the requirements of sub-section (1), he may without prejudice to the provisions of sub-section (8), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.”

From the above, it was viewed that a registered office was envisaged as an office capable of receiving and acknowledging all communications and notices as may be addressed to it at all times. Similarly, there are requirements of change in the registered office defined in terms of outside the local limits of a city, town, village or even outside the state. Further, it was noted that sub-clause (9) of Sec 12 of the Companies Act, 2013 empowers the Registrar to cause ‘physical verification’ of the registered office. It was viewed that such requirements/ power stems from the fact that the Companies Act, 2013

presumes that there should be a physical registered office of the Company irrespective of the mode through which the business of the Company was being conducted. In case, the Companies Act, 2013 had envisaged the registered office as virtual office, then neither the requirements of change in registered office would have been defined in terms of limits of city or state nor the requirement to physically verify the office would have existed. It was noted that the Respondent emphasized current global practice of working virtually. However, the Committee felt that the role of the Respondent could be assessed based on the records he had incorporated of the said companies. If the said records did not meet the requirements of the Companies Act, 2013, then it raises a question on degree of diligence exercised by him during incorporation of alleged company. In the extant case, it was noted that the registered office certified by the Respondent was merely an address hired by the Company for the purpose of incorporation. It was evident from discussion held in preceding paragraphs that the Companies Act 2013 never envisaged a registered office being only an address available for receiving the mail/ fax only. Such arrangement was found to be not in line with the requirements of the Companies Act 2013 which the Respondent failed to evaluate and instead he went on to give wrong declaration to have physically verified registered office of the Company. Thus, the Respondent was held accountable for not performing his professional duties with due diligence while certifying form INC-22. Accordingly, the Respondent was held Guilty for 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/-
[Smt. Anita Kapur]
Presiding Officer

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

Sd/-
[CA. Piyush S Chhajed]
Member

Sd/-
[CA. Sushil Kumar Goyal]
Member

Date: 25th July, 2023
Place: New Delhi