

PR/G/60F/2022/DD/191/2022/DC/1667/2022

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – I (2023-2024)]

[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/60F/2022/DD/191/2022/DC/1667/2022

In the matter of:

Shri Vineet Rai
Indian Corporate Law Services
Deputy Registrar of Companies
O/o Registrar of Companies, West Bengal
Ministry of Corporate Affairs
Nizam Palace, 2nd MSO Building,
2nd Floor, 234/4, A J C Bose Road,
Kolkata (West Bengal) – 700020

.....Complainant

Versus

CA. Nirmal Kaushik (M. No. 050733)
19-D38, Muktaram Babu Street
Kolkata (West Bengal) – 700007

.....Respondent

PR/G/60F/2022/DD/191/2022/DC/1667/2022

MEMBERS PRESENT: -

- i) CA. Aniket Sunil Talati, Presiding Officer
- ii) Shri Prabhash Shankar, IRS (Retd.), (Government Nominee)
- iii) CA (Dr). Rajkumar Satyanarayan Adukia, Member
- iv) CA. Gyan Chandra Misra, Member

DATE OF FINAL HEARING : 31-10-2023
PLACE OF FINAL HEARING : New Delhi / Through VC

PARTIES PRESENT: -

Complainant's Representative : Sh. Ibson Shah
Respondent's Counsels : CA. A. P. Singh & CA. Utsav Hirani

BRIEF OF THE DISCIPLINARY PROCEEDINGS: -

- 1- On the day of hearing held on 22nd March 2023, the Committee noted that the Complainant's representative was present. The Respondent was also present along with his counsel. The Complainant's representative and the Respondent were put on oath. On being asked, the Respondent confirmed that he is aware of the charges levelled against him and he pleaded not guilty to the same. The Complainant stated that they have already submitted their details & documents in the matter, and they do not have any additional documents /submissions to file in the matter. With this, hearing in the above matter was **partly heard & adjourned** to a later date.
- 2- On the date of the hearing held on 14th September 2023, the Committee noted that the Respondent, his counsels, and the representative of the Complainant were present through VC. Thereafter, the Counsels for the Respondent made their brief submissions on the allegation. The Committee also posed questions to the counsels of the Respondent and to the representative of the Complainant. After hearing the submissions, the Committee decided to adjourn the hearing in the matter with the following directions.



PR/G/60F/2022/DD/191/2022/DC/1667/2022

I)- **Respondent** – To submit within 7 days, a copy of affidavit from the Management stating that the alleged Cash Flow Statement was part of the original set of Financial Statements submitted with ROC.

II)- **Complainant** – To submit a copy of authorization by an officer holding a post not below the rank of Joint Secretary and signed by an officer holding a post not below the rank of Under Secretary or equivalent in the Central Government.

With the above said direction to the parties, the hearing in the matter was **part heard & adjourned**.

Both Complainant and Respondent vide their letter dated 29th September 2023 and 25th September 2023 respectively submitted their documents called for by the Committee.

- 3- On the day of the final hearing held on 31st Oct 2023, the Committee noted that the Complainant's representative was present through VC. The Respondent's counsels were also present through VC. Thereafter, the hearing in the matter continued from the stage where it was left in last hearing. The Counsels for the Respondent made their submissions on the charges. Thereafter, the Committee also posed questions to the Complainant's representative and the Counsels for the Respondent. After hearing the submissions of both the parties, the Committee decided to grant seven days' time to the Respondent to submit Form 26 AS of M/s. Pioneer Financial & Management Services Limited. With the abovesaid direction, the Committee decided to conclude the hearing and the judgement was kept reserved.

The Respondent vide his email dated 07th Nov 2023 submitted Form 26AS being directed by the Committee.

4- Brief Background of the matter: -

It had come to the knowledge of the Central Government that certain directors with the correspondent Companies had registered such Companies with Registrar of Companies, West Bengal by using forged documents / omission of material



PR/G/60F/2022/DD/191/2022/DC/1667/2022

facts. It has also been stated that M/s Pioneer Financial & Management Services Limited (hereinafter referred to as '**Company**'), being one of such companies, was found to be engaged in illegal / suspicious activities, Micro Instant Loan App Scam, tax evasion and non-compliance of various provisions of laws. It is also stated that the Professionals (CA) were duty bound to discharge their duties as per applicable law(s) and certify / verify documents / e-forms or give certificate / report after due diligence to ensure the compliance to the provisions of law, however, they had failed to discharge their duties and alleged to have wilfully connived with Directors / Company / Shareholders / Chinese Individuals in certifying E-forms knowingly with false information / documents / false declaration / omitting material facts or information in the said Company.

In the instant matter, the Respondent has certified AOC-4 of the subject Company for the year 2019-20 and e-form - 32 on 29-11-2006.

CHARGES IN BRIEF: -

Based on the above background the Committee noted that Complainant has levelled the following allegations against the Respondent on which he was held Prima facie guilty: -

i)- The Company, not being a small company, was required to attach a cash flow statement to its financial statements but had failed to do so during F.Y 2019-20. The auditors and professionals who were engaged for certifying e-forms (i.e., Respondent) filed with respect to financial statements, had certified these forms without adequate disclosures and proper verifications, thereby leading to omission of material facts, knowing them to be material, thereby misleading the public and the regulators.

ii)- The Complainant has also alleged that the Respondent had certified e-form-32 (for appointment of Director and his consent to act as such). It was observed that the consent letter of one of the directors, namely Ms. Madhu Kedia was not signed but was only marked as 'Sd/-'. Thus, it is alleged that the Respondent has



PR/G/60F/2022/DD/191/2022/DC/1667/2022

certified forged document with an intention to suppress material information from the Complainant department.

SUBMISSIONS OF THE PARTIES AND FINDINGS OF THE COMMITTEE:

- 5- It is observed that the Respondent has inter alia made following written/ verbal submissions in his defense:
- (i) That the preparation and presentation of the Cash Flow Statement or for that matter preparation and presentation of the financial statements is the responsibility of the Management which has been enshrined in Section 134(5) of the Companies Act, 2013 and under SA-200 issued by the ICAI as well. Accordingly, I cannot be held responsible for formatting and sequencing of signatures of the directors. My responsibility was limited to ensure that the cash flow is not materially misstated and was in compliance with AS - 3 issued by the ICAI and requirements of Schedule III. The cash flow statement presented to the bench materially in all aspects complies with the said requirements.
 - (ii) That, the financials including Cash Flow Statement were approved by the Board of Directors and a copy of such Financials and Cash Flow Statement have been stated to be attached with his Written Statement and appropriate Management Representation Letter with regards to such Cash Flow Statement was also obtained.
 - (iii) That, it was by an inadvertent mistake that while preparing AOC-4 the Cash Flow Statement was not attached which was a technical mistake of the management of the Company and it was by an inadvertent mistake that while preparing AOC-4, the Cash Flow Statement was not attached which was a technical mistake of the management of the Company and he has verified the records of the Company to check that AOC-4 matched with the financial statements signed by him.
 - (iv) That the Complainant has also not raised any Complaint with regards to the revenue of the Company. The complainant has simply filed a canned Complaint

PR/G/60F/2022/DD/191/2022/DC/1667/2022

like it has been doing with hundreds of professionals. I submit that the Complainant had no idea with regards to operations of the Company or even had any clue if at all this was a Chinese Company or an Indian Company.

- (v) That all other allegations against me are outside the scope of the inquiry. As per Rule-3 of the Rules, any matter that is evaluated by the Committee or the DD ICAI must be routed through a Complaint. Therefore, I humbly request that you consider this technical point in your inquiry and limit your investigation to the charges against me in Form-I only.
- (vi) In addition, during the hearing, we discussed the provision of details from Form 26AS obtained from the Income Tax website. I am pleased to attach the requested pages for your reference. These documents provide concrete evidence that the company was operating and had significant clients such as ITC Infotech India Ltd., Hexaware Technologies Ltd., Virtusa Consulting Services (P) Ltd., Persolkelly India (P) Ltd., Fidelity Information Services India (P) Ltd., WIPRO Ltd., Collabera Technologies Private Ltd., Intellect Design Arena Ltd., BNP Paribas India Solutions (P) Ltd., Fino Payments Bank Ltd., Tech Mahindra Ltd., Ensono Technologies LLP and Zensar Technologies Ltd. and other leading tech companies in India. We have attached the reconciliation of the revenue of both the financial years 2018-2019 and 2019-2020 and Form 26AS of the Company for the FY 2018-2019 and 2019-2020 respectively.

6- Before giving findings in the matter, the Committee noted the following background about the facts which are given here-in-below:

6.1 In respect of the first allegation, the Committee noted that Respondent has neither commented upon the Cash Flow Statement as part of financial statements nor has given any opinion in this regard. In respect of the above charge, the Respondent through his verbal and written submissions requested the Committee that it was merely an omission while filing AOC-4 and constitute technical error in nature and does not constitute gross negligence on the part of the Respondent and this omission is inadvertent, unknowingly, and unintentional. On perusal of variations in



PR/G/60F/2022/DD/191/2022/DC/1667/2022

the alleged Cash Flow Statement creating doubt on the authenticity and genuineness, the Committee noted that preparation of the Cash Flow Statement that comprises part of the financial statements of the Company is the responsibility of the Management. The Committee directed the Respondent to provide a copy of the affidavit by the Management of the Company stating that the alleged Cash Flow Statement was part of the original set of financial statements submitted with ROC. It is seen that the Respondent has duly submitted a notarized affidavit by the director of the Company to that effect. Hence, on perusal of said affidavit, it is evident that the Board of Directors have approved and adopted the financial statements of the Company and submitted with ROC and the Board has issued a Management Representation Letter to the Respondent. Accordingly, the Committee opined that the benefit of the same needs to be extended to the Respondent for the said omission of attaching Cash Flow Statement while filing form AOC-4 and thus he is held Not guilty of Professional Misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

- 6.2 In respect of allegation pertaining to Certification of e-form- 32 (for appointment of Director and his consent to act as such) it was observed that the consent letter of Ms. Madhu Kedia (Director) was not signed and was only marked as 'Sd' and the said e-form-32 was certified by the Respondent. The Committee noted that the matter is pertaining to 2006 and adequate time has been elapsed since filing of the said form. The Committee also noted that e-form-32 was approved by the MCA and this issue has never been raised ever and the said Director has also never raised any concern on this aspect. Hence, considering the facts mentioned above, the Committee held Respondent Not Guilty of Professional Misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

PR/G/60F/2022/DD/191/2022/DC/1667/2022

Conclusion: -

7. Thus, in the considered opinion of the Committee, the Respondent is **NOT GUILTY** of Professional and Other Misconduct falling within the meaning of Item (2) Part IV of the First Schedule and Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

Sd/-
(CA. Aniket Sunil Talati)
PRESIDING OFFICER

Sd/- Sd/-
(Shri Prabhash Shankar, I.R.S. (Retd.)) CA (Dr). Rajkumar Satyanarayan Adukia
GOVERNMENT NOMINEE Member

Sd/-
(CA. Gyan Chandra Misra)
MEMBER

DATE:09.01.2024

PLACE: NEW DELHI

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy
Chhatrapati
परम सिंह / Charan Singh
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
भारतीय सनदी लेखाकार संस्थान
The Institute Chartered Accountants of India
आईसीएआई भवन, विराट नगर, दिल्ली-110002
ICAI Bhawan, Virat Nagar, Gurgaon, Delhi-110002