



**THE INSTITUTE OF
COST ACCOUNTANTS OF INDIA**
(STATUTORY BODY UNDER AN ACT OF PARLIAMENT)
CMA BHAWAN
12, SUDDER STREET, KOLKATA – 700 016.

DISCIPLINARY DIRECTORATE

Telephones : 2252-1031/1034/1035
2252-1602/1492/1619
2252-7143/7373/2204
Mail id : discipline.director@icmai.in
Website: : www.icmai.in

**The Institute of Cost Accountants of India
Disciplinary Committee u/s 21B of The Cost and Works Accountants
Act 1959**

In the matter of:

Complaint No. Com/21-CA(53)/2017 -

Shri Suresh Shadija [Complainant]

Vs.

Shri Surendra Kumar Agarwal (M/10901) [Respondent]

Quorum

- | | |
|---|---|
| 1. CMA Ashwin G Dalwadi, | - Presiding Officer |
| 2. CMA Manoj Kumar Anand | - Member |
| 3. CMA TCA Srinivasa Prasad | - Member |
| 4. Shri Saraswati Prasad, IAS (Retd.) | - Nominee of Central Government, Member |
| 5. Smt. Meenakshi Sharma, IA&AS (Retd.) | - Nominee of Central Government, Member |

Facts

1. The Disciplinary Directorate received a complaint dated 25th October 2017 in Form I from one Shri Suresh Shadija (hereinafter referred to as the "complainant") against Shri Surendra Kumar Agarwal, bearing membership number 10901 along with requisite complaint fee as prescribed under Rule 4 of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of cases) Rules, 2007 read with Regulation 15B(1) of the Cost and Works Accountants Regulations, 1959.
2. On receipt of the instant complaint, the same was registered by the Disciplinary Directorate and proceeded with in the manner as prescribed in Chapter III of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct



ASR



**THE INSTITUTE OF
COST ACCOUNTANTS OF INDIA**
(STATUTORY BODY UNDER AN ACT OF PARLIAMENT)
CMA BHAWAN
12, SUDDER STREET, KOLKATA – 700 016.

Telephones : 2252-1031/1034/1035
2252-1602/1492/1619
2252-7143/7373/2204
Mail id : discipline.director@icmai.in
Website : www.icmai.in

DISCIPLINARY DIRECTORATE

and Conduct of Cases) Rules, 2007. A unique complaint number Com/21-CA(53)/2017 was allotted to the complaint.

3. The complainant was a Director and a shareholder of Akruti Trexim Private Limited. His complaint against the respondent was that the latter had certified Form No 2 i.e. Return of Allotment (pursuant to Section 75 of the Companies Act, 1956) of Akruti Trexim Private Limited. In the said Form No 2, the respondent had certified the allotment of 9195 equity shares of Rs. 10/- each at par on 31.01.2012 to the following persons:

Sl.No.	Name of the allottee	Number of shares
1	Shri Pawan Shadija	4625
2	Shri Suresh Shadija	4570
Total		9195

4. The complainant contends that the certification of the above mentioned Form No 2 by the respondent was done without exercising due diligence which is expected of a professional and attempted to substantiate the same by highlighting the following discrepancies in the form:
- a. The form shows allotment having been made at a Board meeting held on 16.01.2012. The complainant was a Director and shareholder of Akruti Trexim Private Limited. His contention was that he had not received any notice for the Board meeting dated 16.01.2012 nor has he attended any such meeting. Also, the respondent had not issued any such notice. The complainant raised a query as to what documents had the respondent verified to ensure that the above- said Board meeting was duly held.
- b. The complainant's second contention is that in the said Form No. 2, the respondent had certified that the total amount paid on application was Rs. 91950/-. This means that the entire amount towards allotment was received at the time of application itself. In other words, the company must have received Rs. 46250/- and Rs. 45700/- respectively from Shree Pawan Shadija and the complainant himself. The Company's accounts, however, do not show receipt of any such share application money from him .i.e. the complainant. The complainant raised a query as to whether



ASL



**THE INSTITUTE OF
COST ACCOUNTANTS OF INDIA**
(STATUTORY BODY UNDER AN ACT OF PARLIAMENT)
CMA BHAWAN
12, SUDDER STREET, KOLKATA – 700 016.

Telephones : 2252-1031/1034/1035
2252-1602/1492/1619
2252-7143/7373/2204
Mail id : discipline.director@icmai.in
Website: : www.icmai.in

DISCIPLINARY DIRECTORATE

the respondent had verified the bank account statement to ascertain the receipt of share application money which he had certified in Form No. 2.

- c. The said Form No. 2 contains as an attachment, only a list of allottees. There is no Board resolution attached to the said Form. . The complainant raises a query as to whether or not there was a Board resolution for allotment of Shares.
 - d. On what basis did the respondent, who is a professional, verify the share application forms before certifying the Form No. 2
5. The complainant further contends that:
- i. The above certification had been done without exercise of prudence and diligence expected of an ordinary person; leave aside the high levels of integrity and diligence expected of a professional.
 - ii. The shareholding percentage of the two major groups of shareholders of the company have been altered by the conspiracy of one group of shareholders in the company and the above said professional had abetted the conspiring group in equalizing the shareholding of both the groups in an unethical, illegal and unilateral way.
 - iii. The above mentioned Form No. 2 was certified by the respondent on 31.01.2012. Therefore, it has been only 5 years and 9 months as on the date of filing the complaint and hence, this complaint is not time – barred.
 - iv. The above professional misconduct by the respondent falls under Clause (7) of Part I of Second Schedule, which reads as under:

As per Clause (7) of Part I of the Second Schedule to the Cost and Works Accountants Act, 1959, a Cost Accountant in practice shall be deemed to be guilty of professional misconduct, if he is grossly negligent in the conduct of his professional duties;

6. The complainant concludes by stating that the wrongful certification done by the respondent had prejudicially affected the interest of the former as due to his wrong certification, the shareholding pattern in the company had been altered without following the due course of law and with the sole intention of favouring one group of shareholders



ALL



**THE INSTITUTE OF
COST ACCOUNTANTS OF INDIA**
(STATUTORY BODY UNDER AN ACT OF PARLIAMENT)
CMA BHAWAN
12, SUDDER STREET, KOLKATA – 700 016.

Telephones : 2252-1031/1034/1035
2252-1602/1492/1619
2252-7143/7373/2204
Mail id : discipline.director@icmai.in
Website: : www.icmai.in

DISCIPLINARY DIRECTORATE

to the prejudice of the other group of shareholders. In support of the complaint, the complainant had annexed the following documents:

- i. Copy of Form No. 2 i.e. return of allotment along with the challan
- ii. Copy of attachment to Form 2 i.e. list of allottees

He requested the Disciplinary Directorate to initiate disciplinary proceedings against the respondent and take strict action against him.

7. The respondent was intimated vide letter dated 8th November 2017 to send response to the complaint through a written statement in his defence within 21 days from the date of service of the letter. The respondent, vide his letter dated 15th April, 2018, denied the allegations made against him and made the following submissions, *inter alia* as stated below:-

- i. At the outset, he denied 'each and singular allegation' of the complainant as the said complaint was false and frivolous which was within the knowledge of the complainant. The complainant had filed the captioned complaint after the National Company Law Tribunal, (NCLT) Kolkata passed an order dated 19th April, 2017 in Company Petition No. 156 of 2013 instituted by the elder brother of the complainant u/s 397- 398 of the erstwhile Companies Act 1956. In the said order, the Hon'ble Tribunal under para 1 of the operative part of the order has confirmed the allotment of shares. He had enclosed therewith copy of the order dated 19th April 2017 for ready reference and record.
- ii. In the order dated 19th April 2017 of the Hon'ble NCLT Kolkata Bench, while confirming the Board meeting and share allotment dated 16.01.2012, the Hon'ble NCLT has also directed the complainant to pay for shares allotted to him in the said Board Meeting which were previously reversed illegally by him in the books of accounts of the company (Pg. No 26 of the Hon'ble NCLT's Order).
- iii. While certifying the Form No. 2, the respondent had checked the required documents like the minutes of the meeting of Board of Directors held on 16th January 2012 duly signed by the Directors of the company. At the time of certification he had checked the payment details from the extract of the ledger account and the bank statement and cash ledgers shown by the company in which



Ag



**THE INSTITUTE OF
COST ACCOUNTANTS OF INDIA**
(STATUTORY BODY UNDER AN ACT OF PARLIAMENT)
CMA BHAWAN
12, SUDDER STREET, KOLKATA - 700 016.

Telephones : 2252-1031/1034/1035
2252-1602/1492/1619
2252-7143/7373/2204
Mail id : discipline.director@icmai.in
Website: : www.icmai.in

DISCIPLINARY DIRECTORATE

funds in respect of the share allotment were received by the company. However, he is not responsible for any manipulation in the books of accounts of the company after his inspection.

- iv. The respondent stated that he had certified Form No. 2 on 31.01.2012 and the complaint is filed by the complainant approximately after more than 5 ½ years.
- v. The respondent also stated that as a practicing Cost Accountant while certifying Form No. 2, he is not required to do Forensic Audit to find out whether there was a valid Board Meeting or whether some of the Directors had objection etc to holding of such meeting. He further stated that his duty was to check the minutes of the Board Meeting, name of the allottee, number of shares allotted etc. He submitted that while certifying Form No. 2 he had checked the required documents.
- vi. He further stated that after receipt of the instant complaint, he contacted one Shri Pawan Kumar Shadija, the director, who had signed the Form No. 2 on behalf of the company and he intimated the respondent that there are series of litigations going on between both the brothers. It is therefore clear that the complainant had filed this complaint to harass him.

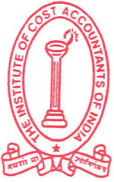
The respondent therefore, requested to quash the complaint and drop the proceedings against him.

8. The written statement of the respondent was sent to the complainant vide letter dated on 1st May 2018 for sending rejoinder on the same. In his rejoinder dated 14th May 2018, the complainant had made the following submissions on the written statement of the respondent:

- i. The respondent had stated in para no. 3 that he had checked the documents before certifying Form No 2 for allotment of shares like the minutes of the meeting of the Board of Directors held on 16th January, 2012. He had also stated that he checked the payment details from the extracts of ledger account and the bank statement and cash ledgers shown by the company in which funds in respect of the said share allotment were received by the Company. He also stated that he was not responsible for any manipulation of books of accounts after his inspection.



Agc



**THE INSTITUTE OF
COST ACCOUNTANTS OF INDIA**
(STATUTORY BODY UNDER AN ACT OF PARLIAMENT)
CMA BHAWAN
12, SUDDER STREET, KOLKATA – 700 016.

Telephones : 2252-1031/1034/1035
2252-1602/1492/1619
2252-7143/7373/2204
Mail id : discipline.director@icmai.in

DISCIPLINARY DIRECTORATE

Website: : www.icmai.in

However, the respondent had not produced any proof/copies of minutes or bank ledgers or other documents inspected by him. In the absence of such documentary evidence, the respondent's oral contentions do not hold any value. Of course, the respondent cannot be held responsible for any manipulations done by anyone after his inspection, but it is the responsibility of the respondent to retain proof or documentary evidence of what he had inspected. Without such proof, any professional can certify anything and then say that he had inspected the documents which were in order at that time and he is not responsible for any manipulations thereafter. Every professional institute requires its members to retain copies of documents on the basis of which he proceeds to certify any form. In the instant case, the respondent has failed to do so. The respondent has given a long reply but has failed to produce even a single document on the basis of which he has certified the form.

- ii. The respondent has stated in para no. 4 that this complaint has been filed 5 ½ years after the certification of the form. This is a matter of fact and is not contested. However, the complaint is not time-barred and just because it is filed 5 ½ years later does not make it frivolous or vexatious. The implications of wrong certification by the respondent are far-reaching and the dispute that this certification has spurred is not yet resolved. Certifying any form for allotment in a closely held family-run company in order to distort the shareholding without verifying the receipt of share application money by each of the allottees as certified is a serious issue. The consequence of this certification has been that the company is now on the verge of being closed down.
- iii. It is very astonishing that the respondent, a professional, is saying in Para 5 that he is not supposed to find out whether there was a valid Board meeting. The complainant asked the basis for certifying the allotment. The complainant adds that It was the respondent's duty to find out whether or not the meeting was validly held, whether the notice of the Board meeting was properly sent to all the Directors and whether the requisite quorum was present at the Board meeting. To that effect he was supposed to check and verify the following documents:
 - a. Notice of Board meeting
 - b. Proof of dispatch of notice of Board meeting to all the Directors
 - c. Attendance sheet of the Board meeting
 - d. Minutes of the Board meeting.



AKL



**THE INSTITUTE OF
COST ACCOUNTANTS OF INDIA**
(STATUTORY BODY UNDER AN ACT OF PARLIAMENT)
CMA BHAWAN
12, SUDDER STREET, KOLKATA - 700 016.

Telephones : 2252-1031/1034/1035
2252-1602/1492/1619
2252-7143/7373/2204
Mail id : discipline.director@icmai.in
Website: : www.icmai.in

DISCIPLINARY DIRECTORATE

Further, the respondent is also required to retain copies of the above documents inspected by him for record purpose. He should be asked to produce such copies to establish the truth.

- iv. Section 75 of Companies Act, 1956 which governs the allotment of shares specifically says:

75. RETURN AS TO ALLOTMENTS

(1) Whenever a company having a share capital makes any allotment of its shares, the company shall, within thirty days thereafter file with the Registrar a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses and occupations of the allottees, and the amount, if any, paid or due and payable on each share

Provided that the company shall not show in such return any shares as having been allotted for cash if cash has not actually been received in respect of such allotment;"

- v. Despite the above specific and clear provision in the Act itself, the respondent has clearly failed in his duty by not verifying whether the share application money has been received by the company from all the allottees or not since he had never paid any share application money against the alleged allotment. This unambiguously shows that the respondent has violated the provisions of Section 75 of the Companies Act, 1956 in certifying the Form No. 2.

In light of his above submission, he requested to take strict disciplinary action against the erring respondent.

9. The prima facie opinion formed by Director (Discipline) together with the documents relied upon was placed before the Disciplinary Committee at its 40th meeting held on 25th May 2018, in terms of Rule 9(2)(a)(ii) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 and the prima facie opinion was accepted and agreed to by the Disciplinary Committee in terms of Rule 9(2)(b) of the said Rules holding the respondent guilty of violation of the following provisions of the Cost and Works Accountants Act, 1959:

- (I) Clause (7) of Part I of Second schedule to the CWA, Act, 1959



Alc



**THE INSTITUTE OF
COST ACCOUNTANTS OF INDIA**
(STATUTORY BODY UNDER AN ACT OF PARLIAMENT)
CMA BHAWAN
12, SUDDER STREET, KOLKATA – 700 016.

DISCIPLINARY DIRECTORATE

Telephones : 2252-1031/1034/1035
2252-1602/1492/1619
2252-7143/7373/2204
Mail id : discipline.director@icmai.in
Website : www.icmai.in

(II) Clause (8) of Part I of Second schedule to the CWA, Act, 1959

The Secretary of the Committee was directed to ensure compliance of Rule 18(2)/18(3) of the Rules.

10. In the 45th Meeting of the Disciplinary Committee held at kolkata on 26th October 2018, the Committee perused the matter and decided to call both the parties in next meeting of Disciplinary Committee for making oral submissions, if any, in terms of Rule 18(6) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. Accordingly, letters dated 19th March 2019 were sent to both the parties requesting them to appear before the Disciplinary Committee on 1st April 2019 at 11.00 A.M. at the EIRC of the Institute. However, the Committee noted that both the parties have failed to attend the meeting and matter was not taken up for discussion.

Action taken by the Directorate & Investigations

11. Here the matter in dispute is the controversy surrounding the certification of Form No. 2. The moot point is whether the respondent, as a professional, has exercised due care and diligence in certifying the same. However, as the company in question, Akruti Trexim Private Ltd of which the complainant was a director/shareholder was a party before the NCLT, Kolkata Bench which was disposed of on 19.04.2017, it was considered necessary to find out whether the complainant or the respondent had moved the NCLAT or whether any other civil suit is pending in the matter.

Accordingly, letter Nos. G/DD (M-10901)/Com-CA(53)/7/01/2021 & G/DD/(Gen-1)/Com-CA(53)/11/01/2021 dated 29th January 2021 was sent to the respondent and the complainant seeking the following information which is reproduced in verbatim:

Quote

To the Respondent

- i. Is there any civil suit instituted and pending against you in the National Company Law tribunal (NCLT) on the same cause of action?





**THE INSTITUTE OF
COST ACCOUNTANTS OF INDIA**
(STATUTORY BODY UNDER AN ACT OF PARLIAMENT)
CMA BHAWAN
12, SUDDER STREET, KOLKATA – 700 016.

Telephones : 2252-1031/1034/1035
2252-1602/1492/1619
2252-7143/7373/2204
Mail id : discipline.director@icmai.in
Website : www.icmai.in

DISCIPLINARY DIRECTORATE

- ii. If the answer to the para (i) above is in affirmative, is the suit still pending before the NCLT?
- iii. Please provide the status of the suit pending /disposed of in/by the NCLT?
- iv. Is the civil suit filed before NCLT relating to *inter alia* non exercise of due diligence by you in certification of Form No 2 i.e., Return of Allotment pursuant to Section 75 of the Companies Act, 1956?

Your reply should reach this Directorate on or before 1st February 2021. You can email your reply to discipline.director@icmai.in

To the complainant

- i. Is there any civil suit instituted and pending against Shri Surendra Kumar Agrawal, respondent in the National Company Law tribunal (NCLT) on the same cause of action?
- ii. If the answer to the para (i) above is in affirmative, is the suit still pending before the NCLT?
- iii. Please provide the status of the suit pending /disposed of in/by the NCLT?
- iv. Is the civil suit filed before NCLT relating to *inter alia* non exercise of due diligence by Shri Surendra Agrawal in certification of Form No 2 i.e., Return of Allotment pursuant to Section 75 of the Companies Act, 1956?

Your reply should reach this Directorate on or before 1st February 2021. You can email your reply to discipline.director@icmai.in

Unquote

12. The hard copy of the letter did not reach the respondent as he had shifted elsewhere which he communicated to the Disciplinary Directorate vide his email dated 30.01.2021. The respondent, by an email dated 31.01.2021 responded as follows which is reproduced below:

"Ref: Your letter no. G/DD(M-10901)/COM-CA(53)/7/01/2021 dated 29th January 2021.

Dear Sir,

With reference to you aforementioned letter, I hereby state as follows:





**THE INSTITUTE OF
COST ACCOUNTANTS OF INDIA**
(STATUTORY BODY UNDER AN ACT OF PARLIAMENT)
CMA BHAWAN
12, SUDDER STREET, KOLKATA – 700 016.

DISCIPLINARY DIRECTORATE

Telephones : 2252-1031/1034/1035
2252-1602/1492/1619
2252-7143/7373/2204
Mail id : discipline.director@icmai.in
Website: : www.icmai.in

1. No Civil Case has been initiated against me before the Hon'ble NCLT, in the said matter.
2. A civil suit has been raised against Mr. Suresh Shadija (The complainant) by Mr. Pawan Shadija before the Hon'ble NCLT, Kolkata Bench, in the said matter in regards to the share allotment dated 16.01.2012.
3. Vide order dated 19.04.2017 The Hon'ble NCLT, Kolkata Bench had confirmed allotment of shares in Board Meeting of the Company dated 16.01.2012 and had directed Mr. Suresh Shadija to pay for Shares allotted to him, which was previously siphoned off by him from the books of accounts of the company. Hence the shares allotted in Board Meeting dated 16.01.2012 over which the respondent had certified a Form 2 was held valid by the Hon'ble NCLT.
4. Mr. Suresh Shadija has not challenged the said order dated 16.01.2012 of the Hon'ble NCLT, which inter alia confirms his acceptance to the said allotment of shares.

Thanking You

Yours Faithfully"

13. Since in para 2, the respondent had written that " A civil suit has been raised against Shri Suresh Shadija (The complainant) by Mr. Pawan Shadija before the Hon'ble NCLT, Kolkata Bench, in the said matter in regards to the share allotment dated 16.01.2012", it was found necessary to know whether there was any civil suit lying in a Court of law on the same cause of action.

However, since the complainant did not respond to this letter, several letters bearing Nos G/DD/(Gen-1)/Com-CA(53)/12/07/2023, G/DD/(Gen-1)/Com-CA(53)/13/09/2023 dated 7th August 2023 & 29th September 2023 respectively were addressed to the complainant seeking clarifications as to the following:

"Dear Sir,

This is in reference to your complaint in Form 'I' against CMA Surendra Kumar Agrawal (M/10901) which has been registered with us vide Complaint No. Com/21-CA(53)/2017.

In this connection, please refer to our earlier letter No. G/DD/(Gen-1)/Com-





**THE INSTITUTE OF
COST ACCOUNTANTS OF INDIA**
(STATUTORY BODY UNDER AN ACT OF PARLIAMENT)
CMA BHAWAN
12, SUDDER STREET, KOLKATA – 700 016.

Telephones : 2252-1031/1034/1035
2252-1602/1492/1619
2252-7143/7373/2204
Mail id : discipline.director@icmai.in
Website : www.icmai.in

DISCIPLINARY DIRECTORATE

CA(53)/12/07/2023 dated 7th August 2023 (followed by an email on the same date), wherein you were requested to apprise this Directorate within 3 (three) days from the date of service of the letter under reference (copy enclosed for ready reference) the following information:

- i. Is there any civil suit instituted and pending against CMA Surendra Kumar Agrawal, respondent in the National Company Law tribunal (NCLT) on the same cause of action?
- ii. If the answer to the para (i) above is in affirmative, is the suit still pending before the NCLT?
- iii. Please provide the status of the suit pending /disposed of in/by the NCLT?
- iv. In case, the suit has been disposed of, a copy of the order disposing of such suit from the NCLT.
- v. Is the civil suit filed before NCLT relating to *inter alia* non exercise of due diligence by CMA Surendra Agrawal in certification of Form No 2 i.e., Return of Allotment pursuant to Section 75 of the Companies Act, 1956?
- vi. Please also provide details of suit filed with the NCLT, if any, against CMA Surendra Agrawal, respondent in the instant matter.

However, we regret to inform you that no response has been received even after six weeks as the earlier letter dated 7th August 2023 has reached you on 14th August 2023. Please also provide a copy of the Order dated 19th April 2017 of the NCLT, Kolkata wherein the Hon'ble NCLT is said to have confirmed allotment of shares of Board meeting of Akruiti Trexim (P) Ltd. Please note that clarifications to the above mentioned queries are required for taking the case to its logical conclusion.

Yours faithfully,"

14. The complainant, by an undated letter (received by the Disciplinary Directorate on 10th August 2023) responded as follows:

"With refer to above No other any cases has been filed against Mr. Surendra Kumar Agarwal except in the ICWAI disciplinary body".

As part of investigation, several communication on various dates, the latest being on 29.09.2023 have been made with the respondent. The respondent had responded on 12th October 2023 seeking 60 days time to check and respond to the letter of the Disciplinary





**THE INSTITUTE OF
COST ACCOUNTANTS OF INDIA**
(STATUTORY BODY UNDER AN ACT OF PARLIAMENT)
CMA BHAWAN
12, SUDDER STREET, KOLKATA – 700 016.

Telephones : 2252-1031/1034/1035
2252-1602/1492/1619
2252-7143/7373/2204
Mail id : discipline.director@icmai.in
Website : www.icmai.in

DISCIPLINARY DIRECTORATE

Directorate stating that he shall try his best to submit required information at the earliest possible time. Further, the matter being very old and based on documents submitted by him and taking into consideration his old age, he had requested to drop the case against him.

No further communication has been made by the respondent and the time of 60 days prayed by the respondent had already elapsed on 12th December 2023.

Findings

15. The short matter that arises for determination in the instant complaint is whether or not the respondent has exercised due care and diligence as is expected from a professional in certifying Form No. 2 i.e., Return of Allotment in respect of 9190 shares of Akruti Trexim Private Limited allotted. Considering the facts and circumstances of the case the Disciplinary Committee arrives at the following findings:
- i. The main allegation of the complainant was that the certification of Form No 2 by the respondent was done by him without exercising due diligence which is expected of a professional.
 - ii. To buttress his allegation, the complainant mentions a number of compliances which, in his opinion, the respondent should have done in certifying the Form No. 2. Some of the compliances which, the complainant alleges that the respondent should have done are as follows:
 - Verification of notice for the Board meeting stated to have been held on 16.01.2012.
 - Verification as to whether the provisions of Section 286 of the Companies Act, 1956 have been complied with in terms of service of notice which states that notice of every meeting of the Board of directors of a company shall be given in writing to every director for the time being in India, and at his usual address in India to every other director.
 - Verification of the ledger accounts of Akruti Trexim (P) Ltd as an evidence of receipt of Rs 91,950/- towards share allotment money.





**THE INSTITUTE OF
COST ACCOUNTANTS OF INDIA**
(STATUTORY BODY UNDER AN ACT OF PARLIAMENT)
CMA BHAWAN
12, SUDDER STREET, KOLKATA – 700 016.

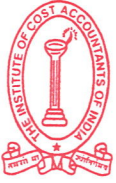
DISCIPLINARY DIRECTORATE

Telephones : 2252-1031/1034/1035
2252-1602/1492/1619
2252-7143/7373/2204
Mail id : discipline.director@icmai.in
Website : www.icmai.in

- Verification of bank account statement to ascertain the receipt of share application money which the respondent has certified in Form No. 2.
 - Verification of Board Resolution of the Board meeting of Akruti Trexim (P) Ltd which was held on 16.01.2012.
 - Verification of attendance sheet of the directors who were present in the Board meeting of 16.01.2012.
 - Attachment of a copy of Board resolution with Form No. 2
- iii. It is a common practice that once the certifying professional certifies a document, he is duty bound to exercise reasonable care and skill in certifying the said document. Once the document is properly certified by the certifying professional after due exercise of reasonable care and skill, his job comes to an end and subsequently he cannot be called upon to produce documents on the basis of which he had certified the document since these documents are not retained by the certifying professional.
- iv. In fact, the certifying professional is not allowed to retain copies of notice of Board meeting, extract of Board resolution, attendance sheet etc which are the exclusive properties of his client. ie, in this case of Akruti Trexim (P) Ltd. The complainant's contention that "every professional institute requires its members to retain copies of documents on the basis of which he proceeds to certify any form" does not hold any ground.
- v. It is also a fact that the Registrar of Companies, West Bengal had accepted the filing of Form No. 2. It is also a fact that National Company Law Tribunal, (NCLT) Kolkata passed an order dated 19th April, 2017 in Company Petition No. 156 of 2013 whereby under para 1 of the operative part of the order the Hon'ble NCLT has confirmed the allotment of shares.
- vi. The complainant's contention that because of the respondent's certification of allotment of shares in Form No. 2, "the shareholding percentage of the two major groups of shareholders of the company have been altered by the conspiracy of one group of shareholders in the company" has got nothing to do with the respondent's



ASL




exercise of due diligence, skill and prudence, for which the instant complaint has been filed.


ORDER

16. The Committee has given a very thoughtful consideration to the complaint, dated 25th October 2017, the written statement dated 15th April 2018 of the respondent, the rejoinder dated 14th May 2018 of the complainant and on consideration of various documents and communications on record as well as the facts and circumstances of the case, this Committee is of the considered opinion that there is nothing on record to show that the respondent has not exercised due diligence and care in certifying Form No. 2 of Akruti Trexim (P) Ltd. The complainant, also, has not been able to produce any cogent evidence to substantiate the fact that the respondent was negligent in his professional duties.
17. The allotment of shares has also been taken on record by the Registrar of Companies, WB.
18. The complaint therefore has no legs to stand on and there is no professional misconduct on the part of the respondent who had acted with due care, skill and caution as expected from a professional.
19. The instant complaint, therefore, lacks merit and the Committee unanimously agrees that the proceedings against the respondent be dropped and the matter is hereby closed in accordance with Rule 9(2)c) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.
20. The matter accordingly, stands disposed of.

Dated:- January 24, 2024


CMA Manoj Kumar Anand
IAS (Retd.)


CMA TCA Srinivasa Prasad


CMA Ashwin G Dalwadi
PRESIDING OFFICER


Shri Saraswati Prasad,


Smt. Meenakshi Sharma, IA&AS (Retd.)

