



# THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory Body under an Act of Parliament)  
CMA Bhawan, 3 Institutional Area,  
Lodhi Road, New Delhi-110003

Phone : +91-11-24622156-57-58  
Website : www.icmai.in

## The Board of Discipline u/s 21A The Institute of Cost Accountants of India

Complaint No. Com/21-CA(54)/2017

CMA Neeraj D. Joshi (M24118) ----- Complainant

CMA Harshad Shamkant Deshpande (M25054)----- Respondent

### ORDER

Dated 06/07/2020

1. CMA Neeraj D. Joshi filed a complaint dated 07<sup>th</sup> November, 2017 against CMA Harshad Shamkant Deshpande (M/24118) in Form I along with requisite fee which was registered vide Complaint No.Com/21-CA (54)/2017.
2. The complaint was made on the following ground:

CMA Harshad Deshpande is a Practicing Cost Accountant. He is Partner in two Partnership Firms namely Deshpande Vaze & Associates (Firm Regn No. : 000377) and Harshad S Deshpande & Associates (Firm Regn No. : 000378). Being a Member of Institute and a Practising Member, he is bound by the CWA Act, Regulations, Bye-Laws & Rules.

As per the CWA Act, Rules & Regulations, a Practising Member can engage only in the Profession of a Cost Accountant.

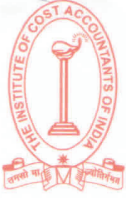
Bizsolindia Services Pvt. Ltd. is a Private Ltd. Company. It publishes monthly magazine Bizsol Update. The said magazine clearly states that CMA Harshad Deshpande is working as "GM - Operations & Business Development, Bizsolindia". This is a clear contravention of the CWA Act, Rules and Regulations. (Refer Annexure 1 & 2). The evidence spans over a period of 4 months which shows continuation of the violation of the CWA Act by CMA Harshad Deshpande.

The act of CMA Harshad Deshpande is a perfect case of Professional & other misconduct under The CWA Act, Rules & Regulations.

1. CMA Harshad Deshpande by accepting employment as GM - Operations & Business Development in Bizsolindia, a Pvt. Ltd. Company, has clearly been engaged in a business or occupation other than profession of cost accountant.

This is a clear case of Professional & Other Misconduct under - First Schedule, Part I. Professional Misconduct in Relation to Cost Accountant in Practice, Section (10) and Second Schedule, Part II, Professional Misconduct in Relation to Members of the Institute Generally, Section (1)

3. The respondent was intimated vide letter dated 16/11/2017 to send response to the complaint through a written statement in his defence within 21 days from the date of service of the letter.



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4. The respondent vide his letter dated 07/12/2017 denied the allegations made against him and stated inter alia as below:-
- I. He is a practicing Cost Accountant & expert in various domains such as Indirect Tax, GST, Cost Management, Insolvency Professional, Valuer etc.
  - II. He has been called to address various Seminars all over Country & Globe
  - III. His photos are being printed & published in Magazines, Newspapers, and Bulletins
  - IV. He was not even aware of such photo is been published by private magazine mentioned in the compliant
  - V. He does not keep track of his photos printed by magazines and the comments made there under
  - VI. He has not submitted any of his photos along with captions to any magazine for publishing
  - VII. He is not in position to explain why the editor of some private magazine has named him as "GM - Operations & Business Development". Nevertheless the photo published in the magazine is not the concluding evidence of the employment
  - VIII. The respondent is practicing Cost Accountant from 2005 and is fully aware of the CWA Act, Rules & Regulations. He submitted that he was never in employment as mentioned in the compliant. He requested the complainant to submit the substantive evidence as regards to employment such as Form 16, Appointment letter or any other agreement / contract evidencing such employer - employee relationship.
  - IX. In the absence of substantive evidence the compliant should be quashed off.

This is frivolous compliant filed by the complainants without having any documentary evidence which has caused lot of mental turmoil and anxiety. It has also affected his personal life. He also stated that "Please consider this as information under section 21 against the complainant for filling such frivolous complaint against me and ask complainant to pay the damages for cost and time spent. I reserve the right to call any person as witness in my defense entirely at the cost of complainant."

5. The written statement of the respondent was sent to the complainant vide letter dated 20/12/2017 for sending rejoinder on the same.
6. In rejoinder dated 12/01/2018 CMA Neeraj D Joshi, had submitted on the written statement:-

"I am in receipt of your captioned letter dated. 2014 December 2017 along with the copy of the Written Statement by CMA Shri. Harshad Shamkant Deshpande. The respondent CMA Harshad Shamkani Deshpande has not denied his association with Bizsol India Services Pvt. Ltd. since he is being repeatedly designated as "GM - Operations and Business Development" not once but





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repeatedly. The reference can be found in October 2016 and in January 2017 Bizsol update published by the Bizsol India Pvt. Ltd. Company.

The respondent has not taken proper care as a Cost Accountant when he is repeatedly being assigned the salutation of an employee. The respondent cannot wish away from his responsibilities by shifting the blame to others. The respondent should have produced a letter of apology from Bizsol India Pvt. Ltd for misrepresentation of facts, which he has failed to do so. The respondent has also not adduced any evidence as regards his objection for publishing his photographs titled as GM- Operations & Business Development. This amounts to tacit acceptance of his position in Bizsol India Pvt. Ltd. There is every likelihood that the respondent CMA Harshad Deshpande is receiving remuneration/payments from Bizsol India Pvt. Ltd. in various capacities. Bizsol India Pvi. Lid. treats and considers respondent as their employee and accordingly uses the designation G M - Operations & Business Development.

It is a matter of convenience how Bizsol India Pvt. Ltd and the respondent deal and behave with each other but certainly there may be a link in the nature of Employer - Employee between the respondent and Bizsol India Pvt. Ltd best known to them. It is requested that the Director Discipline should collect the information from Bizsol India Pvt. Ltd. as regards the payments made by Bizsol India Pvt. Ltd. to the respondent during the year 2017-18 , 2016-17 and 2015-16. This will clearly bring to the surface the relationship between Bizsol India Pvt. Ltd. and respondent."

As regards production of evidence I may like to state as under:

The written statement furnished by CMA HarshadShamkant Deshpande is in the form of a "Disclaimer". The respondent has "not denied" or "refuted" any of the facts mentioned in the complaint filed against him. It is nothing but tacit acceptance of the facts for which disciplinary complaint has been filed by the complainant.

The purpose of written statement is to negate the charges made in the complaint by the complainant and not only to ask for evidence from the complainant himself.

The respondent has only asked for "evidences" from the complainant to support his complaint.

What is expected to be given in "Written statement" is the defence of the respondent. A defence called the written statement, in general is a reply to the complaint, in which the respondent deny or admit each and every allegation or facts given in the complaint.

It may be pertinent to note that in any legal process "Written Statement" has to follow certain rules in process of enquiry of a complaint. The rules for the Written Statement signify that -The facts which remain unanswered by the defendant, it will be presumed that the said fact was admitted by the defendant.

Where a defendant denies an allegation of fact in the complaint, he must not do so evasively, but answer the point of substance. Every allegation of fact in the complaint, if not denied in the written statement shall be taken to be admitted by the defendant, What this rule says is that any allegation of fact must either be denied specifically or by a necessary implication or there should be at least a



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statement that the fact is not admitted. If the plea is not taken in that manner, then the allegation shall be taken to be admitted. I also request your honor to kindly grant me an opportunity of personal hearing before the case is finally decided. Kindly take my above rejoinder on written statement filed by CMA Harshad Shamkant Deshpande (M/25054).

7. Director (Discipline) vide his letter dated 1<sup>st</sup> June, 2020 asked the Bizsolindia Services Pvt Ltd to provide the following information:

- I. Whether CMA Harshad Deshpande is or was employee of Bizsolindia Services Private Limited.
- II. If your answer to the above is in affirmative, then the details of his engagement.
- III. The details of payment made by Bizsolindia Services Private Limited to CMA Harshad Deshpande during the year 2015-16, 2016-17 & 2017-18 and the relationship between Bizsolindia Services Private Limited and CMA Harshad Deshpande.
- IV. In the monthly magazine - Bizsol update October 2016 and January, 2017 issue, it was stated that CMA Harshad Deshpande, GM-operations & Business Development Bizsolindia. Whether CMA Harshad Deshpande was GM-operations & Business Development Bizsolindia?

But no reply has been received till date.

8. The above-mentioned Complaint has been examined in pursuance of Section 21 of the Cost and Works Accountant Act, 1959 as amended in 2006 read with Rule 9 of the Cost and Works Accountants (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007. It is observed that there was nothing on record to prove the allegations against the respondent and the Complainant has not been able to adduce any evidence regarding the same.
9. On perusal of the Complaint, written statement, prima facie opinion of the Director (Discipline), related material on record and in totality of all the facts and circumstances of the case, the Board arrived at the conclusion that there was nothing on record to prove the allegations against the respondent and the Complainant has not been able to adduce any evidence regarding the same. After detailed deliberations, the Board decided to order for closure of the matter in accordance with Rule 9(3) (a) of the Cost and Works Accountants (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007 and inform the Complainant and the Respondent accordingly.

Accordingly, the complaint stands disposed off.

  
Presiding Officer