



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
011-24666109
Mail id-discipline.director@icmai.in
Website : www.icmai.in

DISCIPLINARY DIRECTORATE

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

In the matter of -

Complaint No. Com/21-CA(105)/2022 -

Shri Ram Charan Pal _____ Complainant

Vs.

CMA Smriti Nagar (M/29375) _____ Respondent

Quorum

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

ORDER

1. The Disciplinary Directorate is in receipt of a complaint in Form I dated 16th April 2022 (received by the Disciplinary Directorate on 22nd April 2022) together with the prescribed complaint fee of Rs 2950/- (inclusive of GST) from Shri Ram Chandra Pal (hereinafter referred to as the "complainant"), against CMA Smriti Nagar (hereinafter referred to as the "respondent") bearing membership number 29375 containing certain allegations against the respondent falling under the Second Schedule to the Cost and Works Accountants Act, 1959.
2. On receipt of the instant complaint, an acknowledgement was sent to the complainant vide letter No. G/DD/Com-C-105/01/05/2022 dated 4th May 2022. After scrutiny, the complaint was registered in terms of Rule 5 of the Cost and Works Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 and the same was proceeded with in the manner as prescribed in Chapter III of the Rules. The complaint was registered by the Disciplinary Directorate by giving a unique complaint number, Complaint No. Com/21-CA(105)/2022.





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3. The complaint was inter alia made on the following grounds:

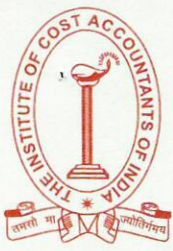
The respondent had conducted Professional Misconduct in exercising due diligence, or is grossly negligent in the conduct of her professional duties and completely violated and ignored the provision section 42, 62, 96, 100 and 173 of the Companies Act, 2013 and Rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014, Rule 13 of The Companies (Share Capital and Debentures) Rules, 2014 and Secretarial Standards-1 and Secretarial Standards-2 Issued by The Institute of Company Secretaries of India (ICSI), while fraudulently certifying the Form MGT-14 of M/s. Marg Polytech Private Limited for issuance of 32500 of Rs. 10 each Equity Shares to Mr. Praphull Goyal, a non-member of the Company. It is under clause 7, Part- I of Second Schedule of The Cost Accountants Act, 1959.

4. The Form I was accompanied by a two page write up explaining the facts alleged in Form I in detail which is reproduced below

- 1) The Complainant, Director and shareholder holding 54.02% share with his father in the M/s. Marg Polytech Private Limited (the Company) making this complaint against serious misconduct and illegal certification of Form MGT-14 by Mrs. Smriti Nagar, Practicing Cost and Works Accountant (Membership No. 29375) having office at 258, Uttamchand Israni Chambers, Second Floor, Behind District Court, Arera Hills, Bhopal 462011.
- 2) Mrs. Smriti Nagar, completely violated and ignored the provision section 42, 62, 96, 100 and 173 of the Companies Act, 2013 and Rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014, Rule 13 of The Companies (Share Capital and Debentures) Rules, 2014 and Secretarial Standards-1 and Secretarial Standards-2 Issued by The Institute of Company Secretaries of India (ICSI), while fraudulently certifying the Form MGT-14 for Issuance of 32500 Equity Shares of Rs. 10/- each of the Company to Mr. Praphull Goyal.
- 3) Mrs. Smriti Nagar certified the Form MGT- 14 without even taking into consideration the following compliances of Companies Act, 2013:

Company was required to give the notice of 21 clear days in terms of section 101(1) of the Companies Act, 2013 and if meeting has to be called through less than 21 clear days' notice then consent for shorter notice from the shareholders representing not less than 95% of the share capital of the Company is required in terms of proviso (i)(a) to section 101(1) of the Companies Act, 2013. It can be easily observed from the records that neither any notice has been served nor any consent for shorter notice has been obtained from the complainant who undisputedly holds 54.02% shares in the Company. Therefore, aforesaid notice of the meeting, EGM dated 16.01.2019 and all the resolution passed thereat is void ab initio.





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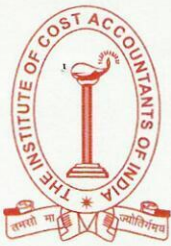
Alleged notice dated 08.01.2019 calling EGM on 16.01.2019 proposes to pass resolution under section 42 and 62(1)(c) of the Companies Act, 2013 read with Rule 13 of Companies (Share Capital and Debentures) Rules, 2014 and Rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014. It is further submitted that aforesaid section and rule made thereunder has defined a specific disclosure requirement in the resolution and explanatory statement sent to the shareholders which inter alia includes identification of the proposed allottees, object of the issue, opening of separate bank account for share application money and valuation of shares by the registered Valuer, issue price of shares, pre and post allotment shareholding pattern and many more. But, alleged notice dated 08.01.2019 which was attached with the form MGT-14 filed with the ROC, categorically devoid of all these mandatory disclosure requirements. Therefore, it can be said that subjected notice is incomplete and deficient of mandatory disclosure requirements, hence illegal and void.

4) Mrs. Smriti Nagar is malafidely and deficient in performing her professional duties while certifying the Form PAS-3 only for the benefits of other directors and definitely not as an independent Practicing Cost and Works Accountant. Being the Practicing Cost and Works Accountant Mrs. Smriti Nagar was supposed to carry out her duties within the discipline of legal provisions and the Standards as prescribed by the Institute. She Colluded with other directors and reduced the complainant from majority shareholder to minority shareholder. Copy of the order dated 30.04.2021 of Hon'ble NCLT, where allottee of these shares has been restrained from exercising any rights with respect to 32500 equity shares allegedly allotted to Mr. Praphull Goyal has been attached.

5. The complainant had attached, the following documents along with his complaint:
- A copy of Form MGT-14 showing the name of the respondent certifying the said form.
 - A copy of the Order dated 30.04.2021 of the NCLT Indore Bench at Ahmadabad
 - Notice dated 8.01.2019 of EGM calling the EGM on 16.01.2019.
 - Explanatory statement for issue of 32500 shares @ Rs 10/- each
 - Copy of Resolution passed at the EGM on 16.01.2019.
6. The said complaint was duly forwarded to the respondent vide letter No. G/DD/Com-CA(105)/(M-29375) /1/05/2022 dated 6th May 2022 requesting the respondent to respond within 21 days from the date of service of the said letter. The respondent, by an email dated 25th May 2022 received by the Disciplinary Directorate at or around 6.48 PM submitted her written statement dated 24th May 2022 (also followed by a hard copy of the same reaching the Disciplinary Directorate on 30th May 2022) which is reproduced below:



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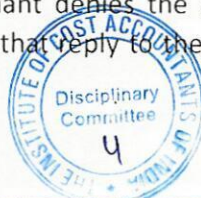
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- 1) It is requested that all the correspondence should be made to Mr. Sanjiv Naidu to his address only. This address belongs to the respondent only and the same was registered for SNS & Co. (Partnership firm) which is no more active from her part and for the same communication was made to the Institute alongwith resignation letter dt. 22.06.2019.
- 2) This may please be noted that the matter alleged in the complaint letter is already subjudice with NCLT court and next dated is 24.06.2022. Hence at this point of time do not want to submit any more detailed information/evidence in this regard.
7. As stated in the written statement, she had enclosed the following documents:
 - i) A letter dated 22nd June 2019 addressed to the then Secretary of the Institute stating that she is resigning from M/s SNS & Co., Cost Accountants due to unreasonable behaviour of her Partner, CMA Sanjiv Vijay Naidu. She had intimated to her Partner, CMA Sanjiv Vijay Naidu to dissolve the firm M/s SNS & Co., Cost Accountants as per the prescribed procedure. She does not carry any liabilities in the name of the firm M/s SNS & Co., Cost Accountants and would like to withdraw her address given at the address of the said firm.
 - ii) A letter of acknowledgement No. MCA/RoC-Gwalior/J0073517/(Ack)-Complaint against company dated 20th April 2022 received from the Ministry of Corporate Affairs (MCA) addressed to the respondent stating that her complaint against Marg Polytech Private Ltd has been registered with the complaint No. J0073517.
 - iii) E-mail dated 27th April 2022 addressed to the Sr. Director (Membership) and other officials of the Membership Department complaining against CMA Sanjiv Vijay Naidu, her Partner for misusing her digital signature for filing MGT-14 and uploading the same at the MCA website in January 2019 without her knowledge and permission.
8. The written statement dated 24th May 2024 was sent to the complainant vide letter No. G/DD/Com-CA(105)/02/06/2022 dated 17th June 2022 requesting for his rejoinder, if any, on the written statement in terms of sub-rule (4) of Rule 8 of the Cost and Works Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 within 21 days from the date of service of the letter under reference.
9. The complainant filed his rejoinder dated 2nd July 2022 (received by this Directorate on 8th July 2022) wherein he made the following submissions which is reproduced below:
 - 1) At the outset, the Complainant denies the submission and contention of the Respondent. It is submitted that reply to the Complaint contains incorrect facts





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and submissions and the same has been filed merely as a formality without any basis or justification.

- 2) That the Respondent stated in her mail dated 27.04.2022 that Mr. Sanjiv Vijay Naidu M. No. 12068 illegally misusing her digital signature for filing MGT 14 form for his independent client and uploaded the same at MCA website in Jan 2019 without the knowledge and permission of Respondent. It is also stated in the above mentioned mail that she came to know this only when NCLT notice was received by her.
- 3) It is submitted that the Respondent of this Complaint is also a Respondent no. 6 of the Company Petition No. (MP) CP 20 OF 2020 filed by the Applicant in the matter of Mr. Ram Charan Pal & Ors. V/s. M/s. Marg Polytech Private Limited & Ors. filed under sections 213, 241 and 242 of the Companies Act, 2013. In compliance of NCLT Order and Rules the copy of such petition/advance copy of petition/notice of hearing are circulated to her time to time at her email id. cma_smriti@rediffmail.com, details of which are as follows:-
 - a. Email dated 12.10.2020 for advance service of Company Petition NO. (MP) CP 20 of 2020.
 - b. Email dated 04.11.2020 for Notice of hearing on 05.11.2020 before Hon'ble NCLT.
 - c. Email dated 17.11.2020 for service of notice in C.P. No. 20 of 2020 along with the order for notice of hearing on 22.01.2021.
 - d. Email dated 06.05.2021 for service of notice of order dated 30.04.2021.
 - e. Email dated 02.07.2021 for advance service of copy of Additional Affidavit dated 01.07.2021 filed in compliance of order dated 30.04.2021 in CP 20 of 2020.
 - f. Email dated 16.02.2022 for copy of Written Submission filed by Petitioner in compliance of order dated 10.12.2021 in CP 20 of 2020.
- 4) It is further submitted that copy of such petition is also served by the Speed Post in compliance of order of Hon'ble Tribunal dated 05.11.2020. Surprisingly, still the Respondent was unaware and submitting that she came to know this only when NCLT notice was received by her. This shows the conduct of the Respondent and ill intention towards the Complainant.
- 5) It is also submitted Respondent deliberately done the illegal and careless certification of forms and caused immense harm to the Complainant. It can be seen that Respondent after receipt of copy of present complaint issued an email to Mr. Sanjiv Vijay Naidu, which shows their collaboration and mutual consent to the activities done in past. Otherwise what restrained the Respondent to take legal action against Mr. Sanjiv Vijay Naidu who allegedly used her DSC for certification.





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She kept quiet for more than two years. If, the complainant has not filed the present complaint with the Institute then she might never file complaint against Mr. Sanjiv Vijay Naidu. This shows her conduct and attitude.

- 6) It is submitted that as far as pendency of petition before Hon'ble NCLT is concerned those are separate proceeding under the Companies act, 2013. There is no bar on institute to take suitable action against the member who is guilty of professional misconduct. In fact, disciplinary committee of the Institute is the fairly entitled to carryout enquiry against the subjected member of the Institute.
 - 7) It is submitted that Mrs. Smriti Nagar chose not to reply on specific allegations against her and tried to shift the burden on others, this amount to admission of specific allegation against her.
 - 8) In view of above submissions, it is humbly request to the Hon'ble Tribunal to pass the appropriate order on the merits of the case.
10. As part of investigation that Director (Discipline) is empowered to do u/s 21 of the Cost and Works Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, a letter No. G/DD/Com-CA(105)/03/08/2022 dated 10th August 2022 was sent to the complainant seeking the following clarifications:
- (1) Whether the respondent in the instant disciplinary complaint is also a respondent in the Company Petition No. (MP) CP 20 of 2020 filed by the complainant with the NCLT Indore Bench at Ahmadabad.
 - (2) Whether the subject matter of the Company Petition No. (MP) CP 20 of 2020 pending before the NCLT is similar to the subject matter of the instant disciplinary complaint.
 - (3) Cogent proof of the fact of fraudulent certification by CMA (Mrs) Smriti Nagar, respondent of Form MGT-14 for issuance of 32500 Equity shares of Rs 10/- each of Marg Polytech (P) Ltd to Shri Praphull Goyal.
 - (4) The date of last hearing by NCLT Indore Bench at Ahmadabad in the matter of Company Petition No. (MP) CP 20 of 2020.
11. Again, a letter No. G/DD/Com-CA(105)/(M-29375)/2/08/2022 dated 11th August 2022 was sent to the respondent requesting her to apprise the Disciplinary Directorate as to the following:
- (1) Whether you are also a respondent in the Company Petition No. (MP) CP 20 of 2020 filed by the complainant with the NCLT Indore Bench at Ahmadabad.
 - (2) Whether the subject matter of the Company Petition No. (MP) CP 20 of 2020 pending before the NCLT is similar to the subject matter of the instant disciplinary complaint.





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- (3) Whether hearing has taken place on 24th June 2022 and if so, a copy of the order of such hearing or any other hearing which may have taken place after 24th June 2022.
- (4) Copies of all communications with the Ministry of Corporate Affairs that you have made and received from them.
- (5) The date of last hearing by NCLT Indore Bench at Ahmadabad in the matter of Company Petition No. (MP) CP 20 of 2020.
12. The respondent by a letter dated 6th September 2022 furnished the details sought for by the Disciplinary Directorate vide letter dated 11th August 2022. She replied that:
- She is Respondent No 6 in the Company Petition No. (MP) CP 20 of 2020 filed by the complainant with the NCLT Indore Bench at Ahmadabad.
 - Subject matter of the Company Petition No. (MP) CP 20 of 2020 pending before the NCLT is similar to the subject matter of the instant disciplinary complaint.
 - Hearing has taken place on 24th June 2022 and a copy of the order of the said hearing was also annexed with the letter dated 6th September 2022 which showed that the matter stood adjourned to 12.08.2022.
 - The respondent has annexed copies of correspondence made with MCA and vice versa including a serious complaint form filed by the respondent with the MCA against Marg Polytech (P) Ltd.
13. As no response from the complainant was forthcoming another letter no. G/DD/Com-CA(105)/04/10/2022 dated 7th October 2022 was sent to the complainant again seeking clarification as to the following :
- Whether the respondent, in the instant disciplinary complaint, is also a respondent in the Company Petition No. (MP) CP 20 of 2020 filed by the complainant with the NCLT Indore Bench at Ahmadabad.
 - Whether the subject matter of the Company Petition No. (MP) CP 20 of 2020 pending before the NCLT is similar to the subject matter of the instant disciplinary complaint.
 - Cogent proof of the fact of fraudulent certification by CMA (Mrs) Smriti Nagar, respondent of Form MGT-14 for issuance of 32500 Equity shares of Rs 10/- each of Marg Polytech (P) Ltd to Shri Praphull Goyal.
 - The date of last hearing by NCLT Indore Bench at Ahmadabad in the matter of Company Petition No. (MP) CP 20 of 2020.
14. An email dated 19th March 2024 was addressed to membership Department at or around 12.40 PM requesting the department to provide the following information to this Directorate:
- Whether the respondent bearing membership number 29375 is a member in practice.
 - If yes, whether she is in partnership with any other partner.
 - The name of the firm in which she is a partner or proprietor, as the case may be.





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- (iv) Whether at any time, CMA Smriti Nagar was a partner? If yes, with whom?
- (v) Whether she had sent any email on 27th April 2022 to membership.dd@icmai.in/membership@icmai.in with a copy marked to membership.director@icmai.in requesting the Institute to take appropriate action against any other member.
- (vi) If so, the details thereof.
15. The Membership Department vide their email of 19th March 2024 received at or about 3.28 PM provided the following information which is reproduced below:-
- (i) Whether as on date, any firm exists in the name and style of M/s SNS & Co.? YES
[FRN 001518]
- (ii) If so, please mention the name of Partners.
CMA Smriti Nagar (M/29375)
CMA Sanjiv Vijay Naidu (M/12068)
- (iii) How many times the firm M/s SNS have been reconstituted? Never.
- (iv) Please provide the names of the partners of the firm at the time of constitution of the firm.
CMA Smriti Nagar (M/29375)
CMA Sanjiv Vijay Naidu (M/12068)
- (v) Please also provide the names of the partners of the firm at each time of re-constitution of the firm. N.A.
16. The respondent, by an email dated 11th October 2023, received at or about 7.44 PM, had provided her response in connection with certain queries raised by the Disciplinary Directorate vide letter No. G/DD/Com-CA(105)/(M-29375)/3/09/2023 dated 9th October 2023. In the said email she once again reiterated that:
- She did not certify the eform MGT-14
 - CMA Sanjiv Vijay Naidu (M/12068) who is also a respondent (No. 5) in the case between Ram Charan Pal & Ors. V/s. M/s. Marg Polytech Private Limited & Ors has misused her digital signature.
 - The matter pending before the NCLT is same as the instant subject matter on which disciplinary proceedings have been initiated.
 - A Police complaint at MP Nagar Police Station, Bhopal was filed by her on 25.04.2022 against CMA Sanjiv Vijay Naidu.
17. As the Police complaint was in Hindi, an email dated 19th October 2023 was sent to the respondent to provide an English translation of the said police complaint filed at MP Nagar P.S., Bhopal.
18. The respondent, by an email dated 20th March 2024 received at or about 11.31 PM provided the English translation of the said police complaint filed on 25th April 2022 at MP Nagar P.S., Bhopal against CMA Sanjiv Vijay Naidu, wherein she *inter alia* complained



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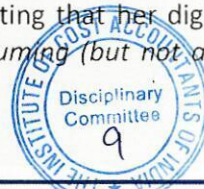
that her digital signature 'must have been used by Mr. Sanjeev Naidu' which can be verified by checking the MCA registration ID and IP address used by the uploader. She further stated that Mr. Naidu was a partner in her firm during that time and he had convenient access to her office premises and had easy access to my office computer etc. Taking advantage of the opportunity, he committed breach of trust and fraudulently uploaded the certificate on the site of the Ministry of Corporate Affairs, Government of India by misusing her digital signature without informing her "in which he must have undoubtedly received a large amount of money as fees." He must have uploaded the certificate on the site of ROC using his own registration ID, so that ROC sends its acknowledgment slip to him and the applicant remains unaware.

19. The only allegation levelled by the complainant against the respondent is that the latter had fraudulently certified e-Form MGT-14 of the Companies (Management and Administration) Rules, 2014 for Issuance of 32500 Equity Shares of Rs. 10/- each of Marg Polytech Pvt. Ltd to one Shri Praphull Goyal.

Thus, the instant complaint of the complainant hinges on only one matter - whether or not the respondent had exercised professional prudence in certifying Form eMGT-14. In other words, whether or not the respondent had fraudulently certified Form MGT-14. Section 117(1) of the Companies Act, 2013 states that a copy of every resolution or any agreement, in respect of matters specified in sub-section (3) together with explanatory statement under Section 102, if any, annexed to the notice calling the meeting in which the resolution is proposed, shall be filed with the Registrar within thirty days of the passing or making thereof in such manner and with such fees as may be prescribed. Rule 24 of the Companies (Management and Administration) Rules, 2014 provides for filing Form eMGT-14 with the Registrar within 30 days of passing of every resolution Sub-section (3) of Section 117 deals with special resolutions, among others where Form MGT_14 needs to be filed within 30 days of passing of such special resolution any agreement, in respect of matters specified in sub-section (3).

The e-Form MGT-14 annexed by the complainant shows the name and membership number of the respondent as the certifying professional. The complainant has alleged that the form MGT-14 filed by the respondent is devoid of any certain mandatory disclosure requirements. Further, the complainant alleges that the notice dated 8th January 2019 of the EGM that was held on 16th January 2019 and the special resolution in respect of which the e-Form MGT-14 has been purportedly filed with the ROC is *void ab initio* for non-compliance of the requirements of the provisions of provisions of Section 101(1) of the Companies Act, 2013 regarding "Notice of a meeting".

However, the Disciplinary Directorate need not go into the controversy on whether or not the respondent, as a certifying professional, had exercised due diligence in certifying e-form MGT-14 of the Companies (Management and Administration) Rules, 2014. She may have denied certifying form e-MGT-14 stating that her digital signature had been used without her knowledge and information. *Assuming (but not accepting) her statement to be true, a*



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question arises as to why should a responsible professional part with her digital signature. This itself speaks volumes for the causal and slapdash attitude of the professional. Even if the respondent did not certify the e-Form MGT-14, she will still be liable for parting with her digital signature to her partner and thereby allowing him to file and upload the form on the MCA website.

In view of the foregoing, the polemic on whether or not the respondent is responsible for not exercising due diligence and skill in certifying e-form MGT-14 is of no consequence and relevance and is not germane to the subject complaint.

20. Prima facie Opinion

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 appears that CMA Smriti Nagar (M/29375) respondent, is guilty of contravening Clause (7) of Part I of the Second Schedule to the Cost and Works Accountants Act, 1959. Clause (7) of Part I of Schedule II states that a cost accountant in practice shall be deemed to be guilty of professional misconduct, if he does not exercise due diligence or is grossly negligent in the conduct of his professional duties. She is grossly negligent in not retaining her digital signature and parting with the same with somebody else.

21. In the 83rd meeting of the Committee held on 27th March 2024, the prima facie opinion against the respondent was placed before the Committee in terms of Rule 9(2)(a)(ii) of the of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 and was accepted and agreed to by the Committee in terms of Rule 9(2)(b) of the Rules. The committee, however, did not agree with all the findings that Director (Discipline) had mentioned in his prima facie opinion.

The only allegation levelled by the complainant against the respondent is that the latter had fraudulently certified e-Form MGT-14 of the Companies (Management and Administration) Rules, 2014 for Issuance of 32500 Equity Shares of Rs. 10/- each of Marg Polytech Pvt. Ltd to one Shri Praphull Goyal. The Committee opined that the Disciplinary Directorate need not go into the controversy on whether or not the respondent, as a certifying professional, had exercised due diligence in certifying e-form MGT-14. She may have denied certifying form e-MGT-14 stating that her digital signature had been used without her knowledge and information. Assuming (but not accepting) her statement to be true, a question arises as to why should a responsible professional part with her digital signature. This itself speaks volumes for the causal and slapdash attitude of the professional. Even if the respondent did not certify the e-Form MGT-14, she will still be liable for parting with her digital signature to her partner and thereby allowing him to file and upload the form on the MCA website. Thus, this prima facie, was an act of other misconduct on the part of the respondent. **The Committee categorically mentioned that the misconduct on the part of the respondent is restricted only to the misuse of the respondent's digital signature. The Committee rejected**





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the other findings of the Disciplinary Directorate.

The Committee noted that this was a fit case against the respondent to be proceeded against and directed Director (Discipline) to proceed further under Chapter V and ensure compliance of Rule 18(2)/18(3) of the Rules.

22. Accordingly, the prima facie opinion together with the documents relied upon by Director (Discipline) in forming such opinion has been sent under the cover of letter Nos. G/DD/Com-CA(105)/PFO/06/03/2024 & G/DD/Com-CA(105)/(M-29375)/PFO/6/03/2024 both dated 27th March 2024 were sent both to the complainant and to the respondent calling upon the latter to send her response by way of a written statement within 21 days from the date of service of the letter under reference. The speed post receipt has confirmed that the letter has reached the respondent on 4th April 2024.

23. The respondent on 24th April 2024 i.e., on the 20th day sent an email to the Disciplinary Directorate seeking following clarifications/documents to finalize her Written statement :-

- 1) Detailed bank statement of M/s SNS Co. and Shri Sanjiv Naidu individual for either period of six months from the date of Signatures in alleged MGT 14.
- 2) The verification report made by the Disciplinary Committee from MCA and documents received from MCA basis on which verification report was prepared, in regards to alleged MGT 14 .
- 3) Certified copy of PAS 3 and Certified copy of the complaint made by Shri RC Pal against me in which it is alleged that PAS 3 was malafidely signed by me, as discussed in the 2nd last para of page no. 3 of the Prima facie opinion drawn by the Disciplinary Committee.
- 4) Action taken report from Membership department of Institute in respect of resignation mail from SNS & Co given by me against Shri Sanjiv Naidu on 22/06/2019, if called by Disciplinary Committee for Investigation and Analysis.
- 5) Clarifications sought by the Disciplinary Committee from the Complainant Shri RC Pal in respect of letter vide no. G/DD/Com-CA(105)/04/10/2022 Dated 07/10/2022 issued by the Disciplinary Authority. As discussed in the point no.13 of Page 9 of prima facie opinion.
- 6) Name and email ID of the mailer ,who made an email to Membership department on dated 19th March 2024 at or around 12:40 PM ,as mentioned in point 14 of page no.9 of prima facie report made by disciplinary authority.
- 7) Copy of the email discussed in point no III of page no.7 of prima facie opinion drawn by Disciplinary Authority.
- 8) Clarifications sought from the complainant by the Disciplinary committee vide their letter no. G/DD/Com-CA(105)/03/08/2022 DATED 10/08/2022,as discussed in point no.10 of Page 8 of prima facie opinion drawn by disciplinary committee.
- 9) Action taken report from Membership department of Institute in respect of Complaint of Professional Misconduct given by me against Shri Sanjiv Naidu on 27/04/2022, if called by Disciplinary Committee for Investigation and Analysis.
- 10) Name and email ID of the mailer ,who made an email to Membership department on dated 19th March 2024 at or around 03:28 PM, as mentioned in point 14 of page no.9 of prima facie report made by disciplinary authority.





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24. In the 84th (Adjourned) meeting held on 11th May 2024, Director (Discipline) informed the learned members of the Committee that the respondent on 24th April 2024 sent an email to the Disciplinary Directorate seeking certain clarifications/documents. The said email was placed on table and the same was perused by the Committee members. The Committee noted the questions/points raised in the instant email and directed Director (Discipline) to respond accordingly. Director (Discipline) was also advised to conduct a thorough investigation regarding the justification for prima facie opinion formed against the respondent and place the same before the Committee at its next meeting.

25. As the matter hinges on the fact as to whether or not the respondent was a Partner in the firm SNS, & Co., the learned members of the Committee advised Director (Discipline) to also seek from the Membership Department a detailed note on the procedure followed in respect of firm of Cost Accountants for being placed in the next meeting:

- (1) Creation of Partnership
- (2) Retirement of Partners
- (3) New Admission
- (4) Dissolution of Partnership

26. As part of the investigation that the Committee had advised, an email dated 13th May 2024 at or about 10.39 AM was sent to the membership Department requesting the Department to provide the following documents to the Disciplinary Directorate:

- (i) Copies of Form M-3 for FY 2020-21, 2021-22, 2022-23 & 2023-24 filed by CMA Smriti Nagar (Membership No. 29375).
- (ii) Copy of Form M-5, if any, filed by CMA Smriti Nagar for FY 2020-21, 2021-22, 2022-23.
- (iii) Reconstituted Partnership Deed, if any of the firm SNS & Co., Cost Accountants in the past 03 (three) years.
- (iv) Details of Proprietary firm of CMA Smriti Nagar.

27. The Membership Department by an email dated 13th May 2024 provided the desired documents.

It is pertinent to mention here that all the Forms M-3 submitted for 2020-21, 2021-22, 2022-23 & 2023-24 shows the respondent had renewed her Certificate of Practice (CoP). It is rather surprising to note that for all the M-3 filed in each of these years, she had nowhere mentioned the name of her firm which she was under an obligation to do so as per serial number (4) of Form M-3. She has also not made a whisper about the fact that she is still being shown as a Partner of M/s SNS & Co.

28. Director (Discipline) was also advised to verify if the e Form MGT-14 was actually certified by the respondent. The Directorate had visited the MCA portal and after locating the relevant year and the form had got the same verified and downloaded the form from the MCA website on 16th May 2024. The last page of the form shows the





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name and membership number of the respondent which showed that she was the certifying professional.

29. The respondent had denied certifying and filing the said form. The Disciplinary Committee had also not charged her with certifying of the form. Even if the respondent did not certify the e-Form MGT-14, she will still be liable for parting with her digital signature to her partner and thereby allowing him or somebody to file and upload the form on the MCA website. Thus, this prima facie, was an act of other misconduct on the part of the respondent. The Committee categorically mentioned that the misconduct on the part of the respondent is restricted only to the misuse of the respondent's digital signature. The Committee rejected the other findings of the Disciplinary Directorate.
30. The respondent, vide an undated letter (received by this Directorate on 30th May 2024) submitted the following written statement: which is reproduced below:
- 1) The respondent on receipt of a prima facie opinion issued by the Disciplinary Directorate had sought some documents / information vide her email dated 24th April 2024. The documents sought were utmost important and relevant to submit her written statement.
 - 2) The documents/information supplied by the Director (Discipline) are incomplete and away from relevancy of her request, which is very unfortunate
 - 3) In view of above, it is completely evident that all the documents/information sought by the respondent are appropriately relevant to the case and utmost important to finalize the written statement. It is also very much unfortunate that Disciplinary Directorate supplied the misleading & incomplete information.
 - 4) It is established that Complainant was not able to put up the cogent proof of the fact of the fraudulent certification by CMA Smriti Nagar, Respondent of Form MGT-14 for issuance of 32500 equity shares of Rs 10/- each of Marg Polytech pvt. Limited to Shri Praphull Goel.
 - 5) It is also established that complainant was not responded in respect of the clarifications sought by Director (Discipline) vide letter no. G/DD/Com-CA(105)/3/8/2022 dated 10/08/2022 and G/DD/Com-CA(105)/4/10/2022 dated 07.10.2022, hence he is hostile and he came to this platform only to get benefit in NCLT Court proceedings.



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- 6) The respondent and Shri Sanjiv Naidu were partners in a Firm Namely M/S SNS & Co. vide FRN 001518. The respondent due to unreasonable behavior of Shri Sanjiv Naidu, resigned from the Firm on dated 22/06/2019. The address of the firm was Chamber no.258, Uttam Chand Israni Chambers, 2nd floor, behind Distt. Court, Arera hills, Bhopal 462011 which is her own chamber. After her resignation, withdrawal this address from the firm with due intimation to Institute.
- 7) Her Digital Signature was always kept safely in her drawer of working table under lock & key and never part her digital signature to anybody in her Professional life. Her whole professional career is clean and without any black dot. She had never signed any offer letter/Appointment letter of Marg Polytech (P) limited for any assignments in her complete professional career. No financial transactions were made among undersigned and Marg Polytech (P) limited ever in her lifetime.
- 8) During the partnership period of M/S SNS & Co. being partner Shri Sanjiv Naidu frequently used to visit and sit in the chamber and at that time for his vested interest he ditched her by misutilizing her digital signature upon alleged MGT-14 without her knowledge. This is verifiable from the MCA records that by whom MGT-14 uploaded in MCA site and to whom acknowledgement and SRN number received.
- 9) As the respondent came to know that the digital signature was misused the undersigned lodged complaint to MP Nagar police station of Bhopal & file a complaint to MCA also along with a complaint to the Institute. These are the only available platforms for her as per law which was exercised by her. In her complaint of MCA it was also requested to treat this MGT-14 null n void.
- 10) That unfortunately the respondent unnecessarily dragged in to petition no. MP (CP) 20 of 2020 of NCI-T Indore bench as respondent no.6. The respondent also submitted the above said full facts on her reply before the court. It is clearly mentioned in reply that her signature in alleged MGT-14 was misused by Shri Sanjiv Naidu who is respondent no.5 in this case. Disclosure of her truthful submission before the H'ble Court shall save the rights of Complainant, if his petition is based upon the truth. This may also for kind information that rest all the respondents including Shri Sanjiv Naidu are not appearing before the Hon'ble NCLT Court in proceedings of this case.
- 11) That the respondent already suffering being victim of fraud, breach of trust & forgery and unnecessarily dragged into NCLT case, instead of getting support to innocent member by the Institute, the Disciplinary committee also dragged her for disciplinary proceedings of undue complaint of Shri RC Pal who wants to harass the respondent an innocent female member of the Institute for his vested interest. Due to above said unfortunate circumstances the respondent is suffering from severe mental agony & feeling harassed.





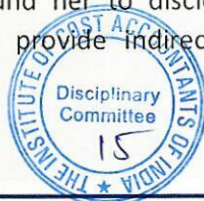
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- 12) Disciplinary Committee neither verified from MCA that by whom alleged MGT-14 uploaded in MCA site nor verified the authenticity of documents produced by the Complainant in his complaint. Being a statutory authority it was necessary to verify the above said details justify the investigation clean and clear. Without thinking that it is a matter of victimized, innocent and harassed member. Such documents like MGT-14 or PAS-3 etc. are only effective/valuable when uploaded before the authority.
- 13) Disciplinary Committee did not verify the authenticity of Resignation from SNS & Co. and Complaint given against Sanjiv Naidu by the respondent from Membership dept. of Institute upto finalization of PFO. Same verification made by Director (Discipline) only when undersigned sought the verification report that too 2nd May 2024 which is post issuance of PFO. Please note PFO was signed on 27th March 2024. This shows that Disciplinary Committee issued the PFO in a hurried manner.
- 14) The respondent requested not to provide more documents/information in this disciplinary proceedings because this same matter was pending before the NCLT Indore bench vide petition no. MP(CP) 20 of 2020 but ignoring her request the Disciplinary Committee continued for the proceedings in hurry manner & bound her to disclose all the facts. This leads the undue pressure upon her which was framed by Complainant due to malafied motive and the undersigned suffered from mental agony and pain. This is against the natural justice.
- 15) Prima facie opinion formed in hurry by jumping the unresponsive act of the complainant on the letters issued by Director (Discipline) and kept the main issues of the complaint open ended.
- 16) Prima facie opinion is bias because no verification was made by disciplinary committee from Ministry of Corporate Affairs about the truthfulness of the facts provided by her as complaint against Shri Sanjiv Naidu. Even not verified the authenticity of the documents related to affair of MCA mentioned by the complainant. Hence investigation is vague and incomplete.
- 17) Prima facie opinion formed in such a casual manner that the disciplinary committee even not verified the update and facts of the complaint which the respondent raised to membership department of the institute up to the finalization of PFO on dated 27/03/2024. Same was verified on 2nd May only when the respondent sought this information /document from Disciplinary committee to finalize her written statement in respect of PFO.
- 18) This prima facie opinion is against the natural justice laws of the country because Disciplinary Committee bound her to disclose all the facts of her defense in disciplinary proceedings to provide indirectly to the complainant during the



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- proceedings of NCI-T Court in petition no. MP (CP) 20 of 2020 knowing fully that the undersigned is one of the respondents in the case and both cases are similar.
- 19) The complete proceedings right from registration of complaint to prima facie formation is full of lapses and contraventions/violation of lawful provisions of the country. Hence it is fictitious and liable to be scrapped only.
 - 20) The complainant had given this complaint to Director (Discipline) with a malafied intension not only to harass an innocent professional by undue pressure but also to explore the possibility of disclosure of her defense during the NCLT Court proceedings for taking his undue benefit in final outcome of Court.
 - 21) It is very much evident from all above discussions that Director (Discipline) only in very much hurry and on the basis of this fictitious, unlawful and illogical PFO wants to conclude the case by penalizing her and also wants to provide the copy of punishment to absconded Complainant RC Pal, that leads to undue help in NCLT Court case indirectly to him. Possibility of misinterpretation of your any undue penalty by his lawyer might cause damage my defense in court.
 - 22) Unnecessarily intervening in the court case indirectly through fictitious disciplinary proceedings, to help the Complainant who is also a petitioner in the case and absconded from disciplinary proceedings is unfair, as per justice.
 - 23) In view of the above lapses it is established that the complete preparation of PFO, investigation and analysis are the result of gross negligence on the part of Investigating Authority of this complaint. On the basis of this it is unfair to charge anybody for his/her undue negligence while she was victim & sufferer and unnecessary dragged in to Court and Disciplinary proceedings.
 - 24) It is a pure criminal case in which digital signature of the respondent was misused for the vested interest of Shri Sanjiv Naidu and the same is verifiable from MCA records that by whom this forged MGT-14 form uploaded and to whom acknowledgement of the same issued. It is unfortunate to state that verification from the MCA record is still pending by the Disciplinary Authority.
 - 25) In view of above, it is humbly requested to quash this complete proceedings and Prima facie opinion formed by Director (Discipline) on a baseless fictitious and fabricated complaint given by complainant for his ill motive and give her the justice. Otherwise, her clean professional career would be damaged."

On perusal of the written statement, the following points emanate:





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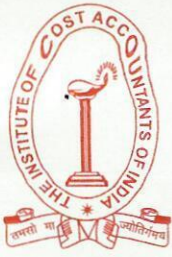
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- The respondent had certified eForm MGT 14. This is admitted by the respondent in her reply where she has said that "It is clearly mentioned in reply that her signature in alleged MGT-14 was misused by Shri Sanjiv Naidu who is respondent no.5 in this case".
 - The digital signature was not kept in her safe custody which the respondent admits by stating that "he ditched me by misutilizing my digital signature upon alleged MGT-14 without my knowledge."
 - The respondent may not have uploaded the eform MGT 14 but this is not relevant as in any case she is being charged with negligence for parting with her digital signature.
 - The respondent makes mention of PAS-3 in her written statement. The Disciplinary Directorate has not charged her with certifying Form PAS 3.
 - The respondent had stated that the Disciplinary Directorate did not verify from MCA that by whom the Form MGT-14 was uploaded. This is true as there was no need to investigate from MCA about the identity of the person uploading the said form since, the Directorate had visited the MCA portal and downloaded the form MGT-14 from the MCA website on 16th May 2024. The last page of the form shows the name and membership number of the respondent which showed that she was the certifying professional and the same was certified on 23rd January 2019, though the respondent denied certifying the said form and stated that her digital signature has been misused in certifying such form.
31. In the 85th meeting of the Committee held on 20th May 2024, Director (Discipline) was advised to place her second written statement in the next meeting of the Committee once the same is received from her. In this meeting, Director (Discipline) placed an undated letter (received by this Directorate on 30th May 2024) wherein the respondent had denied certifying e-Form MGT 14 and uploading the same on the MCA site. The Committee, however, noted that it is on record that the Disciplinary Directorate had visited the MCA portal and after locating the relevant year, the form was verified and the same was downloaded from the MCA website on 16th May 2024. The last page of the form shows the name and membership number of the respondent which showed that she was the certifying professional. It is also a fact that the digital signature was not kept in her safe custody which the respondent admits by stating that "*he ditched me by misutilizing my digital signature upon alleged MGT-14 without my knowledge.*"
32. In the 86th meeting of the Committee held on 19th July, 2024, Committee directed Director (Discipline) to call both the complainant and the respondent in the next meeting of the Committee for making oral submissions 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.
33. In accordance with such directions of the Committee, both complainants as well as respondent were called for making oral submissions, if any, under Rule 18(6) of the Cost





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and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 Rules.

34. On behalf of the Complainant, Shri Pratik Tripathi, FCS, Partner of M/s P.S. Tripathi & Associates, Company Secretaries, Indore, appeared through virtual mode at the scheduled date and time and made *inter alia* the following submissions:

- I. Respondent had deliberately done the illegal and fraudulent certification of Form MGT-14 for issuance of 32500 Equity Shares of Marg Polytech Private limited to Mr. Praphull Goyal
- II. Respondent had certified the Form MGT-14 without even taking into consideration the compliances of Companies Act, 2013
- III. Respondent is grossly negligent in the conduct of his professional duties
- IV. As far as pendency of petition before Hon'ble NCLT is concerned, he stated that those are separate proceeding under the Companies Act, 2013. There is no bar on institute to take suitable action against the member who is guilty of professional misconduct.

The Committee took on record the submissions made by the Complainant.

35. Respondent also appeared through the virtual mode on the scheduled date and time. The Committee read out the charges as required under Rule 18(7) of the Rules together with the summary of the prima facie opinion. The respondent did not plead guilty and submitted *inter alia* as follows:-

- I. The respondent refuted all charges and allegations levelled by the Complainant against her as these were devoid of any merit, lack substance and baseless.
- II. The complete proceedings right from registration of complaint to prima facie formation is full of lapses and contraventions/violation of lawful provisions of the country. Hence it is fictitious and liable to be scrapped only.
- III. The complainant had given this complaint to Director (Discipline) with a malafied intension not only to harass an innocent professional by undue pressure but also to explore the possibility of disclosure of her defense during the NCLT Court proceedings for taking his undue benefit in final outcome of Court.
- IV. It is a pure criminal case in which digital signature of the undersigned was misused for the vested interest of Shri Sanjiv Naidu and the same is verifiable from MCA records that by whom this forged MGT-14 Form





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uploaded and to whom acknowledgement of the same issued. It is unfortunate to state that verification from the MCA record is still pending by the Disciplinary Authority.

V. It is humbly requested to quash this complete proceedings and Prima facie opinion formed by Director (Discipline) on a baseless fictitious and fabricated complaint given by complainant for his ill motive and give her the justice. Otherwise, my clean professional career would be damaged.

36. The Committee took note of the same and directed Director (Discipline) to issue notice to both the complainant and respondent for examination of witness and production of documents in terms of Rule 18(9) of the of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.
37. In accordance with such directions of the Committee, letters dated 17th September, 2024 were sent via mail to the complainant as well as to the respondent requiring their presence under Rule 18 (9) of the Cost and Works Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules 2007 for examination of witness and production of documents.
38. On behalf of the Complainant, Shri Pratik Tripathi, FCS, Partner of M/s P.S. Tripathi & Associates, Company Secretaries, Indore, appeared through virtual mode at the scheduled date and time. Respondent also appeared through the virtual mode on the scheduled date and time and reiterated their submissions.
39. However, no additional evidence or witness was produced by any of the party in the matter.
40. The Committee took note of the same and directed Director (Discipline) to proceed further as per the provisions of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.
41. The Committee observed that the Complainant has failed to provide any concrete evidence which could have corroborated the said allegation of illegal and fraudulent certification of Form MGT-14 for issuance of 32500 Equity Shares of Marg Polytech Private limited to Mr. Praphull Goyal and also failed to substantiate the fact as to how the Respondent was grossly negligent in the conduct of her professional duties.
42. Hence, there is no merit in the allegation of the complainant.
43. However, Committee after considering all the evidences and arguments produced before it, observed that the respondent was negligent in not retaining her digital signature in





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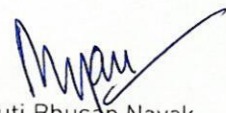
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proper custody. Respondent was supposed to be more vigilant while discharging her professional duties

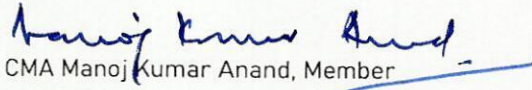
44. The matter was discussed at length and after discussion, the Committee decided that the respondent is to be cautioned.

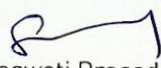
45. Accordingly, the complaint stands disposed of.

28th January, 2025

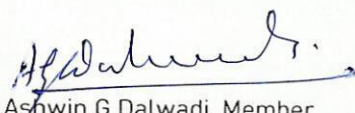

CMA Bibhuti Bhusan Nayak

PRESIDING OFFICER


CMA Manoj Kumar Anand, Member


Shri Saraswati Prasad, IAS (Retd.)

Govt. Nominee


CMA Ashwin G Dalwadi, Member


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

Govt. Nominee

