



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(106)/2022 -

Shri Ram Charan Pal _____ Complainant

Vs.

CMA Sanjiv Vijay Naidu (M/12068) _____ 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

Facts

1. The Disciplinary Directorate was 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 Sanjiv Vijay Naidu (hereinafter referred to as the "respondent") bearing membership number 12068 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, the same was registered by the Disciplinary Directorate after it was found to be in order and was proceeded with in the manner as prescribed under Chapter III of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. A unique complaint number Com/21-CA(106)/2022 was allotted to the complaint.
3. The complaint was inter alia made on the following grounds:
 - i. The respondent had conducted Professional Misconduct in exercising due diligence, or was grossly negligent in the conduct of his 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,





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

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 PAS- 3 of M/s. Marg Polytech Private Limited for allotment of 32500 Equity Shares to Mr. Praphull Goyal, a non-member of the Company. Professional Misconduct under Clause 7, Part- I of Second Schedule of The Cost Accountants Act, 1959.

II. A Copy of the below mentioned documents were attached with Form I.

- A. Facts and Particulars of Complaints
- B. Copy of Form PAS-3 Certified by Mr. Sanjiv Vijay Naidu
- C. Copy of the attachments of Form PAS-3
- D. Copy of order dated 30.04.2021 of Hon'ble NCLT

4. The complainant had sent a covering letter dated 16th April 2022 which is reproduced below in verbatim:

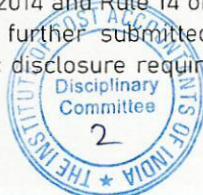
"Sub:- Complaint against Mr. Sanjiv Vijay Naidu, Practicing Cost and Works Accountant (Membership No. 12068) regarding the illegal and fraudulent certification of Form PAS- 3 for allotment of 32500 Equity Shares of Marg Polytech Private Limited having CIN:U25190MP2009PTC021980 to Mr. Praphull Goyal.

I, Ram Charan Pal, Director and shareholder holding 54.02% share with my father in the M/s. Marg Polytech Private Limited (the Company) making this complaint against serious misconduct and illegal certification of Form PAS-3 by Mr. Sanjiv Vijay Naidu, Practicing Cost and Works Accountant (Membership No. 12068) having office at 258, Uttamchand Israni Chambers, Second Floor, Behind District Court, Arera Hills, Bhopal 462011 MP IN.

The complainant states that Mr. Sanjiv Vijay Naidu, 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 PAS- 3 for allotment of 32500 Equity Shares of the Company to Mr. Praphull Goyal.

The complainant further states that Mr. Sanjiv Vijay Naidu certified the Form PAS- 3 without even taking into consideration the following compliances of Companies Act, 2013:

1. 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.
2. 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 specific disclosure requirements in the resolution and explanatory





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

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.

3. As per the procedure prescribed under the Companies Act, 2013 the Board is required to approve the letter of offer, finalise the opening and closing dates of issue, circulation of the offer to the proposed allottee and receipt of share application money in a separate Bank Account open for the purpose. All these activities admittedly require a meeting of Board and these are pre-allotment activities required to be done. But, surprisingly there is no such meeting of Board ever called and no proof of separate bank account and opening & Closing of offer letter and no proof of receipt of amount and no other necessary activities has been done. Even allotment of 32500 Equity Shares shown to be allotted in an alleged meeting of Board dated 17.01.2019 which in fact never been called or held. Therefore any allotment made pursuant to aforesaid alleged meeting is void abinitio

The complainant states that Mr. Sanjiv Vijay Naidu is deficient in performing his professional duties while certifying the Form PAS-3 only for the benefits of other directors and definitely not as an independent Practising Cost and Works Accountant. Being the Practising Cost and Works Accountant Mr. Sanjiv Vijay Naidu was supposed to carry out his duties within the discipline of legal provisions and the Standards as prescribed by the Institute.

He Colluded with other directors and reduced me from majority shareholder to minority shareholder. I am annexing copy of 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.

In the aforesaid circumstances, we hereby pray and request that strict action to be taken against Mr. Sanjiv Vijay Naidu and be penalized accordance with law and code of conduct of Institute of Cost and Management Accountant of India.

5. The complaint dated 16th April 2022 of the complainant was sent to the respondent vide letter No. G/DD/Com-CA(106)/(M-12068)/1/05/2022 dated 6th May 2022 calling upon the respondent to furnish his response in his defence by way of a written statement within 21 days from the date of service of the letter under reference. However, the complaint of the complainant together with the annexure did not reach the intended destination as the address provided by the complainant was incorrect. Subsequently, the correct address was obtained and the complaint was once again forwarded to the respondent vide our letter No. G/DD/Com-CA(106)/(M-12068)/1/10/2022 dated 7th October 2022 for his written statement. However, this letter too had returned undelivered with the remarks "Always door locked at delivery time". A letter No. G/DD/Com-CA(106)/04/02/2023 dated 2nd February 2023 was addressed to the complainant requesting him to apprise the Disciplinary Directorate in case the address of the respondent is known to any other person, the same may kindly be furnished to this Directorate. Another letter No. G/DD/Com-CA(106)/(M-12068)/04/02/2023 dated 2nd February 2023 was addressed to the respondent enclosing therewith the complaint of the complainant. In the meantime, the email id of the respondent was obtained from the Membership Department vide their email dated 31st January 2023 and a scanned copy of the complaint numbering 16 (sixteen) pages together with the annexure was forwarded to the respondent vide email dated 1st February 2023 at or around 4.12 PM calling upon him to provide the written statement in his defence. The respondent was also requested to share his complete residential as well as professional address to enable the Disciplinary Directorate to communicate with the respondent. The respondent, by an email dated 6th





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

February 2023 received by this Directorate at or around 4.23 PM stated that he was in receipt of the complaint and would respond within 21 days.

1. The respondent vide letter dated 15th February 2023 denied the allegations made against him and stated inter alia as below:-
 1. The company Marg Polytech Pvt. Ltd., CIN No. U25190MP2009PTC021980, Registered Office at H-5, Bag Mugalia Ext., Bhopal, Pin 462043 had approached to him at Bhopal dated 17.01.2019 and assigned him work of e-filing of DIR 12, MAG 14 and PAS-3, however he filed only PAS- 3, The DIR 12 AND MGT 14 Filed by some other professional. Copy of Company letter was attached as Page 1 of the enclosures.
 2. In the letter itself the company had mentioned that they are enclosing following documents with the explanation that they are interested in adding Mr. Prafull Goyal as Director in the company and since he had supported them in the Tough time of the company.
 3. It was informed to him that the company account having funding with the State Bank of India Secured Team loan outstanding Rs. 19.30 lakhs and Short term Borrowings TL+CC - 14.89 lakhs = Total 34.89 lakhs and the company was not regular in depositing statutory dues such as income tax, sales tax and other material statutory dues and also had accumulated loss of Rs. 25.17 lakhs and cash loss of Rs. 13.61 lakhs (Audited Report para 9 (a) and 10 of the annexure to Audit report as on 31.03.2023)
 4. It was also informed to him that The State Bank of India had filled Recovery suit before The Hon'able Dect Recovery Tribunal Jabalpur Application No. 456/2018 against the company and their Directors (including the complainant Shri Ram Charan Pal) for recovery of Rs. 10.47 lakhs plus interest + other charges
 5. It was also informed to him that the company approached to the SBI for One Time settlement against their recovery suit and got sanctioned One Time settlement and for making this amount paid as per Director and authorised person Mr. Gaurav Bharadwaj, Mr. Prafull Goyal played an active role in getting this OTS sanctioned and also proposed to extend financial support for making part payment for this OTS on our request as no one from the existing Directors and shareholders are willing to extend further financial support to the company and this was taken in right sprit by the Board of Directors of the company and they had decided to take him as Director on the Board of the company and also allot the Shareholding in the company.
 6. The company in order to introduce Mr. Prafull Goyal as Director taken his consent in the FORM DIR- 2 and passed resolution in the meeting of the Board of Director dated 24.10.2018 - Kindly see the enclosure page No. 2, 3 and 4 of the Annexure A.
 7. The company had issued notice of EGM dated 08.01.2019 to conducted EGM on 16.01.2019 at the registered office of the company - see the enclosure page 5 of the Annexure- A. It was told to him that the company had taken consent of more than 95% of the shareholder to conduct the EGM with shorter notice then 21 Days.
 8. The acceptance of offer, the explanatory statement of issue of shares, copy of resolution passed in the EGM dated 16.01.19 for issue of share to Mr. Prafull Goyal, the resolution passed in the BOD dated 16.10.2019 confirming the issue of share which was proposed in the earlier BOD dated 24/10/2018 was enclosed page 6,7,8,9 and 10 of the Annexure A.



h



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

9. The list of allottees as well the Form PAS- 5 is enclosed page 11, 12 of the Annexure A. The MGT 14 was filed with the ROC and its all compliances were done by other professional person.

ALLEGATION AND REPLY OF THE RESPONDENT

Allegations made by the Complainant- As per the letter dated 16/04/2022 addressed to Director (Discipline).

Violated and ignored the provisions 42, 62, 96, 100 and 173 of the Company Act 2013 and rule 14 (Prospectus and Allotment of Securities) of the companies Rule 2014, Rule 13 of the Companies (Share Capital and Debentures) Rules 2014 and Secretarial Standards 1 and 2 Issued by the ICSI while certifying the PAS- 3 specifically.

Allegation- 1 : Shorter notice to conduct the EGM.

Submission -

The company had given him the supporting documents like copy of notice and resolution passed in the BOD dated 24/10/18. Notice of EGM dated 08/01/19, and minutes of meeting of the EGM dated 16/01/19 confirming the addition of new Director as well fresh issue of share. They had relied upon this and other documents submitted to them by the company with the request to file the documents with MCA/ROC.

The conduct of meeting and the provisions of that, the issue of notice, the minutes of meeting all are the responsibilities of Board of Directors; they are not the "Officer in Default" of the company. They had been given the specific work of filing the document with ROC/MCA and i.e. are specific PAS- 3. The essential attachment in the form are i.e. Acceptance of Offer, Board resolution. List of Allottees and PAS- 5 were as attached page 6,7,8,9,10,11 and 12 of the enclosed Annexure- A.

The notice of EGM and the specific requirement of the content of notice etc. is the attachment of MGT 14 and they had not filed the MGT 14. Further the documents supplied to them was showing the specific disclosure the explanatory statement, the identification of the allottee and the object for that and the necessity for this all are explain by the company that the company needed fund to meet the one time settlement offer of the bank and to get free from the DRT proceedings against company and all Directors.

Allegation- 2 : MGT 14 filed with the ROC, where the notice dated 08.01.2019 attached does not contain the specific disclosure requirements in the resolution and explanatory statement sent to the shareholder.

My submission - same as above as in the reply to point no. 1 and further

The notice of EGM and the specific requirement of the content of notice etc. is the attachment of MGT 14 and they had not filed the MGT 14. Further the documents supplied to us is showing the specific disclosure, the explanatory statement, the identification of the allottee and the object for that and the necessity for this all are explain by the company that the company needed fund to meet the one time settlement offer of the bank and to get free from the DRT proceedings against company and all Directors.

Allegation - 3 : Pre allotment activities required the meeting of Board to approve the letter of offer, the proposed allottees etc.

Submission -





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 company had conducted the Board of Directors meeting on 24/10/2018 and also in the Board of Directors meeting held on 16/01/2019 the reference of earlier taken Board of Directors Meeting conducted on 24/10/2018 was mentioned. The allegation is false and baseless.

Allegation- 4: He (Respondent) colluded with other Directors and reduced me from Majority shareholder to Minority shareholder.

Submission -

The allegation is baseless and with no substance. His assignment was to file the PAS- 3 and the required documents needed in support were provided to me by the company. In none of the documents his involvement was in preparation, suggestion of any certification. Further please refer Annexure- D (General Circular issued by the MCA dated 07/05/2012 REGARDING certification of E form by the practicing professional whereas specifically mention in the Para 2 as reproduced below

"In this regard attention is invited towards the requirements of authentication of documents prescribed under the Companies (Registration Offices and Fees) Rules 2014 which elaborate on the responsibility. Further rule 10 of ibid the Registrar is to examine forms or none forms attached and filled with general forms on MCA portal viz. to verify whether all the requirements have been complied with and all the attachment to the forms have been duly scanned and attached in accordance with the requirements of the above said rules"

Here in PAS- 3 all the documents duly scanned and attached in accordance with the requirement.

In the absence of filing of documents, application or return of application the Regional director or Registrar shall conduct an enquiry and here there is no such enquiry as he had followed the requirement of e filing.

The mechanism of E filing was introduced and a guidance note was also prescribed for preparation before Certification:

Where the professional was particularly ensure the following:

- Ensure that letter of engagement/Board Resolution authorising the professional for the assignment by the company to be obtained. (Where the statutory requirement is there for the board resolution or general meeting resolution then a copy of the extract of such resolution shall be obtained by PCS. Wherever the instance is possible it is recommended to record such appointment in the Board meetings.)
- Maintain a physical/scanned of all documents verified (subject to confidentiality requirement)
- Ensure that all relevant documents and attachments are legible & visible.
- Verification of the documents from the original records of the company.
- Correctness of the records and the material departure from the facts.
- The form is signed by the authorised person of the company.

Here is filing the PAS- 3, he had collected the required documents and attached while certifying the e filing.

Allegation- 5: Reference of Hon"ble NCLT order dated 30.04.2021.





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

Again it is misleading in giving the reference of the copy of interim order of Hon"ble NCLT as this order was passed as no one from the company had attended the proceeding and as the lawyer for the petitioner is pressing for interim relief, though there are various reliefs however the Hon"ble Bench is constrained to pass an order to maintain the status quo in respect of immovable assets of the company from selling/transferring/alienating or encumbering in any manner and exercising respondent no. 4 from exercising any rights or to deal with in respect of 32500 equity share allotted to him.

Here in this the case is still not heard on merit, the ROC is also one respondent and hence to presume that this is final order is just misleading and misguiding.

The fact is that from the present status as available on the MCA site as "COMPANY MASTER DATA" - as Annexure-E. The Company had filed the last Financial Returns for the period 31.03.2018 and thereafter till date total five financial year had passed without filing the Financial Return and as per Rule 14(2) of the companies.

"As per rule 14(2) of Companies (Appointment and Qualification of Directors) Rules 2014, whereas a company fails to file the financial statements or annual returns for and continues period of three financial years, the Company shall immediately file Form DIR- 9, with the ROC furnishing therein the name and addresses of all the Directors for the said financial years. Further as per section 167(1)(a), the office of such director shall also be vacated in the company in which the default has committed. In case of failure of the company to file Dir-9, the company and the officer in default shall be liable to a fine of Rs. 50000 up to Rs. 2.00 lacs.

As per Section 164(2) (a) no person who is or has been a director of a company which has not filed a financial statement or annual return for any continues period of three financial years shall be eligible to be reappointment as director of that company or appointment in any other company for period of five years from the date on which the said company fails to do so."

Accordingly, all the Directors of the company is disqualified as continue to remain disqualified and in the application filed in FORM No. 1 as well in the letter mentioning himself as Director by concealing the facts about his own disqualification as Director is nothing but misguiding and incorrect submission of information and taking oath on wrong ground need immediate rejection of his baseless allegation.

Final submission:

In wake of all the facts and his submission to all the allegation point wise. He requested the Director (Discipline) to quash the complaint no. Com/21-CA (106)/2022 as it is base less, misguiding with no substance and only for own mala fide vested interest of the Complainant Mr. Ram Charan Pal had made this complaint while in fact the present status of the company shows that from last five years there is no filing of Financial Statement, Annual return and claiming himself as majority shareholder.

The respondent had submitted along with his written statement 05 (five) nos of Annexure namely, A, B, C, D & E.

6. A copy of the written statement dated 15th February 2023 received from the respondent was duly forwarded to the complainant vide letter No. G/DD/Com-CA(106)/05/02/2023 dated 22nd February 2023 requesting the respondent to forward his rejoinder, if any, within 21 days from the date of receipt of the letter under reference. The respondent, vide letter dated 1st June 2023 (received by the Directorate on 12th June 2023) submitted his rejoinder which is reproduced below in verbatim:

Reply to Submission 1: The Respondent has taken a plea that the Respondent has certified form





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

PAS- 3 on the basis of documents provided by the company to the Respondent hence it clearly shows the reckless behaviour of the Respondent towards his professional duties. The professional certifying Form PAS-3 has to duly certify it after well proof checking of each and every document otherwise then that no provision is needed to be made for certification of such form. The Respondent has certified and filed Form PAS- 3 blindly even without any due diligence and asking documents which are required under the Companies Act, 2013. The certification of the professional is meant for the purpose that basic requirement of the Companies Act, 2013 must be complied with for the allotment of the shares. In present case shares has been issued to a new person who is outsider and not the existing shareholder of the Company. There is basic procedure prescribed for issue of shares on preferential basis under section 42 and 62 of the Companies Act, 2013 read with rule 13 of the Companies (Share Capital and Debentures) Rules, 2014 and Rule 14 of the Companies (Prospectus of Securities) Rules, 2014. These sections and rules interalia provides for :-

1. Valuation Report from the registered valuer for issue of shares.
2. Record date for issue of shares.
3. Board meeting for calling shareholder meeting for passing special resolution to issue shares on preferential basis and notice must contained the information prescribed under rule 13 of the Companies (Share Capital and Debentures) Rules, 2014.
4. Meeting of shareholders for passing special resolution.
5. Opening of separate bank account in which share application money has to be kept and can be withdrawn only after filling of Return of allotment by the company.
6. Approval of Offer Letter by the Board and circulation of offer letter to proposed allottees.
7. Opening and closing dates of the Offer, filling of the Offer Letter in form PAS- 4 with the ROC.
8. Board meeting for the consideration of the offer received and allotment of the shares to the proposed allottees.

All the above legal requirements of issue and allotment of the shares have been not verified by the Mr. Naidu which reasonably expected from him and he certified and filed the return of allotment with ROC which changed the position of a majority share holder in to minority. Now he shamelessly arguing that shareholder approval is not required. But unfortunately the written position in the Companies Act, 2013 is quite different.

The provisions of the Companies Act, 2013 are reproduced as under:-

Section 42: Issue of shares on private placement basis -

- (1) A company may, subject to the provisions of this section, make a private placement of securities.
- (2) A private placement shall be made only to a select group of persons who have been identified by the Board (herein referred to as identified persons), whose number shall not exceed fifty or such higher number as may be prescribed excluding the qualified institutional buyers and employees of the company being offered securities under a scheme of employees stock option in terms of provisions of clause (b) of sub-section(1) of section 62, in a financial year subject to such conditions as may be prescribed.
- (3) A company making private placement shall issue private placement offer and application in such form and manner as may be prescribed to identified persons, whose names and addresses are recorded by the company in such manner as may be prescribed:

Provided that the private placement offer and application shall not carry any right of renunciation.





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

Explanation I - "private placement" means any offer or invitation to subscribe or issue of securities to a select group of persons by a company (other than by way of public offer) through private placement offer-cum-application, which satisfies the conditions specified in this section.

Explanation II - "qualified institutional buyer" means the qualified institutional buyer as defined in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, as amended from time to time, made under the Securities and Exchange Board of India Act, 1992, (15 of 1992).

Explanation III - If a company, listed or unlisted, makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to more than the prescribed number of persons, whether the payment for the securities has been received or not or whether the company intends to list its securities or not on any recognised stock exchange in or outside India, the same shall be deemed to be an offer to the public and shall accordingly be governed by the provisions of Part I of the Chapter.

- (4) Every identified person willing to subscribe to the private placement issue shall apply in the private placement and application issued to such person alongwith subscription money paid either by cheque or demand draft or other banking channel and not by cash :

Provided that a company shall not utilise monies raised through private placement unless allotment is made and the return of allotment is filed with the Registrar in accordance with sub-section (8).

- (5) No fresh offer or invitation under this section shall be made unless the allotments with respect to any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the company.

Provided that, subject to the maximum number of identified persons under sub-section (2), a company may, at any time, make more than one issue of securities to such class of identified persons as may be prescribed.

- (6) A company making an offer or invitation under this section shall allot its securities within sixty days from the date of receipt of the application money for such securities and if the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within fifteen days from the expiry of sixty days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of twelve per cent. per annum from the expiry of the sixth day:

Provided that monies received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than -

- (a) For adjustment against allotment of securities ; or
(b) for the repayment of monies where the company is unable to allot securities.
- (7) No company issuing securities under this section shall release any public advertisements or utilise any media, marketing or distribution channels or agents to inform the public at large about such an issue.
- (8) A company making any allotment of securities under this section, shall file with the Registrar a return of allotment within fifteen days from the date of the allotment in such





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

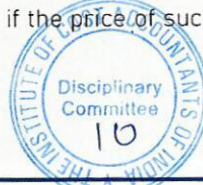
DISCIPLINARY DIRECTORATE

manner as may be prescribed, including a complete list of all allottees, with their full names, addresses, number of securities allotted and such other relevant information as may be prescribed.

- (9) If a company defaults in filing the return of allotment within the period prescribed under subsection (8), the company, its promoters and directors shall be liable to a penalty for each default of one thousand rupees for each day during which such default continues but not exceeding twenty-five lakh rupees.
- (10) Subject to sub-section (11), if a company makes an offer or accepts monies in contravention of this section, the company, its promoters and directors shall be liable for the penalty which may extend to the amount raised through the private placement or two crore rupees, whichever is lower, and the company shall also refund all monies with interest as specified in sub-section (6) to subscribers within a period of thirty days of the order imposing the penalty.
- (11) Notwithstanding anything contained in sub-section (9) and sub-section (10), any private placement issue not made in compliance of the provisions of sub-section (2) shall be deemed to be a public offer and all the provisions of this Act and the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and the Securities and Exchange Board of India Act, 1992 (15 of 1992) shall be applicable.]

Section 62:

- (1) Where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered -
- (a) to persons who, at the date of the offer, are holders of equity shares of the company in proportion, as nearly as circumstances admit, to the paid-up share capital on those shares by sending a letter of offer subject to the following conditions, namely:-
- (i) the offer shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days [or such lesser number of days as may be prescribed] and not exceeding thirty days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined;
- (ii) unless the articles of the company otherwise provide, the offer aforesaid shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person; and the notice referred to in clause (i) shall contain a statement of this right;
- (iii) after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of Directors may dispose of them in such manner which is not disadvantageous to the shareholders and the company;
- (b) to employees under a scheme of employees' stock option, subject to special resolution passed by company and subject to such conditions as may be prescribed ; or
- (c) to any persons, if it is authorised by a special resolution, whether or not those persons include the persons referred to in clause (a) or clause (b), either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation





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

report [of a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed].

- (2) [The notice referred to in sub-clause (i) of clause (a) of sub-section (1) shall be dispatched through registered post or speed post or through electronic mode or courier or any other mode having proof of delivery of all the existing shareholders at least three days before the opening of the issue.]
- (3) Nothing in this section shall apply to the increase of the subscribed capital of a company caused by the exercise of an option as a term attached to the debentures issued or loan raised by the company to convert such debentures or loans into shares in the company.

Provided that the terms of issue of such debentures or loan containing such an option have been approved before the issue of such debentures or the raising of loan by a special resolution passed by the company in general meeting.

- (4) Notwithstanding anything contained in sub-section (3), where any debentures have been issued, or loan has been obtained from any Government by a company, and if that Government considers it necessary in the public interest so to do, it may, by order, direct that such debentures or loans or any part thereof shall be converted into shares in the company on such terms and conditions as appear to the Government to be reasonable in the circumstances of the case even if terms of the issue of such debentures or the raising of such loans do not include a term for providing for an option for such conversion:

Provided that where the terms and conditions of such conversion are not acceptable to the company, it may, within sixty days from the date of communication of such order, appeal to the Tribunal which shall after hearing the company and the Government pass such order as it deems fit.

- (5) In determining the terms and conditions of conversion under sub-section (4), the Government shall have due regard to the financial position of the company, the terms of issue of debentures or loans, as the case may be, the rate of interest payable on such debentures or loans and such other matters as it may consider necessary.

- (6) Where the Government has, by an order made under sub-section (4), directed that any debenture or loan or any part thereof shall be converted into shares in a company and where no appeal has been preferred to the Tribunal under sub-section (4) or where such appeal has been dismissed, the memorandum of such company shall, where such order has the effect of increasing the authorised share capital of the company, stand altered and the authorised share capital of such company shall stand increased by an amount equal to the amount of the value of shares which such debentures or loans or part thereof has been converted into.

Rule 13 of the Companies (Share Capital and Debenture) Rules 2014:

For the purposes of clause (c) of sub-section (1) of section 62, if authorised by a special resolution passed in a general meeting, shares may be issued by any company in any manner whatsoever including by way of a preferential offer, to any persons whether or not those persons include the persons referred to in clause (a) or clause (b) of sub-section (1) of section 62 and such issue on preferential basis should also comply with conditions laid down in section 42 of the Act.

[Provided that in case of any preferential offer made by a company to one or more existing members only, the provisions of sub-rule (1) and proviso to sub-rule (3) of rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014 shall not apply.]





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

Provided [further] that the price of shares to be issued on a preferential basis by a listed company shall not be required to be determined by the valuation report of a registered valuer.

Explanation – For the purposes of this rule, (i) the expression 'Preferential Offer' means an issue of shares or other securities, by a company to any select person or group of persons on a preferential basis and does not include shares or other securities offered through a public issue, rights issue, employee stock option scheme, employee stock purpose scheme or an issue of sweat equity shares or bonus shares or depository receipts issued in a country outside India or foreign securities;

(ii) the expression, "shares or other securities" means equity shares, fully convertible debentures, partly convertible debentures or any other securities, which would be convertible into or exchanged with equity shares at a later date.

(2) Where the preferential offer of shares or other securities is made by a company whose share or other securities are listed on a recognised stock exchange, such preferential offer shall be made in accordance with the provisions of the Act and regulations made by the Securities and Exchange Board, and if they are not listed, the preferential offer shall be made in accordance with the provisions of the Act and rules made hereunder and subject to compliance with the following requirements, namely :-

- (a) the issue is authorised by its articles of association;
- (b) the issue has been authorised by a special resolution of the members;
- (c) 8a[***]
- (d) The company shall make the following disclosures in the explanatory statement to be annexed to the notice of the general meeting pursuant to section 102 of the Act:
 - (i) the objects of the issue;
 - (ii) the total number of shares or other securities to be issued ;
 - (iii) the price or price band at/within which the allotment is proposed;
 - (iv) basis on which the price has been arrived at along with report of the registered valuer ;
 - (v) relevant date with reference to which the price has been arrived at ;
 - (vi) the class or classes of persons to whom the allotment is proposed to be made ;
 - (vii) intention of promoters, directors or key managerial personnel to subscribe to the offer;
 - (viii) the proposed time within which the allotment shall be completed ;
 - (ix) the names of the proposed allottees and the percentage of post preferential offer capital that may be held by them ;
 - (x) the change in control, if any, in the company that would occur consequent to the preferential offer ;
 - (xi) the number of persons to whom allotment on preferential basis have already been made during the year, in terms of number of securities as well as price ;
 - (xii) the justification for the allotment proposed to be made for consideration other than cash together with valuation report of the registered valuer ;
 - (xiii) The pre issue and post issue shareholding pattern of the company in the following format -

Sr. No.	Category	Pre Issue	Post Issue
A	Promoters' holding :		
1.	Indian :		
	Individual		
	Bodies Corporate		
	Sub-Total		
2.	Foreign Promoters		
	Sub-Total (A)		
B.	Non-Promoters' holding:		
1.	Institutional Investors		
2.	Non-Institution:		





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

Private Corporate Bodies
Directors and Relatives
Indian Public Others (Including NRIs) Sub-Total

(B) GRAND TOTAL

(e) the allotment of securities on a preferential basis made pursuant to the special resolution passed pursuant to sub-rule (2)(b) shall be completed within a period of twelve months from the date of passing of the special resolution.

(f) if the allotment of securities is not completed within twelve months from the date of passing of the special resolution, another special resolution shall be passed for the company to complete such allotment thereafter.

(g) the price of the shares or other securities to be issued on a preferential basis, either for cash or for consideration other than cash, shall be determined on the basis of valuation report of a registered valuer ;

(h) where convertible securities are offered on a preferential basis with an option to ply for and get equity shares allotted, the price of the resultant shares shall be determined beforehand on the basis of a valuation report of a registered valuer and also complied with the provisions of section 62 of the Act ;

(h) where convertible securities are offered on a preferential basis with an option to apply for and get equity shares allotted, the price of the resultant shares pursuant to conversion shall be determined -

(i) either upfront at the time when the offer of convertible securities is made, on the basis of valuation report of the registered valuer given at the stage of such offer, or

(ii) at the time, which shall not be earlier than thirty days to the date when the holder of convertible security becomes entitled to apply for shares, on the basis of valuation report of the registered valuer given not earlier than sixty days of the date when the holder of convertible security becomes entitled to apply for shares:

Provided that the company shall take a decision on sub-clauses (i) or (ii) at the time of offer of convertible security itself and make such disclosure under sub-clause (v) of clause (d) of sub-rule (2) of this rule.]

(i) where shares or other securities are to be allotted for consideration other than cash, the valuation of such consideration shall be done by a registered valuer who shall submit a valuation report to the company giving justification for the valuation;

(j) where the preferential offer of shares is made for a non-cash consideration, such non-cash consideration shall be treated in the following manner in the books of account of the company -

(i) where the non-cash consideration takes the form of a depreciable or amortizable asset, it shall be carried to the balance sheet of the company in accordance with the accounting standards; or (ii) where clause (i) is not applicable, it shall be expensed as provided in the accounting standards.

[Explanation - For the purposes of these rules, it is hereby clarified that, till a registered valuer is appointed in accordance with the provisions of the Act, the valuation report shall be made by an independent merchant banker who is registered with the Securities and Exchange Board of India or an independent Chartered Accountant in practice having a minimum experience of ten years.] 9 [(3) The price of shares or other securities to be issued on preferential basis shall not be less than the price determined on the basis of valuation report of a registered valuer.]

(h) where convertible securities are offered on a preferential basis with an option to apply for and





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

get equity shares allotted, the price of the resultant shares shall be determined beforehand on the basis of a valuation report of a registered valuer and also complied with the provisions of section 62 of the Act;

Rule 14 of the Companies (Prospectus of Securities) Rules, 2014:

Private Placement.

14.(1)(a) For the purposes of sub-section (1) of section 42, a company may make an offer or invitation to subscribe to securities through issue of a private placement offer letter in Form PAS-4.

(b) A private placement offer letter shall be accompanied by an application form serially numbered and addressed specifically to the person to whom the offer is made and shall be sent to him, either in writing or in electronic mode, within thirty days of recording the names of such persons in accordance with sub-section (7) of section 42:

Provided that no person other than the person so addressed in the application form shall be allowed to apply through such application form and any application not conforming to this condition shall be treated as invalid.

(2) A company shall not make a private placement of its securities unless -

(a) the proposed offer of securities or invitation to subscribe securities has been previously approved by the shareholders of the company, by a Special Resolution, for each of the Offers or Invitations:

Provided that in the explanatory statement annexed to the notice for the general meeting the basis or justification for the price (including premium, if any) at which the offer or invitation is being made shall be disclosed:

Provided further that in case of offer or invitation for non-convertible debentures, it shall be sufficient if the company passes a previous special resolution only once in a year for all the offers or invitation for such debentures during the year :

[Provided also that in case of an offer or invitation for non-convertible debentures referred to in the second proviso, made within a period of six months from the date of commencement of these rules, the special resolution referred to in the second proviso may be passed within the said period of six months from the date of commencement of these rules:]

(b) such offer or invitation shall be made to not more than two hundred persons in the aggregate in the financial year:

Provided that any offer or invitation made to qualified institutional buyers, or to employees of the company under a scheme of employees' stock option as per provisions of clause (b) of sub-section (1) of section 62 shall not be considered while calculating the limit of two hundred persons.

Explanation - For the purposes of this sub-rule, it is hereby clarified that -

(i) the restrictions under sub-clause (b) would be reckoned individually for each kind of security that is equity share, preference share or debenture;

(ii) the requirement of provisions of sub-section (3) of section 42 shall apply in respect of offer or invitation of each kind of security and no offer or invitation of another kind of security shall be made unless allotments with respect to offer or invitation made earlier in respect of any other kind of security is completed;

(c) the value of such offer or invitation per person shall be with an investment size of not less





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

than twenty thousand rupees of face value of the securities;

(d) the payment to be made for subscription to securities shall be made from the bank account of the person subscribing to such securities and the company shall keep the record of the Bank account from where such payments for subscription have been received:

Provided that monies payable on subscription to securities to be held by joint holders shall be paid from the bank account of the person whose name appears first in the application.

(3) The company shall maintain a complete record of private placement offers in Form PAS-5:

Provided that a copy of such record along with the private placement offer letter in Form PAS-4 shall be filed with the Registrar with fee as provided in Companies (Registration Offices and Fees) Rules, 2014 and where the company is listed, with the Securities and Exchange Board within a period of thirty days of circulation of the private placement offer letter.

Explanation-

For the purpose of this rule, it is hereby clarified that the date of private placement offer letter shall be deemed to be the date of circulation of private placement offer letter.

(4) A return of allotment of securities under section 42 shall be filed with the Registrar within thirty days of allotment in Form PAS- 3 and with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 along with a complete list of all security holders containing -

- (i) the full name, address, Permanent Account Number and E-mail ID of such security holder;
- (ii) the class of security held;
- (iii) the date of allotment of security;
- (iv) the number of securities held, nominal value and amount paid on such securities; and particulars of consideration received if the securities were issued for consideration other than cash.

(5) The provisions of clause (b) and (c) of sub-rule (2) shall not be applicable to -

- (a) non-banking financial companies which are registered with the Reserve Bank of India under Reserve Bank of India Act, 1934 ; and
- (b) housing finance companies which are registered with the National Housing Bank under National Housing Bank Act, 1987, if they are not complying with regulations made by Reserve Bank of India or National Housing Bank in respect of offer or invitation to be issued on private placement basis:

Provided that such companies shall comply with sub-causes (b) and (c) of sub-rule (2) in case the Reserve Bank of India or the National Housing Bank have not specified similar regulations.

The Respondent plea that notice of EGM is not required to see before filing form PAS-3 is totally misconceived.

Rule 14 (2) (a) of (Companies Prospectus and Allotment of Securities) Rules, 2014 read as under :

The proposed offer of securities or invitation to subscribe securities has been previously approved by the shareholders of the company, by a Special Resolution, for each of the Offer or Invitations:

Provided that in the explanatory statement annexed to the notice for the general meeting the basis or justification for the price (including premium, if any) at which the offer or invitation is being made shall be disclosed.

Form the above paragraph it is crystal clear that the special resolution needed to be passed before making proposed offer of securities but then also the Respondent by clearly ignoring such provision has stated that notice of EGM is not required to see before filing form PAS-3. It clearly shows the unprofessional behaviour of the Respondent toward his profession by not complying with the





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

provision of law, rules and regulations.

It is further submitted that basis of justification for price at which the offer or invitation is being made shall be disclosed in explanatory statement but such disclosure has not been made in the explanatory statement as attached by the Respondent himself therefore it is also one of the non-compliance of the provision of Companies Act, 2013 done by the director of the company and ignored by the Respondent.

Reply to Submission 2 : The Respondent has again taken plea that notice of EGM is not required in this paragraph and against which the detailed reply has already given in above paragraph hence deserves no reply on the part of complainant.

Reply to Submission 3 : According to the procedure prescribed under Companies Act, 2013 the Board is required to approve letter of offer, circulation of the letter of offer to the proposed allottee and receipt of share application money in a separate bank account for the purpose. It is hereby stated that no board resolution has been attached by the Respondent with his reply which will justify that abovementioned action has been taken by board. It clearly reflected the non-compliance of provision of Companies Act, 2013.

Reply to Submission 4: It is submitted that the Respondent has done the non-compliance of Companies Act, 2013 against which the Complainant has filed the complaint against the Respondent before Registrar of Companies.

Reply to Submission 5: It is submitted that Hon'ble Tribunal has clearly passed the order of maintaining status quo vide its order dated 30.04.2021 which can be clearly ascertained from the order annexed with the complaint by the Complainant. It is pertinent to mention here that such aforesaid order has been passed by the Tribunal after hearing facts and circumstances of the case and looking to the merits in the case rather than due to non-appearance of the Respondent. The issue of disqualification of director is not an issue raised by the Complainant in his complaint. And even upon the proper service of the Notice, Mr. Naidu failed to appear before the Hon'ble NCLT then it is his own choice. Even, in case of present complaint, he lately started responding to the parent institute. One can see his conduct at the time of certifying the documents, before the NCLT and before the Institute.

Reply to Final Submission:

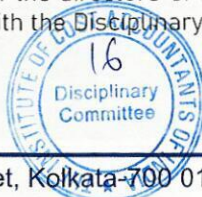
The Respondent failed to justify his action towards filing of Form PAS- 3 by complying provision of Companies Act, 2013. The Respondent malafidely and deficient in performing his professional duties while certifying the Form PAS-3 only for the benefits of other directors and definitely not as an independent Practicing Cost and Works Accountant. Being the Practicing Cost and Works Accountant, the Respondent was supposed to carry out his duties within the discipline of legal provisions and the Standards as prescribed by the institute.

Therefore in the said circumstances, I hereby pray and request that strict action to be taken against Respondent and be penalised accordance with law and code of conduct of Institute of Cost and Management Accountant of India.

7. Investigation by the Disciplinary Directorate

As part of the investigation that Director (Discipline) is empowered to perform u/s 21 of the Cost Accountants Act, 1959, a letter No. G/DD/Com-CA(106)/06/09/2023 dated 29th September 2023 was addressed to the complainant seeking his response to the following queries within 3 (three) days from the date of service of the letter:

- i. Please mention the names of the directors of Marg Polytech Private Ltd as on the date of filing the instant complaint with the Disciplinary Directorate.





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

- II. Please mention the names of the directors of Marg Polytech Private Ltd as on 16.01.2019 i.e., the date of folding Extraordinary General Meeting (EGM).
- III. Please mention the number of shareholders of Marg Polytech Private Ltd as on 16.01.2019 i.e., the date of folding Extraordinary General Meeting (EGM).
- IV. Please provide copies of Annual Reports of Marg Polytech Private Ltd for FY 2015-16, 2016-2017, 2017-18 & 2018-19?
- V. Are these reports filed with the Registrar of Companies, Madhya Pradesh? If so, please provide the dates thereof.
- VI. The authorized, paid up and subscribed capital at the time of its incorporation of Marg Polytech Private Ltd
- VII. The authorized, paid up and subscribed capital Marg Polytech Private Ltd as on 31st March 2019.
- VIII. Copies of the Annual Return [pursuant to Section 92 of the Companies Act, 2013] in MGT 7 during the Financial Years FY 2015-16, 2016-2017, 2017-18 & 2018-19?

Similarly, another letter No. G/DD/Com-CA(106)/(M-12068)/3/10/2023 dated 3rd October 2023 (followed by an email on the same date) was addressed to the respondent seeking his response to the following queries within 3 (three) days from the date of service of the letter:

- I. Please mention the documents you have checked / verified while certifying and filing e-Form PAS-3 i.e., Private Placement of Securities of Marg Polytech Private Ltd.
- II. On which date was the certification and filing of PAS-3 with the ROC, MP done?
- III. Was 32500 equity shares @ Rs 10- each issued to Shri Praphull Goyal for which e-Form PAS-3 for private placement was filed?
- IV. Please provide the names of all directors of Marg Polytech Private Ltd who had approved the issuance of 32500 equity shares to Shri Praphull Goyal together with copies of DIN, DIR-2 and DIR-12.
- V. Please provide the date of Board meeting of Marg Polytech Private Ltd when the decision to issue 32500 equity shares to Shri Praphull Goyal was taken.
- VI. Please provide a certified copy of the notice calling the Board meeting and the relevant minutes approving the issuance of 32500 equity shares to Shri Praphull Goyal.
- VII. Please also provide a certified copy of the notice convening Extraordinary General Meeting (EGM) where the decision to issue 32500 equity shares to Shri Praphull Goyal was taken by the shareholders of Marg Polytech Private Ltd.
- VIII. Please mention the total number of shareholders of Marg Polytech Private Ltd as on 16.01.2019 i.e., the date of holding Extraordinary General Meeting (EGM) by Marg Polytech (P) Ltd.

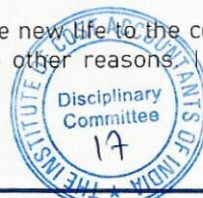
8. The respondent, by an email dated 9th October 2023 received at or about 12.46 PM sent his response to the above queries. His reply is reproduced in verbatim:

Please find as attached my reply point wise as asked in your trailing mail.

Here apart from my reply (3 pages) , there is attachment having (Page No 1 to Page 12) , Form no MGT 14 - This was filed for the special business resolution for the Notice of EGM as well resolution of EGM by other professional. The PAS-3 filed with the attachment clearly shows that there is record of Private placement, The list of Allotee as well acceptance of offer.

Further here I also like to bring to your kind attention that in my earlier reply also I had mentioned that as a part of due diligence when I asked the reason for the issue of share the company had narrated me the various circumstance whereby it was important for the company to raise the fund so that the company can save from DRT and to pay the amount of OTS with the Bank, and no one in the existing stakeholder is willing to bring the fresh capital to meet the present urgent crises.

The issue of the share only brought the new life to the company by having the fresh money input to meet the urgent requirement with no other reasons. I had done the requisite due diligence and





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

followed the procedure before filing the PAS -3 . If there would have lapses in the procedure or any omission, then the Hon"ble ROC would have raised objections or remark, any clarification over this, which is not there. Further the Hon"ble DRT also issued the order to maintain the status only, with no remark over the "legitimacy over the issue of share". The status que is because of wants of some information from company not from my side. The presentation of DRT order without any relevance here is just to influence you with DIFFERENT ANGLE , with the pure intention to misguide the entire case and to influence your authority .

In view of my present submission, as well previous submission, humble request to quash this false allegations put on me as it is incorrect, false & baseless and does not have any merit.

The reply was accompanied by an annexure containing various documents which were previously submitted by the respondent with his written statement.

9. Subsequently, vide another letter No. G/DD/Com-CA(106)/(M-12068)/4/12/2023 dated 11th December 2023, the respondent was requested to clarify the following within 07 (seven) days from the date of receipt of the letter:

- a) In regard of providing the certified copy of the notice calling the Board meeting and the relevant minutes approving the issuance of 32500 equity shares to Shri PraphullGoyal, you had referred to annexure 4, 8, 9 and 10 of the annexure, which you had enclosed, but on perusing these annexures it is observed that these are undated and do not adhere to the Secretarial Standards prescribed by the ICSI so far as drafting notice and board resolutions are concerned.
- b) On page 3 of your response you had stated that "the notice was issued with the shorter notice period than the 21 days requirement as it was informed to me that it is consented from all the shareholders and Directors and together they hold more than 95% of shareholding".

Please note the provisions of Section 10(1) of the Companies Act, 2013 regarding "Notice of a meeting" which states as follows:

A general meeting of a company may be called by giving not less than clear twenty-one days' notice either in writing or through electronic mode in such manner as may be prescribed.

Provided that a general meeting may be called after giving shorter notice than that specified in this sub-section if consent, in writing or by electronic mode, is accorded thereto-

- (i) in the case of an annual general meeting, by not less than ninety-five percent of the members entitled to vote thereat; and
- (ii) in the case of any other general meeting, by members of the company
 - (a) holding, if the company has a share capital, majority in number of members entitled to vote and who represent not less than ninety-five per cent of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or

- (b) having, if the company has no share capital, not less than ninety-five per cent of the total voting power exercisable at that meeting. [Section 101(1)]

The notice of every meeting of the company shall be given to -

- (a) every member of the company, legal representative of any deceased member or the assignee of an insolvent member;
- (b) the auditor or auditors of the company, and





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

(c) every director of the company. [Section 101(3)]

In the light of the above you are requested to furnish to this Directorate:

- i. On what basis did you certify PAS-3 for issuance of 32500 equity shares @ Rs. 10- each to Shri Praphull Goyal?
- ii. Please provide documentary evidence that at least 95% of members entitled to vote and who represent not less than ninety-five per cent of such part of the paid-up share capital of the company have consented to issuance of shorter notice for the Extraordinary General Meeting (EGM) by Marg Polytech (P) Ltd. that was held on 16th January 2019.
- iii. Please also provide documentary evidence of the shorter notice for the Extraordinary General Meeting which must have been received by Shri Ran Charan Pal, complainant in the instant matter.

The above mentioned letter has reached the respondent on 16th December 2023. No reply, however, has been received till date.

10. Comments from the Disciplinary Directorate

From the complaint dated 16th April 2022 of the complainant and the various submissions made by the respondent from time to time including the written statement dated 15th February 2023, it is abundantly clear that:

- o The respondent has not able to furnish proper evidence as to the basis for certification of PAS-3 for issuance of 32500 equity shares @ Rs. 10- each to Shri Praphull Goyal.
- o The respondent has also not been able to provide documentary evidence that at least 95% of members entitled to vote and who represent not less than ninety-five per cent of such part of the paid-up share capital of the company have consented to issuance of shorter notice for the Extraordinary General Meeting (EGM) by Marg Polytech (P) Ltd. that was held on 16th January 2019.
- o The respondent has also not able to provide documentary evidence of the shorter notice for the Extraordinary General Meeting which must have been received by the complainant.
- o The plea of the respondent that he had certified form PAS- 3 on the basis of documents provided by the company to him does not hold any ground. The professional certifying Form PAS-3 has to duly certify it after carrying out proper due diligence and calling for proper documents which are required under the Companies Act, 2013.
- o The certification of the professional is meant for the purpose that basic requirement of the Companies Act, 2013 must be complied with for the allotment of the shares. In present case shares has been issued to a new person who is an outsider and not the existing shareholder of the Company. There is basic procedure prescribed for issue of shares on preferential basis under section 42 and 62 of the Companies Act, 2013 read with rule 13 of the Companies (Share Capital and Debentures) Rules, 2014 and Rule 14 of the Companies (Prospectus of Securities) Rules, 2014.
- o A bare perusal of the notice dated 8th January 2019 the of Extraordinary General meeting of Marg Polytech (P) Ltd and a certified true copy of the resolution purporting to have been passed at the Board meeting dated 24th October 2018 would clearly indicate that these documents have been manufactured.
- o The fact that the State Bank of India had filled Recovery suit before The Hon^{ble} DEBT RECOVERY TRIBUNAL JABALPUR APPLICATION No. 456/2018 against the company and their





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

Directors (including the complainant) for recovery of Rs. 10.47 lakhs plus interest and other charges does not hold any ground.

Prima facie opinion

11. 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. CMA Sanjiv Naidu (M/12068) respondent, is guilty of contravening Clause (7) of Part I of the Second Schedule to the CWA 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.
12. In the 82nd (Adjourned) meeting of the Committee, 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 but the same was not agreed to by the Committee. The learned members of the Committee advised the Director to further investigate the matter. The Committee advised Director (Discipline) to seek clarification from the respondent as to the basis for certification of Form PAS-3 for issuance of 32500 equity shares @ Rs. 10- each to Shri Praphull Goyal. The Committee also advised to seek documentary evidence from the respondent that at least 95% of members entitled to vote and who represent not less than ninety-five per cent of such part of the paid-up share capital of the company have consented to issuance of shorter notice for the Extraordinary General Meeting (EGM) by Marg Polytech (P) Ltd. that was held on 16th January 2019. In accordance with such directives of the Committee, a letter No. G/DD/Com-CA(106)/(M-12068)/5/03/2024 dated 12th March 2024 was addressed to the respondent requesting the respondent to furnish to this Directorate the following information within 07 (seven) days from the date of receipt of the communication:
 - i. On what basis did you certify PAS-3 for issuance of 32500 equity shares @ Rs. 10- each to Shri Praphull Goyal?
 - ii. Please provide documentary evidence that at least 95% of members entitled to vote and who represent not less than ninety-five per cent of such part of the paid-up share capital of the company have consented to issuance of shorter notice for the Extraordinary General Meeting (EGM) by Marg Polytech (P) Ltd. that was held on 16th January 2019.
 - iii. Please provide documentary evidence of shorter notice indicating the the date of EGM, claimed to have been held on 16.01.2019, where the resolution for shorter notice was passed and provide a copy of such notice.
 - iv. Please also provide documentary evidence of the shorter notice for the Extraordinary General Meeting which must have been received by Shri Ran Charan Pal, complainant in the instant matter.

Please also mention the change in shareholding, if any, of Shri Ram Charan Pal consequent upon allotment of 32500 shares to Shri Prafull Goyal.





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

However, the said letter has been returned undelivered on 21st March 2024 as 'unclaimed'. The content of the said letter has been emailed to the respondent on 21st March 2024 at or about 4.11 PM. The said letter was subsequently emailed to him on 21st March 2024 at or about 4.12 PM.

13. The respondent, by an email dated 11th April 2022 provided the following reply at or about 12.22 PM which is reproduced in verbatim:

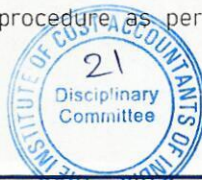
Please find as attached, my additional reply to your email dated 21st March 24, and 10th April 24 Point's wise for your kind consideration as follows.

a. The annexure -4, 8, 9 and 10 submitted earlier by me are undated and not adhere to the Secretarial Standard of ICSI

Reply - The annexures are having dates. Please refer the body of the text where dates are mentioned - Annexure 4 (Page -4)- dated -24.10.2018. Annexure 8 (Page -8)- Dated 16.01.19, Annexure -9 (Page -9) - Dated 16.01.19 and Annexure 10 (Page -10)- Dated -17.01.19. With regard to adhering to the standard of ICSI - Please refer annexure 1 (page-1) of my earlier reply where I been asked for only specific work of filing the documents i.e PAS -3 . The entire process of issuing the fresh share and its all the work/documentation is done by the company , including passing of all the resolution and filing MGT 14 by some other professional. I was not involved in the procedural part of the the process of deciding and conducting the Board Meeting, the issue of notices , conducting the EGM , BOD , finalizing the agenda of share allotment, the list of allottee , PAS-5 etc. I been given all the documents as per the list attached in Annexure 1 do the specific job of filing the PAS-3.

The resolution passed and MGT 14 was not filed by me.

b. The EGM was conducted with shorter notice period, it is clearly stated by me in my reply as I asked the same to the Company when the documents presented to me and been informed to me by the company that they had made all the compliances of Section 101(1) of the Companies Act and the notices were issued to majority shareholder, directors covering more than 95% voting rights. The relevant documents are with the company and Mr. Ram Charan Pal who is the seating Director had access to all those records, what is the procedure followed whether the notice or intimation is given by taking consent on register, the minute book, the proceeding register, the communication methodology between all of them etc are known to him only. "Being closely held Pvt. Limited Company having more or less same no of shareholding persons as well no of Directors." It is from him that he has to show that the company had not made the compliance and he should produce such evidences which can substantiate that there is non-compliance he had not received the notice , less than 95% were not given the notice etc. The reason for the dispute if any between him and other Directors of the Board that they had not informed him and other such details is known to him only and if it is like that then onus on him that he had been not informed and produce the documents in support as he is also the part of BOD and custodian of all the legitimate documents being the Director of the company . How a sitting director can say that the company is not following the procedure while he also is the integral part of all the proceedings. The Authorized person of the company had put the signature in all the Forms having authority from entire BOD including Mr..Ramcharan Pal The PAS -3 is also signed by the Director/Authorized Director of the company that the company had followed the procedure as per the company act provisions. I have not





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

conducted the entire process. Please refer annexure 1 of my reply where I was asked to file the PAS 3 after all process being completed.

Even the resolution and MGT 14 was filed on the MCA by other professional.

c. The fresh shares were allotted to the Mr. Prapfull Goyal. The No of Shares of Mr. Ramcharan Pal remained the same.

d. The company had not filed any audited financial since 31.03.2018. The affairs of the company, the documentation part of the master data of the company, the statutory requirement of maintaining the records etc and other such compliance, all are known to the BOD where Mr. Ramcharan Pal is one of the Director and involved in all the activity the company does.

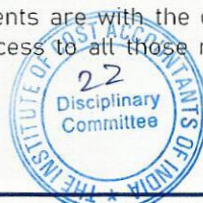
The reason of highlighting this point is how a person can place himself in two capacity one as victim because of own act.

I have filed the PAS-3 and it was taken on record by the MCA/ROC on the basis of documents shown to me as per page 1 of the Annexure and there was no complaint from approving/controlling authority reading any lapse or any explanation being called from me for this certification which can say that I have not justified my Professional duties.

I hope my all the above explanation and my previous submitted reply will meet to the requirement that I did full justification to my professional duties and there is no negligence on my part.

14. The Disciplinary Directorate perused carefully the said reply dated 11th April 2024 of the respondent and noted the following:

- (iii) That the respondent was given only the specific work of filing Form PAS-3 (i.e., Return of Allotment) of Companies (Prospectus and Allotment of Securities) Rules, 2014.
- (iv) That the "entire process of issuing the fresh share and its all the work/documentation was done by the company, including passing of all the resolution and filing MGT 14 by some other professional".
- (v) That the respondent was "not involved in the procedural part of the process of deciding and conducting the Board Meeting, the issue of notices, conducting the EGM, BOD, finalizing the agenda of share allotment, the list of allottee, PAS-5 etc."
- (vi) That regarding the conduct of EGM with shorter notice the respondent has stated that he was informed that the company had made all the compliances of Section 101(1) of the Companies Act, 2013 and the notices were issued to majority shareholders with more than 95% voting rights, meaning thereby, that at least 95% of members entitled to vote and who represent not less than ninety-five per cent of such part of the paid-up share capital of the company have consented to issuance of shorter notice for the Extraordinary General Meeting (EGM) by Marg Polytech (P) Ltd. that was held on 16th January 2019.
- (vii) That the relevant documents are with the company and the complainant, who is the 'seating Director' had access to all those records and that he has to show that the





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

company had not made the compliance and he should produce such evidences which can substantiate that there was a non-compliance.

The logical inference that one can draw from the response dated 11th April 2024 of the respondent is that it is clear that the respondent did not check the notices, resolutions passed at the EGM and other requirements to vouch that the provisions of Section 101(1) of the Companies Act, 2013 have been complied with. This view of the Disciplinary Directorate was communicated to the respondent by email dated 17th April 2024 at or about 11.39 AM. The respondent, however, did not provide any explanation since then in the matter.

15. In the 86th meeting of the Disciplinary Committee held on 19th July, 2024, Director (Discipline) informed the Committee that further investigation was made by the Disciplinary Directorate but no cogent evidence of the involvement of the respondent, as has been alleged in the complaint, have been found. The committee once again carefully perused the complaint of the complainant, the written statement of the respondent and all correspondence between the respondent and the Disciplinary Directorate as well as various submissions made by the respondent at different dates. The Committee agreed to the submissions made by the respondent from time to time and noted the following:
- The respondent had stated that regarding issuance of shorter notice for convening Extraordinary General Meeting (EGM), the company had provided him the supporting documents like copy of notice and resolution passed in the BOD dated 24th October 2018. The documents regarding the notice of EGM dated 8th January 2019, and the minutes of meeting of the EGM dated 16th January 2019 confirming the addition of new Director as well as the details relating to fresh issue of shares were also provided to him. He had relied upon these and other documents submitted to him by the company with request to upload/ file the documents with the Ministry of Corporate Affairs/Registrar of Companies.
 - The conduct of meeting and the procedure for the issue of notice, the minutes of meeting - all are the responsibilities of Board of Directors. The respondent will not be held as "Officer in Default" of the company. The respondent has been assigned the specific work of filing the document with ROC/MCA i.e. specifically e-Form PAS- 3. The essential attachments in the form i.e. Acceptance of Offer, Board resolution, List of Allottees and PAS- 5 all have been checked by the respondent.
 - The notice of EGM and the specific requirement of the contents of notice etc. were in the attachment of MGT 14. though the respondent had not filed Form MGT 14.
 - Regarding checking the necessary documents for the pre allotment activities requiring the Board of Directors to approve the letter of offer, the proposed allottees etc, the respondent submits that the company had held the Board of Directors meeting on 24th October 2018 and also in the Board of Directors meeting held on 16th January 2019, the reference of the earlier taken Board of Directors Meeting conducted on 24th October 2018 was mentioned. The allegation is false and baseless.
 - With regard to the complainant's allegation that the respondent colluded with other Directors and reduced the complainant from Majority shareholder to Minority shareholder, the respondent contends that his assignment was to file the PAS- 3 and the required documents needed in support were provided to him by the company. The respondent has cited General Circular issued by the MCA dated 7th May 2012 regarding certification of e form by a practicing professional wherein Para 2 it has been specifically mentioned that:-





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

"In this regard attention is invited towards the requirements of authentication of documents prescribed under the Companies (Registration Offices and Fees) Rules 2014 which elaborate on the responsibility. Further rule 10 of ibid, the Registrar is to examine forms attached and filled with general forms on MCA portal viz. to verify whether all the requirements have been complied with and all the attachment to the forms have been duly scanned and attached in accordance with the requirements of the above said rules"

- (f) The respondent contends that while certifying and uploading eForm PAS- 3, all the documents were duly scanned and attached in accordance with the requirement.
16. The respondent further stated that as a certifying professional, he had to ensure the following:
- (a) Ensure that letter of engagement/Board Resolution authorising the professional for the assignment by the company to be obtained. (Where the statutory requirement is there for the board resolution or general meeting resolution then a copy of the extract of such resolution shall be obtained by PCS. Wherever the instance is possible it is recommended to record such appointment in the Board meetings.)
 - (b) Maintain a physical/scanned of all documents verified (subject to confidentiality requirement)
 - (c) Ensure that all relevant documents and attachments are legible & visible.
 - (d) Verification of the documents from the original records of the company.
 - (e) Correctness of the records and the material departure from the facts.
 - (f) The form is signed by the authorised person of the company.
 - (g) In certifying and filing the eForm PAS- 3, the respondent had collected the required documents and attached the same with the form and there was no objection from the RoC.
17. The Committee agreed to the submissions made by the respondent and observed that as a certifying professional he was to discharge his duties on the basis of documents supplied by the company and the respondent had relied upon the same in his wisdom. Hence, there is no merit in the allegation of the complainant.

ORDER

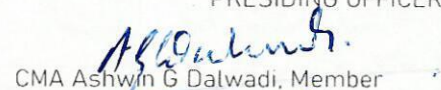
18. The Committee decided to drop the proceedings against the respondent as the complaint lacks merit.
19. The matter thus stands disposed of

19th November, 2024

CMA Bibhuti Bhusan Nayak

PRESIDING OFFICER


CMA Manoj Kumar Anand, Member


CMA Ashwin G Dalwadi, Member

Shri Saraswati Prasad, IAS (Retd.)

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

