



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

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

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

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

In the matter of

Complaint No. Com/21-CA(66)/2019

Shri Supratit Dhali.....Complainant

Vs

CMA Rakesh Rajbhar (M/34598).....Respondent

PRESENT

1. CMA Vijender Sharma, Presiding Officer
2. CMA Biswarup Basu, Member
3. CMA P. Raju Iyer, Member
4. CA Nalini Padmanabhan, Government Nominee
5. CA G.V. Krishna, Government Nominee

1.0 FACTS OF THE CASE

1. The Disciplinary Directorate was in receipt of a complaint in Form I dated 22nd November 2018 along with the prescribed complaint fee from one Shri Supratit Dhali, (hereinafter referred to as the 'complainant') against CMA Rakesh Rajbhar, (hereinafter referred to as the 'respondent') bearing membership number 34598, alleging acts of misconduct by the latter. A unique complaint number Com/21-CA(66)/2018 was allotted to the complaint.
2. The Director (Discipline) registered the complaint vide letter No. G/DD/Com-C-66/1/01/2019 dated 30th January 2019 and an acknowledgement to this effect was sent to the complainant.
3. Form I dated 22nd November 2018 is reproduced in verbatim:





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FORM 1

Particulars of allegations serially numbered together with corresponding clause/part of the relevant Schedule(s), or Particulars of allegations serially numbered together with corresponding clause/part of the relevant Schedule(s) under which the alleged acts of commission or omission of both would fall.	<ol style="list-style-type: none">1. The respondent is in regular employ of Magma Leasing Ltd, in the capacity of Deputy Manager, Main Accounts. His employee no., as per the master roll of the company is 13070.2. The respondent is holding a Certificate of Practice valid up to 31/03/2019.3. The respondent is also a Partner of a firm of Cost Accountants.
Particulars of evidences adduced in support of the allegation(s) made	<ol style="list-style-type: none">1. The company may be contacted for verifying the employment details.2. For the details of Certificate of Practice and Partnership, the details available with the ICAI Office may be referred to.

The complainant prayed that the truth be brought on surface and an appropriate action be taken as per the CWA Act, 1959 and the rules of the Institute.

4. The complaint, as it appears, is based on the following premise:

- That the respondent was in regular employment of Magma Leasing Ltd in the capacity of Deputy Manager (Accounts).
- That the respondent was holding a Certificate of Practice (CoP) which was valid up to 31st March 2019.
- That the respondent was also a Partner of a Firm of Cost Accountants.

5. The Director (Discipline) vide letter G/DD(M-34598)/Com-C-66/1/02/2019 dated 20th February 2019 requested the respondent to send his response through a written statement in his defence within 21 days from the date of service of the letter under reference.

6. Since the respondent did not submit his written statement within the stipulated time limit as specified in the letter dated 20th February 2019 of the Director (Discipline), another letter





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No. G/DD(M-34598)/Com-C-66/2/6/2019 dated 1st June 2019 was sent to the respondent requesting him to send his written statement and at the same time stating that if no reply is received by this Directorate within the time allowed, it shall be presumed that he has nothing further to state and further action will be taken as provided under Chapter III of the Cost and Works Accountants (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007.

7. The respondent, after a lapse of almost six months, submitted his written statement dated 20th June 2019 which is reproduced in verbatim:

"To
The Director (Discipline)
The Institute of Cost Accountants of India,
Disciplinary Directorate,
CMA Bhawan, 3, Institutional Area,
Lodhi Road
New Delhi- 110 003

Sub.: Letter dated 13th December, 2019 being Ref. No. G/DD/Com-C-82/1/12/2019 issued by the Director (Discipline).

Dear Sir,

The undersigned is in receipt of the aforesaid letter whereby the undersigned has been directed to send the response of the undersigned through a written statement as defence to the complaint made by one Shri Supratim Dhali in Form 'I' and which has been registered as Complaint No. Com-/21C(82)/2019.

Before entering into my defence the undersigned would like to state that I have ceased to be a partner of Bandyopadhyaya Bhaumik & Co. Cost Accountants since long and I have also duly resigned before taking up a job and the instant complaint against the undersigned has been made with a malafide intention and is bogus, motivated and without any basis and the complaint is liable to be dismissed in limine.

WRITTEN STATEMENT

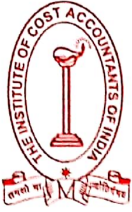
1. With regard to the statement made in serial no. 2, I would like to state that I am no longer a member of the Institute of Cost Accountants of India.
2. That the allegations made in paragraph 1 in serial no. 5 is a matter of record and anything beyond such record is specifically denied and disputed by me.
3. That the allegations made in paragraph 2 in serial no. 5 is specifically denied and disputed by me. I deny that I am holding any certificate of practice as of now as the question of its validity does not at all arise.



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4. That the allegations made in paragraph 3 in serial no. 5 is also specifically denied and disputed and I put the complainant to strict proof thereof. I say that I was a partner of a firm of Cost Accountants and I have duly resigned as per the norms before taking up the employment as such the question of still being a partner of the firm does not arise at all.

The undersigned therefore prays that complaint filed by the said SupratitDhali is liable to be rejected in limine.

Thanking You

Yours faithfully"

8. The respondent, once again by a letter dated 3rd July 2020, submitted his written statement, which is reproduced in verbatim:

"To

The Director (Discipline)
The Institute of Cost Accountants of India,
Disciplinary Directorate,
CMA Bhawan, 3, Institutional Area,
Lodhi Road
New Delhi- 110 003

Sub.: Letter dated 20th Feb, 2019 being Ref. No. G/DD/34598/Com-CA(66)/1/2/2019 issued by the Director (Discipline).

Dear Sir,

The undersigned is in receipt of the aforesaid letter whereby the undersigned has been directed to send the response of the undersigned through a written statement as defence to the complaint made by one Shri SupratimDhali in Form 'I' and which has been registered as Complaint No. Com-CA(66)/1/2/2019.

Before entering into my defence the undersigned would like to state that I have ceased to be a partner of BandyopadhyayaB haumik& Co. Cost Accountants since 18.03.2019 (copy of email attached for your reference) and I have also duly resigned before taking up a job. I do accept the fact that I did hold a CoP till 31.03.2019 in spite of being in full-time employment. However, I would also like to state that this has been done out of sheer ignorance. I have never ever accepted any assignment in my capacity as a partner of the said firm and never signed any audit or compliance documents.

WRITTEN STATEMENT





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1. With regard to the statement made in serial no. 1, I do accept the fact that I am in regular employment since 17.07.2015 (Offer Letter attached for your reference).
2. With regard to the statement made in serial no. 2 and 3, I also accept the fact that I held CoP till 31.03.2019 and it lapsed after the said date since it has not been renewed thereafter.

The undersigned therefore accept his fault and ignorance and seeks apologies for the same.

Thanking You

Yours faithfully"

9. It is observed that the respondent had sent two written statements to Director (Discipline), one dated 20th June 2020 and another dated 3rd July 2020 i.e. less than two weeks of sending the first written statement. It is interesting to note that the two written statements are diametrically opposite to each other. While in the first written statement dated 20th June 2020, the respondent has completely denied all the allegations levelled against him by the complainant, in the second written statement submitted *suomotu* by the respondent, he accepts the allegations and admits that :

- It is a fact that he was in regular employment since 17th July 2015.
- It is also a fact that he held Certificate of Practice (CoP) till 31st March 2019 and it lapsed after the said date since it has not been renewed thereafter.

In the same written statement of 3rd July 2020 which was sent for the second time, the respondent had accepted his fault and sought apologies for the same. Also, the statement made by the respondent in his first written statement dated 20th June 2019 that "I am no longer a member of the Institute of Cost Accountants of India" is factually incorrect.

10. On a careful perusal of the complaint dated 22nd November 2018 of the complainant and the second written statement dated 3rd July 2020 of the respondent, it transpires that:-
 - The complaint was mainly on the ground that the respondent was in regular employment of a company while holding Certificate of Practice (CoP)
 - The respondent was indeed holding Certificate of Practice (CoP) while he was in employment which has been admitted by the respondent.
 - The respondent was a Partner of M/s Bandyopadhyaya Bhaumik & Co. Cost Accountants during the time while he was in regular employment.

11. As part of the investigation that Director (Discipline) is empowered to do under Section 21 of the Cost and Works Accountants Act, 1959, an email dated 7th March 2022 was sent to the



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Membership Department at or around 10.05 AM seeking the following information in respect of the respondent:

- His status as an ACMA/FCMA
- The date of becoming his member. Please provide a scanned copy of Form B/M-2, as applicable.
- His membership fee payment status
- Whether at any time did he hold a Certificate of Practice of the Institute?
- If so, when and for how many years? Please also provide details of the firm(s) where he has been partners.
- His latest residential and professional address.

12. The Membership Department sent an email on the same day at or around 10.44 AM and furnished the following information which is reproduced below:

"Dear Sir,

As desired, the details are as under :

Shri Rakesh Rajbhar (M/34598)

(i) ACMA

(ii) 19/05/2013. Scanned copy of form M-2 is attached herewith.

(iii) Rs.1000/- + applicable GST is due for 2021-22.

(iv) COP was held by the member from 28/06/2013 which was valid till 31/03/2019.

(v) Was a partner of M/s. Bandyopadhyaya, Bhaumik & Co., Cost Accountants from 29.01.2014 to 14.02.2019

(vi) Residential Address

*177A, Chakdah Govt Colony,
Near Padma Pukur,
Purbaputary, Kudghat
Kolkata - 700093*

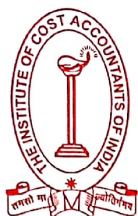
Professional Address

*Manager Risk Analytics
Magma Fincorp Limited
2nd Floor Tower 3
Equinox Business Park
LBS Marg, Kurla West
Mumbai - 400070*

Thanks & Regards,

TEAM MEMBERSHIP"





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13. The information provided by the Membership Department as in above, goes on to show that the respondent was indeed holding Certificate of Practice from 28th June 2013 till 31st March 2019. By his own admission, he was in regular employment from 17th July 2015, though no email was found attached to his second written statement of 3rd July 2020. Thus during the period from 17th July 2015 to 31st March 2019 i.e., for three years eight months and fourteen days, he was in regular employment while holding CoP which is prohibited in terms of Clause (10) of Part I of the First Schedule to the CWA Act, 1959.

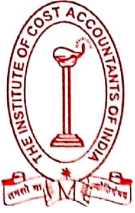
Prima facie opinion

14. The Director (Discipline) formed prima facie opinion against the respondent at its 62nd meeting of the Committee held on 22nd May 2022 and the same together with the documents relied upon was placed before the Disciplinary Committee in terms of Rule 9(2)(a)(ii) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. The prima facie opinion formed by Director (Discipline) against the respondent was agreed to by the Committee in terms of Rule 9(2)(b) of the Rules, holding the respondent guilty of contravening the following provisions of the Cost and Works Accountants Act:
- Clause (10) of Part I of the First Schedule to the CWA Act, 1959 – A cost accountant in practice shall be deemed to be guilty of professional misconduct if he engages in any business or occupation other than the profession of cost accountant unless permitted by the Council so to engage.
 - Clause (1) of Part II of the Second Schedule to the CWA Act, 1959 – A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct if he, contravenes any of the provisions of this Act or the regulations made there-under or any guidelines issued by the Council.

The Director (Discipline) was directed to ensure compliance of Rule 18(2)/18(3) of the Rules. The Committee members advised Director (Discipline) to give 21 days' time to the respondent file his written statement.

15. In accordance with the said directives of the Disciplinary Committee, the prima facie opinion dated 22nd May 2022 was sent on 31st May 2022 both to the complainant and the respondent with a request to the respondent file a written statement within 21 (twenty one) days from the date of service of this letter. Both these letters, however, returned undelivered. In case of respondent, the letter had returned with the remarks "Addressee left without instructions" and in case of the complainant, the letter had returned with the remarks "No such person in this address". On receipt of the undelivered letter of the respondent, an email dated 10th June 2022 at or about 1.08 PM was sent to him attaching the prima facie opinion dated 22nd May 2022 together with the documents relied upon formed by Director (Discipline). The email had reached the recipient.





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16. In the 64th meeting of the Disciplinary Committee held on 4th August 2022, Director (Discipline) informed the learned members of the Committee that all the hard copies of letters which are being sent to the complainant and the respondent are being returned undelivered. On receipt of the undelivered letter of the respondent, an email dated 10th June 2022 at or about 1.08 PM was sent to him attaching the prima facie opinion dated 22nd May 2022 formed by Director (Discipline). The email had reached the recipient. Since no response was forthcoming from the respondent, another email dated 18th July 2022 at or about 11.09 A.M. was sent to the respondent requesting him to send his written statement at the earliest to enable the Disciplinary Directorate to proceed in the matter. He was also advised to provide his latest residential and professional address to this Directorate. This email too has reached the recipient but response of the same was awaited.
17. In the same 64th meeting of the Disciplinary Committee held on 4th August 2022, the Committee members unanimously agreed to the fact that prima facie there was a clear case of misconduct against the respondent since by his own admission, he was in regular employment from 17th July 2015 to 31st March 2019 i.e., for three years eight months and fourteen days, he was in regular employment while holding Certificate of Practice which is prohibited in terms of Clause (10) of Part I of the First Schedule to the CWA Act, 1959. He is also guilty of contravening Clause (1) of Part II of the Second Schedule to the CWA Act, 1959. The learned members of the Committee directed Director (Discipline) to call both the complainant and the respondent 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 in the next meeting of the Committee.
18. At the 65th meeting of the Committee held on 2nd September 2022, the respondent appeared through the online mode at the appointed date and time. The charges against the respondent along with the summary of the prima facie opinion arrived at by Director (Discipline) was read out as required by Rule 18(7) of the Rules. The respondent pleaded guilty and admitted that he was in full time employment while holding Certificate of Practice (CoP) at the same time. He further submitted that:
- He could not recollect till which date he had held Certificate of Practice but it may have been from 2013-14 till 2016.
 - He was a Partner in M/s Bandyopadhyaya Bhaumik & Co. Cost Accountants
 - He had himself signed the prescribed form for applying for Certificate of Practice. Subsequently, he did not file the prescribed Form (M-3) for renewal but somebody else filed Form M-3 on his behalf and also paid the CoP renewal fee.
 - He was mislead by one Dr. Sanjiban Bandopadhyaya, a member of the Institute who was then the Council member of the Institute to apply for Certificate of Practice.
 - The holding of CoP while in full time employment was out of sheer ignorance as he was not aware of the CWA Act, 1959 and the rules framed there under.

On a query raised by a learned Government Nominee on whether the respondent received any





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remuneration or profit from M/s Bandyopadhyaya Bhaumik & Co, he replied in negative. The respondent prayed for a week's time to submit his response in writing to the Disciplinary Directorate.

The Committee noted that the respondent had pleaded guilty. However, the Committee decided to grant him a week's time to submit his response in writing to the Disciplinary Directorate.

19. Subsequently, a letter No. G/DD/(M-34598)/Com-CA(66)/PFO/7/09/2022 dated 7th September 2022 (followed by an email communication) was sent to the respondent stating that during the proceedings before the Disciplinary Committee on 2nd September 2022, certain questions were put to him and he had sought a week's time to respond to those queries. He was requested to provide his written submission within a week from the date of his appearance before the Committee under Rule 18(6).

The respondent, by an email dated 20th September 2022 received by the Disciplinary Directorate at or about 8.51 PM stated as follows which is reproduced in verbatim:

"Dear Director,

With reference to your mail, please find details sought below.

1. Date of surrender of COP - 31.03.2019 since it has not been renewed post 31.03.2019.
2. Date of joining service/job - 17.07.2015

Sincere apologies for delay in reply.

Thanks
Rakesh Rajbhar"

20. In the 66th meeting of the Disciplinary Committee held on 27th September 2022, the Director (Discipline) informed the learned members of the Committee that the respondent, by an email dated 20th September 2022 received by the Disciplinary Directorate at or about 8.51 PM, stated the following:

- Date of surrender of COP - 31.03.2019 since it has not been renewed post 31.03.2019.
- Date of joining service/job - 17.07.2015

2.0 FINDINGS OF THE COMMITTEE U/R 18 (17)

21. In the 66th meeting of the Disciplinary Committee held on 27th September 2022, the Committee, on a careful perusal of the complaint of the complainant, the written statement of the respondent, the oral submissions made by the respondent on 2nd September 2022 as well as on the basis of various documents and emails on record, is of the considered view that it is abundantly clear that:-





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- (i) The respondent did hold Certificate of Practice (CoP) till 31st March 2019 and not till 2016 as orally submitted by him during the oral submissions.
- (ii) COP was held by the member from 28/06/2013 which was valid till 31/03/2019.
- (iii) By his own admissions made in his email of 20th September 2019, his date of joining full time employment was on 17th July 2015 during which he held CoP simultaneously
- (iv) The respondent had also admitted in his written statement as well as in his oral submissions that this was out of sheer ignorance.
- (v) It is worthwhile to mention the Latin maxim 'ignorantia juris non-excusat,' or 'ignorance of the law is no excuse,' which implies that *the Court presumes that every party is aware of the law and hence cannot claim ignorance of the law as a defence to escape liability*

20. In the same meeting of the Committee held on 27th September 2022, the Committee directed Director (Discipline) to issue notice to the respondent under sub-rule (1) of Rule 19 of the Rules to afford him an opportunity of being heard in the next meeting of the Committee before passing any order under sub-section (3) of Section 21B of the Cost and Works Accountants Act, 1959. The respondent duly appeared on the scheduled date and time and admitted the fact that he was holding Certificate of Practice (CoP) from 28th June 2013 till 31st March 2019. He also admitted that he was in full time employment from 17th July 2015 to 31st March 2019 i.e., *for three years eight months and fourteen days, he was in regular employment while holding CoP*. The respondent stated that this was from his ignorance and apologized profusely for his mistake.

3.0 ORDER

21. In the 67th meeting of the Committee held on 18th October 2022, the Committee members unanimously agreed that it is axiomatic that the respondent is guilty of holding Certificate of practice while in employment. This has been admitted by the respondent himself which may have been attributed to his ignorance. However, this does not absolve him from liability. The Committee noted that such an act by the respondent is not befitting a professional and calls for disciplinary action.
22. The Committee members unanimously held the respondent guilty of contravening the following provisions of the Cost and Works Accountants Act, 1959:
 - i. Clause (10) of Part I of the First Schedule to the CWA Act, 1959 – A cost accountant in practice shall be deemed to be guilty of professional misconduct if he, engages in any business or occupation other than the profession of cost accountant unless permitted by the Council so to engage.
 - ii. Clause (1) of Part II of the Second Schedule to the CWA Act, 1959 – A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct if he, contravenes any of the provisions of this Act or the regulations made there-under or any guidelines issued by the Council.
23. The Committee unanimously decided that the following action be taken under sub-section (3) of Section 21B of the CWA Act, 1959 against the respondent:





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- (a) Reprimand
- (b) Removal of name from the Register of members for a period of three months
- (c) Impose a fine of Rs 50,000/- (Rupees Fifty thousand) only to be paid within 60 days of the date of service of the order, failing which the name of the member shall stand removed for an additional period of six months.

24. As per Section 22E (1) of the Cost and Works Accountants Act, 1959, "any member of the Institute aggrieved by any order of the Board of Discipline or the Disciplinary committee imposing on him any of the penalties referred to in sub-section (3) of Section 21A and sub-section (3) of Section 21B, may within ninety days from the date on which the order is communicated to him, prefer an appeal to the Authority."



CMA Vijender Sharma
PRESIDING OFFICER