



# THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

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

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

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

Complaint No. Com/21-CA(70)/2019

Shri Jai Prakash Gupta (M/7956) ----- Complainant

CMA Navneet Kumar Jain (M/17133)----- Respondent

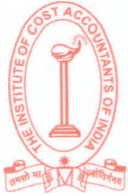
### ORDER

Dated 06/07/2020

1. Shri Jai Prakash Gupta (M/7956) filed a complaint dated 18<sup>th</sup> February, 2018 against CMA Navneet Kumar Jain (M/17133) in Form I along with requisite fee which was registered vide Complaint No.Com/21-CA (70)/2019.

2. The complaint was made on the following ground:

1. Mr Jai Prakash Gupta, Partner M/s GT & CO. has been performing the cost audit of M/s Sterling Tools Limited ("STL") from FY 2012-13 to FY 2017-18 and presented its cost audit report for FY 2017-18 to be approved by the board in its board meeting dated August 11, 2018.
2. M/s Jitender Navneet & Co. were appointed as cost auditors of STL for FY 2018-19 in the same board meeting i.e. August 11, 2018 and the same was included as special business in the notice for AGM issued on the same date.
3. That STL failed to inform M/s GT & CO about its decision of non-appointment of the firm as cost auditor for FY 2018-19, nor was the firm invited to attend the said board meeting or any other meeting of the audit committee.
4. That M/s Jitender Navneet & Co. & its Partner CMA Navneet Kumar Jain failed to communicate with M/s GT & CO before accepting the appointment as Cost Auditors of STL.
5. That M/s GT & CO were being paid a professional fee of Rs 1,05,000 for FY 2016-17 & FY 2017-18. Considering the nature and complexity of the assignment, M/S GT & CO had requested a revision of their professional fee for F.Y.2018-19.
6. That M/s Jitender Navneet & Co. accepted the above-mentioned assignment for same fee as being charged by M/S GT & CO i.e. Rs 1,05,000 for FY 2018-19 thereby indulging in undercutting of Fee. This cannot be done without connivance with the Audit Committee of STL.
7. That Mr Navneet Kumar Jain, being an elected member of NIRC has failed to perform ethical duties and moral responsibilities towards his professional brethren through his conduct of soliciting professional assignments through unethical means.
8. That M/s Jitender Navneet & Co. & Mr Navneet Kumar Jain are guilty of professional misconduct under serial no 5, 8 & 11 of Part I of THE FIRST SCHEDULE.
9. That M/s Jitender Navneet & Co. & Mr Navneet Kumar Jain are guilty of professional misconduct under serial no 7 of Part I & serial no 1 of Part II of THE SECOND SCHEDULE.



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3. The respondent was intimated vide letter dated 05/03/2019 to send response to the complaint through a written statement in his defence within 21 days from the date of service of the letter.

4. The respondent vide his letter dated 11/03/2019 denied the allegations made against him and stated inter alia as below:-

"I am in receipt of the letter under reference along with copy of Form-I. I would like to humbly submit that the complaint has been filled with ulterior motives without any substantive proof Just to harass the under signed,

The complaint is devoid of any merit and is defective ab-Initio and needs to be dealt in a way to ensure that the disciplinary mechanism is not misused for unnecessary harassing CMA members.

In the particulars of allegations, the following points have been mentioned in the Form I at Point 4 that "M/s Jitender, Navneet & Co. & Its partner failed to communicate with M/s GT & Co before accepting the appointment as Cost Auditors of M/s Sterling Tools Ltd. (STL)"

I would like to draw the attention to the fact that the undersigned has not received any appointment letter from the company Sterling Tools Ltd. (STL) till date and the question of having accepted the same without informing the previous auditor does not arise.

As per the practice, after the approval of the Board with regard to the appointment of Cost Auditor, an appointment letter is issued and the same is signed and acknowledged by the cost auditor as a token of proof of acceptance. (An extract of such appointment letter is annexed as annexure 1 for reference). Till date no such acceptance has been issued to the company. Also, CMA Jai Prakash Gupta has not provided the appointment letter duly accepted by the undersigned/firm to prove his charge.

I also would like to draw your attention to the Form I filed by Mr Jai Prakash Gupta on February 18th, 2019, the form is incomplete in all respects and has not been signed by the complainant at all. Filing of the unsigned form that too without any conclusive documentary proof to harass other members speaks of the ill Intentions and these types of acts bring disrepute to the profession.

Filing of frivolous complaint by CMA Jai Prakash Gupta without submission of any proof of having accepted the assignment

CMA Jai Prakash Gupta has given a false statement that M/s Jitender, Navneet & Co. and its partner failed to communicate with M/S GT & Co. before accepting the appointment as Cost Auditors of STL.





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A template of appointment letters received from the companies is given as annexure 1 which clearly shows that appointment letter has to be signed and acknowledged as token of acceptance as normal practice. Till date we have not received any such letter from the company nor we have given any such acceptance. He has not furnished any document showing the acceptance of the appointment.

## **Professional misconduct by CMA Jai Prakash Gupta**

The complainant CMA Jai Prakash Gupta should be held guilty for professional misconduct under the clause 3 of Part II of The Second Schedule to the cost and Works Accountants Act, 1959 as amended. He has furnished the false information (regarding acceptance of appointment by under signed) to the Director Discipline.

Clause 3 of Part II of The Second Schedule (Professional Misconduct in Relation to Members of The Institute Generally states:

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional

Misconduct, if he

(3) includes in any information, statement, return or form to be submitted to the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority any particulars knowing them to be false;

**Unsigned Complaint:** I would like to bring on record that the Complaint Form I has not been signed by the complainant at all which clearly shown the disregard by CMA Jai Prakash Gupta to the disciplinary mechanism instituted through the Act of parliament. An exemplary punishment needs to be awarded to the complainant and hold him guilty of professional misconduct as mentioned above and for misusing the disciplinary mechanism.

## **Filing of Complaint without any authority**

It needs mention that the complainant has violated the Rule 3 of The Cost And Works Accountants (Procedure of Investigations of Professional And Other Misconduct And Conduct Of Cases) Rules, 2007

The relevant rule is reproduced below:

Rule 3 of The Cost And Works Accountants (Procedure of Investigations of Professional And Other Misconduct And Conduct Of Cases) Rules, 2007 States:



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"A complaint filed by or on behalf of a company or a firm, shall be accompanied by a resolution, duly passed by the Board of Directors of the company or the partners of the firm, as the case may be, specifically authorizing an officer or a person to make the complaint on behalf of the company or the firm."

The matter pertains to GT & Co., a partnership firm, no resolution authorizing CMA Jai Prakash Gupta to make the complaint on behalf of the firm as required under rule 3 as stated above has been placed on record.

Keeping in view of the above, the pointwise reply to the allegations in Form I (unsigned) is given below:

## Complaint filed through unsigned Form-I

The Form-I have not been signed by the complainant at all. It shows the negligence on his part in filing the documents with the Disciplinary Directorate.

The undersigned came to know about the appointment through the communication under reference and is yet to receive the appointment letter from the company and before acceptance of the same, undersigned would definitely have given the intimation to the complainant.

The complainant has not provided even a single proof stating that the appointment has been accepted before communication to him. The appointment letter duly accepted by the JNC/undersigned has not been placed on record.

The point wise reply is given below for the kind consideration of the hon'ble Disciplinary Committee.

	Allegation	Reply
Point no 5(4)	That M/s Jitender, Navnee t& Co., and its partner CMA Navneet Kumar Jain failed to communicate with M/s GT & co. before accepting the appointment as Cost Auditors of STL	The averments made are incorrect, misleading and thus denied. The complainant has not furnished any proof of acceptance by the undersigned.





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5(6)	That M/s Jitender, Navneet & Co accepted the above-mentioned assignment for same fee as being charged by M/s GT & Co i.e. Rs 1,05,000 for FY 2018-19 thereby indulging in undercutting of the fee. This cannot be done without connivance with the audit committee of STL	The averments made are incorrect, misleading and thus denied. There is no under cutting of fee.
5(7)	That Mr Navneet Kumar Jain, being as elected member of NIRC has failed to perform ethical duties and moral responsibilities towards his professional brethren through his conduct of soliciting professional assignments through unethical means	The averments made are incorrect, misleading and thus denied. The allegation does not contain any truth and the complainant has tried to defame the undersigned without bringing on records any conclusive proof.
5(8)	That M/s Jitender, Navneet & Co & Mr. Navneet Kumar Jain are guilty of professional misconduct under serial no 5, 8 and 11 of part 1 of THE FIRST SCHEDULE	The averments made are incorrect, misleading and thus denied. The complainant has not furnished any proof with regard to the said allegations.
5(9)	That M/s Jitender, Navneet & Co & Mr. Navneet Kumar Jain are guilty of professional misconduct under serial no 7 of Part 1 & Serial no 1 of Part II of THE SECOND SCHEDULE.	The averments made are incorrect, misleading and thus denied. The complainant has not furnished any proof with regard to the said allegations."

5. The written statement of the respondent was sent to the complainant vide letter dated 13/03/2019 for sending rejoinder on the same.

6. In rejoinder dated 05/04/2019 Shri Jai Prakash Gupta, had submitted on the written statement

"That the contents of all the paragraphs of the reply by NK Jain are vehemently denied as incorrect.



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1. That the submission by CMA Navneet Kumar Jain ("NK Jain") that as per practice, after approval of the Board with regard to appointment of Cost Auditor, an appointment letter is issued which is acknowledged as a token of acceptance and that he is yet to receive any appointment letter from M/s Sterling Tools Ltd ("STL/Company"). is absolutely wrong.
2. The Company in question is a Listed Company with an Audit Committee in place. Notice for AGM of the Company dated 11.08.2018 clearly mentions that M/s Jitender Navneet & Co has been appointed as the Cost Auditors of the Company for Financial Year ending 31.03.2019 by the Board on the recommendations of its Audit Committee. It is therefore obvious that the said appointment must have been made on or before 11.08.2018 and there must have been multiple communications between the Company and NK Jain before his appointment was finalized.
3. As per Rule 6(2) of the Companies (Cost Records and Audit) Rules, 2014, a Company shall inform the cost auditor of his appointment and file a notice of such appointment with the Central Government within a period of 30 days of the board meeting in which such appointment is made. Considering that the appointment must have been made on or before 11.08.2018, the Company should have filed the notice of appointment to the Central Government in Form CRA-2 after informing NK Jain and his firm. It is imperative to note that the requirement of Rule 6(2) is to inform the Cost Auditor. The same could have been done without issuance of an appointment letter. Further since such documents are private in nature between the Company and the Cost Accountant, the appointment may have communicated to the Cost Auditor and the Complainant cannot be expected to produce such private documents.
4. Further, for appointment of the Cost Auditor, the Company files Form CRA-2 with the MCA. The said form is not a public document and thus cannot be downloaded from Public Documents of STL on the MCA portal. It is therefore requested that M/S STL be asked to furnish Form CRA-2 filed for FY 2018-19 with the MCA, if any.
5. It is also very absurd to believe that between 11.08.2018 and 11.03.2019, i.e. for 7 months, NK Jain did not enquire about the status of his appointment from STL or if any such enquiry was made, STL did not respond to his communications.
6. It would be completely against the dignity of the profession to expect a professional in the capacity of an Auditor nonetheless, to be at the whims fancy of a Company. The submission by NK Jain that he is yet to receive any confirmation regarding his appointment as the Cost Auditor even 20 days before the end of the Financial Year, and





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yet he has not withdrawn his consent to be appointed as the Cost Auditor of STL shows his malafide intentions and also projects the profession and the Institute in a bad light.

7. That NK Jain has further submitted the Complainant has submitted unsigned Form I is completely wrong and denied. The Complainant has duly signed the Complaint Form and submitted 3 copies of the same to the office of the Hon'ble Director (Discipline). Had the application been unsigned the same would not have been accepted by the Hon'ble Director (Discipline). Copy of the signed Complaint along with proper receiving is attached as Annexure 1.
8. Further, NK Jain alleges that the Complained has been filed without authority. The allegation is baseless and devoid of any merit. NK Jain has failed to notice that the Complaint has been filed by the Complainant in his personal capacity. Further, the Authority Letter issued by M/s GT & CO authorizing the Complainant to file the complaint is attached as Annexure 2. Similarly, NK Jain himself has not placed on record any document authorizing him to file reply on behalf of M/s Jitender Navneet & Co. Thus, based upon his own contention, no reply to the Complaint has been received from the firm and the same be deemed as acceptance by the Firm of the acts mentioned in the Complaint.
9. That NK Jain contends that accepting the said assignment at the same fee i.e. Rs 1,05,000 does not amount to undercutting shows his utter disregard towards his professional brethren. It is humbly submitted the act of accepting the exact same fee i.e. Rs 1,05,000 which is not a round figure clearly shows that NK Jain deliberately settled for the exact same fee with the intention of soliciting the client.
10. It is further submitted that NK Jain advertises his professional accomplishments and achievements through emails. Extract of such email is attached as Annexure 3. Through these emails, NK Jain claims himself to be a highly accomplished and learned professional. However when such a professional is willing to accept an audit assignment at the price equal to the one charged by the existing auditor for the last two years, it portrays the Institute and its members in a bad light to the Industry and thus limits professional opportunities to the members thereby causing irreparable loss to the reputation of the Institute and its members.
11. NK Jain also contends that he only came to know about the appointment through the complaint, thereby accusing STL of appointing him as the Cost Auditor with his consent and information. The Hon'ble Director (Discipline) is requested to take a strict action against the Company for such an unauthorized act, if true.



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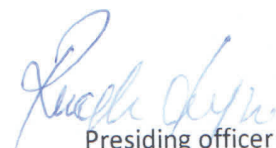
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12. However, had any Company appointed any professional as its Cost Auditor without informing him, the professional would have taken necessary legal action against such Company. That NK Jain has not taken any legal action against STL till the date of filing of his reply also proves the case against him.
13. That NK Jain has accused the Complainant of Professional Misconduct for submitting false particulars. The same is categorically incorrect and strongly denied by the Complainant. The Complainant has furnished documents available in public domain, published by STL on its own website to support his points."

7. Meanwhile, CMA Navneet Kumar Jain vide his mail dated 22<sup>nd</sup> June, 2020 provided the copy of intimation letter dated 02/04/2019 given to the Partner, GT & Company.

8. The above-mentioned Complaint has been examined in pursuance of Section 21 of the Cost and Works Accountant Act, 1959 as amended in 2006 read with Rule 9 of the Cost and Works Accountants (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007. It is observed that as there is no prescribed mode of sending intimation to the previous auditor, ordinary post can be considered as proper intimation as required under the provisions of the CWA Act.
9. On perusal of the Complaint, written statement, prima facie opinion of the Director (Discipline), related material on record and in totality of all the facts and circumstances of the case, the Board arrived at the conclusion that intimation regarding respondent's appointment as Cost Auditor for the year 2018-19 in respect of Sterling Tools Limited was given to the Complainant via letter dated 02/04/2019.
10. In view of totality of all the facts and circumstances of the case and after detailed deliberations, the Board held that the complaint lacks merit and decided to order for closure of the matter in accordance with Rule 9(3)(a) of the Cost and Works Accountants (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007 and inform the Complainant and the Respondent accordingly.

Accordingly, the complaint stands disposed off.

  
Presiding officer