



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(77)/2019

Shri Kushal P Desai (M/37341) -----Complainant

v/s

Shri Dinesh Kr Birla (M/7907) -----Respondent

ORDER

Dated 13/08/2020

1. Shri Kushal Parehbhai Desai (hereinafter referred to as the "complainant") bearing membership number 37341 filed a complaint dated 16th August, 2019 against Shri Dinesh Kr. Birla (hereinafter referred to as the "respondent") bearing membership number /7907 in form 'I' along with requisite fee of Rs. 2950/- (inclusive of GST) which was registered vide complaint No. Com/21-CA(77)/2019.

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

The complainant has received a copy of quarterly News Letter of Ahmedabad Chapter for the Period April-June 19 which gives the minutes of AGM dated 27-05-2019 on page no 13.

Under Agenda item no. 5 the case of "fraud" has been reported in details. A copy of the said minutes is attached at Sr. No. 6 which narrates the incidence of fraud in full details. The facts are mentioned in summary manner as below: On 23rd March, 2019 a CEP on "Cost Audit-Looking Ahead in a Time of Rapid Changes" was organised by the ICAI- Ahmedabad Chapter. Shri Dinesh Kumar Birla had signed the attendance sheet on behalf of Shri Narayan Das Birla bearing membership number 2210.

The act of CMA Dinesh Kumar Birla amounts to "impersonation" and he has forged the signature of CMA Narayan Das Birla to transfer CEP credit to CMA Narayan Das Birla.

The Act committed by CMA Dinesh Kumar Birla will squarely fall under Sec. 468 of The Indian Penal Code, 1860.



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Forgery for purpose of cheating – “Whoever commits forgery, intending that the [document or electronic record forged] shall be used for the purpose of cheating, shall be punished with imprisonment of either description for term which may extend to 7 years, and shall also be liable to fine.” It may be further stated that this criminal act does not require that the accused should actually commit the offence of cheating. What is material is the intention or purpose of the offender in committing forgery.

The Act committed by CMA Dinesh Kumar Birla will squarely fall under Sec. 471 of The Indian Penal Code, 1860.

Using as genuine a forged document or electronic record – “Whoever fraudulently or dishonestly uses as genuine any [document or electronic record] which he knows or has reason to believe to be forged [document or electronic record] shall be punishable in the same manner as if he had forged such [document or electronic record].”

What is material under this section is, he had used as genuine of any document which is known or believed to be a forged document. It may be noted that any member of the ICAI is not expected to have criminal mind and go to the extent of forging the signature. The CEP Programs are mandated by the Institute with certain objectives and Impersonation, attending the program on behalf of other member and signing the attendance sheet to suggest that the member not present for CEP has attended the CEP amounts to criminal act under section 468 & 471 mentioned above.

The Institute has also mandated the Code of Ethics for the members and CMA Dinesh Kumar Birla has violated the Code of Ethics in its entirety. Some of the ethical provisions which are totally violated can be enumerated as under:

Chapter 1 – Introduction

(a)(viii) - conduct himself or herself toward other Members with courtesy and good faith.

Chapter 2 Objectives –

(a) Integrity-

A cost accountant should be straightforward and honest in performing his services.

(e) Professional Behaviour

A cost accountant should act in a manner consistent with the good reputation of the profession.





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In addition to the fundamental principles above a cost accountant in practice, should be and appear to be free of any interest which might be regarded, whatever its actual effect, as being incompatible with integrity, objectivity and independence.

"Other Misconduct"

A member is liable to disciplinary action under Section 21 of the Cost and Works Accountants Act, if he is found guilty of any professional or "other misconduct". "Other misconduct" has not been defined in the Act. This provision empowers the Council to enquire into any misconduct of a member even if it does not arise out of its professional work. This is considered necessary because a Cost Accountant is expected to maintain the highest standards of integrity even in his personal affairs and any deviation from these standards, even in his non-professional work, would expose him to disciplinary action. For example, a member who is found to have forged the will of a relative, would be liable to disciplinary action even though the forgery may not have been done in the course of his professional duty.

Thus the Conduct of Shri Dinesh Kumar Birla is totally against the ethical standards and all set norms of the Institute for its members.

Shri Dinesh Kumar Birla has not only failed to follow the guidelines, ethical standards and the various provisions of The CWA Act, 1959 and the rules and regulation framed thereunder and more particularly he has committed the Acts which fall under the various provisions of professional misconduct under Chapter V misconduct of CWA Act, 1959.

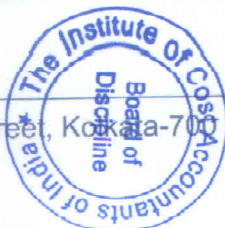
1. The First Schedule Part IV Other Misconduct in relation to members of the Institute generally - (2) A Member of the institute, Whether in practice or not, shall be deemed to be guilty of other misconduct if in the opinion of the Council he brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work.

The Actions of CMA Dinesh Kumar Birla are certainly bringing disrepute to the profession since these actions also squarely fall under the IPC Sec. 468 & 471.

2. The Second Schedule Part I Professional Misconduct in relation to Cost Accountants in practice.

(7) 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.

Shri Dinesh Kumar Birla is grossly negligent and has not exercised any due diligence while signing the attendance for Shri N. D. Birla the other member of the Institute.





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3 The Second Schedule Part II- Professional Misconduct in relation to members of the institute generally-

(1) 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 thereunder or any guidelines issued by the Council.

The Actions of Shri Dinesh Kumar Birla are beyond the comprehension of the various provisions of CWA Act, 1959 and the Rules & Regulations framed thereunder. The CEP programs are mandated by the Council, which are mandatory for members and members holding COP. A person attending the CEP can only sign the attendance sheet and is only then entitled to CEP credit points. A COP holder is not expected to sign attendance sheet of CEP on behalf of other COP Holder. Such an action of Shri Dinesh Kumar Birla squarely falls under the professional misconduct.

Before the amendment of The CWA Act, 1959 there was a Specific clause under schedule I Part III (1) ***"A member of the Institute whether in practice or not shall be deemed to be guilty of professional misconduct, if he—***

"(1) includes in any statement, return or form to be submitted to the Council any particulars knowing them to be false;"

Thus the intention of The CWA Act is such that no false information should be provided in any statement, return or form to be submitted to the Council.

The Action of Shri Dinesh Kumar Birla also falls under such category and need to be taken cognizance by the Council and the Disciplinary Mechanism of the Institute.

Lastly it is requested that since the actions of Shri Dinesh Kumar Birla are totally unethical, disgusting and despicable immediate action under disciplinary mechanism should be taken. This is all the more important for maintaining the dignity of the profession of the Cost Accountants

In support of the complaint, the complainant has annexed the Copy of the Minutes of AGM dated 27th May, 2019 circulated by the chapter.

2. A copy of the complaint was sent by the Disciplinary Directorate to the respondent vide letter dated 21st August, 2019 requesting the respondent to send in his response by way of a written statement within 21 days from the date of service of the letter.

3. The respondent vide his letter dated 17th September, 2019 requested to extend the time period of reply by another 45 days due to his illness.





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4. Director (Discipline) vide its letter dated 25th September, 2019 written to the respondent, extended the date to send written statement up to 10th October, 2019.

5. The respondent vide his letter dated 9th October, 2019 denied the allegations made against him and requested for the dismissal of the complaint filed against him.

6. The written statement of the respondent was sent to the complainant vide letter dated 15th October, 2019 for sending his rejoinder on the same.

7. The Complainant in his rejoinder dated 08th November, 2019 mainly reiterated his allegations already made in his complaint and stated that:

He informed that he received our letter no. G/DD/C-72/10/2019 dated 15-10-2019 on 22-11-2019. Based on that letter, he sought copy of the CC TV Recording from the Chapter and upon receipt of the said, he placed his rejoinder.

In this connection, he submitted herewith his Rejoinder to the Written Statement which *inter alia* stated that:-

A) The charges levied by the Complainant are only refuted and denied by the respondent. Such written statement is nothing but acceptance of all the charges, misdeeds and acts of professional misconduct by the respondent.

1. B) It may be mentioned that he has stated the full details as to how CMA Dinesh Kumar Birla is involved not only in acts of Professional Misconduct but his acts squarely fall under Indian Penal Code, 1860 – Sec. 468 (Forgery) for purpose of cheating, Sec. 471, using as genuine a forged document of electronic record.

2. C) It is evident from the records and is proved beyond doubt that CMA Dinesh Kumar Birla attended the CEP Programme on 23-03-2019 organised by Ahmadabad Chapter under Sr. No.10 of the attendance sheet in the name of Shri N. D. Birla along with M. No. 2210 is appearing but the signature is not of Shri N. D. Birla but the attendance sheet is signed by Shri Dinesh Kumar Birla for his father Shri N. D. Birla.





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3. D) The Complainant wanted to reiterate that the CEP Programme on 23-03-2019 held by Ahmedabad Chapter in the Chapter premises was not and never attended by Shri N. D. Birla , however the said programme was attended by ShriDinesh Birla, the fees in cash were paid by Shri Dinesh Birla. However, while making entry on the attendance sheet the entry for the attendance of Shri N. D. Birla was registered by Shri. Dinesh Birla and also has signed the attendance sheet as Shri N. D. Birla.

It was requested that the Institute can verify the signature of Mr. N. D. Birla from its records and match it with the signature on the attendance sheet. The Complainant emphatically stated that the signature will not match. It is also evident that ShriDinesh Birla did not record his attendance nor paid any fees, but attended the CEP Programme. Shri Dinesh Birla only has signed on the attendance sheet against the name of Shri. N. D. Birla who never attended the CEP Programme. Similarly, Shri Dinesh Birla attended the CEP Programme but did not pay the CEP Programme fee to the Chapter and as such has defaulted and committed fraud by not paying the CEP Programme fees to the Ahmedabad Chapter. This act of ShriDinesh Birla squarely falls under professional misconduct as already pointed out in his complaint dated 16-08-2019.

E) The CC TV Footage of the CEP Programme dated 23-03-2019 held by Ahmedabad Chapter in its premises, which he has collected from the Chapter, was submitted herewith in a soft copy format along with this rejoinder. This footage clearly shows the presence of Shri Dinesh Birla and nowhere Shri N. D. Birla is seems attending the CEP Programme throughout its conduct from the time of registration till its conclusion.

5F) t may be stated that the fact was reported by Mr. P. P. Dave , the Executive Officer immediately on 01-04-2019 by speed post AD to the Secretary of the Institute.

G) The matter being of serious nature, office of the Director Discipline on 02-04-2019 at 6.02 PM advised the Executive Officer of the Chapter to keep the copy of CCTV footage in





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a safe custody. The mail was acknowledged by the Executive Officer of the Chapter and accordingly the action was taken.

7H) The copy of the minutes of AGM dated 27-05-2019 was already provided to Director Discipline along with the complaint filed by him. Under agenda item no. 5 the Fraudulent act of Shri Dinesh Birla was reported in details. .

- I) The Complaint is filed by the Complainant for contravention of provisions of CWA Act and Rules and Regulations made thereunder –

The First Schedule Part IV (Clause 2).

The Second Schedule Part I (Clause 7).

The Second Schedule Part II (Clause 1).

The Respondent has only refuted and denied the allegations in the complaint filed by the complainant against him. This itself shows that the Respondent has nothing to submit in his defence and it is clearly an acceptance of the misconduct committed by the Respondent.

- J) The Complainant is a dedicated Cost and Management Accountant and respects the CWA Act, 1959 and Rules and Regulations made there under. Whenever there is deliberate attempt to overrule or undermine the Provisions of The CWA Act and Regulations the Complainant feels his moral duty to compel the wrong doers to amend and rectify themselves and work within the framework of CWA Act and Regulations. The Complainant affirms that he has no personal enmity against the Respondent.

- K) The Complainant craves leave to add, alter, and amend any of the statements in this Rejoinder and to produce any evidences in support of his contentions.

- L) The Complainant therefore most respectfully prayed that:

The Complainant has filed Complaint in good faith and believing that Respondent had contravened the Provisions of CWA Act, 1959 and Rules and Regulations made there under,





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and the Complainant has also provided the sufficient evidences in support of the Complaint and hence he prayed for appropriate actions against the Respondent under the CWA Act, 1959 and Rules and Regulations made there under.

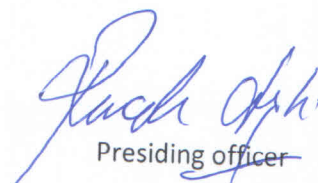
M)The Complainant therefore most respectfully prayed that :

The basic objective of the CWA Act , 1959 is "To regulate the profession of Cost and Works Accountants" (now Cost Accountants). As such the Disciplinary complaints involving moral turpitude of the CMAs must be handled expeditiously since the justice delayed is justice denied. He requested the Disciplinary Directorate and the Disciplinary Authorities of the Institute to give priority to this complaint.

8. Here the crux of the matter is that whether Shri Dinesh Birla had really signed the attendance sheet of Shri N.D. Birla and has forged his signature or not as has been alleged by the complainant. It is important to know whether such person whose signature has been alleged to have been forged had objected to such forgery of the respondent, if at all committed as alleged. In case, no complaint is received from Shri N.D. Birla, it is unlikely that the respondent is guilty of impersonation as has been alleged. The member, Shri N.D. Birla, in the instant case, must raise his objection and protestation to such acts, in case, the same was committed by the respondent. In the absence of any such objection from Shri N.D. Birla, I am not inclined to opine that the respondent is guilty of professional and other misconduct.

9. In fact from the facts of the complaint, it is observed that there was nothing on record to prove the allegations against the respondent and the complainant has not been able to adduce any evidence regarding the same. Neither did the member whose signature has been alleged to have been forged in the attendance sheet has raised any objection nor there was any intention on the part of the respondent to 'deceive' since the word 'impersonation' as per dictionary means "to represent another person to deceive people". From the facts available on record, it cannot be concluded that the respondent sought to deceive people and thereby the complaint lacks merit. Complaint is therefore, disposed of in pursuance of Rule 9 (3) of the Cost and Works Accountants (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007.

Accordingly, the complaint stands disposed off.


Presiding officer

