



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(84)/2019

Shri Amar Pal.....Complainant

VS.

Shri Sukomal Roy Choudhuri (M/4840).....Respondent

ORDER

06/09/2020

1. A complaint dated 06/11/2019, in Form- I was filed under Section 21 of the Cost Accountants Act, 1959, ("the Act") read with Sub- Rule (1) of Rule 3 of the Cost and Works Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, ("the Rules), by Shri Amar Pal (hereinafter referred to as 'the Complainant'), against CMA Sukomal Roy Choudhuri (M/4840) , (hereinafter referred to as 'the Respondent).
2. The complainant *inter-alia* stated/ alleged that:-
 - I. "Shri Sukomal Roy Choudhuri is a bonafide Member of the Institute.
 - II. Based on information from the website of the Institute, he along with others had submitted a Partnership Deed for Re-constitution, M-5 for Branches (where they could not produce any document for Branch in one or more cases) and Resignation letters of Partners whose names are not in the new Deed. Here, I have to mention that one of the Partners, Mr. Shyama Prasad Ganguly was and is sick and did not put his signature on this resignation letter. Moreover another Partner, Mr. Mukesh Kumar did not issue any Resignation letter.
(Document enclosed- if originally signed by Shri Sukomal Roy Choudhuri)
 - III. It proves that Mr. Roy Choudhuri had made false statement to the Institute through some illegal path, which attracts Disciplinary action against him".
3. The respondent was intimated vide letter dated 13th December, 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.





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4. The respondent vide his letter received on 05th January, 2020 denied the allegations made against him and stated *inter alia* as below:

(i) "With regard to the statement made in serial no. 1, I would like to state that Amar Pal is a fictitious person and does not reside at all at the address as set out in Serial 3 of the alleged complaint. There is no existence of any person by the said name and as such no identity proof of the complainant has been annexed to the alleged complaint.

(ii) That the statement made in Serial No. 2 and 4 are admitted. I am a Cost Accountant having Membership No. M/10928 since the last thirty years and I have discharged my duties sincerely, diligently and honestly without any complaint whatsoever.

(iii) That the allegations made in paragraph 2 in serial no. 5 are specifically denied and disputed by me. I specifically deny and dispute that on 11th April, 2019 I had signed or sent a Report of Internal Audit to M/s BEML Ltd., on behalf of the firm by flouting any norms. I deny and dispute that the letter head of the firm used in the forwarding report contains the address or mobile number or e-mail ID which were other than the ones available with the institute as registered address of the firm. I also deny and dispute that I have made similar misrepresentations with other organizations also.

(iv) That the allegations made in paragraph 3 in serial no. 5 are specifically denied and disputed by me. I specifically deny and dispute that I along with others had submitted a Partnership Deed for re-constitution or resignation letters of partners whose names are not in the new deed. I further specifically deny and dispute that one of the partners Mr. Shyama Prasad Ganguli is sick or did not put his signature on his resignation letter or another partner Mr. Mukesh Kumar did not furnish any resignation letter.

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





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5. The written statement of the respondent was sent to the complainant vide letter dated 08/01/2020 for sending rejoinder on the same.
6. In rejoinder dated 24/01/2020 Shri Amar Pal had submitted *inter alia* that:-

"I have nowhere claimed that I have a Cost Accountant or a member of your esteemed Institute. In this regard, point no. - 1 In Form - 1 may please be referred to.

I declare that, my signatures, wherever appearing on the papers available with you, have been put by me only and any difference which may be apparent is due to some uncontrolled movement of the pen.

Now I furnish my rejoinder, in the same order, one after another:

a) Mr. Roy, while refuting the charges, has claimed that I have fabricated the charges based on some confidential documents of their firm M/s Bandyopadhyaya Bhaumik & Co. This is in effect, a clear admission of the charges contained in my complaints. I further declare that the papers were not obtained through any illegal means.

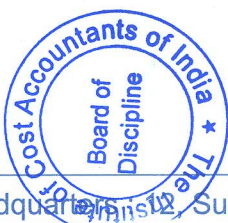
b) I fail to understand, how putting up at the appropriate forum of the unethical and illegal means adopted by them in procuring business can be called interfering into the day to day affairs of their firm.

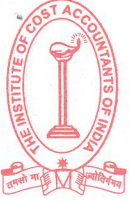
c) I admit; I am not supposed to be aware of the nitty gritty of Cost Auditing as I am not a Cost Accountant. However, it is a well-accepted legal maxim that "Ignorance of law of the land is no excuse". I trust, the corollary to this maxim also holds good.

Moreover, Mr. Roy has used the word "revenge" with regard to some unnamed CMA. Since the word "revenge" denotes a reaction to some action, Mr. Sukomal Roy Choudhuri has implicitly admitted that he, individually or jointly, has caused severe professional harm to one or more professionals of his ilk. I pray, such little digression may please be pardoned.

However, I would like to categorically declare that the sole purpose of my complaints is to stop some members of the honourable profession like CMA from obtaining assignments through illegal and unethical means.

d) Considering the submissions above, it can well be said that my complaints are anything but bogus and stand on irrefutable basis, which have also been explicitly and implicitly admitted by the respondent.





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I hope, the Disciplinary Committee of the Institute of Cost Accountants of India will be sufficiently satisfied with my rejoinder and deal with my complaints as per the standing provisions of the relevant statutes.

I reserve my right to add / alter the complaints already-lodged and place additional documents for consideration in this context in future".

7. As a part of investigation, following information were also sought from Director (Membership)

- All forms M5 submitted by M/s Bandyopadhyaya Bhumik & Co (FRN00041)
- Partnership deed submitted by M/s Bandyopadhyaya Bhumik & Co (FRN00041)
- Enclosures of Form M5, if any.

Director (Membership) vide his mail dated 04/07/2020 had provided the desired documents. However, from the documents it is difficult to conclude whether or not the reconstitution of the firm M/s Bandyopadhyaya Bhumik & Co was validly made or not. Accordingly, an e mail dated 7th August 2020 was sent to the Sr. Director (Membership) requesting him to furnish:

- Whether or not Shri Sukomal Roy Choudhuri bearing membership number 4840 at any time during the preceding 2 years had submitted an application for reconstitution of the firm, M/s Bandyopadhyaya Bhaumik & Co.
- If so, whether or not the Membership Directorate has given effect to such request for reconstitution of the above mentioned firm.

The Membership Directorate vide mail dated 12th August 2020 has replied the following

"We accept the reconstitution applications only when it is sent from the partnership firm. Any reconstitution application that has been sent by an individual partner is not accepted."

Thus, it appears that the membership Directorate gives effect to request for reconstitution of a firm only when a request is made by the partnership firm and not by an individual partner.

- This matter was put up before the Board of Discipline at its 25th meeting of the Board of Discipline held on 13th August 2020. The Board members examined the complaint of the complainant and observed that there was prima facie nothing on record to prove the allegations against the respondent. However, the Secretary of the Board pointed out to the Board members that the entire issue hinges on reconstitution of the firm M/s Bandyopadhyaya Bhaumik & Co, bearing Firm Registration No. 000041). During the meeting Ms. Malobika Das, Asst. Director (Membership) was advised to join the meeting and she was asked whether the reconstitution of the firm has been validly





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made to which she replied that she had checked all the relevant documents for giving effect to the reconstitution of the said firm. She further stated that "we accept the reconstitution applications only when it is sent from the partnership firm. Any reconstitution application that has been sent by an individual partner is not accepted." From her statement it appears that in the present case also the Membership Department must have given effect to the reconstitution of the firm. The Board members advised Ms. Das to send an email to the Director (Discipline) confirming that the reconstitution of the firm M/s Bandyopadhyaya Bhaumik & Co (FRN00041) had been done based on request for reconstitution being received from the partnership firm and not from any individual partner.

9. Ms. Malobika Das, by her email dated 20th August 2020 sent on or about stated that *"with respect to the processing of the application for reconstitution of the partnership firm 'M/s, Bandyopadhyaya Bhaumik & Co. - FRN 000041' this is to confirm that the application was processed as per the guidelines of the Institute as laid down"*.
10. 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 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. The complaint lacks merit and it is therefore, proposed that the complaint may be 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)

