



**THE INSTITUTE OF
COST ACCOUNTANTS OF INDIA**
(STATUTORY BODY UNDER AN ACT OF PARLIAMENT)
CMA BHAWAN
12, SUDDER STREET, KOLKATA – 700 016.

Telephones : 2252-1031/1034/1035
2252-1602/1492/1619
2252-7143/7373/2204
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 and Works Accountants Act
1959**

In the matter of :

Complaint No. Com/21-CA(68)/2019 –

CMA Neeraj D. Joshi (M/24118)Complainant

Vs

CMA Harshad Deshpande (M/25054)Respondent

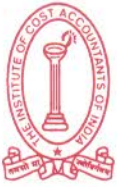
Facts

1. CMA Neeraj D Joshi (hereinafter referred to as the "complainant") bearing membership number 24118 filed a complaint dated 5th February 2019 in Form I along with the requisite fee against CMA Harshad Deshpande, (hereinafter referred to as the "respondent") bearing membership number 25054 alleging misconduct against the respondent.
2. The complaint, *inter alia*, was made on the following grounds:
 - (i) Violation of the directions issued by the Central Council under Regulation 145A of the Cost and Works Accountants Regulations 1959.
 - (ii) The Secretary (Acting) vide his letter Ref. G:142:01:2019 dated 18.01.2019 (which was received by the WIRC on 19.01.2019) had issued clear directions to the Western India Regional Council. The directions pertained to passing of necessary entries in the books of accounts of the WIRC as on 28.09.2018 to cancel debit notes against the respondent and against CMA Ashish Thatte, a member of this Institute.
 - (iii) The complaint mentions that the said entries in the accounts should be passed within 7 (seven) days from the date of receipt of the directions. The letter from the Secretary has clearly mentioned that the directions are issued as per the decision of the Central Council in its 316th Meeting.

The minutes of the 316th Meeting of the Central Council were hosted on the website of the Institute on 17.01.2019 and thus were in public domain.

The CWA Act & Regulations do not provide for asking of additional information or clarifications against the order of the Central Council under Regulation 145A.

Regulation 124 of the CWA At clearly states the functions of the Treasurer of the Regional Council as "The Treasurer shall cause proper accounts to be maintained of the moneys



DISCIPLINARY DIRECTORATE

received and expended, and of the assets and liabilities of the Regional Council"

Thus it was the statutory responsibility and duty of the respondent who was the Treasurer of the WIRC of the ICAI to give effect to the directives of the Central Council to pass necessary entries in the books of accounts of WIRC to cancel the debit notes against the complainant and another member, namely, CMA Ashish Thatte by 29.01.2019 (considering the 3 holidays in between).

- (iv) The respondent has failed to follow the directions of the Central Council, his statutory Duties as Treasurer of Central Council and is a wilful defaulter which is evident from the various email communications from WIRC to the Central Council.

Thus the respondent failed to comply with the requirements asked for by the Institute & Council.

Above misconduct falls under Clause (2), Part-3, the First schedule

- (v) The respondent, by violating clear directives issued to 'WIRC under Regulation 145A by the Central Council, has contravened the Provision of the CWA Act and Regulations framed there under and also have contravened the guidelines / directives issued by the Central Council.

Above misconduct falls under Clause (1), Part 2, the Second schedule.

- (vi) In support of the complaint, the complainant had annexed the following evidences:
Annexure 1 : Copy of the Order Under Regulation 145A issued by the Central Council.
Annexure 2: Copies of Email from WIRC to The Institute showing his wilful non-compliance with the directives of the Institute.

3. The instant complaint was registered by the Disciplinary Directorate after it was found to be in order and the same was proceeded with in the manner as prescribed in 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(68)/2019 was allotted to the complaint.
4. The respondent was intimated vide letter dated 5th March 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. The respondent, vide his letter dated 26th March 2019, denied the allegations made against him and stated that in this subject matter the Regional Council is the competent authority to take decision and which is beyond the authority of an individual Regional Council Member. Hence the act is beyond the authority of an individual and cannot be exercised by the individual therefore, the complaint is illegal and not tenable in law.
5. The Director (Discipline) formed Prima facie opinion in respect of the above mentioned information in terms of Rule 9(2)(a)(ii) of the Rules holding the respondent guilty of violation of Clause (1) of Part II of Second schedule to the CWA, Act, 1959. The Disciplinary Committee, however, did not agree with the prima facie opinion formed by Director (Discipline) and asked him to further investigate the matter in the light of subsequent developments that had taken place in various meetings of the Council.
6. The then members of WIRC pleaded that WIRC needs to call meetings of Finance Committee, Executive Committee and Regional Council meetings and before responding to the complaint of the complainant,



DISCIPLINARY DIRECTORATE

the respondent has asked for certain information from the Institute and the respondent reaffirmed his stand that he has called for certain information from Institute and WIRC. Upon receipt of the same only, he will respond and he reserved his right to be heard in person.

7. Meanwhile, the Institute Headquarters passed requisite entries for reversal of said debit notes in its books of accounts but WIRC did not pass the same. Hence, this matter has resulted in non-compliance of the directions of the Headquarters made under Regulation 145A of the Cost and Works Accountants Regulations, 1959 to the WIRC, vide letter Ref. G: 142:01:2019 dated 18.01.2019, directing the WIRC to reverse the debit notes raised against the then two Regional Council members, including the complainant.
8. A report in this regard was placed before the Disciplinary Committee in its 54th meeting held on 28th August 2021. Members of the committee informed the Director Discipline that the matter has been periodically discussed in council meetings of recent past. Finally, the Committee, advised the Director (Discipline) to further investigate the matter. Director (Discipline) was advised to get the Council decision in the matter regarding cancellation of debit note and to place the same at its next meeting of the Committee.
9. Based on the 316th & 325th Council's records of discussions, resolutions and/or directives the matter was placed before the DC on 8th September 2021 at its 55th meeting.
 - i. The matter was discussed in 316th meeting of Council held on 10th December, 2018. The relevant extract of the said meeting is as under:

"3.(ii) Status of the Debit Notes issued by NIRC & WIRC and its impact on the Accounts of the Institute.

When, this item was taken up, Chairman CMA Amit Apte and CMA Vijender Sharma, recused themselves being interested parties and CMA Balwinder Singh, Vice President, chaired the meeting for this Agenda.

After due deliberations, it was resolved to amend the Minutes of 315th Meeting held on 20th September and 28th September, 2018 to read relating to Agenda item No. 3(ii) as under:

"Resolved that, three member committee consisting of CMA Manas Kumar Thakur, Council Member ICAI, CMA Biswarup Basu, Council Member ICAI and CMA H. Padmanabhan, Council Member ICAI was committee lawfully constituted by the council. The recommendations/findings of the committee in the form of report was tabled and accepted by majority in the Council meeting after due deliberations except the dissent of Council members on land matters related to Rajarhat and Noida Building,. The recommendations/findings of the committee specifically relating to cancellation of debit notes raised on CMA Vijender Sharma by ICAI NIRC and cancellation of debit notes raised on CMA Ashish Thatte and CMA Neeraj Joshi by ICAI WIRC are accepted by Central Council of the ICAI. In view of the above, all debit notes against CMA Vijender Sharma, CMA Ashish Thatte & CMA Neeraj Joshi have no merit and these debit notes are hereby nullified, cancelled and stand withdrawn from the accounts of NIRC & WIRC of ICAI and also from the consolidated accounts of the Institute of Cost Accountants of India with effect from 28/09/2018."



**THE INSTITUTE OF
COST ACCOUNTANTS OF INDIA**
(STATUTORY BODY UNDER AN ACT OF PARLIAMENT)
CMA BHAWAN
12, SUDDER STREET, KOLKATA – 700 016.

DISCIPLINARY DIRECTORATE

Telephones : 2252-1031/1034/1035
2252-1602/1492/1619
2252-7143/7373/2204
Mail id : discipline.director@icmai.in
Website : www.icmai.in

- ii. In the 324th meeting of the Council held on 17th May and 18th May 2020, the Council decided to call Chairman and other members of Western India Regional Council for a hearing in the next meeting of the Council to explain why WIRC shall not be dissolved for violation of directions issued to them under Regulation 145A for withdrawal of debit notes.
- iii. The matter relating to cancellation/withdrawal of debit notes on the members of the WIRC was discussed and deliberated thread bare in the 325th meeting of the Council held on 28th June 2020, 5th July 2020, 19th July 2020, 21st July 2020, 22nd July, 2nd August 2020 continuing on 3rd August 2020. The gist of the proceedings is as under:

Agenda Item No. 3 Hearing of WIRC for violation of Regulation 145A of the CWA Regulations, 1959. - Date:- 28th June 2020

- a) On 28th June 2020, the Council noted that notice has been issued to the members of the Regional Council on 18th June 2020 to attend the hearing on 28th June 2020 submitting an explanation about violation of Regulation 145A of the CWA Regulations, 1959. However, no member of WIRC was present in the hearing. Accordingly, Secretary of the Council was directed to contact all such members over phone and to obtain their views on the debit notes. Some members attended the call and some wrote e-mail about their views on compliance of the direction of the Council. The council noted such non-compliance. And a following resolution was passed:

"Resolved that for non-compliance of guidelines and instructions/directives issued from Headquarters by Chapters and Regions, the Chapter/Region concerned shall be issued a notice of 21 days for ensuring compliance by the Secretary. In case of non-compliance by the Managing Committee of Chapter/Regional Council within 21 days, further notice of 21 days will be served to them by the Secretary for dissolution of the Managing Committee of Chapter/Regional Council with an opportunity of being heard."

"Resolved further that if the Chapter/Regional Council is continuing the non-compliance of directives after appropriate hearing, then it shall be dissolved by a notification issued by the Secretary under approval of the President."

- iv. Finally, on 3rd August, 2021, in the adjourned 325th meeting, it was decided that the accounts of WIRC shall be finalized under the supervision of Headquarters ensuring compliance of directions issued in respect of withdrawal of aforesaid debit notes.
- v. Accordingly, WIRC's Accounts for the year 2019-20 were prepared under supervision of the Headquarters and passed in the of WIRC AGM on 19th August 2020.



**THE INSTITUTE OF
COST ACCOUNTANTS OF INDIA**
(STATUTORY BODY UNDER AN ACT OF PARLIAMENT)
CMA BHAWAN
12, SUDDER STREET, KOLKATA – 700 016.

DISCIPLINARY DIRECTORATE

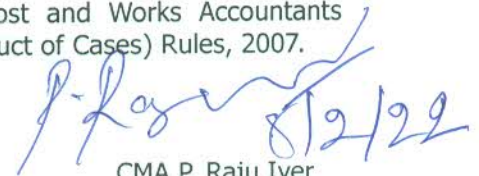
Telephones : 2252-1031/1034/1035
2252-1602/1492/1619
2252-7143/7373/2204
Mail id : discipline.director@icmai.in
Website: : www.icmai.in

Findings of the Disciplinary Committee

10. The reasons for providing the instant complaint to the Disciplinary Directorate can be attributed to the following:
- From the records, it is evident that there was a tug of war between the Central Council and the Western India Regional Council (WIRC) regarding the very imposition of debit notes on the complainant and the case therefore, has a political angle to it.
 - The Council had periodically issued directions to WIRC to reverse the debit notes which was not followed by WIRC due to some technical issues with which the Committee is not concerned.
 - Finally, the Council in its wisdom had resolved the matter by finalizing the accounts of the WIRC by reversing the debit notes.

ORDER

- Now since the matter has been put to the rest by revising the debit notes in the books of accounts of the Headquarters and WIRC, the cause of action does not exist.
- The Committee members after discussion among themselves decided unanimously to drop the complainant against the respondent.
- The complaint stands disposed of in terms of Rule 9(2)(c) of the Cost and Works Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.


CMA P. Raju Iyer
PRESIDING OFFICER
