



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

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

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ORDER

Complaint No. Com/21-CA(36)/2015 Shri Mukesh Kumar Gupta (M/12643) Vs. Shri Parveen Kumar Sharma (M/19843)

In the Matter of-

Shri Mukesh Kumar Gupta (M/12643) ----- Complainant

Vs. Shri Parveen Kumar Sharma (M/19843) ----- Respondent

1. The Disciplinary Directorate was in receipt of a complaint in Form I dated 5th December 2015 from Shri Mukesh Kumar Gupta (M/12643), complainant against Shri Parveen Kumar Sharma (M/19843), Respondent alleging that the latter has been holding full time Certificate of Practice (CoP) during the period 2012-13, 2013-14 and other financial years and has been practicing in the name and style "Parveen Sharma & Co.". At the same time, the said Shri Parveen Kumar Sharma, Respondent was working on full-time basis as Sr. Manager (F & A) with Ind-Swift Ltd, a Chandigarh based company during the same period 2012-13 and 2013-14, when he held full-time Certificate of Practice. Shri Mukesh Gupta, complainant also alleged that:
 - (i) As per the List of Voters published during the Elections to the Council and Regional councils – 2015, the name of his firm "Parveen Sharma & Co." was published in the voters list with address given as # 1024/2, sector-45-B, CHB Flats, Chandigarh – 160047.
 - (ii) This is the same address that is recorded with the Institute as his professional address.
 - (iii) Shri Sharma, Respondent has been holding a full-time Certificate of Practice (CoP) for 2012-13, 2013-14 and other financial years while he was in full-time employment for the past 15 (fifteen) years.
2. Shri Gupta, Complainant has also enclosed a copy of the e-mail purported to have been sent by the Respondent to some members on 30th May 2012 at about 10.09 A.M. wherein he had stated his designation as Sr. Manager (F & A), Ind-Swift Limited, Plot No. 781, 1A-II, Ramdarbar, Chandigarh. The Complainant in his complaint, has clearly stated that based on the evidence adduced by him, the Respondent is guilty of misconduct attracting clause (10) of Part-I of Schedule-I to the Cost and Works Accountants Act, 1959.
3. The complaint of the Complainant was sent to the Respondent vide letter Ref. No. G/DD(M-19843)/Com-CA(36)/1/01/2016 dated 4th January 2016 requesting the Respondent to submit a written statement within 21 days from the date of service of the letter.



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4. The Respondent by his letter dated 28th February 2016 apologizing for the delayed response of the Complaint stated that:

- (i) The complaint is a politically motivated and made with a malafide intention as the facts mentioned are not true.
- (ii) The complaint was filed to take revenge against the Respondent as along with other senior members of Chandigarh Panchkula Chapter of Cost Accountants (CPCCA) he had highlighted the wrong doings of the Chapter.
- (iii) The issues were raised with the Managing Committee of CPCCA including the President and the Vice President of the present term of the ICAI.
- (iv) The complaint holds no relevance as the Respondent was not a member in practice since 1st April 2013. (A printout to this effect taken from the Institute website was also enclosed with the written statement)
- (v) The CoP was in paper only which was applied in a routine manner.
- (vi) Though the Respondent held CoP during the FY 2012-13, he neither practiced nor signed any document and also did not receive any fee during the said period.
- (vii) The said CoP was also not renewed from the year 2013-14 as he did not have any intention to practice.

The Respondent has enclosed certain documents with the written statement having no relevance to the issue under discussion, some of which are:

- (a) Letter, signed by members of CPCCA, to Director (Finance) of the Institute regarding incomplete accounts and perfunctory adoption of the same at the AGM of CPCCA.
- (b) Letter dated 20th September 2015 addressed to the Chairman of CPCCA regarding calling of Extraordinary General meeting (EGM).
- (c) Various e-mails sent by the Respondent to the Chairman of CPCCA regarding administrative issue of the Chapter.
- (d) Mails sent by other members namely Shri Anil Sharma and Shri Rakesh Bhalla to the Chairman of CPCCA regarding administrative issue of the Chapter including requests for holding of EGM.
- (e) Mail dated 6th November 2016 of the Respondent addressed to the present President of the Institute complaining about the non-receipt of the annual accounts of the Chapter for the FY 2014-15.
- (f) Mail dated 17th December 2015 of the Respondent addressed to the Secretary of the Institute regarding postponement of EGM in view of the Regional Conference of NIRC that was to be



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held on 18th December 2015 at Vigyan Bhawan, Delhi, which coincided with the date of the EGM.

- (g) Mails from other member of the Chapter to the Chairman, Chandigarh-Panchkula Chapter regarding accounts, audit and other administrative matters.
5. The said written statement dated 28th February 2016 of the Respondent was duly forwarded to the Complainant vide our letter Ref No.: G/DD (M-12643)/Com-CA(36)/2/03/2016 dated 8th March 2016 requesting for a rejoinder on the written statement. In response, the Complainant vide his letter dated 20th April 2016 stated that it was quite evident from the reply dated 28th February 2016 of the Respondent that he was holding certificate of Practice during FY 2012-13 while in employment.
6. The Disciplinary Directorate vide letter Ref No. G/DD(M-19843)/2/04/2016 dated 29th April 2016 addressed to the Membership Department sought information on the following:
- (i) Whether Shri Parveen Kumar Sharma (M/19843) was a holder of Certificate of Practice (CoP) as on the date of the service of the letter?
 - (ii) If the answer to the above is in negative, if Shri Parveen Kumar Sharma was, at any time, a holder of Certificate of Practice (CoP) during the periods 2011-12, 2012-13, 2013-14 and 2014-15.
 - (iii) In case Shri Sharma happened to be a holder of CoP in any of the years mentioned above, to provide documentary evidence thereof.
7. The Membership departments vide their letter dated 2nd May 2016 replied as follows:
- (i) As on date, Shri Parveen Sharma was not a holder of Certificate of Practice.
 - (ii) Shri Parveen Sharma was the holder of COP during the periods 2011-12 and 2012-13.
 - (iii) Copies of Forms 'D' (now Form M-3) i.e., form for renewal of COP dated 24.08.11 (for FY and 7.08.12 were enclosed as evidence.
8. Also, a letter Ref No.: G/DD/(M-19843)/ISL/02/05/2016 dated 9th May 2016 was addressed to the Head (HR) of Ind-Swift Ltd requesting them to provide the following information about the Respondent:
- (i) Whether any employee by the name of Shri Parveen Kumar Sharma who is a Cost Accountant, by qualification, is working in their company.
 - (ii) If so, to provide the Disciplinary Directorate with:-
 - The date of his joining your esteemed company
 - His present designation and his initial designation at the time of joining
 - If there was any break in his employment



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- Whether he has applied for No Objection Certificate (NOC) for any purpose during the last four years of his service.

9. Ind-Swift Ltd vide their letter Ref: ISL/781/CHD/9232 dated 4th June 2016 replied that Shri Parveen Kumar Sharma, respondent was working in Ind-Swift Ltd since 4th December 2000. He is presently designated as Sr. Manager – MIS. Further, there was no break in employment and he had also not taken any No Objection Certificate (NOC) from the company during the last four years.

10. Comments from the Disciplinary Directorate

It is clear from the foregoing that Shri Parveen Kumar Sharma, respondent was in full-time employment while holding Certificate of Practice during the FY 2011-12 and 2012-13. The complaint of the Complainant that Shri Parveen Kumar Sharma held CoP during FY 2013-14 is, however, not correct as records of Membership Department reveal that he did not hold CoP during FY 2013-14. Also all along during 2011-12 and 2012-13, the Respondent was in full-time employment as evident from the letter Ref: ISL/781/CHD/9232 dated 4th June 2016 of the Dy. Manager (HR) of Ind-Swift Ltd.

It is necessary to examine the provisions of clause (10) of Part I of First Schedule to the Cost and Works Accountants Act 1959 which is reproduced below:

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:

It is also necessary to examine the provisions of clause (3) of Part II of Second Schedule to the Cost and Works Accountants Act 1959 which is reproduced below:

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

“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 particular knowing them to be false.”

The Respondent was engaged in full-time employment with Ind-Swift Limited while holding Certificate of Practice and no permission from the Council was sought in this regard. Also, he had made false statement while submitting Form ‘D’ / M-3 (form for renewal of CoP) by suppressing the fact of his full-time employment elsewhere stating ‘N.A.’ in the column meant for disclosing whether the member is engaged in other occupation.

11. **Prima facie opinion:-** 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



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and Works Accountants (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007. Shri Parveen Kumar Sharma, Respondent appears to be guilty of:

- (i) Clause (10) of Part I of First schedule to the CWA, Act, 1959
- (ii) Clause (3) of Part II of Second schedule to the CWA, Act, 1959

12. In the 26th meeting of the Disciplinary Committee held at the Delhi office of the Institute on 28th June 2016, the Committee perused the complaint dated 5th December 2015 of the Complainant, the written statement dated 28th February 2016 of the Respondent and the rejoinder dated 20th April 2016 of the Complainant and noted with grave concern that Shri Parveen Kumar Sharma, Respondent was in full-time employment in Ind-Swift Limited, a Chandigarh based company, and simultaneously holding Certificate of Practice during the FY 2011-12 and 2012-13.

The Secretary placed on table a letter Ref: ISL/781/CHD/9232 dated 4th June 2016 of the Dy. Manager (HR) of Ind-Swift Ltd, Chandigarh wherein it was stated that the Respondent had been working in the said company from the year 2000 onwards till date. He is presently designated as Sr. Manager – MIS. Further, there was no break in employment and he had also not taken any No Objection Certificate (NoC) from the company during the period when the Respondent held Certificate of Practice. The Committee members opined that there has been a clear violation of the CWA Act, 1959 as no member can be in full-time employment while simultaneously holding Certificate of Practice.

The Committee members perused the prima facie opinion framed by the Director (Discipline) in terms of Rule 9(2)(a)(ii) and noted and accepted the same. The Secretary was directed to ensure compliance of Rule 18(2)/18(3) of Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

13. Accordingly, the prima facie opinion was sent to the respondent vide letter Ref No. G/DD(M-19843)/CA(36)/2/07/2016 dated 28th July 2016 requesting Shri Parveen Kumar Sharma to file a written statement along with supporting documents and list of witnesses with a copy to the complainant in terms of Rule 18(3)/18(4) of Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. No written statement has been received from Shri Parveen Kumar Sharma, in terms of Rule 18(4) on the prima facie opinion.

14. In the 28th meeting of the DC held at Delhi office of the Institute, the Secretary of the Committee informed the members that written statement from the respondent in terms of Rule 18(4) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 has still not been received till date despite giving reminders vide letters No. G/DD/(M-19843)/CA(35)/3/01/2017 and G/DD/(M-19843)/CA(35)/4/02/2017 dated 3rd January 2017 and 16th February 2017. The Committee directed the Secretary to call the complainant and the respondent for making oral submissions in terms of Rule 18(6) of Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 at the next meeting of the Committee. Accordingly letters No. G/DD(M-12643)/CA(36)/4/02/2017 and G/DD/(M-19843)/CA(35)/4/02/2017 both dated 21st February 2017 has been sent to the complainant and the respondent requesting them to be



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present before the DC on 3rd March 2017 for making oral submission in terms of Rule 18(6) of the Rules.

15. In the meantime, the respondent by his letter dated 28th February 2017 sent his second written statement stating that:

- (i) The complaint was politically motivated.
- (ii) It was filed as revenge against the respondent as he along with a few senior members of the Chandigarh-Panchkula Chapter had highlighted the wrong doings of the Chapter in the past. The issues were raised with the Managing Committee of Chandigarh-Panchkula.
- (iii) The complaint does not hold any relevance as on date as the respondent did not hold CoP since 1st April 2013.
- (iv) Though the respondent held CoP during the FY 2012-13, he did not sign any document and did not receive any fee during this period.
- (v) Since he had no intention to practice, the CoP was not renewed from the year 2013-14.

Considering the above, the respondent feels that he did no wrong and requests for dropping the complaint. He had also enclosed several annexures stating regarding the motive of the complainant behind the complaint.

16. In the 29th meeting of the DC, the Secretary of the Committee informed the Committee members that as evident from Speed Post Tracking system, letter No G/DD/(M-19843)/CA(35)/4/02/2017 dated 21st February 2017 has not reached the respondent though letter No. G/DD(M-12643)/CA(36)/4/02/2017 dated 21st February 2017 addressed to the complainant reached him. The Committee directed the Secretary of the Committee to call both the complainant and the respondent at the next meeting of the Committee for making oral submissions in terms of Rule 18(6) of the Rules. The members also suggested that while notices requiring the appearance of the parties will continue to be sent physically, it is advisable to send the same electronically also through e-mail to the parties' respective e-mail ids registered with the Institute. Accordingly, along with hard copy of the notices, scanned copy was sent to the complainant and the respondent requiring their presence on 7th April 2017 for making oral submissions in terms of Rule 18(6) of the Rules. However, neither the complainant nor the respondent appeared at the meeting. The Secretary of the Committee placed on table a letter dated 6th March 2017 (received by the Institute on 14th March 2017) of the respondent wherein he has stated that he had received the letter regarding making oral submissions in Mumbai on 4th March 2017 and prayed that since he is a resident of Chandigarh, the hearing may be fixed at the Delhi office of the Institute instead of Mumbai. The Committee members advised the Secretary to call both the complainant and the respondent in the next meeting of the Committee to produce witnesses in support of their contention and to produce any document or material evidence in terms of Rule 18(9)/18(10) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.



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17. Accordingly both the complainant and the respondent were sent notices vide letters No G/DD(M-12643)/CA(36)/6/04/2017 and G/DD/(M-19843)/CA(36)/7/04/2017 both dated 25th April 2017 (scanned copy thereof also e-mailed on 25th April 2017) requiring the complainant to produce witnesses in support of his contention and to produce any document or material evidence in terms of Rule 18(9)/18(10) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 and the respondent to make oral submissions in terms of Rule 18(6) of the Rules at the next meeting of the Disciplinary Committee.
18. The Disciplinary Directorate in the meantime was in receipt of an e-mail on 28th April at or about 11.27 AM from the complainant stating that:
- (i) It is evident from para 5, 6 & 7 of the respondent's reply dated 28th February 2016 wherein he has admitted that he was holding CoP during the FY 2012-13.
 - (ii) He reiterates the charges filed by him in the complaint.
 - (iii) He relies on the prima facie opinion formed by the Director (Discipline).
19. The Disciplinary Directorate also received on 3rd May 2017, a letter dated 28th April 2017 of the respondent acknowledging the communication of the Disciplinary Directorate dated 25th April 2017 and submitted that:
- (i) The respondent had filed a written statement addressing the issues involved in response to the letter No. G/DD/(M-19843)/CA(36)/4/02/2017 dated 16th February 2017. [This response is the same response as the one filed by the respondent on 28th February 2016].
 - (ii) Regarding appearance before the Disciplinary Committee on 3rd March 2017, the said letter was received by him only on 4th March 2017 i.e., after a day of the meeting.
 - (iii) The next communication regarding appearance before the Disciplinary Committee on 7th April 2017 at Kolkata was received by him on 4th April 2017 which was again at short notice period. [The respondent suppresses the fact that e-mail communication was sent to him on 28th March 2017 at or about 12.26 PM].
 - (iv) Earlier he had requested to reschedule the hearing to some other date and make it convenient to fix the venue at NIRC office at Delhi as the said venue is just five hours journey from the respondent's place of residence at Chandigarh.
 - (v) Once again he has received the present communication No. G/DD/(M-19843)/CA(36)/7/04/2017 dated 25th April 2017 via e-mail directing the respondent to be present before the Disciplinary Committee at the WIRC office at Mumbai which has been fixed without considering his previous requests.
 - (vi) The respondent is in the employment in a private sector at Chandigarh and it is a costly and time consuming affair to attend proceedings at Mumbai or Kolkata.
 - (vii) Therefore, requests the hearing to be fixed at the Delhi office of the Institute.
20. The Secretary of the Committee in the 31st meeting held at Mumbai on 5th May 2017 drew the attention of the esteemed Committee to a decision taken at the 27th meeting of the Committee held at Kolkata on 23rd December 2016 wherein it was decided that in order to



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ensure speedy disposal of complaints/information and for the convenience of the complainant and the respondent to enable them appear before the Disciplinary Committee without much of a hassle, the complaints/information pertaining to a particular region be heard in the said region, to the extent possible.

21. The Committee noted the request made by the respondent and decided that he may be called for the next process as envisaged in the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 at a meeting to be held at Delhi. The charges framed against the respondent, were however, read out along with the summary of prima facie opinion as required under Rule 18(7) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. Accordingly, letter No. G/DD/(M-19843)/CA(36)/8/06/2017 dated 19th June 2017 has been sent to the respondent (scanned copy of the letter also sent subsequently) requesting him to be present in the Delhi office of the Institute on 27th June 2017 to produce witnesses in support of his contention and to produce any document or material evidence in terms of Rule 18(9)/18(10) of the Rules.
22. The respondent appeared before the Committee on the scheduled date and time and admitted that he was holding certificate of Practice during the years 2011-12 and 2012-13 while he was in full time employment of Ind-Swift Ltd where he has been working since 4th December 2000. The respondent also admitted that he was not aware of the provisions of the CWA/CWR and once he realized that retaining Certificate of Practice 'was not of his interest', he did not get the same renewed in 2013-14. He also stated that he did not undertake any cost audit during the period he held Certificate of Practice and did not do any certifications. He gave an undertaking in writing to this effect and stated that this will not be repeated in future.
23. The Committee noted the submissions made by the respondent and directed the Secretary of the Committee to issue notice to the respondent for being heard at the next meeting of the Committee in terms of Rule 19(1) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 before passing any order under sub-section (3) of Section 21B of the CWA Act, 1959. Accordingly, letter No G/DD/(M-19843)/CA(36)/9/07/2017 dated 7th July 2017 was sent to the respondent (e-mailed notice subsequently) requesting him to make it convenient to be present before the Disciplinary Committee constituted under Section 21B of the Cost and Works Accountants Act, 1959, on 15th July 2017 at 11.30 A.M. at the Institute of Cost Accountants of India, 'CMA Bhawan', 12, Sudder Street, Kolkata – 700 016 to enable him an opportunity of being heard in terms of sub-rule (1) of Rule 19 of Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 before any order is passed under Section 21B(3).
24. The respondent vide his e-mail dated 12th July 2017 sent at or about 9.39 PM stated that The respondent is in the employment in a private sector at Chandigarh and it is a costly and time consuming affair to attend proceedings at Kolkata. He therefore, requests the hearing to be fixed at the Delhi office of the Institute.

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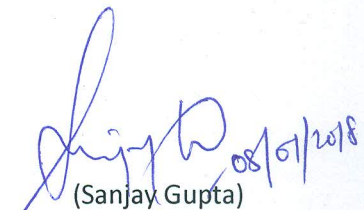
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25. The Committee deliberated on the same and concluded that no further opportunity need be given to the respondent who has himself admitted that he was holding certificate of Practice during the years 2011-12 and 2012-13 while he was in full time employment of Ind-Swift Ltd where he has been working since 4th December 2000.
26. The Disciplinary Committee concluded that the respondent is guilty of professional misconduct and takes the following action under Section 21B(3) of the CWA Act, 1959:
- (a) Reprimand
 - (b) Removal of name from the register of members for 3 (three) months

8th January, 2018


(Sanjay Gupta)
Presiding Officer