

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

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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(76)/2019

Association of Indian Medical Device Industry [Complainant]

Vs

CMA Ravi Kumar Sahni (M/16339) [Respondent]

Quorum

- | | |
|---------------------------------------|---|
| 1. CMA Ashwin G Dalwadi, | - Presiding Officer (Joined through VC) |
| 2. CMA Manoj Kumar Anand | - Member |
| 3. CMA TCA Srinivasa Prasad | - Member |
| 4. Shri Saraswati Prasad, IAS (Retd.) | - Nominee of Central Government, Member |

Facts:

1. Shri Rajiv Nath, Forum Coordinator of Association of Indian Medical Device Industry filed a complaint on behalf of Association of Indian Medical Device Industry (hereinafter referred to as the 'complainant organization') in triplicate in Form I dated 29th July 2019 against CMA Ravi Kumar Sahni, (hereinafter referred to as the 'respondent') bearing membership number 16339 together with the requisite fee as prescribed under Rule 4 of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of cases) Rules, 2007 read with Regulation 15B(1) of the Cost and Works Accountants Regulations, 1959.
2. The complaint, as stated in Form I, is reproduced below in verbatim:



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FORM I
[See sub-rule (1) of Rule 3]

1.	Name of the Complainant : (with membership number, if member of Institute of Cost and Works Accountants of India)	Rajiv Nath Forum Coordinator
2.	Name of the member/firm against whom complaint is being made: (with membership number/registration number of the firm, if known)	Ravi Kr. Sahni, FCMA M/16339
3.	Latest address of the complainant for communication	Association of Indian Medical Device Industry (AiMeD) 901-902, Narain Manzil, 23, Barakhamba Road, New Delhi Pin Code: 110001
4.	Last available professional address of the member or the firm against whom the complaint is made.	Ravi Sahni & Associates, Regd. Office: C-40, West Gorakh Park Extension, New Delhi Pin Code: 110032
5.	Particulars of allegation(s) serially numbered together with corresponding clause/part of the relevant Schedule(s), or Particulars of allegation(s) serially numbered together with clause/part of the relevant Schedule(s) under which the alleged acts of commission or omission or both would fall	1. CA Certificate for Local Content calculation cannot be for future on the basis of speculative figures of the Management of the Company. Relevant Schedule(s): Clause 3, Part I, the Second Schedule of Cost and Works Accountants Act, 1959.
6.	Particulars of evidence(s) adduced in support of the allegation(s) made.	Copies of Certificate dated 17.06.2019 are enclosed herewith.
7.	Name(s) of person who have knowledge of the facts of the case	1. Pardeep Sareen 2. Subhash Chand Madan 3. Chitta Ranjan Biswal



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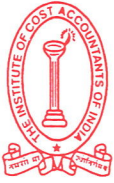
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3. On receipt of the instant complaint, the same was registered by the Disciplinary Directorate after it was found to be in order and was proceeded with in the manner as prescribed under Chapter III of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. A unique complaint number Com/21-CA(76)/2019 was allotted to the complaint.
4. The respondent was intimated vide letter dated 30th July 2019 of the Disciplinary Directorate to send his response to the complaint in his defence through a written statement within 21 days from the date of service of the letter.
5. The respondent, vide his letter dated 26th August 2019, denied all the allegations made against him and stated *inter alia* as below:-
 - (i) That the alleged complaint filed by the Sh. Rajiv Nath, representing the complainant organization had come as a surprise to the respondent in as much as, neither the respondent was ever engaged by his association or any members thereof nor the latter had ever rendered any services to them and as such, the said complaint is without any *locus standi* whatsoever and deserves to be rejected on this ground alone.
 - (ii) That the respondent admitted to the issuance of certificate in question, in the capacity of their Cost Auditor, for his client, Becton & Dickinson India Private Lid. at their request and on the basis of adequate material supplied by them, in terms of the requirements contained in tenders issued by the Ministry of Health & Family Welfare, Govt. of India namely, tender enquiry No. 12011/16/2019-Proc-I/TE/0.5 ml ADS ("0.5 ml Tender") and tender enquiry no. 12011/17/2019-Pro-I/TE/0.1 ml ADS ("0.1 ml Tender") read with Public Procurement (Preference to Make in India) Order, 2017.
 - (iii) That Sh. Rajiv Nath, Forum Coordinator of the complainant organization was guilty of wilful suppression of material facts, inasmuch as, this complaint was a result of business rivalry between Becton & Dickinson India (P) Ltd and HMD Healthcare India (P) Ltd ("HMD") which is evident from the fact that the said Sh. Rajiv Nath representing the complainant organization is also the director and majority shareholder of HMD Healthcare India (P) Ltd which was also one of the many bidders in both the aforesaid tenders.
 - (iv) That the complaint has been filed only at the behest of HMD Healthcare India (P) Ltd and is a complete abuse of process of law. The alleged complaint is nothing but a camouflage to foster the vested interest of the said company





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bidder and is an arm twisting tactics to somehow create impediment in the finalization of the tender process by Govt. of India.

- (v) That the complaint is completely false, frivolous, concocted and made with pre-conceived and malafide intent. The complainant has approached the Institute of Cost Accountants of India for furthering its vested interests and with unclean hands. The complaint is liable to be rejected outright and summarily on this ground alone. The content of the complaints except which are matters of record, are expressly denied.
- (vi) That as far as the allegation of professional misconduct as specified in Clause (3) of Part I of the Second Schedule of the Cost & Works Accountants Act, 1959 is concerned, the same is devoid of any substance whatsoever.
- (vii) That the tender invited by the Govt. of India was for the procurement of 0.5 ML, 0.1 ML AD Syringes and 5 ML disposable syringes under routine Immunization Programme, for the year 2020-2021 and 2021-2022, The tender documents in terms of Public Procurement (Preference to Make in India) Order, 2017 at clause 39.3(f) provided as under:-

"In case of procurement for a value in excess of Rs.10 crores, the local supplier shall be required to provide a certificate from the statutory auditor or cost auditor of the company (in the case of companies) or from a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than companies) giving the percentage of local content."
Since, the procurement is only for the years 2020-2021 and 2021-2022, in the Minutes of the pre-bid meeting held on 28.05.2019 for the said tender a. Sl.No.6 it was clarified by the Govt. as under:-

"... this tender is applicable for year 2020-21 & 2021-22, Hence bidders are required to meet the minimum local content criteria of 66.60% as on 1st April 2010 and 75% as on 1st April 2021."

- (viii) That, in these circumstances, the requisite certificate in terms of the aforesaid Govt. of India Order and the tender conditions has been issued on the basis of material furnished by the respondent's client Becton & Dickinson (P) Ltd. The respondent enclosed true copies of the relevant portion of the tender as well as the Minutes of Meeting dated 28.05.2019 with his written statement.
- (ix) That all the prospective bidders have also furnished the certificate only pertaining to the years 2020-2021 and 2021-2022 issued by Chartered/Cost



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Accountants because that was the requirement of the tender without which the bid would not have been considered any further.

- (x) Finally, the respondent submitted that acceptance of the contention as made in the complaint would amount to a modification in not only in the tender conditions read with the minutes of meeting dated 28.05.2019 but also of the Public Procurement (Preference to Make in India) Order, 2017.
- (xi) The respondent has submitted para-wise reply to the complaint filed on behalf of the complainant, which is reproduced below in verbatim:

Quote

1	We, Association of Indian Medical Devices Industry (AiMeD) are the umbrella body of domestic manufacturers of Medical Devices and promoting Government's flagship programme of MAKE IN INDIA.	The so called 'association' is being run and promoted by a Mr. Rajiv Nath who is the owner of HMD who has been declared as LI for [.] number of schedules in the Tenders as submitted hereinabove. AiMeD is misrepresenting facts to suit themselves and furthering its vested interests by filing its frivolous complaints. Material facts have been suppressed.
2	Under Public Procurement (Preference to Make in India), Order 2017 Dated 15.06.2017 issued by DIPP (copy enclosed), where the procurement value exceeds Rs. 10 crores, a certificate has to be issued by the Statutory Auditor or Cost Auditor of the Company (in the case of Companies) or from a practicing Cost Accountant or practicing Chartered Accountant (in respect of suppliers other than companies) giving the percentage of local content as it's a requirement to qualify for benefit under the PPO (MII) 2017 order.	A statement of fact. However, the Minutes of Meeting dated 28.05.2019 has been suppressed wherein, it has been clarified as under:- "... this tender is applicable for year 2020-21 & 2021-22, Hence bidders are required to meet the minimum local content criteria of 66.60% as on 1st April 2020 and 75% as on 1st April 2021."
3	Your member CMA Ravi Kr. Sahn, FCMA, M/16339 of Ravi Sahni & Associates, Regd. Office : C-40, West Gorakh Park Extension, New Delhi –	These certificates have been Issued in pursuance of requirement of Clause 9(b) & 13 of the Public Procurement (Preference to Make in India) Order, 2017, vide Order No P-



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	<p>110032, has issued certificates (copy enclosed) certifying that the Local Content of the stated Medical Devices will be 66.60% wef 1st April 2020 and 75.00% wef 1st April 2021, which is a gross negligence amounting to Professional Misconduct.</p>	<p>45021/2/2017-B.E-2 Dt. 15.6.2017 issued by Department of Industrial Policy and Promotion, Ministry of Commerce & Industry, Govt. of India read with clause 2 and 4(b) of the Guidelines issued vide F No. 31026/36/2016-MD Dt. 18.5.2018 by Department of Pharmaceuticals, Ministry of Chemicals and Fertilizers, Govt. of India & Office Memorandum No. Z-28015/137/2018/PP&C Dt. 18.6.2018 ("Order"). The Order was made a part of Tenders. The tendering authority called for a pre-bid meeting where representatives from HMD and other companies were duly present. The tendering authority in its minutes of meeting dated 28.05.2019 clarified that the local content requirement under the Tenders were to be by March 31, 2020 (66%) and by March 2021 (75%). Therefore, when the government tendering authority themselves permitted the local content % to be fulfilled in Financial Year 2020 and 2021, claims raised by AiMeD on behalf of M/s HMD have no relevance and should be rejected as it mocks the processes set up by our esteemed Institution to address genuine complaints. There's no gross negligence or professional misconduct as alleged, as the certificates have been issued in pursuance of a government policy and directive calling for a Professional Cost Accountant in practice or Statutory Cost Auditor of the company to issue such certificates and the same have been issued by me in the capacity of the Cost Auditor.</p> <p>The allegations are completely denied being false and frivolous and therefore having no merits and therefore, liable to be rejected in totality.</p>
4	<p>To our understanding, a Cost Accountant cannot certify anything which has yet to happen. A certificate</p>	<p>As stated earlier, these certificates have been issued in pursuance of requirement of Clause 9(b) & 13 of the Public Procurement</p>



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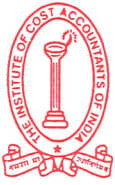
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<p>by the Cost Accountant is issued for the arithmetical accuracy of financial statement / cost records after verification and audit based on certain Cost Accounting Standards, principles, conventions and practices, which is existing or happened in the past and not for future. He is not expected to be an astrologer to predict what or how will it happen in future. By issuing the same, he has misused his position, for which the Authority and the stakeholders have placed faith and trust.</p>	<p>(Preference to Make in India) Order, 2017, vide Order No. P-45021/2/2017-B.E-2 Dt. 15.6.2017 issued by Department of Industrial Policy and Promotion, Ministry of Commerce & Industry, Govt. of India read with clause 2 and 4(b) of the Guidelines issued vide F No. 31026/36/2016-MD Dt. 18.5.2018 by Department of Pharmaceuticals, Ministry of Chemicals and Fertilizers, Govt. of India & Office Memorandum No. Z-28015/137/2018/PP&C Dt. 18.6.2018. The tender also incorporates the same.</p> <p>A professional need not be an astrologer to certify such figures as cost auditors do similar certifications where projections or projected costs/profits are included. These are permissible fields for practicing cost accountants Please refer to the official website of the institute icmai.in, for more details), for example and your ready reference to dispel doubts (quoting a few) :</p> <ol style="list-style-type: none">1. Project Reports incorporating projected costs and profitability and fund Flows, submitted to banks for considering financial assistance to the companies/others.2. Credit Monitoring Authorization Data (CMA Data) incorporating costs and profitability projections for future3. For borrowers, borrowing more than 500 crores from banks/financial Institutions, Techno-Economic Viability (TEV) and the proposed restructuring package incorporating future projections/estimates. Number of Cost Accountants are members of "Independent Evaluation Committees (IEC),4. Model Concession Agreement (MCA) on infrastructure for PPP Projects in Highways empowered by Ministry of Road Transport and Highways
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		<p>incorporating projections for future costs, revenues and Profitability No 'astrology' or 'misuse' of position has been done as wrongly alleged by you.</p> <p>The allegations are therefore, completely denied being false and frivolous and therefore having no merits and therefore, liable to be rejected in totality.</p>
5	<p>Due to the malpractices in Issuing these types of misleading Certificates, the MAKE IN INDIA efforts are undermined as pseudo manufacturers are encouraged and is a dis-service to our Nation building efforts. India requires success of this effort which is a clarion call of our Hon'ble Prime Minister to provide employment to the ever increasing population, growth of our GDP, saving of valuable foreign exchange, etc. and which should not be undermined by importers claiming to Manufacturers</p>	<p>As stated earlier, no misleading certificates have been issued. These certificates have been issued in respect of my client who has a manufacturing plant in India since 1998 duly licensed as per laws of India.</p> <p>HMD after being the L1 in only [-] no. Schedules is crying foul and camouflaging its grudge against my client by raising frivolous requests under the disguise of the so called Association of Indian Medical Device industry (AiMeD) which is being run and promoted by HMD for the such malafide purposes, is venting its anguish as to why client could succeed in getting this order through the bidding process.</p> <p>My client is a renowned company par excellence having the technology, expertise, knowhow and uncompromising quality standard to produce and sell the AD syringes, as required by the government of India for their ambitious nationwide Immunization programme.</p> <p>My client is already a market leader and is having patented technology and manufacturing facilities across the globe for such products and has been successfully contributing to manufacturing activities since 1998.</p>

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The respondent finally concludes stating that the instant complaint is completely false, frivolous, concocted and made with preconceived and malafide intention to defame a



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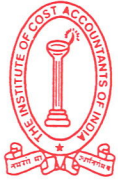
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professional, devoid of merits, hence the same should be summarily rejected and if allowed, such malpractices by the corporates to involve professionals in their corporate tussles would set a wrong precedent for professionals which is likely to damage the Integrity & professional independence of a professional.

6. The written statement dated 26th August 2019 of the respondent was sent to the complainant for sending its rejoinder on the written statement within 21 days from the date of service of the written statement.
7. Sh Rajiv Nath, on behalf of the complainant organization submitted rejoinder dated 17th September 2019 wherein denying all the submissions made by the respondent, he has *inter alia* stated that:
 - (i) The fact that the complainant has not engaged the respondent in its work is true. However, it is false to state that the complaint has to be rejected on this ground.
 - (ii) The complainant puts the respondent to cogent proof regarding adequate materials supplied by his client.
 - (iii) It is frivolous, vexatious in the part of the respondent to cast aspersions on the complainant regarding business rivalry with an intention to cover up its own professional misconduct. The respondent has suppressed the material facts and intentionally presented a distorted picture. HMD Healthcare India (P) Ltd is not at all a bidder in the said tender.
 - (iv) To put in a correct perspective it is stated that M/s. Association of Indian Medical Device Industry (AiMeD) is an umbrella organization of domestic medical device manufacturers and is a registered body which works for the promotion of domestic manufacturers and an active participant of 'Make in India' initiative of the Government of India. AiMeD is governed and led by its elected members. At present, Sh. Rajiv Nath is the Forum Coordinator of AiMeD who is also the Managing Director of Hindustan Syringes & Medical Devices Limited, which is one of the members of AiMeD and a bidder in the aforesaid tender. Apart from Hindustan Syringes & Medical Devices Limited, other technically qualified bidders such as Iscon Surgicals Ltd. and Carewell Medical Systems have also registered their complaint with the Tender Authority and approached AimeD to pursue this case, on behalf of Association.
 - (v) It is wrong to state that the complaint has been filed only at the behest of HMD Healthcare India Private Limited and it lacks bonafide. In fact, HMD Healthcare India Private Limited is not a bidder at all.
 - (vi) The certificate issued by the respondent itself prima facie reveals professional misconduct. It is wrong and incorrect to state that the certificate is as per the terms of Govt. of India Order and the tender conditions. In fact, the certificate issued by the respondent is camouflaged in such a way that it shows to the outside world that it fulfils the tender condition, which actually does not. The essence of the certificate of the



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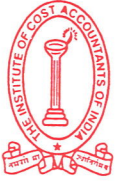
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- statutory auditor or cost auditor of the company is to ascertain whether the bidder is a local supplier or foreign bidder as per prescribed local content in the product.
- (vii) The main purpose of the Government is to encourage domestic production rather than import. "However, due to the astrology of the respondent who knows how much local content would be in future, i.e., in 2020-21 and 2021-22, he issued the certificate which is against very norms and rules of a professional behaviour. It is pertinent to note that the client of the Respondent has established its business in India in 1995 and till April 2018 it achieved local content of 27% as per its own admission in Hon'ble Delhi High Court" in which it has lost its case against the Union Government on the same local content ground. Then, how the respondent can predict the future that within nine Months, his client would fulfil this condition of 66.6% & 75%.
- (viii) The certificate furnished by other bidders are based on actual local content of the present period (on the date of the bid) as well as future based on present period. However, the respondent knew that if he mentions the present local content % then his client might not be technically qualified in the bidding process. Hence intentionally he specified the future figure without mentioning present period, which is unknown, absurd and just a mere prediction.
- (ix) The content of the paragraph regarding no violation of Clause 3 is wrong. The certificate is purely a prediction and based on contingent transaction amounting to violation of Clause 3 of Part-I of Second Schedule of the Cost & Works Accountants Act, 1959.
- (x) The respondent is portraying the picture as if the Government order says to issue the certificate for future which is bogus and misleading. In fact, the Public Procurement (Preference to Make in India) Order, 2017 is issued to encourage domestic manufacturing in India and discourage import. As per definition clause 2 of the said PP Order, "Local content" means the amount of value added in India which shall, unless otherwise prescribed by the Nodal Ministry, be the total value of the item procured (excluding net domestic indirect taxes) minus the value of imported content in the item (including all customs duties) as a proportion of the total value, in percent. "Local Supplier" means a supplier or service provider whose product or service offered procurement meets the minimum local content as prescribed under this Order or by the competent Ministries / Departments in pursuance of this order. Again, as per clause 5 of the said PP Order, "The minimum local content shall ordinarily be 50%. The Nodal Ministry may prescribe a higher or lower percentage in respect of any particular item and may also prescribe the manner of calculation of local content."

As per Category Table of clause 1 of the Guidelines Dated 18.05.2018 issued by the Nodal Ministry, i.e., Department of Pharmaceuticals, Ministry of Chemicals and Fertilizers, the local content is as follows:





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Category of Medical Devices	% of Minimum Local Local Content	% of Local Content proposed to be increased in phased manner over next three years
Medical disposables and consumables	50%	50% to 75%

The Tendering Authority in its minutes dated 28.05.2019, only clarifies the aforesaid Guidelines of the Nodal Ministry, stating that the Local content % by 1st April, 2020 would be 66% and by 1st April, 2021, it would be 75%. The Certificate of the Cost Auditor is sacrosanct and trusted by the Government, stakeholders and the public at large. By issuing this bogus and unsubstantiated certificate, the Respondent has caused a grave injury to the cause of Make in India initiative of the Government. The Respondent is guilty of gross negligence and professional misconduct.

- (xi) The complainant finally contends that the respondent has issued a misleading certificate amounting to gross negligence and professional misconduct. As the respondent is claiming himself that his client's manufacturing plant in India is from 1998 and as per his client, it achieved local content of 27% till April 2018 (as per its own admission in Hon'ble Delhi High Court), i.e., in 20 years time, how can wef 1st April 2020, the local content will be 66.60% and w.e.f. 1st April 2021, it will be 75%. It clearly shows, the respondent has compromised his professional position and issued the said Certificate for extraneous consideration, best known to him.

8. The complainant, along with his rejoinder dated 17th September 2019, has enclosed the following annexure:

- i) Minutes of Pre bid meeting held on 28th May 2019 for procurement of 0.5 ML and syringes and 5 ML disposable syringes under routine immunization programme 2020-21 and 2021-22.
- ii) Guidelines for implementation of the provisions of Public Procurement (Preference to make in India) Order (PPO), 2017, related to procurement of Goods & Services in Medical Devices vide Order F. No.31026/36/2016-MD, Ministry of Chemicals & Fertilizers, Department of Pharmaceuticals, Government of India, prescribing the percentage of minimum local content, manner of calculation of local content, verification of local content, among others.
- iii) Order dated 28th November 2018 of the Hon'ble High Court of Delhi in the matter of WP (C) 6964/2018 Becton Dickinson India Private Limited Vs. Union of India &ors.





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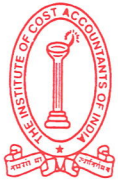
Investigation by the Directorate

9. As part of the investigation that the Director (Discipline) is empowered to do u/s 21 of the Cost and Works Accountants Act, 1959, a letter No. G/DD/Com-CA(76)/(M-16339)/02/01/2022 dated 20th January 2022 was sent to the respondent requesting him to enlighten the Disciplinary Directorate with the following information within 07 (seven) days:
- What were the requirements of the Tender Enquiry Nos 12011/16/2019-Proc-I/TE/0.5 ml ADS ("0.5 ml Tender") and 12011/17/2019-Proc-I/TE/0.1 ml ADS ("0.1 ml Tenders") invited by Ministry of Health & Family Welfare, Govt. of India for the procurement of 0.5 ML, 0.1 ML AD syringes and 5 ML disposable syringes under the routine immunization programme, for the years 2020-21 & 2021-22? Please provide a copy thereof.
 - Is it a fact that the requirement of the tender was that the bidder should have a minimum local content of 75% in 2021-22? In other words, was the requirement of fulfilling the minimum local content of 75% based on futuristic estimates? Please provide details thereof.
 - Is there any exemption available to a local supplier for meeting the 'minimum local content'? If so, please provide details thereof.
 - Did the respondent provide a certificate to his client certifying "Local Minimum Content" in the capacity of a cost auditor?
 - If his answer to (iv) above is in affirmative, to whom was the certificate provided and the reason necessitating for providing such certificate to his client? To provide a copy of such certificate provided to the respondent's client.
 - On what basis was the said 'minimum local content' certificate provided to his client and what records, documents and information was provided to him by the respondent's client to satisfy him that the 'minimum local content' for 0.5 ml syringe will be 66.60% for FY 2020-21 & 75% for FY 2021-22. A detailed calculation may please be provided.
 - Did all prospective bidders to the bid invited by the Ministry of Health & Family Welfare, Govt. of India furnish a similar certificate specifying that the 'minimum local content' for 0.5 ml syringe will be 66.60% for FY 2020-21 & 75% for FY 2021-22? If yes, please provide details thereof.

The above letter, however, was returned undelivered with the remarks "Addressee left without instructions".



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10. On the above referred letter being returned undelivered on 27th January 2022, the aforesaid content was emailed to the respondent on 31st January 2022 at or about 1.13 PM. The respondent, by an email dated 7th February 2022, sent at or about 4.33 PM attached a letter dated 5th February 2022 mostly reiterating the submissions made in his written statement. He stated that the complaint was a false one made in the disguise and using the "masked front face of so called Association of Indian Medical Device Industry (AiMeD) which is being run and promoted by a company called Hindustan Syringes and Medical Devices Ltd" for malafide purposes and intentions having their registered office at 901-902, Narain Manzil, 23, Barakhamba Road, New Delhi by the person representing the complainant organization (i.e., Shri Rajiv Nath), who is the Managing Director of the beneficiary company Hindustan Syringes and Medical Devices Ltd w.e.f. February 2019 till date and is the so called the forum coordinator of Association of Indian Medical Device Industry (AiMeD) ("masked identity") which is registered at the same address as that of the registered office of the beneficiary. The respondent had attached an annexure – 'Annexure 2' to justify his statement. On perusal of Annexure – 2, however, no such address can be seen.
11. In response to the queries raised by the Disciplinary Directorate vide its email of 31st January 2022, the respondent furnishes the following reply dated 5th February 2022 which is reproduced in verbatim:

Quote

Most respectfully, I submit the following para-wise submissions to make the facts clearer for your valued consideration:

(i)	<p>What were the requirements of the Tender Enquiry Nos. 12011/16/2019-Proc-I/TE/0.5 ml ADS ("0.5 ml Tender") and 12011/17/2019-Proc-I/TE/0.1 ml ADS ("0.1 ml Tender") invited by Ministry of Health & Family Welfare, Govt. of India for the procurement of 0.5 ML, 0.1 ML AD syringes and 5 ML disposable syringes under the routine immunization programme, for the years 2020-21 & 2021-22? Please provide a copy thereof.</p>	<p>Qualification criteria has been mentioned in Section 39.2 (Page 24) of the E Tender Enquiry No: S.12011/16/2019-Proc-I/TE/0.5 ml ADS for Purchase of 0.5 ml Auto Disable Syringes with needles for year 2020-21 and 2021-22 issued by Ministry of Health & Family Welfare, Procurement- I (vaccine procurement cell), Govt. of India, Room no. 546, "A" Wing, Nirman Bhavan, New Delhi- 110011, India (Copy enclosed as Annexure- 5) as under:</p> <p>"39.2 Minimum Local Content: A supplier shall be considered as local supplier provided the minimum local content of the offered item is 66.6% for year 2020-21 and 75% for year 2021-22. Format of calculation of local content shall be as contained in Enclosure I."</p> <p>Further Para 6 of the minutes of the Pre-bid meeting</p>
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DISCIPLINARY DIRECTORATE

		<p>Dt. 28.5.2019 (“Minutes of Pre-bid Meeting”) (Copy of minutes enclosed as Annexure- 4), the following requirements were stipulated:</p> <p>“The tender was applicable for the year 2020-21 & 2021-22. Hence, the bidders are required to meet the minimum local content criteria of 66.60% as on 1st April, 2020 and 75% as on 1st April, 2021”</p> <p>It is quite evident here that advance certification/stipulation was there to meet the local content% for the financial year 2020-21 & 2021-22 for tender issued in the year 2019.</p> <p>Para 8 of the minutes of Pre-Bid meeting stipulated reply to a question as under:</p> <p>“It was replied that local content calculations will be based on the DoP guideline dated 18th May 2018 as per its Clause no. 2 specified on page no. 120 of the tender document of 0.1 ml AD Syringes and Page no. 107 in case of 0.5 ml ADS Tender document.”</p> <p>Further, Para 10 of the minutes of Pre-Bid meeting stipulated reply to a question as under: “It was clarified that the award of criteria of contract as mentioned in clause 39.1 & 2 of the tender document will be applicable.”</p> <p>The above details make it amply clear that certification of local content of 66.60% for FY 2020-21 & 75% for FY 2021-22 was a pre-condition to be satisfied to qualify as a ‘Domestic Bidder’ in terms of the tender document issued in the year 2019, as above referred.</p>
(ii)	Is it a fact that the requirement of the tender was that the bidder should have a minimum local content of 75% in 2021-22? In other words, was the requirement of fulfilling the	<p>Yes, it is a statement of fact as detailed in Para(i) above.</p> <p>It was based on future estimates or projections as the tender document required this condition to be satisfied on the date of tendering (year 2019) but for the period after that date i.e. as on 1st April, 2020 and 75% as on</p>



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DISCIPLINARY DIRECTORATE

	<p>minimum local content of 75% based on futuristic estimates? Please provide details thereof.</p>	<p>1st April, 2021, as quoted as per Section 39.2 (Page 24) of the E Tender Enquiry No: S. 12011/16/2019-Proc-I/TE/0.5 ml ADS for Purchase of 0.5 ml Auto Disable Syringes with needles for year 2020-21 and 2021-22 (Copy enclosed as Annexure- 5) as under :</p> <p>“The tender was applicable for the year 2020-21 & 2021-22. Hence, the bidders are required to meet the minimum local content criteria of 66.60% as on 1stApril, 2020 and 75% as on 1st April, 2021”</p>										
(iii)	<p>Is there any exemption available to a local supplier for meeting the 'minimum local content'? If so, please provide details thereof.</p>	<p>No exemption was provided to anyone. It was applicable to all bidders and was to be provided as a pre-condition to qualify as a 'Domestic Supplier'. It is quite clear that these four bidders (including the beneficiary company) qualified as 'Domestic Manufacturer' by meeting all the conditions of the E tender, as referred above, including the requirement to submit local content certification for FY 2020-21 & 2021-22, without giving any exemption or relaxation on this account to any of these qualified bidders.</p> <p>Please refer to Section-I of Notice Inviting Tender E-Tender Enquiry No: S.12011/16/2019-Proc-I/TE/0.5 ml ADS (Page 3) (Copy enclosed as Annexure- 5) which states the year wise procurement quantity as under:</p> <p>E-Tender Enquiry No. S.12011/16/2019-Proc-I/TE/0.5 ml ADS</p> <p>Ministry of Health and Family Welfare, Nirman Bhawan New Delhi invites e-tenders on behalf of the President of India from the eligible and qualified Bidders for supply of following goods:-</p> <table border="1" data-bbox="630 1731 1375 1910"> <thead> <tr> <th>Year</th> <th>Brief Description of stores</th> <th>Quantity</th> <th>Max. Bld Security** (in Rs.)</th> <th>Tentative Delivery Period</th> </tr> </thead> <tbody> <tr> <td>2020-</td> <td>0.5 ml AD</td> <td>2886</td> <td>95,81,520/-</td> <td>Jun 2020</td> </tr> </tbody> </table>	Year	Brief Description of stores	Quantity	Max. Bld Security** (in Rs.)	Tentative Delivery Period	2020-	0.5 ml AD	2886	95,81,520/-	Jun 2020
Year	Brief Description of stores	Quantity	Max. Bld Security** (in Rs.)	Tentative Delivery Period								
2020-	0.5 ml AD	2886	95,81,520/-	Jun 2020								





DISCIPLINARY DIRECTORATE

		21	Syringes with needle	lakh pc.		- Feb 2021
		2021-22		3383 lakh pcs	1,12,31,560/-	Apr 2021 - Feb 2022
		Total		6269 lakh pcs	2,08,13,080/-	
		It is clearly sets out procurement for future period (FY 2020-21 & FY 2021-22) but local content conditions to be confirmed/satisfied in advance (in the year 2019) to qualify as a successful Domestic Bidder'.				
(iv)	Did you provide a certificate to your client certifying "Local Minimum Content" in the capacity of a cost auditor?	Yes, the certificate was provided by me in the name of our firm under my signature. It was issued in the capacity of Cost Auditor of the company for the year.				
(v)	If your answer to (iv) above is in affirmative, to whom was the certificate provided and the reason necessitating for providing such certificate to your client? Please provide a copy of such certificate provided to your client.	<p>The certificate was issued with complete integrity and professional independence and in utmost good faith to the management, on request of Sh. Salil Tripathy, Plant Controller of our client company M/s. BD India Private Limited, Haryana.</p> <p>The need necessitating issue of such certificate has already been explained several times in the earlier paras. It is not being repeated for the sake of brevity.</p> <p>Copy of the certificate issued is enclosed as Annexure-6 for your ready reference.</p>				
(vi)	On what basis was the said 'minimum local content' certificate provided to your client and what records, documents and information was provided to you by your client to satisfy yourself that the 'minimum local content' for 0.5 ml syringe will be 66.60% for	<p>The local content was calculated based on the methodology prescribed vide Enclosure- 1 of E-Tender Enquiry No.: S.12011/16/2019-Proc-I/TE/0.5 ml ADS (Page 110) (Copy enclosed as Annexure- 5) using the method suggested at Srl "a" of the notes as under:</p> <p>"Sum of the costs of all inputs which go into the product (including duties and taxes levied on procurement of inputs except those for which credit/setoff can be taken) and which have not been</p>				

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DISCIPLINARY DIRECTORATE

	<p>FY 2020-21 & 75% for FY 2021-22. A detailed calculation may please be provided.</p>	<p>imported/directly or through a domestic trader or an intermediary”</p> <p>Broad methodology adopted:</p> <ol style="list-style-type: none">1. Certified Bill of material was obtained from the manufacturer (our client).2. Individual items of inputs were individually certified.3. Confirmed purchase orders for all items of input i.e. raw materials, packing materials & others for the period of certification i.e. FY 2020-21 & FY 2021-22 were verified and confirmed.4. Local expenses and overheads were verified and projections about the period of certification were made based on inflation mark up ever present year actual costs.5. Cost of any imported item of inputs was carefully checked and examined and excluded from the above calculations in pursuance of the methodology enumerated above. <p>A year wise detailed calculation sheet is enclosed as Annexure- 7 for your perusal.</p>
(vii)	<p>Did all prospective bidders to the bid invited by the Ministry of Health & Family Welfare, Govt. of India furnish a similar certificate specifying that the 'minimum local content' for 0.5 ml syringe will be 66.60% for FY 2020-21 & 75% for FY 2021-22? If yes, please provide details thereof.</p>	<p>Yes, all the bidders had to satisfy the same condition about confirmation of local content for FY 2020-21 & FY 2021-22 in advance.</p> <p>There were four successful bidders of the referred e-Tender:</p> <ol style="list-style-type: none">1. BD India Private Limited, Haryana, India (“Our Client”)2. Hindustan Syringes and Medical Devices Ltd., Ballabgarh, Haryana, India (“the beneficiary Company”)3. Carewell Medical Systems, Chandigarh, India4. Iscon Surgical, Jodhpur, Rajasthan, India. <p>All of these four bidders qualified after meeting all the tender requirements including the one related to certification of local content as mentioned in Section</p>

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DISCIPLINARY DIRECTORATE

		39.2 (Page 24) of the E Tender Enquiry No. S.12011/16/2019-Proc-I/TE/0.5 ml ADS for Purchase of 0.5 ml Auto Disable Syringes with needles for year 2020-21 and 2021-22 (Copy enclosed as Annexure- 5)
	This is to state that a hard copy of the letter Ref. No. G/DD/Com-CA(76)/M-16339)/02/01/2022 dated 20 th January 2022 was sent to your professional address but the same has been returned undelivered to us with remarks "Addressee left without instructions". You are requested to confirm your professional address.	I sincerely regret the inconvenience caused to your office. Due to spread of COVID Pandemic, the office at the referred address became un-operational for affected period. I request your good office to kindly communicate in future, at my below mentioned address: CMA Ravi Kumar Sahni 408, Padmana Naidu Marg, Shakti Khand-IV, Indirapuram, Ghaziabad- 201014 Uttar Pradesh India Ph.: +91 9810063419, E-mail: cma.ravisahni@gmail.com

Unquote

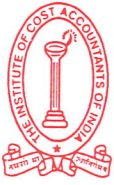
The respondent further added that:

- The referred complaint is completely false, frivolous, concocted and made with a preconceived and malafide intention to defame a professional and was made to win back a lost tender.
- Subsequent to the date of making this complaint, the tender in question has already been scrapped and discharged by the competent authority due to some gaps/inconsistencies in the terms of the tender and has therefore, certification of the local content by the undersigned has not impacted any interests of any of the stake holders associated with it, as wrongly alleged by the complainant.
- A fresh tender has already been issued by the competent authority subsequent to the date of this complaint and won successfully by both of the major manufacturers -
 - a. BD India Private Limited, Haryana, India ("Respondent's Client") &
 - b. Hindustan Syringes and Medical Devices Ltd., Ballabgarh, Haryana, India ("the beneficiary Company")

making Auto Disabled Syringes urgently required by the Government of India to support the anti COVID Mass Immunization Programme.



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12. The Disciplinary Directorate, in the meantime, by an email dated 18th January 2022 sent at or about 12.39 PM to CMA Tarun Kumar, Additional Director (Technical) of this Institute, sought the following information which is reproduced below:

"Dear Sir,

In connection with certain disciplinary proceedings against a member of this Institute, your expert opinion is sought on the following matter which is purely of technical nature:

Minimum Local Content:-

"A supplier shall be considered as local supplier provided the minimum local content of the offered item is 66.6% for year 2020-21 and 75% for year 2021-22"

The above is one of the mandatory requisites to be certified by a cost auditor for participation in the tender for procurement of 0.5 ML, 0.1 ML and syringes and 5ML disposable syringes under routine immunization programme 2020-21 and 2021-22 of the Ministry of Health and Family Welfare, Government of India.

In the above backdrop, you are requested to please enlighten this Directorate as to the following:

- (a) Is it within the purview of a cost auditor to certify the percentage of 'minimum local content' in relation to any product?
- (b) If your answer in (a) above is in affirmative, can a cost auditor vouch in the year 2019 that the "minimum local content" of a product during the FY 2021-22 would be 75%? In other words, can a cost auditor vouch in advance that a product would have 'minimum local content' during the FY 2021-22 which is based on futuristic estimates?
- (c) The justification for your opinion with relevant standards/details/write up/literature on the subject.

Yours faithfully,

Sd/-"

13. CMA Nisha Dewan, Additional Director, & Secretary, Technical Cell of the Institute of Cost Accountants of India, by an email dated 19th January 2022 sent at or about 6.25 PM replied which is reproduced in verbatim:





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"Dear Sir,

This is in reference to the trailing mail which was referred to the Technical Cell of the Institute by the Additional Director (Technical) bearing the Ref. No.: G/DD/Com-CA(76)/Addl.Dir(T)/4/01/2022 dated 18th January 2022 whereby expert opinion was sought on the subject matter. Chairman, Technical Cell of the Institute has closely noted the subject matter and finalised on the following submission.

Please note below the reply to each of the query:

- (a) **Is it within the purview of a cost auditor to certify the percentage of 'minimum local content' in relation to any product?**

Public Procurement (Preference to Make in India), Order 2017 dated June 15, 2017 issued by the Department of Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce and Industry has prescribed as under:

"In case of procurement of value in excess of Rs.10 crore, the 'Class-I local supplier'/'Class-II local supplier' shall be required to provide a certificate from the statutory auditor or cost auditor of the company (in the case of companies) or from a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than companies) giving the percentage of local content."

As per these Orders, the Cost Auditor is eligible to issue the certificate for the percentage of 'minimum local content' in respect of the purchase of syringes, if the certificate is required as a prerequisite for submission of the tender document issued by the procurement agency.

- (b) **If your answer in (a) above is in affirmative, can a cost auditor vouch in the year 2019 that the "minimum local content" of a product during the FY 2021-22 would be 75%? In other words, can a cost auditor vouch in advance that a product would have 'minimum local content' during the FY 2021-22 which is based on futuristic estimates?**

'Local Content' certificate is provided as part of tender requirements meant for future supplies.

The statement on calculation of local content percentage is prepared by the management who is responsible for the preparation and maintenance of all accounting and other relevant supporting records and documents.

Cost auditor provides such certificate based on the verification of relevant documents produced by the management. For this purpose, the cost auditor will take into consideration the proposed plan for consumption of raw material & other inputs and will rely on the estimates of Local Content calculation as prepared by the management showing imported/indigenous content of input materials and services. He will take into consideration the following supporting documents, as may be made available by the management:





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- Estimated Bill of Materials showing local/imported percentage for each;
- Localisation plan proposed for substitution of imported components/raw materials (R&D);
- Steps taken to develop job workers for substituting imported components/raw materials;
- Any contract for additional procurement of component/raw material for future supplies with the indigenous supplier(s).
- Any other documentary evidence.

The cost auditor should apply his mind judiciously and consider all details, relevant documents and explanations provided by the management of the company while issuing the LC certificates for current/future periods. There must be complete disclosure and the basis for cost computation and relevant documents used for its verification may also be clearly mentioned.

(c) The justification for your opinion with relevant standards/details/write up/literature on the subject.

Copies of the DPIIT's Public Procurement (Preference to Make in India), Order 2017 dated 15.06.2017 and as revised on 16.09.2020 are enclosed.

Further, the Institute of Cost Accountants of India has issued a Guidance Note on the subject which can be downloaded from its website https://icmai.in/icmai/Technical_Cell/GN_Local_Content.php

with best regards,
CMA Nisha Dewan
Additional Director
Secretary, Technical Cell

Along with the reply, CMA Dewan had attached two annexure –

- i. Annexure – I Public Procurement (Preference to Make in India), Order 2017 – Order No. P-45021/2/2017-(B.E-II), dated 15th June 2017 Government of India, Ministry of Commerce and Industry, Department of Industry Policy and Promotion.
- ii. Annexure – II Public Procurement (Preference to Make in India), Order 2017 – Revision Regarding – Order No. P-45021/2/2017 (B.E-II), dated 16th September 2020, Government of India, Ministry of Commerce and Industry, Department for promotion of Industry and Internal Trade (Public Procurement Section)





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14. Here the crux of the matter is whether or not a cost auditor can vouch in advance that a product would have 'minimum local content' of 66.60% or 75%, as the case may be which is based on futuristic estimates? The Disciplinary Directorate was inclined to conclude that:
- The respondent had nowhere in his written statement or in his response to the query made by the Directorate disclosed in detail the methodology adopted in arriving at the conclusion that the local content for 0.5 ml syringe with needle will be 66.60% and 75% in FY 2020-21 & 2021-22 respectively.
 - Such a certificate not backed by any judicious conclusion only leads one to conclude that such local content declaration was given only to enable Becton & Dickinson India Private Ltd, i.e., his client company to participate in the Tender process of Ministry of Health.
 - There is nothing on record to prove that the respondent has taken into consideration the following supporting documents, as may be made available by the management:
 - Estimated Bill of Materials showing local/imported percentage for each;
 - Localisation plan proposed for substitution of imported components/raw materials (R&D);
 - Steps taken to develop job workers for substituting imported components/raw materials;
 - Any contract for additional procurement of component/raw material for future supplies with the indigenous supplier(s).
 - Any other documentary evidence.
 - It is an admitted fact that the main purpose of the Government is to encourage domestic production rather than import. The essence of the Certificate of the statutory auditor or cost auditor of the company is to ascertain whether the bidder is a local supplier or a foreign bidder as per prescribed local content in the product. In fact, the client of the respondent apprehended the situation and got clarification vide Sl. No. 5 of the Minutes of the pre-bid meeting dated 28th May 2019 which states to get exemption from the nodal ministry for not fulfilling local content criteria. From the minutes of the said Pre Bid meeting held on 28th May 2019 it is observed in serial no 5 (Page No 2) that "BD India requests to be considered as 'local supplier' (while being L2/L3/L4) even if local content is less than required as company has already invested in India by way of factory expansion, Technology transfer, testing capabilities, generating local employment, vendors, and taxes, all after securing a valid manufacturing license." From the minutes of the Pre Bid it is evident that Becton & Dickinson India Private Ltd, the client of the respondent was itself apprehensive of not fulfilling the 'local content' criteria and hence requested to be a local supplier even if the local content was less than that required.
 - The Order dated 28th November 2018 of the Hon'ble Delhi High Court (enclosed as Annexure – C by the complainant organization) in the matter of Becton & Dickinson India





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Private Ltd Vs. Union of India [W.P. (C) 6964/2018] bears testimony to the fact that since its business in India in 1995 and till April 2018, it achieved local content of 27% as per its own admission in Hon'ble Delhi High Court in which it has lost its case on the same local content ground. It is therefore, extremely unlikely that the client would fulfil this condition of 66.6% & 75% within a period of nine months.

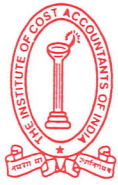
15. Based on the above contentions, Director (Discipline) formed the prima facie opinion against the respondent which was placed at the 70th adjourned meeting held on 26th February 2023 in terms of Rule 9(2)(a)(ii) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. However, the prima facie opinion was not agreed to by the Committee and the learned members advised Director (Discipline) to further investigate the matter in terms of Rule 9(2)(c) of the Rules.
16. The Director (Discipline) was directed to communicate with the client company of the respondent, to whom the respondent had furnished the impugned certificate, requesting the company to confirm the quantum of local content actually offered in respect of Hypodermic syringes 0.1 ml to 10 ml with and without needles for FY 2020-21, and 2021-22 for placing the same in the next meeting of the Committee. Accordingly, Director (Discipline) vide letter No. G/DD/Com-CA(76)/BDIL/1/03/2023 dated 1st March 2023 sent a letter to Becton Dickinson India (P) Ltd, Delhi stating that M/s Ravi Sahni & Associates, Cost Accountants had certified on 17th June 2019 in respect of the company having manufacturing facility at Bawal, Haryana, and having a manufacturing capacity of Hypodermic syringes 0.1 ml to 10 ml with and without needles the local content which is stated below:
- (1) W.e.f. 1st April 2020, Local content will be 66.60%
- (2) W.e.f. 1st April 2021, Local content will be 75.00%.

In this connection, the company was requested to confirm as to the following:

- I. Whether or not the local content offered in respect of Hypodermic syringes 0.1 ml to 10 ml with and without needles was actually 66.60% during the FY 2020-21, and
- II. Whether or not the local content offered in respect of Hypodermic syringes 0.1 ml to 10 ml with and without needles was actually 75.00% during the FY 2021-22

Also, to mention whether or not such certification was done by M/s Ravi Sahni & Associates, Cost Accountants based on the documents and records provided to the said firm.





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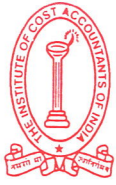
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17. Shri Abhay Kumar Jain, Head-Plant Management of Becton Dickinson India (P) Ltd vide their letter dated 17th March 2023 stated that "the local content data is confidential and not publicly available" and denied divulging information on the same. However, another letter No. G/DD/Com-CA(76)/BDIL3/03/2023 dated 31st March 2023 was again sent to Becton Dickinson India (P) Ltd requesting for the information forthwith.
18. In the 71st meeting of the Disciplinary Committee held on 18th April 2023, the prima facie opinion formed by Director (Discipline) together with the documents relied upon was placed before the Committee in terms of Rule 9(2)(a)(ii) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 and the prima facie opinion was accepted and agreed to by the Disciplinary Committee in terms of Rule 9(2)(b) of the said Rules holding the respondent guilty of violation of the following provisions of the Cost and Works Accountants Act, 1959:
- Clause (2) of Part IV of The First Schedule to the CWA, Act, 1959
 - Clause (3) of Part II of Second schedule to the CWA, Act, 1959
 - Clause (7) of Part I of Second schedule to the CWA, Act, 1959
19. The Director (Discipline) was directed to ensure compliance of Rule 18(2) (a) and 18(2) (b) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 i.e., it may cause to deliver to the respondent and the complainant, the prima facie opinion formed by the Director (Discipline) in pursuance of Rule 18(2)(a) and particulars and documents relied upon by the Director (Discipline) during the course of formulation of prima facie opinion in pursuance of Rule 18(2)(b) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 along with copies of all relevant papers placed before the Disciplinary Committee.
20. In accordance with such directives of the Disciplinary Committee, the prima facie opinion together with the documents relied upon was sent both to the complainant and the respondent under the cover of letter Nos. G/DD/Com-CA(76)/PFO/4/04/2023 and G/DD/Com-CA(76)/(M-16339)/PFO/05/04/2023 both dated 21st April 2023 calling upon the respondent to file a written statement within 21 (twenty one) days from the date of service of the letter under reference. The speed post receipt shows that the letter No. G/DD/Com-CA(76)/(M-16339)/PFO/05/04/2023 addressed to the respondent has reached him on 29th April 2023.
21. In the meantime, Becton Dickinson India (P) Ltd, vide their letter dated 24th April 2023 in response to the Disciplinary Directorate's letter No. G/DD/Com-CA(73)/BDIL2/03/2023, stated as follows:



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"Dear Sir/Mam,

We are in receipt of your abovementioned letter bearing reference no. G/DD/Com-CA(73)/BDIL/1/02/2023 dated 21/03/2023. We apologise for the delay in revert.

As informed earlier the local content is non-public information. However, in the spirit of transparency and as a good corporate citizen we are happy to provide you with the following information:

- (a) The tender mentioned in your letter dated 1/03/2023 pertained to hypodermic needles whereas local content requirement pertains to a different set of products i.e. Auto Disable Syringes with needles 0.1 & 0.5 ml which was planned to be procured by Gol.
- (b) Certification was done by Ravi Sahni & Associates, Cost Accountants basis the information provided to them by us.
- (c) Certification for local content was the requirement under the rules and regulations framed by the Govt. of India that inter-alia required bidders to provide their plan on increasing the local content while manufacturing products in India. The futuristic projections about local content were given by other bidders and their respective Cost Auditors as well as a part of the tender conditions.
- (d) Kindly note the tender was cancelled by the Government of India and accordingly, we reserved our right to plan and our production accordingly.

We sincerely hope this gives you the necessary information. We are happy to meet you personally and provide clarification, if needed in your Delhi office."

22. In the 72nd meeting of the Disciplinary Committee held on 6th May 2023, the learned members advised Director (Discipline) to issue notice under Rule 18(6) of the Rules, both to the complainant and the respondent for making oral submission in the next meeting of the Committee. In accordance with such directions of the Committee, notices dated 19th May 2023 were served through mail and in physical form under the cover of letter Nos. G/DD/Com-CA(76)/PFO/505/2023 and G/DD/Com-CA(76)/(M-16339)/06/05/2022 dated 19th May 2023 calling upon both the complainant and the respondent respectively to be present before the Disciplinary Committee at the Institute Headquarters at Kolkata on 29th May 2023 for making oral submissions, if any, under Rule 18(6) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 Rules.





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23. The complainant, on receipt of such notice under Rule 18(6) of the Rules, by an email dated 25th May 2023 received at or about 8.13 A.M., sent the following response to the Disciplinary Directorate which is reproduced below:

"Dear Mr. Rajendra Bose ji,

We acknowledge the receipt of your email dt : 19.05.2023 and duly noted the contents of the same.

We are pleased to confirm the Names of the below mentioned AiMeD Representatives will appear virtually before the Disciplinary Committee on Monday, the 29th May 2023 at 10.45 AM at The Institute of Cost Accountants of India, 'CMA Bhawan', 12, Sudder Street, Kolkata for making oral submissions, if any, under Rule 18(6) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 Rules.

Mr. Rajiv Nath, Forum Coordinator, AiMeD
Mr. Chitta Ranjan Biswal, Company Secretary, Hindustan Syringes & Medical Devices Ltd

Warm Regards,

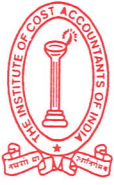
Rajiv Nath
Forum Coordinator
Association of Indian Medical Device Industry (AiMeD)"

24. In the 73rd meeting of the Disciplinary Committee held at Kolkata on 29th May 2023, Director (Discipline) informed the Committee members that notices dated 19th May 2023 were served through email and in physical form under the cover of letter Nos. G/DD/Com-CA(76)/PFO/505/2023 and G/DD/Com-CA(76)/(M-16339)/06/05/2022 dated 19th May 2023 calling upon both the complainant and the respondent to be present before the Disciplinary Committee at 10.45 AM and 11.15 AM respectively for making oral submissions, if any, under Rule 18(6) of the Rules.

25. Shri Rajiv Nath, representing, the complainant organization, appeared at the scheduled date and time and made the following oral submissions:

- (i) Association of Indian Medical Device Industry (AiMeD) is an umbrella organization of domestic medical device manufacturers and is a registered body which works for the





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DISCIPLINARY DIRECTORATE

promotion of domestic manufacturers and it is an active participant of Make in India initiative of the Government of India. AiMeD is governed and led by its elected members.

- (ii) Shri Rajiv Nath introduced himself stating that he represents the Forum Coordinator of AiMeD who is also the Managing Director of M/s. Hindustan Syringes & Medical Devices Limited, which is one of the members of AiMed and a bidder in the aforesaid tender.
- (iii) The respondent has abused his position as a Cost Accountant and gave a false certificate without proper verification of data.
- (iv) This certificate was given for Becton Dickinson India Private Ltd for complying with local content based on future estimates.
- (v) The main purpose of the Government is to encourage domestic production rather than import. He added that the respondent is not a fortune teller who will know how much local content would be in future, i.e., in 2020-21 and 2021-22, he issued the certificate which is against very norms and rules of a professional behaviour.
- (vi) The client of the respondent has established its business in India in 1995 and till April 2018 it achieved local content of 27% as per its own admission in Hon'ble Delhi High Court in which it has lost its case against Government of India on the same local content ground. Then, how the respondent can predict the future that within nine Months, the client would fulfil this condition of 66.6% & 75%.
- (vii) The certificate furnished by other bidders were based on actual local content of the present period (on the date of the bid) as well as future based on present period. However, the Respondent knew that if he mentions the present local content percentage then his client might not be technically qualified in the bidding process, hence intentionally he specified the future figure without mentioning present period, which is unknown, absurd and just a prediction.
- (viii) The certificate is purely a prediction and based on contingent transaction amounting to violation of Clause 3 of Part-I of Second Schedule of the Cost & Works Accountants Act, 1959.

Shri Rajiv Nath, appearing for the complainant organization was asked if he was the Managing Director of a rival company of Becton Dickinson India Private Ltd to which he replied in the affirmative. Finally, in response to a query of an esteemed member of the Disciplinary Committee, as to whether the certificate of projections by the Cost Auditor was mandatorily required, Shri Rajiv Nath stated that he would like to furnish a detailed reply very soon.

The respondent, however, did not appear for the oral submissions. The Committee decided to





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DISCIPLINARY DIRECTORATE

afford one more opportunity to the respondent for making oral submissions under Rule 18(6) of the Rules.

26. The Disciplinary Directorate, in the meantime, was in receipt of an email dated 30th May 2023 at or about 10.27 A.M. from the respondent showing that he had changed his address, though the Disciplinary Directorate was not aware of the same and have been communicating with him at his erstwhile address. The email of the respondent is reproduced below:

"The Director Discipline

Greetings

This has reference to the above referred matter.

This is to bring to your kind notice that I've not received any update on my this official email id (cma.ravisahni@gmail.com) (also my official e mail id as per Institute data base) meant for communication with me, or any other mode ie. by post etc, for last many months, hence I'm not aware of any developments or update in this matter.

You are kindly requested to communicate me any updates on this matter on my above referred e mail id only along with registered letter at my below mentioned address:

408, Padmana Naidu Marg, Shakti Khand-IV, Indirapuram, Ghaziabad- 201014 Uttar Pradesh
India

Any matter dealt/update without any notice to me shall be treated as null and void and will not have any force of law, as opportunity of being will deemed to have not been provided in that case.

Thanking you for your valued cooperation.

CMA RAVI KR. SAHNI
FCMA , M/16339

Regd. Independent Director IDDB-NR-202004-022064

|Principal Consultant | Sr. Partner

|RAVI SAHNI & CO. | RAVI SAHNI & ASSOCIATES"





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27. The letter No. G/DD/Com-CA(76)/(M-16339)/PFO/4/04/2023 dated 21st April 2023 together with a copy of the prima facie opinion dated 18th April 2023 and the documents relied upon by Director (Discipline) in forming such opinion was once again sent to the respondent at his present address vide letter No. G/DD/Com-CA(76)/(M-16339)/07/05/2023 dated 30th May 2023 with a request to file a written statement in terms of Rule 18(4) of the Rules within 21 (twenty one) days from the date of service of the letter. The respondent had confirmed over telephone, the receipt of the same.
28. In the 74th meeting of the Disciplinary Committee held on 10th June 2023, the Director (Discipline) informed the Committee members that prima facie opinion formed by Director (Discipline) under Rule 9(2)(a)(ii) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 together with the documents relied upon by Director (Discipline) was considered and agreed to by the Disciplinary Committee at its 71st meeting held on 18th April 2023 pursuant to Rule 9(2)(b) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, a copy of which was duly forwarded to the respondent under the cover of letter No. G/DD/Com-CA(76)/(M-16339)/PFO/4/04/2023 dated 21st April 2023 with a request to file a written statement within 21 (twenty one) days from the date of service of the letter under reference. The respondent, by an email dated 30th May 2023 sent at or about 10.27 A.M. to the Disciplinary Directorate stated that the respondent had changed his address, though the Disciplinary Directorate was not aware of the same and had been communicating with him at his erstwhile address. It was further informed to the learned members of the Committee that the prima facie opinion dated 18th April 2023 and the documents relied upon by Director (Discipline) in forming such opinion was once again sent to the respondent at his present address vide letter No. G/DD/Com-CA(76)/(M-16339)/07/05/2023 dated 30th May 2023 with a request to file a written statement in terms of Rule 18(4) of the Rules within 21 (twenty one) days from the date of service of the letter. The respondent had confirmed over telephone the receipt of the same.
29. In the same meeting on 10th June 2023, the Committee directed Director (Discipline) to call the respondent in the next meeting of the Committee for making oral submissions under Rule 18(6) of the Rules. In accordance with such directives of the Committee, letter No. G/DD/Com-CA(76)/(M-16339)/06/06/2022 dated 23rd June 2023 was sent to the respondent requesting his appearance before the Committee on 29th June 202 to make oral submissions under Rule 18(6) of the Rules at 11.30 AM.
30. The respondent, by an email dated 25th June 2023 sent at or about 9.19 AM stated as follows:





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"Dear Sir

Greetings of the day.

In reference to your trailing mail, you are requested to kindly share the weblink to attend the meeting, as I would attend the meeting in virtual mode.

Thanks & Regards,

CMA RAVI KR. SAHNI
FCMA

Regd. Independent Director IDDB-NR-202004-022064

|Principal Consultant | Sr. Partner

|RAVI SAHNI & CO. | RAVI SAHNI & ASSOCIATES"

31. In the 75th meeting of the Disciplinary Committee held on 29th June 2023, the respondent duly appeared on the scheduled date and time. The charges were read out as required under Rule 18(7) of the Rules. The respondent denied all the charges and made *inter alia* the following oral submissions:

- i. That the respondent admitted the issuance of certificate in question, in the capacity of their Cost Auditor, for his client, Becton & Dickinson India Private Lid. at their request and on the basis of adequate material supplied by them, in terms of the requirements contained in tenders issued by the Ministry of Health & Family Welfare, Govt. of India namely, tender enquiry No. 12011/16/2019-Proc-I/TE/0.5 ml ADS ("0.5 ml Tender") and tender enquiry no. 12011/17/2019-Pro-I/TE/0.1 ml ADS ("0.1 ml Tender") in question read with Public Procurement (Preference to Make in India) Order, 2017.
- ii. That all the prospective bidders have also furnished the certificate only pertaining to the years 2020-2021 and 2021-2022 issued by Cost Accountants because that was the requirement of the tender without which the bid would not have been considered any further.
- iii. It is quite evident here that advance certification/stipulation was there to meet the local content% for the financial year 2020-21 & 2021-22 for tender issued in the year 2019.





DISCIPLINARY DIRECTORATE

- iv. That the certificate was issued with complete integrity and professional independence and in utmost good faith to the management, on request of Sh. Salil Tripathy, Plant Controller of our client company M/s. BD India Private Limited, Haryana.
- v. That the local content was calculated based on the methodology prescribed vide Enclosure-1 of E-Tender Enquiry No.: S.12011/16/2019-Proc-I/TE/0.5 ml ADS. A detailed calculation has been provided in the written statement dated 26th August 2019.
- vi. That the respondent had personally visited the plant and all individual items were inspected to find out the imported content.
- vii. That the complaint was a result of business rivalry between Becton & Dickinson India (P) Ltd and HMD Healthcare India (P) Ltd ("HMD") which is evident from the fact that the said Sh. Rajiv Nath representing the complainant organization is also the director and majority shareholder of HMD Healthcare India (P) Ltd which was also one of the many bidders in both the aforesaid tenders.
- viii. That no supplies have been made and therefore no rights of the parties have been affected. This tender was withdrawn subsequently.
- ix. That the complaint is completely false, frivolous, concocted and made with pre-conceived and malafide intent.

Finally, the respondent prayed before the Committee to quash the proceedings and drop the proceedings against the respondent.

The Committee directed Director (Discipline) to call the respondent at the next meeting of the Committee to appear before the Disciplinary Committee under Rule 18(9) of the Rules for examination of witness and production of documents.

32. In accordance with such directives of the Committee, a letter No. G/DD/Com-CA(76)/(M-16339)/07/07/2023 dated 13th July 2023 was issued to the respondent requiring his presence at Delhi office of the Institute on 20th July 2023. The respondent appeared on the scheduled date and time under Rule 18(9) of the Rules and submitted as follows:

- That all the prospective bidders have also furnished similar certificates only pertaining to the years 2020-2021 and 2021-2022 issued by Cost Accountants in practice because that was the requirement of the tender without which the bid would not have been considered any further.





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DISCIPLINARY DIRECTORATE

- That the complaint was a result of business rivalry between Becton & Dickinson India (P) Ltd and HMD Healthcare India (P) Ltd which is evident from the fact that the said Sh. Rajiv Nath representing the complainant organization is also the director and majority shareholder of HMD Healthcare India (P) Ltd which was also one of the many bidders in the aforesaid tenders.
- That within a period of 06 (six) months of the issuance of the tender, the same was withdrawn and no supplies were made against the tender. So none of the parties' interest was affected. HMD Healthcare India (P) Ltd which was one of the bidders also submitted a similar certificate as one of the requirements of the tender.
- That the question of professional misconduct did not arise in the instant case as full justification was obtained from Becton & Dickinson India (P) Ltd for issuance of the certificate which was not based on projections but on future arrangements. It was neither an estimate nor a calculation but made purely on the basis of future arrangement made by Becton & Dickinson India (P) Ltd.
- That the certificate was issued with complete integrity and professional independence and in utmost good faith to the management, on request of Sh. Salil Tripathy, Plant Controller of the respondent's client company BD India Private Limited, Haryana.
- That on the date of certification i.e., on 17th June 2019, the Institute did not have any prescribed guidelines for certifying future projections.

The respondent also produced, as evidence, literature of HMD Healthcare India (P) Ltd where Shri Rajiv Nath i.e., the person representing the complainant organization who has been shown as the Managing Director of the company. In fact, Shri Rajiv Nath is also the President of Syringes & Needles Mfg, Association and the Founder and Forum Coordinator at the Association of Medical Device Industry (AIMED).

Findings

33. *The Committee noted that it is a fact that the complainant's organization was indeed a business rival of BD India Private Limited and there may be a likelihood that the instant complaint could have emanated from such business rivalry. The learned members of the Committee, at the same time, were of the view that there was no malafide intent by the respondent and based on documents submitted and evidence produced by the respondent, there was no professional misconduct by him.*





DISCIPLINARY DIRECTORATE

34. In the 76th meeting of the Committee held on 20th July 2023, the learned members of the Committee directed Director (Discipline) to communicate with the complainant organization and to find out whether the said organization, which was also one of the bidders in the tender, submitted a similar certificate based on future projections. In accordance with such directives of the Disciplinary Committee, a letter No. G/DD/Com-CA(76)/PFO/6/10/2023 dated 13th October 2023 was sent to the Shri Rajiv Nath of the complainant organization asking him to submit as to whether his organization, which was also one of the bidders in the tender, *submitted a similar certificate based on future projections*. If so, to provide a copy of such certificate submitted by your organization. Another letter No. G/DD/Com-CA(76)/PFO/7/10/2023 dated 27th October 2023 was also sent requesting for the complainant organizations' response.
35. Shri Rajiv Nath, representing the complainant organization, by an email dated 6th November 2023 sent at or around 9.14 AM *inter alia* stated that "one of our member company M/s. Hindustan Syringes and Medical Devices Limited (HMD), which had participated in the bidding process of the tender, then please find enclosed herewith the same. Kindly notice that their Auditor never said that the local content – will be with effect from 1st April, 2020 or 2021 as was futuristically claimed by the said CMA Ravi Kumar Sahni. It was a simple calculation as per format of the DOP based on the existing local content of manufacturing as on date of certification (23.05.2019)."
36. In the 77th meeting of the Committee held on 9th November 2023, the learned members of the Committee noted *that if advance certification/stipulation by a chartered accountant or cost accountant in practice was a precondition for bidding for the tender so as to meet the local content percentage for the financial year 2020-21 & 2021-22 for tender issued in the year 2019, then the member in practice has no recourse but to comply with the same.*

Order

37. The Committee has given a very thoughtful consideration to the complaint, the written statement, the communication made from time to time by the Disciplinary Directorate to the complainant, respondent and to Becton & Dickinson India (P) Ltd and considering the usual practice of certifying projected figures by a cost accountant in practice, the Committee is of the view that:
- The respondent had issued the certificate in pursuance of requirement of Clause 9(b) & 13 of the Public Procurement (Preference to Make in India) Order, 2017, vide Order No. P-45021/2/2017-B.E-2 Dt. 15.6.2017 issued by Department of Industrial Policy and Promotion, Ministry of Commerce & Industry, Govt. of India, which was a mandatory requirement of the tendering process.
 - The respondent had provided the certificate on the basis of documents/ Data and information furnished by the manufacturer based on his professional prudence and skill.





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DISCIPLINARY DIRECTORATE

- iii. That the certificate was issued with professional independence based on his professional competence as a cost and management accountant.
- iv. There is no professional misconduct on the part of the respondent and the respondent had acted with due care and caution as expected from a professional.
38. The instant complaint, therefore, lacks merit and the Committee unanimously agrees that the proceedings against the respondent be dropped and the matter is hereby closed in accordance with Rule 9(2)c) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.
39. The matter accordingly, stands disposed of.

December 20, 2023

S
(SARAJWATI PRASAD)

TCHQ
CTCA Srinivasa
Prasad

Ashwin G Dalwadi
CMA Ashwin G Dalwadi
PRESIDING OFFICER

Amrith Kumar Reddy

