



**THE INSTITUTE OF
COST ACCOUNTANTS OF INDIA**
(STATUTORY BODY UNDER AN ACT OF PARLIAMENT)
CMA BHAWAN
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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(50)/2017 –

Shri Ashish Prakash Thatte (M/27543)Complainant

Vs.

Shri Ashok B. Nawal (M/5720).....Respondent

ORDER

A complaint dated 19th May 2017 in Form I in triplicate was filed with prescribed application fee of Rs 2500/- under Section 21 of the Cost Accountants Act, 1959, read with Sub-Rule (1) of Rule 3 of the Cost and Works Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, (hereinafter referred to as "the Rules") by Shri Ashish Prakash Thatte (hereinafter referred to as the 'Complainant') bearing membership number 27543) against Shri Ashok B. Nawal (hereinafter referred to as the 'Respondent') bearing membership number 5720 alleging contravention of certain provisions of the Cost Accountant Works Act, 1959 and the rules made there under.

2. The contravention, according to the complainant, was of the Cost and Works Accountants Act, Rules and Regulations which are stated below:

i. Clause (4) of Part I of the First Schedule –

The respondent is occupied in Business through Panchavati Business Solutions LLP hereinafter referred as (PBSL). Panchavati Business Solutions LLP is involved in business as mentioned in LLP Agreement as follows:

"To carry on the Business of Shipping Agents, Custom House Agents, Clearing & Forwarding Agents, Chartering Agents, Transshipment and Warehouseman, Multimodal Transport operations, haulage proprietors, barge owners, stevedore's, clearing agents, underwriters, insurance brokers, managers of shipping properly, freight contractors, carries by sea and to undertake and carry on all any of the

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trades and business of shippers, ship owners, ship brokers, ship agents, ship under writers, ship managers, tug owners and carries, insurance brokers, loading brokers, freight brokers, freight contractors, carriers of goods and passengers by water transport haulage and general contractors, railway within or outside India." For doing the above business he has entered into partnership with 2 persons who are not CMAs. One Mr. Venkatchalam Aiyer and Mr. Hemant Sonar. The CWA Act and Rules framed thereunder does not permit any practicing Individual to enter into Partnership other than Cost Accountant whereas these 2 persons are not Cost Accountant. LLP Agreement as proof of the same was also attached. The same was downloaded from MCA website by paying requisite fees from MCA website and challan for the same was also attached.

- ii. Clause (10) of Part I of the First Schedule –
The respondent declared himself as Designated Partner of such PBSL dated 6th January 2017 and filed form No. 4 for LLP prescribed by MCA on MCA Website. His declaration for acting as Designated Partner was attached along with Form 4 .By accepting position of Designated Partner in this LLP with contribution in profit and loss of 59.87% which is controlling stake for any entity. He drew attention to Clause 12 of LLP Agreement wherein Designated Partner is supposed to look after day to day functions which is totally prohibited for Practicing Cost Accountant. The respondent further reconfirmed about he being designated partner of PBSL by filing annual return in Form 11 on MCA website dated 17th May 2017 about 7.00 PM. The same form was attached.
- iii. Clause (1) of Part II of the Second Schedule –
The Institute has issued guidelines dated 1st February 2012 which prohibits entering into LLP with any person other than Cost Accountant. As per these guidelines, Cost Accountants are allowed to convert their current Partnership into LLP or form new LLP with other Cost Accountant only. As per clause 22 of the referred guidelines it is very clear that for such LLP also permission is to be taken from Council of Institute. Under the case of PBSL it is not possible to determine of the permission was sought and was given or not but since no documents are attached with company on MCA website for such permission it is believed that permission was not sought or sought but not accorded. The same guidelines were attached.
- iv. Clause (3) of Part II of the Second Schedule –
It was serious offence on the part of the respondent that he, after giving his consent to act as designated partner in partnership firm with non-cost accountants, he applied for renewal of Certificate of Practice wherein he had declared to the Council of Institute in clause 2 as follows: "I hereby declare that I am not engaged in any other business or occupation besides the profession of Accountancy. If and when I intend to be so engaged I shall obtain the prior permission of the Council." Therefore while declaring the same to Council of the



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Institute of Cost Accountants of India through its Secretary, the respondent gave a false statement willfully on the form M-3 which for renewal of Certificate of Practice. His details of renewal of Certificate of Practice was taken from institute website and attached.

3. In support of the complaint, the complainant had annexed the following evidences:

Annex 1: Copy of LLP Agreement

Annex 2: Copy of Declaration for Acting as Designated Partner in LLP by Shri Ashok Nawal

Annex 3: Copy of form 4 filed by PBSL on MCA website

Annex 4: Guidelines of The Institute of Cost Accountants of India on forming LLP

Annex 5: Copy of details of Certificate of Practice of Shri Ashok Nawal

Annex 6: Copy of M-3 Blank form for renewal of Certificate of Practice

Annex 7: Challan of MCA for viewing public documents

Annex 8: Copy of Form 11 filed by PBSL dated 17th May 2017 signed by Shri Ashok Nawal as Designated Partner.

4. The complaint was registered by the Disciplinary Directorate after it was found to be in order and the same proceeded with in the manner as prescribed in Chapter III of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. A unique complaint number Com-21/CA(50)/2017 was allotted to the complaint.

5. The respondent was intimated vide letter dated 1st June, 2017 to send his response to the complaint through a written statement in his defence within 21 days from the date of service of the letter. However, the respondent even after the expiry of eight months, did not respond to the Disciplinary Directorate making abundantly clear that he had nothing to state in his defence in the matter. Hence, as per proviso to sub-rule (5) of Rule 8 of the Rules, it was presumed by the Disciplinary Directorate that the respondent had nothing further to state and the Directorate proceeded to take further action as provided under Chapter III of the Rules.

6. The Prime facie opinion against the respondent was formed and placed before the Disciplinary Committee in terms of Rule 9(2)(a)(ii) of the Rules in its 36th meeting held on 17th February 2018, which was agreed to by the Disciplinary Committee in terms of Rule



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9(2)(b) of the Rules, holding the respondent guilty of contravening the following provisions of the Cost and Works Accountants Act, 1959 and the rules framed there under:

- Clause (4) of Part I of The First Schedule
- Clause (10) of Part I of The First Schedule
- Clause (1) of Part II of The Second Schedule
- Clause (3) of Part II of The Second Schedule

7. The committee members noted the prima facie opinion framed by the Director (Discipline) in terms of Rule 9(2)(b) against the respondent and accepted the same. The Director (Discipline) was directed to ensure compliance of Rule 18(2)/18(3) the Rules.

8. In the 37th meeting of the Disciplinary Committee held on 24th April, 2018, the Disciplinary Committee advised the Director (Discipline) to call the complainant and respondent at a meeting of the Committee for making oral submissions in terms of Rule 18(6) of the Rules. Accordingly, letters dated 9th May 2018 were sent to both the parties requesting them to make oral submissions, if any, at New Delhi on 14th May 2018.

9. In the 39th meeting of the Disciplinary Committee held at New Delhi on 14th May 2018, the Committee noted that both the complainant and the respondent have failed to appear before the Disciplinary Committee for making oral submission in terms of Rule 18(6) of the Rules. The Committee decided to provide one more opportunity to the complainant and respondent and call them in the next meeting of the Committee to make oral submissions, if any in accordance with sub-rule (6) of Rule 18 of the Rules. Letters dated 16th May 2018 were sent to the respondent and the complainant requesting them to make oral submissions, if any, at New Delhi on 25th May 2018.

10. The complainant, in the meantime, vide his email dated 24th May 2018 sent at or about 07:21 PM to Director (Discipline) asked for the response of the respondent on the PFO and informed that he will not be making his submissions on 25th May 2018.

11. In the 40th Meeting of the Disciplinary Committee held at New Delhi on 25th May 2018, on behalf of the respondent, Mr. Arpan Behl submitted Photocopy of 'Vakalatnama' dated 24th May 2018 authorising Mr. Mahfooz Nazki, Mr. Rohit Sharma (D/4072/2010), Mr. Arpan Behl, Ms. Mukta Dutta, Mr. Avinash Tripathi (D/1003/2013) and Mr. Priyank Mangal Advocates, along with CMA Vijendra Sharma to represent Shri Ashok B. Nawal (M/5720) in the instant case. The respondent, vide his email dated 25th May, 2018 sent at or about 5:18 PM to the Disciplinary Committee, authorized Mr. Mahfooz Nazki, Mr. Priyank Mangal, Mr. Arpan Behl along with CMA Vijender Sharma to represent him before the Disciplinary Committee.

12. The Disciplinary Committee perused the matter and opined that the photocopy of 'Vakalatnama' cannot be considered to represent the respondent in pursuance of Rule 18(6) of the Rules. However, the Committee members decided to provide one more opportunity to

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the complainant and respondent and call them in the next meeting of the Committee for making oral submission in terms of Rule 18(6) of the Rules.

13. The respondent, in the meantime, vide his email dated 29th May 2018 submitted that Panchvati Business Solutions LLP was earlier private limited company in which he was a Non-Executive Director. The company has decided to convert the same in LLP and which was done on 22.12.2016 for reducing paper work and compliances. The respondent further stated that he had submitted notice of his resignation w.e.f. 21.07.2017. He submitted copies of letter of resignation and notice thereof and supplementary LLP Agreement and the papers which have been submitted/filed with the ROC. He further stated that he did not have any interest in the said firm. Also, there was no business carried out by the respondent of any other activities as has been alleged. Therefore, the complaint need not to be considered and to be quashed being filed as vengeance and mainly to harass the respondent.

14. Letters dated 05th June 2018 were sent by the Disciplinary Directorate to the respondent and the complainant both, requesting them to make oral submissions, if any in accordance with sub-rule (6) of Rule 18 of the Rules at New Delhi on 12th June 2018.

15. The respondent, in the meantime, by his email dated 16th May 2018 informed that despite sending the duly authorized legal representatives along with copies of Vakalatnama, authority letters and emails authorizing his legal representatives and despite duly informing about the said authorization vide email dated 25th May 2018, the Disciplinary Committee, neither allowed duly authorized legal representatives to appear on his behalf nor allowed his legal representatives to attend the proceedings of the Disciplinary Committee. Further, inspite of his legal representatives being duly present at the premises where the meeting of Disciplinary Committee dated 25th May 2018 was taking place, the Disciplinary Committee, illegally and unlawfully did not mark the attendance of his authorized legal representatives. Furthermore, the Disciplinary Committee also failed to provide any reason, as to why the legal representatives duly present at the venue of the Disciplinary Committee meeting were not allowed to attend the meeting. Even after waiting for almost two hours outside the meeting room, the Disciplinary Committee did not allow his duly authorized legal representatives to appear on his behalf and present his case. He further submitted that the actions of the Disciplinary Committee were in violation of the principles of natural justice and violated his legal and natural rights.

16. In the 41th meeting of the Disciplinary Committee held at New Delhi on 12th June, 2018, on behalf of the respondent, Mr. Arpan Behl submitted Vakalatnama dated 24th May 2018 authorising Mr. Mahfooz Nazki, Mr. Rohit Sharma (D/4072/2010), Mr. Arpan Behl, Ms. Mukta Dutta, Mr. Avinash Tripathi (D/1003/2013) and Mr. Priyank Mangal Advocates, along with Shri Vijendra Sharma to represent the respondent in the instant cases and other cases as well where the complainant happened to be the same person.

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17. On behalf of the complainant, Dr. Dhananjay V Joshi was present and made oral submission reiterating all the allegations leveled by the complainant against the respondent. The respondent, in the meantime, vide his email dated 12th June, 2018 sent at or about 4:48 PM to the Director (Discipline), stated that he was being represented by his Advocates Shri Arpan Behl and Shri Priyank Mangal from Economic Laws Practice and his duly authorized representative Shri Vijender Sharma. The Vakalatnama and the authority letter were duly handed over to Shri R.K. Jain Dy. Director, Disciplinary Directorate. Further, appearance of all the aforementioned persons was duly recorded and finds mention in the charge sheet which was filled and handed over to Shri R. K. Jain, Dy. Director, Disciplinary Directorate.

18. The complainant in his letter dated 12th June 2018, inter alia stated that:

- i. Prima Facie opinion formed by Director (Discipline) is completely valid and correct.
- ii. The respondent had filed absolutely false response. Rather his response was an example of complete falsehood and such falsehood person has no rights to remain as member of this prestigious institute. He has also made false statements to Ministry of Corporate Affairs and should be punished severely under various acts and laws.
- iii. The respondent had filed his response in a haphazard manner and had not referred to any section charged by Director (Discipline). He just tried to explain his relationship with Panchavati Business Solutions LLP and thereby tried to misguide.
- iv. The respondent apparently had attached a Chartered Accountant Certificate for showing no business transactions in a LLP from 1st April 2016 to 21st July 2017. However, he had completely forgotten that CWA Act and LLP related guidelines issued by the Institute attached in the original complaint talks about entering into LLP and not turnover of LLP. Hence defense taken by the respondent was only for his satisfaction and not as per law and guidelines framed there under.
- v. In his response, the respondent claimed many process/steps that he took for resignation from Panchavati LLP. However, he could not bring to light any letters/records for reasons best known to him. Disciplinary Committee must order for production of documents of all those records for further investigation of this case.
- vi. The respondent claimed that he was a Non-Executive Director in Panchavati Business Solutions Private Limited in his statement. However it is a complete misstatement and he continued to be an Executive Director in the company prior to this to be converted into LLP. He requested to refer MGT page 9 and 10 which stated that he was an Executive Director and also Key Managerial Personnel (KMP) for the company. The respondent can be removed from membership as he

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- declared to be an Executive Director in Panchavati Business Solutions Private Limited engaged in business other than Accountancy.
- vii. The respondent claimed that he resigned from Panchavati LLP on 21st July 2017 as per Stamp Paper agreement between him and his partners and inducted Mrs. Chitra Ashok Nawal as designated partner and transferred his all shares to Mrs Chitra Ashok Nawal. With this stamp paper agreement, he had no stakes in Panchavati LLP and merely because MCA has not accepted his requisite form due to some or other reason he continues to be on board. However, stamp paper agreement is conclusive agreement which detaches him from Panchavati LLP. The respondent continued to sign documents digitally and physically also for Panchavati LLP. He signed digitally Form 8 dated 20th November 2017 at 12.31.31+ 5.30 Hours as mentioned on Digital Signature. When the respondent had transferred all his shares to his spouse dated 21st July 2017 then he has no right to sign any form digitally after the said date.
- viii. The respondent, as per the documents sent in his written statement, sent "Intimation to Resignation" as Designated Partner as per Section 21(1) of LLP Act. As per LLP Act he ceased to be a partner of LLP within 30 days after the due notice. His notice was received by Panchavati LLP on 12th April 2017 as received signature is also seen on attachment given by the respondent in his written statement. However, as per Form 8 of the said LLP he had signed Profit and Loss Account and Balance Sheet for Panchavati LLP on 15th June 2017. He had already given his intention to resign as per Section 24(1) of the act dated 10th April only and hence he should have refrained from any activities of Panchavati LLP, since then. The respondent continued to be partner in LLP despite his intention to resign from the LLP. His act of giving such statements in his written statements is completely misstatement to Disciplinary Committee and nothing less than a fraud of documents in nature.
- ix. The respondent had violated quite a few regulations and Laws under the CWA Act and also LLP Act. He must be removed immediately from membership of the Institute before he commits any other fraud and bring disrepute to the Institute and profession. He is a habitual law breaker and should be fined Rs. 5,00,000/- as maximum penalty under CWA Act.
- x. The complainant once again reiterated that the prima facie opinion formed by the Director (Discipline) was absolutely correct and that the respondent was guilty of professional Misconduct of all clauses mentioned in his opinion.

19. In compliance with the decision taken in the 41st meeting of the Disciplinary Committee held on 12th June 2018, a letter dated 18th June, 2018 was sent to the respondent, requesting him to make oral submissions, if any in accordance with sub-rule (6) of Rule 18 of the Rules. In the 42nd meeting of the Disciplinary Committee held at New Delhi on 27th

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June 2018, on behalf of the respondent, Mr. Arpan Behl submitted 'Vakalatnama' dated 24th May 2018 authorised Mr. Mahfooz Nazki, Mr. Rohit Sharma (D/4072/2010), Mr. Arpan Behl, Ms. Mukta Dutta, Mr. Avinash Tripathi (D/1003/2013) and Mr. Priyank Mangal Advocates, along with Shri Vijendra Sharma to represent the respondent.

20. On behalf of the respondent, advocate Mr. Priyank Mangal, Mr. Arpan Behl appeared before DC and made the oral submission. Since, respondent had not pleaded guilty, the committee noted the submission of the respondent and advised the Secretary to call the respondent in the future meeting of the Committee for production of witnesses in support of their contention and to produce any document or material evidence in terms of Rule 18(9)/18(10) of the Rules.

21. In compliance with the decision of the Disciplinary Committee, letters dated 19th September 2018 were sent to both the parties requesting them to appear before the Disciplinary Committee on 5th October 2018 at 11.30. A.M. at Mumbai 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, in the meantime, vide his email dated 26th September 2018 informed that due to CESTAT hearing at 10.30 A.M which was likely to get over by 3:00 P.M, he will attend the hearing only after 3:00 pm. He requested to grant him pass over of time or if pass over is not possible then adjourn the hearing. On such a request being made by the respondent, the Director (Discipline), vide email dated 3rd October 2018 granted permission to the respondent to appear before Disciplinary Committee at 3 pm on the said date. However, the respondent vide his email dated 3rd October 2018, informed that the a notice for hearing before principal commissioner of Customs, Ahmedabad on 5th October 2018 had been received by him and hence, he requested to adjourn the hearing in Mumbai.

23. In the 44th Meeting of the Disciplinary Committee held at Mumbai on 5th October 2018, the Committee deliberated on the same and decided to provide one more opportunity to the respondent and call him in the next meeting of the Committee 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. In compliance with such a decision of the Disciplinary Committee to provide one more opportunity to the respondent to produce any document or material evidence in terms of Rule 18(9)/18(10) of the Rules, a letter No G/DD/(M-5720)/Com-CA(50)/09/10/2018 dated 16th October, 2018 was sent to the respondent requesting him to appear before the Disciplinary Committee on 26th October 2018 at 11.30 A.M. at the Institute HQ at Kolkata.

24. The respondent, in the meantime, vide his email dated 23rd October 2018 intimated the Disciplinary Committee that his left leg was swollen and he has been advised rest and informed that he will not able to attend the meeting. Further, he requested to keep the hearing either at Pune or Mumbai for in the interest of justice.



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25. The Committee noted that the respondent had failed to attend the meeting despite several opportunities given to him. The Committee deliberated on the same and decided to provide one more opportunity to the respondent and call him in the next meeting of the Committee for compliance 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. The complainant, however, had appeared before the Committee at the appointed date and time i.e., on 26th October 2018 and reiterated his submissions. He placed before the committee all evidence that have been alleged by him in his complaint against the respondent which proves beyond doubt that the allegations complained of by the complainant are correct.

26. The respondent was given one last opportunity to appear before the Disciplinary Committee at its 49th meeting held on 10th and 11th February 2021 for compliance of Rule 18(9)/18(10) of the Rules. The respondent vide his letter dated 3rd February 2021 once again denied the charges levelled against him by the complainant and enclosed his submissions made before the Disciplinary Committee during the hearing held on 27th June 2018. The respondent appeared through virtual mode on 11th February 2021 for hearing and made his submissions. However, neither could he produce any evidence for refuting the allegations of the complainant nor there was any substance in his submissions. The Committee noted that the Disciplinary Committee had considered the prima facie opinion and particulars and documents relied upon by the Director (Discipline) during the course of formulation of Prima facie Opinion at its 36th meeting held on 17th February 2018. The committee also noted that his resignation from Panchavati LLP was on 21st July 2017 while the complaint had been filed by the complainant on 19th May 2017 i.e., two months before tendering of the resignation by the respondent which also proves that the respondent had resigned from Panchavati LLP only after receipt of complaint from the Disciplinary Directorate.

27. After the respondent had made his submissions in terms of Rule 18(9)/18(10) of the rules, the Director (Discipline) presented the following evidence in support of the contraventions made by the respondent in terms of Rule 18(12) of the Rules:

- a) Clause (4) of Part I of The First Schedule which forbids a cost accountant in practice whether in India or outside India, to enter into partnership other than a cost accountant in practice. For carrying on the "Business of Shipping Agents, Custom House Agents, Clearing & Forwarding Agents, Chartering Agents, Transshipment and Warehouseman, Multi model Transport operations, haulage proprietors, barge owners, stevedore's, clearing agents, underwriters, insurance brokers, managers of shipping properly, freight contractors, carries by sea and to undertake and carry on all any of the trades and business of shippers, ship owners, ship brokers, ship agents, ship under writers, ship managers, tug owners and carries, insurance brokers, loading brokers, freight brokers, freight contractors, carriers of goods and passengers by water transport haulage and general contractors, railway within or outside India", he has entered into partnership with two persons who are not cost accountants. This is clearly evident from the LLP agreement.

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- b) Clause (10) of Part I of The First Schedule forbids a cost accountant in practice to engage in any business or occupation other than the profession of Cost Accountant unless permitted by the Council so to engage. The respondent has engaged in the "Business of Shipping Agents, Custom House Agents, Clearing & Forwarding Agents, Chartering Agents, Transshipment and Warehouseman, Multi model Transport operations, haulage proprietors, barge owners, stevedore's, clearing agents, underwriters, insurance brokers, managers of shipping properly, freight contractors, carries by sea and to undertake and carry on all any of the trades and business of shippers, ship owners, ship brokers, ship agents, ship under writers, ship managers, tug owners and carries, insurance brokers, loading brokers, freight brokers, freight contractors, carriers of goods and passengers by water transport haulage and general contractors, railway within or outside India" which has nothing to do with the profession of cost accountancy. Furthermore, he was a Designated Partner of such PBSL, (with capital contribution of 59.87%) being responsible for doing all acts, matters and things as are required to be done by the Limited Liability Partnership in respect of compliance of the Act.
- c) Clause (1) of Part II of The Second Schedule which states that a member of the Institute shall be deemed to be guilty of professional misconduct if he contravenes any of the provisions of this Act or the regulations made there-under or any guidelines issued by the Council. The Institute has issued guidelines dated 1st February 2012 which prohibits entering into LLP with any person other than Cost Accountant. As per these guidelines Cost Accountants is allowed to convert his current Partnership into LLP or form new LLP with other Cost Accountant only. [In this connection an email dated 8th February 2021 was sent to the Membership Department with a request to apprise the Disciplinary Directorate if a Cost Accountant in practice can enter into a LLP agreement with members of other profession, not being Cost Accountants within the meaning of Section 2(1)(b) of the Cost and Works Accountants Act, 1959. The Membership Department vide their email dated 9th February 2021 replied that "Converted Cost Accountant LLP registered with ICAI shall be allowed to work only in terms of Section 2(2) of the Institute of Cost and Works Accountants Act, 1959 and for the objects of LLP to be incorporated as per Form-2 and Form 17 of the LLP Rules, 2009 or as per the LLP agreement and same shall be in the nature of Professional Services allowed under Section 2(2) of Cost and Works Accountants Act, 1959. LLP shall be subject to the same regulations, as if they were a partnership firm. Mere conversion into LLP does not give any privileges, which were not earlier with the Cost Accountant firms. The provisions of the Cost and Works Accountants Act, 1959, the Cost and Works Accountants Regulations, 1959 and Code of Ethics issued by ICAI shall be applicable to all partners jointly and severally, of the LLP." This, in effect, implies that only cost accountants can enter into practice with another cost accountant for professional matters relating to cost accountancy.

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- d) Clause (3) of Part II of The Second Schedule states that a member of the Institute 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 particulars knowing them to be false. A copy of Form M-3 (Form of Application for the issue or renewal of a Certificate of Practice) filed by the respondent on 14th March 2017 which was obtained from the Membership Department vide email dated 8th February 2021 of the respondent makes no mention of the fact of his being engaged in any other business or occupation besides the profession of Accountancy as the said Para 2 of Form M-3 read as follows:

"I declare that I am not engaged in any other business or occupation besides the profession of Accountancy. If and when I intend to be so engaged I shall obtain the prior permission of the Council." There is nothing on record to show that the respondent had obtained prior permission from the Council for engaging himself in the business of PBSL. Therefore while declaring the same to Council of the Institute of Cost Accountants of India the respondent appeared to have given false statement on the form M-3.

It was also brought to the notice of the Committee by Director (Discipline) that the respondent is a habitual offender and he had been punished on earlier occasions in respect of some other complaints involving the same complainant.

28. On presentation of evidence by the Director (Discipline) on 11th February 2021, in support of the contraventions made by the respondent in terms of Rule 18(12) of the Rules, the Committee noted that the contraventions by the respondent were on four counts:

- Clause (4) of Part I of The First Schedule
- Clause (10) of Part I of The First Schedule
- Clause (1) of Part II of The Second Schedule
- Clause (3) of Part II of The Second Schedule

The Committee advised the Director (Discipline) to call the respondent in the next meeting of the Committee in terms of Rule 19(1) of Rules before passing any order under Section 21B of the CWA Act, 1959. The Disciplinary Directorate vide letter Ref No. G/DD/(M-5720)/Com-CA(50)/15/03/2021 dated 5th March 2021 called upon the respondent to appear before the Disciplinary Committee on 12th March 2021 to afford him an opportunity of being heard before passing any order under sub-section (3) of Section 21B of the Cost and Works Accountants Act, 1959.

29. The respondent appeared through virtual mode at the scheduled date and time under Rule 19(1) of the rules and pleaded that he is not guilty of professional or other misconduct.

30. We have heard the submissions made by the respondent but not finding any of his submission convincing the Committee holds him guilty of offences committed by him in



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regard to contravention Clauses (4) and (10) of Part I of the First Schedule and Clauses (1) and (3) of the Second Schedule of the Cost and Works Accountants Act, 1959.

31.However, though we find him guilty of contravening the provisions of the First and the Second Schedules of the Cost and the Works Accountants Act, 1959, considering his age and his physical disabilities we reprimand the respondent in terms of Section 21B(3)(a) of the Cost and Works Accountants Act, 1959. Being a senior member, he is warned to follow and adhere to all the provisions of the Cost and Works Accountants Act, 1959, the Rules made there under, the Cost and Works Accountants Regulations, 1959, the directions and other guidelines as may be issued from time to time by the Council of the Institute.

32.The complaint, accordingly, stands disposed of.

Biswarup Basu
18.9.2021
(Biswarup Basu)

PRESIDING OFFICER