



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory Body under an Act of Parliament)

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Order

16th July, 2018

Complaint No. COM-21/CA(20)/2014- Shri Ashish P. Thatte (M/27543)
Complainant Vs. Ashok B. Nawal (M/5720) [Respondent]

In the matter of-

Shri Ashish P. Thatte (M/27543).....Complainant

Vs.

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

Complaint No. Com/21-CA(20)/2014-Shri Ashish Prakash Thatte (M/27543) [Complainant] Vs Shri Ashok B. Nawal (M/5720) [Respondent]- In pursuant to the specific directions given by the Appellate Authority vide its order dated 19.07.2018 and 24.04.2018

1. A complaint in Form I in triplicate dated 14th November 2014 together with prescribed complaint fee of Rs 2500/- was made by Shri Ashish Prakash Thatte (M/27543) against Shri Ashok B. Nawal (M/5720), respondent alleging contravention of the provisions of CWA Act/CWA Regulations and Rules framed thereunder on account of:

- (1) Accepting position as Managing Director (MD) in a company despite clearly prohibited by Cost and Works Accountants Act and Cost and Works Accountants Regulations.
- (2) Accepting remuneration /fixed salary other than share in Partnership firm.
- (3) Solicits clients indirectly by advertisement on Institute letterhead and material.
- (4) Grossly negligent in conduct of his professional duties.

Along with his complaint, Shri Ashish P. Thatte, complainant has adduced, among others, the following documents in support of his allegations:

- (1) Declaration by Shri Ashok Nawal for Directorship of Siddharth Education Services Ltd.

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- (2) LLP Agreement between Bizsolindia Services (P) Ltd, Alok Equipments (P) Ltd and Shri Janak Jani.
 - (3) Certified true copy of extract of resolution passed on 23rd December 2013 at the meeting of the Board of Directors of Bizsolindia Services (P) Ltd.
 - (4) Copy of brochure on full day workshop on service Tax organized by WIRC of ICAI soliciting business as Chairman, WIRC and MD of Bizsolindia Services (P) Ltd who is also a Practicing Cost Accountant (PCA), holding valid Certificate of Practice (CoP).
 - (5) List of practicing members published by the Institute.
2. The Disciplinary Directorate having scrutinized the complaint and finding the same in order and on being satisfied that it is a fit case to be dealt 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, proceeded to register the complaint vide Complaint No. Com/21-CA(20)/2014
 3. The main allegation against the respondent is that he has accepted the position of Managing Director of a private limited company despite simultaneously holding a Certificate of Practice. The complainant, in his complaint, alleged that the respondent has contravened:
 - Clause (10) of Part-I of First Schedule to the CWA Act, 1959.
 - Clause (6) of Part-I of First Schedule to the CWA Act, 1959.
 - Clause (1) of Part-II of Second Schedule to the CWA Act, 1959.
 - Clause (7) of part-I of Second Schedule to the CWA Act, 1959.
 4. The complaint was forwarded to the respondent vide letter Ref No. G/DD(M-5720)/Com-CA(19)/01/11/2014 dated 20th November 2014 requesting for written statement of the latter within 21 days from the date of service of the said letter. In the said letter, the complaint number was incorrectly mentioned and subsequently another letter Ref No. G/DD(M-5720)/Com-CA(20)/02/11/2014 dated 27th November 2014 was sent to the respondent mentioning the correct complaint number.
 5. The respondent, by his written statement dated 18th December 2014, submitted that the complaint had been filed by the complainant with a malicious intention to trouble him only because the former had earlier filed some information against Shri Ashish P. Thatte. He also stated that the present complainant has been filed out of personal rancor and needs to be thrown out. Since, the complainant was not performing his duty, being the then Vice Chairman of WIRC of ICAI, the respondent obtained him from doing so and the Complainant did not adhere to the rules/regulations and directives from the Headquarters.
 6. The respondent then proceeded to give point wise reply to the allegations levelled by the Complainant:
 - That the respondent has been providing professional services of consultancy and advisory to a company on retainership basis and charges to the company professional fees and company has not paid him any salary or remuneration other than professional fees.



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- Further, the company, Bizsolindia Services (P) Ltd has been engaged in providing services of consultancy, audit and implementation of taxation and economic laws. Therefore, the complainant has accepted the position as a Managing Director of the company so as to provide advisory services in a better manner.
- That the complainant referred to clause (10) of Part-I of First schedule (alleged to have been contravened by the respondent) being guilty of professional misconduct will be termed only when a Cost Accountant engages in any business or occupation other than the profession of Cost Accountant. According to the respondent, he has never engaged in any business or occupation other than that permitted by CWA Act/Regulations. The respondent contends that he performs similar functions of profession of Cost Accountant in a company and the company is also engaged in similar occupation of profession of Cost Accountant.
- That the respondent has engaged in profession/business which are allowed to be practiced as a Cost Accountant by the Institute which appears on the website <http://icmai.in/professionaldevelopment/prof.avenues.php#prac> and the respondent is the Managing Director of Bizsolindia Services (P) Ltd which also provides services in the said areas only. The nature of services provided by Bizsolindia Services (P) Ltd of which the respondent is the MD, had been annexed with the written statement by the respondent.
- That the respondent has given the definitions of 'Managing Director' and 'Whole-time Director' as defined in Sections 2 (54) and 2 (94) of the Companies Act, 2013. 'Managing Director' as per Section 2 (54) of the Companies Act, 2013 means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called. 'Whole-time Director', according to Section 2(94) of the Co's Act, 2013 includes a director in the whole time employment of the company.
- That the respondent is not the whole-time director and not in the employment of any company including that of Bizsolindia Services (P) Ltd. The respondent had also annexed a copy of the agreement between Bizsolindia Services (P) Ltd and him containing certain covenants like scope of work, professional fees, and terms and conditions governing his work in Bizsolindia Services Private Ltd.
- That the Respondent has been providing services to Bizsolindia Services (P) Ltd and the revenue derived from the said company is more of an independent practice. He provides a comparative table showing revenue derived from Bizsolindia Services and other than Bizsolindia Services.

Year	Revenue from Bizsolindia	Revenue other than Bizsolindia
2013-14	38%	62%
2014-15	34%	66%



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- That the respondent, therefore has not made any professional misconduct.
 - In regard to accepting remuneration/ fixed salary by the respondent, he contends that the complainant has blindly made this allegation without understanding the factual position and without providing any evidence towards acceptance of remuneration/ fixed salary.
 - In regard to the allegation of the complainant on soliciting clients by the respondent, the latter contends that he has never given any advertisement on institute's letterhead or material to solicit clients. The extract of invitation enclosed by the complainant with his complaint is regarding information on training session and the respondent's name was written as speaker of the said training session and the said invitation was published by the Institute and not by the Respondent or under his instructions. Therefore, this allegation by the Complainant is totally baseless and incorrect.
 - In regard to the last allegation of the complainant that the respondent was grossly negligent in conduct of his professional duties, the latter contends that the complainant has made blind statement without providing any evidence of gross negligence in the conduct of his professional duties and in the absence of any concrete evidence, the allegation made by the complainant was baseless.
 - The respondent finally submits that the complaint has been made out of personal animosity and hence, should not be entertained and be thrown out.
7. The written statement of the respondent was forwarded to Shri Ashish P. Thatte, Complainant by letter Ref No. G/DD(M-27543)/Com-CA(20)/03/12/2014 dated 31st December 2014 requesting for the latter's rejoinder to the written statement. The complainant by his letter dated 19th February 2015 submitted inter alia that:
- The counter statements made by the Respondent were denied as the Respondent himself was a wrong doer.
 - The respondent in his written statement had submitted that since, the complainant was not performing his duty, being the then Vice Chairman of WIRC of ICAI, the respondent obtained him from doing so. This counter allegation of the Respondent has also been denied by the Complainant stating that the former can always take legal recourse and legal remedy against the 'illegal' things in the WIRC.
 - The defence put forward by the Respondent was baseless, irrelevant and have been denied by the complainant.
 - The respondent in his written statement claimed that he has been providing "Professional services of Consultancy and Advisory to a company as retainership basis and charges to the company professional fees" This statement made by the respondent, according to the complainant, is totally



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in contradiction to the various clauses contained in the letter dated 1st April 2014 (this has been enclosed with the written statement of the Respondent) addressed to the Respondent by the Chairman of Bizsolindia Services (P) Ltd.

- The concept of professional services or consultancy and Advisory services are on assignment to assignment basis. However, Bizsolindia Services (P) Ltd has agreed to pay “fixed amount per annum” to the Respondent.
- Under clause 7 of the letter under reference, a condition has been mentioned that the incumbent (i.e., the respondent) will not accept any other employment, part-time or otherwise or engage in any commercial venture, business or pursuit on his own account or through any agent, individuals, company or agency which is directly related to the said company’s [i.e., Bizsolindia Services (P) Ltd] business interest or activities or which would be detrimental to the company’s business activities except, except with the prior approval of the management.
- This clause, according to the complainant, is a reflection of existence of Employer-Employee relationship as all the terms and conditions are applicable in such a relationship. Thus, it is an admission of the Respondent that he was in fact employed in Bizsolindia Services Private Ltd. Thus, this submission by the respondent tantamount to acceptance of guilt and commission of professional misconduct.
- The respondent has mentioned, the services in which his Employer Company has been engaged in which also includes “Audit”. The Audits (Statutory) can be conducted only by Professional authorized under the various statutes. The concept of Audit and Advisory Services do not go hand in hand and purpose/objectives/scope etc. of the Audit and that of Advisory Services are different and are in variance to each other.
- The respondent has also not explained how accepting the position as “a Managing Director of a company” enabled him to provide Advisory Services in better manner. In any case of Managing Director of a company and Advisory Services by the same person do not go together and it is totally in contradiction of the role defined for the Managing Director under The Companies Act, 2013.
- The Complainant mentioned specifically that section 203 of The Companies Act, 2013 the Managing Director is also one of key Managerial Personnel (KMP).
- Thus, the submission of the respondent of providing Advisory Services and holding the position as Managing Director of the Company are contrary to each other since the provisions of the Companies Act, 2013 makes it amply clear that a person holding the position as Managing Director is not in “advisory capacity” in relation to the company in which he holds the position as Managing Director.
- The complaint is filed by the complainant for contravention of provisions of CWA Act and Rules and Regulations made thereunder – The First Schedule Part I (Clause 10).



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- The respondent has only reproduced the provisions of the said The First Schedule Part One (Clause 10) and has not given any submission thereon. This itself shows that the respondent has nothing to submit in his defence and it is clearly an acceptance of the misconduct committed by the Respondent.
 - The Last Sentence of the respondent only shows a confused state of mind when he submits that "Respondent performance the similar functions of profession of Cost Accountant in a company and company is also engaged in similar occupation of profession of Cost Accountant". It is reiterated that whatever may be functions performed by the respondent in a company he is prohibited under the CWA Act, 1959 to hold the position as Managing Director in a company.
 - The submission by the respondent is irrelevant and misleading and is of no consequence to the present act of professional misconduct committed by the Respondent under CWA Act and Regulations particularly with reference to the First Schedule Part- I (Clause 10).
 - It is evident from the letter dated 1st April, 2014 from the Chairman of Bizsolindia Services Private Limited that the respondent was getting a fixed amount per annum under the guise of professional fees. In case of any professional fees the scope of assignment is always defined. Whereas the letter issued by the Chairman of Bizsolindia Services Private Limited to the respondent is an open ended letter as regards "Scope of Work" to be performed by the respondent.
 - The whole structure of the letter is in the form of an employment agreement whereby the respondent has accepted a fixed amount per annum and other restrictive conditions like not accepting any other employment, part time as otherwise etc. as per clause 7 of other terms and conditions prescribed in the letter referred above.
 - From the evidences already submitted, it was clear that despite knowing the fact that Managing Director (MD) was not allowed under the CWA Act, the respondent had accepted the position of MD and also protecting the same. This clause had been inserted since 2006 and respondent was holding this position since 14th May 2004 which the respondent, by a letter dated 20th April 2014 informed the Disciplinary Directorate. This clearly shows gross negligence on his part. Knowing the fact that Practicing Cost Accountant cannot take remuneration, respondent entered into company as Managing Director and accepted remuneration in the form of employee-employer relation and accepted executive position and was also responsible to sign executing documents which are signed by Managers or Employees of company like executing agreements.
8. The Disciplinary Directorate after perusing the complaint, written statement and the rejoinder of the parties issued a letter No. G/DD (M-5720)/Com-CA(20)/06/03/2015 dated 6th March 2015 stating that it appears from the records available with the Directorate that Shri A.B. Nawal, respondent had been holding the office of Managing Director of Bizolindia Services private Limited and the office of Director in several other companies. He was requested to inform the Disciplinary Directorate within 10 (ten) days of service of the letter under reference as to whether or not:



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- 1) He had informed the Institute before holding such offices and
 - 2) Necessary approval under the Cost and Works Accountants Act, 1959 / and Cost and Works Accountants Regulations, 1959 have been obtained for holding such offices.
9. Again, another No. G/DD(M-5720)/Com-CA(20)/07/03/2015 dated 11th March 2015 was sent to the respondent requesting him to inform the Disciplinary Directorate within 10 (ten) days of service of the letter under reference as to:
- 1) The nature of business undertaken by Bizolindia Services Private Limited and Siddharth Education Services Ltd.
 - 2) Details of remuneration, if any, drawn from the above stated two companies.
10. The respondent vide his letter dated 17th March 2015 stated that he was not getting any remuneration from any of the companies where he is a Director. He was also not drawing any remuneration from Bizolindia Services Private Limited where he is designated as "Managing Director". Enclosing once again the copy of the contract, i.e., the letter dated 1st April 2014 issued by the Chairman of Bizolindia Services Private Limited to the respondent, the latter stated that the scope of work provides the list of services which he needs to provide to Bizsolindia Services Pvt. Ltd, which can be carried on by practicing Cost Accountant. Further, in accordance with the terms and conditions of contract, the respondent was supposed to maintain an office with sufficient staff recruited for providing support services and assisting their team whenever required. Again by another letter dated 20th April 2015, the respondent provided a list of 12 (twelve) organizations where the respondent held positions in various capacities viz, Director/Addl. Director/MD. On perusal of the list, it shows that the respondent was the MD of Bizolindia Services Private Limited. In the said letter, he stated that based on the declaration required in the form for renewal of Certificate of Practice (CoP), it was his bonafide belief that no intimation/approval was required from the Institute for assuming the office of Director of any company. He further stated that neither did he intimate nor had taken approval from the Institute before assuming the office of Director of reputed companies where he holds directorship.
11. The Disciplinary Director vide letter Ref No. G/DD(M-5720)/7/03/2016 dated 7th March 2016 wanted to know from the Membership Department –
- i. Whether necessary permission/approvals under the CWA Act, 1959/ CWA Regulations, 1959 have been sought by Shri A.B. Nawal (M/5720) for assuming the office of Managing Director in Bizolindia Services Private Ltd?
 - ii. Was a disclosure to the effect that Shri A.B. Nawal was a MD/Director made in Forms 'D' /'M-3' submitted to Membership Department since FY 2004-05 onwards?
 - iii. Copies of Forms 'D'/'M-3' submitted to Membership Department since FY 2004-05.



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12. The Director (Membership) vide his letter dated 9th March 2016 stated that consent for using the designation of Managing Director has been sought vide letter dated 8th August 2015 enclosing therewith a copy of the said letter addressed to the Director (Membership). The said letter dated 9th March 2016 of the Director (Membership) also stated that from the forms for renewal of Certificate of Practice, as available with the Membership Department for the period 2004-05 onwards, no disclosure to the effect of MD/Director appears to have been made. Copies of form 'D' and 'M-3' were also enclosed with the letter.
13. The Director (Discipline) framed his prima facie opinion which was placed and accepted by the Disciplinary Committee at its 25th meeting held on 20th May 2016 holding the respondent prima facie guilty on two counts:
- (i) Clause (10) of Part I of First schedule to the CWA, Act, 1959
 - (ii) Clause (1) of Part II of Second schedule to the CWA, Act, 1959
14. The Disciplinary Committee in the said meeting of 20th May 2016 noted the detailed write up of the Disciplinary Directorate which was of the view that by accepting the position of Managing Director of Bizolindia Services Private Limited, the respondent appeared to have contravened the provisions of clause (10) of Part I of First Schedule to the Cost and Works Accountants Act 1959 which is reproduced below:

A cost accountant in practice shall be deemed to be guilty of professional misconduct, if he -
"engages in any business or occupation other than the profession of cost accountant unless permitted by the Council so to engage:

Provided that nothing contained herein shall disentitle a cost accountant from being a director of a company (not being a managing director or a whole-time director) unless he or any of his partners is interested in such company as accountant."

15. The respondent has all along being a holder of Certificate of Practice. Under such circumstances, he cannot hold the position of a Managing Director in a company. The definition of 'Managing Director' under Section 2(26) of the Companies Act 1956 is given below:

"Managing director" means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed by the company in its general meeting, or by its Board of Directors or, by virtue of its memorandum is entrusted with substantial powers of management which would not otherwise be exercisable by him, and includes a director occupying the position of managing director, by whatever name called".

According to Section 2 (54) of the Companies Act 2013, -

"Managing Director" means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called".



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The Companies Act is very clear in its definition of 'Managing Director' where the main emphasis is on entrusting of substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called". From the contract dated 1st April 2014 of the respondent, it is amply clear that he was entrusted with substantial powers. Also, irrespective of the fact whether or not he drew 'remuneration' he was entitled to a fixed pay package of Rs 54,36,000/- per annum. Even if for the sake of argument, the said package was not towards remuneration for his managing directorship, that does not alter the position since in the Companies Act 1956/2013, there is no mandate that to be a Managing Director of a company, one has to be remunerated.

16. Further, the contract is a reflection of existence of Employer-Employee relationship since all the terms and conditions that are applicable in such a relationship are applicable in the instant case. The whole structure of the letter is in the form of an employment agreement whereby the respondent has accepted a fixed amount per annum and other restrictive conditions like not accepting any other employment, part time as otherwise etc. as per clause 7 of other terms and conditions prescribed in the letter referred above.
17. The respondent has also not explained how accepting the position as "a Managing Director of a company" enabled him to provide Advisory Services in better manner. In any case of Managing Director of a company and Advisory Services by the same person do not go together and it is in contradiction of the role defined for the Managing Director under the Companies Act, 2013 or Companies Act 1956. The concept of 'providing advisory services' also does not hold good since, the fact remains that whatever services have been provided by the Respondent to Bizolindia Services Private Limited, it was in the capacity of Managing Director and while holding Certificate of Practice.
18. The complainant, however, has not been able to furnish cogent evidence as to how the respondent has solicited clients indirectly by advertisement on Institute letter head and material and how clause (6) of Part I of First Schedule to the CWA Act, 1959 has been violated.
19. The prima facie opinion formed against the respondent pursuant to 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 being accepted, the Disciplinary Committee directed the Secretary to ensure compliance of Rule 18(2)/18(3) of the said Rules.
20. Accordingly, the prima facie opinion dated 20th May 2016 was sent both to the complainant and the respondent vide letters Ref No.: G/DD(M-27543/Com-CA(20)/01/06/2016 and G/DD(M-5720)/Com-CA(20)/01/06/2016 dated 15th June 2015 requesting the Respondent to file a written statement along with supporting document and list of witnesses with a copy to the Complainant in accordance with Rules 18 (3) & 18 (4) of Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 within 21 days of service of this notice.
21. The written statement as mentioned in para 20 above was not received within 21 days from the date of sending prima facie opinion. Subsequently, vide letters No. G/DD(M-5720)/Com-CA(20)/02/12/2016 &



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G/DD(M-5720)/Com-CA(20)/03/02/2017 dated 16th December 2016 & 17th February 2017, the respondent was again requested to submit the written statement pursuant to Rule 18(4) of the Rules..

22. The complainant and the respondent were called vide letters No G/DD/(M-27543)/CA(20)/03/02/2017 and G/DD/(M-5720)/CA(20)/04/02/2017 both dated 20th February 2017 to make oral submission at the office of the WIRC at the 29th meeting of the Disciplinary Committee held on 3rd March 2017 in terms of Rule 18(6) of the Rules.
23. Both the complainant and the respondent arrived for making oral submissions at the appointed date and time. The charges against Shri Ashok B. Nawal as required under Rule 18(7) of the Rules were read out. The respondent while denying the charges handed over to the Secretary of the Committee his written statement dated 2nd March 2017. He stated inter alia that there was no employee-employer relationship between him and Bizolindia services Pvt. Ltd as he was paid monthly retainership which was subject to deduction of TDS. He referred to the relevant portion of the terms and conditions of the contract with Bizolindia Services (P) Ltd. He had also enclosed copies of Form No 16A as proof of his retainership. In his Income Tax Return he is showing the income as 'Business Income'. He also stated that the professional fee received from other clients is much higher than that received from Bizolindia Services Pvt. Ltd. The respondent in regard to his 'Managing Director' designation stated that when Managing Director is in whole time or full time employment then only permission is required from the Council but he was never in full time employment. Committee directed the Secretary to place the submission of the respondent in the next meeting of the Committee.
24. Shri Ashish Thatte, complainant stated that holding of the position of Managing Director while in full time practice is prohibited by clause (10) of Part I of First Schedule to the CWA Act. He also inter alia stated that the respondent has got no regard and respect to the CWA Act/Regulations/Rules and the actions of the respondent should be kept in check and he must pay for his actions.
25. Since the respondent has not pleaded guilty, the Committee advised the Secretary to call both the complainant and the respondent in the next 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 Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. Accordingly letters dated 23rd March 2017 were sent to both respondent and the complainant to produce witnesses in support of their contention and to produce any document or material evidence in terms of Rule 18(9)/18(10) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 at the next meeting of the Disciplinary Committee.
26. The respondent, by his e-mail dated 6th April 2017, sent at or about 5.02 PM to the Disciplinary Directorate sought leave of absence stating that he was suffering with viral fever and hence he will not be able to attend the same. The complainant appeared on the scheduled date and time and presented a written submission and produced certain documents in support of his contention the major points of which are given below:



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- Director (Discipline) while forming his prima facie opinion completely erred on dropping charges of clause (6) of Part I of First schedule on the ground that respondent is advertising on Institute Material. He stated that he would like to rely on his letters dated 13th October 2015 and 24th September 2015. In those letters under reference, the complainant had mentioned about advertisements published in private magazine of Bizsol India Limited which was against Code of Ethics and Rules of Network. Director (Discipline) has also omitted this statement from documents relied upon while framing prima facie opinion (Ref Page 11 of Prima Facie Opinion). He has requested the Committee to consider his statement on records and frame charges under clause (6) of Part I of First schedule to the CWA Act. Since the instant case is staged at additional documents, the complainant presented print outs of website of Bizsol India Limited (www.bizsolindia.com). This annexure includes
- Advertisement published by Shri Ashok Nawal on various pages of its magazine called Bizsol Updates.
- The complainant invited the attention of the Committee to his letter dated 13th October 2015 and 24th September 2015 wherein he has added additional charge on Shri Ashok Nawal by insertion of Clause (7) of Part I of First Schedule to the Act. The advertisement published on Bizsol India website (enclosed as Annexure 2 of the complainant's submission) in addition to advertisement published by Shri Ashok Nawal every month in the magazine of Bizsol India Limited (Statement dated 24th September 2015 and 13th October 2015 & Annexure 1 of this statement) clearly proves the charges under this section. Shri Ashok Nawal was openly using his designation as Managing Director in all places like reading material provided by Regional Council in February 2017, which was already submitted to Disciplinary Committee in previous hearing at the time of making oral submissions .The complainant added that a seminar was to be held on 8th April 2017 (the next day after the instant meeting) at Navi Mumbai where the respondent has consented to act as speaker and from the brochure that was available on the Institute website also reveals that the respondent is Managing Director of Bizsol India Private Limited. (enclosed as Annexure 6 of the complainant's submission). Shri Ashok Nawal who is also speaker in one of the seminars to be held at Vapi dated 13th April 2017 , has again termed himself as Managing Director of Bizsol India Services Private Limited and the same is also available on Institute Website (enclosed as Annexure 7 of the complainant's submission).
- In the various documents attached by Shri Nawal, he gives his email ID as nawal@bizsolindia.com. This is a clear indication about using name of another company as a practicing professional.



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- Shri Nawal has, in his written statement, failed to appreciate the stand taken by the Director (Discipline) about holding of substantial powers of company. However, Shri Nawal focused on proving his monthly retainership which he claims is not his remuneration but income from profession. The complainant stated that he would like to reply upon opinion formed by Director Discipline on Page 9 of the prima facie opinion. He also drew the attention of the learned Committee members to point No 6 of other terms and conditions specified in agreement between Bizsol India Services Private Limited and Shri Nawal which clearly compels Shri Nawal to devote full time with the company and execute decisions taken by company's Board of Directors.
- Any turnover statement, copies of TDS deducted, details of bifurcation between earnings from company or from own partnership firm etc submitted by the respondent are irrelevant matters in the present case.
- The respondent has completely disregarded that he was Managing Director for quite a long period of time and deriving benefit from the same. However, respondent has provided most of the documents after this complaint has been filed and not before the date of complaint. Hence all such documents, which are filed after the date of complaint till date by the respondent, are to be set aside and are irrelevant for the case.
- The respondent's statement of 'when advisory services are provided by the senior it is considered as authenticated and responsible' is completely a vague statement and accepting such position does not help anyone in providing services. Being Managing Director of the company is the only reason for continuing him to render services to the company.
- In case of practicing professionals it is very clear that he can become director of the company but in other words he has to be Director Simplicitor and not Managing Director or Whole time Director. By drawing huge sums every month from his company by virtue of his agreement which is in nature of employee and employer relationship clearly shows that respondent is violating basic principle of law i.e. Director Simplicitor.
- The respondent has completely misguided the Disciplinary Committee about his change in designation in Bizsolindia Services Pvt. Limited. He has only changed his designation from Managing Director to Director but was still holding substantial powers of Management by way of declaring himself as Executive Director. He drew the attention of the learned members of the Committee to DIR 12 form filed by respondent himself for the same. The complainant quoted the definition from the Companies (Specification of Definition details) Rules, 2014 published in the Official Gazette dated 31st March 2014. He referred rule 2(k) of the above rules: "Executive Director" means whole time director as defined in clause 94 of the section 2 of the Act. The definition of Executive Director is very clear and as per the interpretation, the respondent is still in continuing default. He has not taken any permission from Council to act as Whole Time director of the company as he has not given any documents to that effect in his Written



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Statement. It is in violation of Clause (6) of Part I of First schedule and Clause (1) of Part II of the Second Schedule to the Act.

Finally, the complainant prayed for removal of the name of the complainant for a period of five years along with appropriate amount of penalty under Sub-section (3) of Section 21B.

27. The Committee noted the submissions of the complainant and decided to give another opportunity to respondent to be present 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 Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. Accordingly, letter No G/DD/(M-5720)/CA(20)/06/04/2017 dated 25th April 2017 was sent to the respondent (copy thereof also e-mailed on 25th April 2017) requesting the respondent to be present in the next meeting of the Committee to be held on 5th May 2017 at the WIRC office 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.
28. The respondent appeared at the appointed date and time. At the outset, the respondent attempted to respond to the submissions dated 7th April 2017 made by Shri Ashish Thatte, complainant, the important among those were:
- The respondent is not a salaried employee of Bizolindia Services Private Limited and therefore, not in whole time employment.
 - The respondent is merely providing consultancy services. He is not filing Income Tax Return as a salaried employee.
 - The annual return of Bizolindia Services Private Limited shows that income of the respondent from the said company is 40% while the rest comprising 60% income is from other clients/corporate.
 - Regarding the expression 'Director Simplicitor' used by the complainant in para 10 of his submissions dated 7th April 2017, the respondent stated that the expression 'Director Simplicitor' does not appear in the CWA Act/Regulations or Code of Ethics and cannot be considered.
 - Regarding para 11 of the submissions made by the complainant that the respondent has made a false statement about his relationship with Dr. Dhananjay Joshi, the respondent stated that the complainant, as on date, is a Partner in Joshi Apte & Associates where Ms. Priyamwada D. Joshi, wife of Dr. Dhananjay Joshi is a Partner. Hence, the statement of the respondent was not false.
29. On behalf of the respondent, Shri Venkat R. Venkitachalam, Chairman of Bizolindia Services (P) Ltd appeared and on query raised by the Committee on the respondent's designation as Managing Director in Bizolindia Services (P) Ltd while holding Certificate of Practice, Shri Venkat R. Venkitachalam submitted that:
- (i) He was aware that the respondent was holding full time Certificate of Practice of the Institute while he was designated as Managing Director in Bizolindia Services (P) Ltd.



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- (ii) Although the respondent was designated as Managing Director, he did not hold substantial powers of management. It was only to give an impression to the world at large that the respondent held substantial powers of management.
 - (iii) He also wanted the respondent to devote full time and attention to the job profile assigned to him.
 - (iv) His designation was changed to Vice-Chairman from July 2015 with a view to rewarding him for good work put in by him over the years as Managing Director of Bizolindia Services (P) Ltd. This elevation in designation, according to Shri Venkat R. Venkitachalam, witness of the respondent, was like any other corporate employee where a person gets rewarded for good work.
 - (v) The witness also confirmed that the respondent is a promoter full-time Director.
30. The Committee after hearing the witness noted that the proviso to clause (10) of Part I of First Schedule to the Cost and Works Accountants Act, 1959 specifically prohibits a person holding the position of a Managing Director while holding full-time Certificate of Practice. The company had appointed the respondent as Managing Director by filling up of prescribed forms and the powers of Managing Director are also laid down in the Companies Act. In this regard, The Company Bizolindia Services (P) Ltd had filed Form No 32 with the RoC for his appointment as Managing Director. He was removed from Managing Director but continued as Executive Director as per Form DIR 12 filed with the RoC on 3rd September 2015. Whether the respondent was entrusted with substantial powers or not are internal matters of the company. But the fact remains that the respondent was held out as a Managing Director to the outside world. Also, from the wordings of the terms and conditions of the agreement entered into between the respondent and Bizolindia Services (P) Ltd, it was quite clear that the respondent was entrusted with substantial powers and he was required to devote full time and attention to the job profile assigned to him which was stated by the witness appearing on behalf of the respondent.
31. Prior to the attendance of witness, the Director (Discipline) placed on table cogent evidence against the respondent of holding Certificate of Practice while being Managing Director (now Vice-Chairman) of Bizolindia Services (P) Ltd and the Certificate of Practice was also renewed for FY 2017-18. The form for renewal of Certificate of practice was also placed on table which carried a declaration that he is not engaged in any other business or occupation besides the profession of Accountancy. This tantamounts to misstatement by the respondent.
32. The Committee also noted that on 7th April 2017 when the respondent was called for production documents document / material evidence /witness in terms of Rule 18(9)/18(10), he did not appear before the Committee citing illness but on that day, the Complainant had produced some evidence regarding the webinar to be conducted by the respondent on the same day inspite of his illness, which fact was also confirmed from WIRC source.
33. The Committee members noted the same and directed the Secretary to issue notice to the respondent for being heard in terms of Rule 19(1) of the Cost and Works Accountants (Procedure of Investigations of



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Professional and Other Misconduct and Conduct of Cases) Rules, 2007 before passing any order under sub-section (3) of Section 21B of the CWA Act, 1959 at the next meeting of the Committee.

34. Accordingly, letter No. G/DD/(M-5720)/CA(20)/10/06/2017 dated 19th June 2017 was sent to the respondent requesting him to be present before the Disciplinary Committee on 27th June 2017 at 12.45 PM at the Delhi office of the Institute to enable him an opportunity of being heard in terms of sub-rule (1) of Rule 19 of Cost and Works Accountants ((Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 before passing any order under Section 21B(3) of Cost and Works Accountants Act, 1959.

35. The respondent vide e-mail dated 24th June 2017 sent at or about 10.54 AM to the Director (Discipline) requested for grant of opportunity to cross examine the complainant in terms of Rule 18(14) of Cost and Works Accountants ((Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. He also attached a letter addressed to the Members of the Disciplinary Committee as 'additional & final submission' whereby he reiterated all submissions made by him from time to time. This mail of the respondent was placed on table by Director (Discipline) at the meeting and after perusal of the submissions, the members of the Disciplinary Committee noted that the respondent has not been able to adduce any new point relating to the case and the e-mail dated 24th June 2017 praying for grant of opportunity to cross examine the complainant in terms of Rule 18(14) of Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 was nothing but a deliberate attempt by the respondent to delay the proceedings. The Committee also noted that the respondent has nothing more to state or add in the matter which was evident because of his absence and therefore, grant of opportunity to cross examine the complainant as prayed by the respondent need not be granted.

36. In the case Council of The Institute of Chartered Accountants of India Vs. Subodh Gupta decided by the Hon'ble Delhi High Court, the Hon'ble Court remarked

"In the instant case the admitted position is that the respondent is registered with the Council to practice as a Chartered Accountant. He cannot be a director of a company without the permission of the Council. The appellant is the promoter of various companies of which he is a director as per the evidence on record. Being a Chartered accountant the respondent cannot actively carry on business through companies, trusts and firms. There is evidence that the respondent is doing so. Affirming the verdict of guilt and keeping the gravity of the misconduct we answer the reference by imposing the penalty of removal of respondent's name from the Register of members of the Institute of Chartered Accountants for a period of two years".

37. The Disciplinary Committee concluded that the respondent is guilty of professional misconduct and takes the following action under Section 21B(3) of Cost and Works Accountants Act, 1959:

- (a) Reprimand
- (b) Removal of name from the Register of members for a period of two years.
- (c) Fine of Rs 25000/- (Rupees twenty five thousand)



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The fine is to be paid within 30 days from the date of receipt of the order.

38. Against the decision of the Disciplinary Committee dated 27th June, 2017 in the above complaint, Shri Ashok B. Nawal (Respondent) filed an Appeal before the Hon'ble Appellant Authority vide Appeal No. 04/ICWAI/2017).

I. The extracts of the order passed by the Hon'ble Appellant Authority on 19th July, 2017 in the above Appeal are as below:

1. This appeal along with stay application arises against the Order dated 27th June, 2017 passed by the Disciplinary Committee of the Institute of Cost Accountants of India in complaint No. Com-21/CA (20)/2014 titled Ashish P. Thatte (Complainant) Vs. Ashok B. Nawal (Respondent), whereby, the Appellant has been held guilty of Professional Misconduct under clause (10) of Part-I of the First Schedule of the Cost Accountants Act, 1959 for having worked as Managing Director of M/s Bizsolindia Services Private. Limited. The said clause reads as under:-

"PART-I: PROFESSIONAL MISCONDUCT IN RELATION TO COST ACCOUNTANTS IN PRACTICE

A cost accountant in practice shall be deemed to be guilty of professional misconduct, if he-

(10) engages in any business or occupation other than the profession of cost accountant unless permitted by the Council so to engage:

Provided that nothing contained herein shall disentitle a cost accountant from being a director of a company (not being a managing director or a whole-time director) unless he or any of his partners is interested in such company as accountants".

2. The Appellant has submitted that the impugned order has not been passed in accordance with the law as contained in the Cost Accountants Act, 1959 and the Cost and Works Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 made by the Central Government in as much as, as facts as well as the Disciplinary Committee has not acted correctly as per the procedure to be followed by the Disciplinary Committee more particularly Rule 18 (14) of the Cost and Works Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. The said Rule reads as under:-

“(18) Procedure to be followed by the Committee:-

(1) x x\ x x

(14) If the respondent applies to the Committee to issue any notice for compelling attendance of any witness for the purpose of examination or cross-examination, or the



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production of any document or any material object, the Committee shall issue such notice unless it considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by it in writing”.

3. It is also submitted before us that the Disciplinary Committee has not recorded any evidence in support of the allegations made in the complaint and despite the request having been made in this regard, no opportunity of cross examination of the complainant has been provided to the Appellant herein.

Furthermore, it is also submitted that the manner in which the order of removal of the name of the Appellant from the Register of Members has been passed, shows some bias on the part of the authority who have done so as the Impugned Order had not even reached to the Council of the Institute of Cost Accountants of India for its perusal in terms of sub-section (2) of Section 20 of the Cost Accountants Act, 1959. The said section reads as under:-

“(20) Removal from the Register:-

(1) x x\ x x

(2) The Council shall remove from the Register the name of any member in respect of whom an order has been passed under this Act removing him from membership of the Institute”.

4. Additionally, we have also been taken through the various provisions of the Cost Accountants Act, 1959 and the Cost and Works Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 with special reference to sub-rule (14) of Rule (18) of the said Rules, as the said Rule goes to show that once a request is made by the Respondent for cross examination of any witness, to the committee, it is obligatory on the part of the committee to issue notice for compelling attendance of the witness for the purpose of examination or cross examination. Of course, there is discretion available with the committee to refuse from doing so, but in the present case, it is apparent that on the very first date of receipt of this request, it was refused, but not for the reasons as specified and aforesaid mentioned.
5. However, it is true that according to the Disciplinary Committee of the Institute of Cost Accountants of India, there were other reasons also and non-cooperation virtually on the part of the Appellant on various dates, besides admission of certain facts regarding the Appellant working as a Managing Director despite being holder Certificate of Practice (CoP).
6. The records goes to show that neither the Institute has recorded any evidence in support of the complaint nor afforded any opportunity of the cross examination to the Appellant despite his request. It clearly goes to show that the Cost and Works Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 have not been complied with in the present case. It is the settled law of the land that the justice should not only be done but it should also seem to be done. This is also contrary to the principles



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of Natural Justice.

7. Though on behalf of the Appellant, it is argued before us that the refusal to accept the request of cross examination of the complainant has caused a serious prejudice to his case, while according to the Respondent, it is not so considering his conduct on the past hearings, but we are in agreement with the submissions made on behalf of the Appellant that the refusal to accept the request for cross-examination, causes a prejudice to the case of the Appellant and would come within the preview of denying justice to the concerned party besides being violative Rule 18(14) as aforesaid.
 8. Taking all these facts into consideration and without going further, we are of the considered view that the manner in which the name of Appellant has been removed from the Register of Members, avoiding the compliance of the provisions of the Act and the Rules framed thereunder, casts serious issues regarding the fairness of the procedure followed and the interest of justice will be met out by directing the Council of the Respondent Institute of Cost Accountants of India to reinstate the name of Appellant with immediate effect. Accordingly, we stay the operation of the Impugned Order dated 27th June, 2017 passed by the Disciplinary Committee and the Notification No. 16-CW (23583)/2017 issued in pursuance of the Impugned Order for removing the name of Mr. Ashok B. Nawal from the Register of Members of the Institute for a period of two years, till the compliance of the directions which are being issued to the Institute of Cost Accountants of India through this Order and reconsideration of the compliance report by the Appellate Authority as well as to the Appellant.
 9. Further, the Disciplinary Committee is hereby directed to issue notice compelling the attendance of the witness in response of the request of Mr. Ashok B. Nawal, the Appellant herein, for cross examination thereof and the entire proceedings in the matter be completed within a period of three months from the date of the receipt of this order and thereafter the matter be referred back to the Appellate Authority for its further consideration.
 10. The Appellant herein, in case he wants to hold the Certificate of Practice (CoP), is also hereby directed to resign from all the posts, if he is holding the same presently like Managing Director, Whole time Director or Executive Director from various corporate bodies within a period of three days from the date of receipt of this order and supply a copy of his resignation to the Institute of Cost Accountants of India as well as to this Authority through the Registrar for records. The aforesaid directions are being given in view of the admission of the Appellant working as a Managing Director that also for annual remuneration as stated in his letter dated 1st April, 2014.
 11. With this, the present stay application is disposed of and the Registrar of the Appellate Authority is directed to list this appeal before the Appellate Authority after receipt of the report of the proceedings held in compliance of the directions issued to the Disciplinary Committee / Council of the Institute of Cost Accountants of India and the Appellant.
- II. The Secretary, Disciplinary Committee requested the Hon'ble Appellant Authority vide his letter dated 11/10/2017 to extend the time for conducting cross examination by Shri Ashok B. Nawal and



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accordingly the Hon'ble Appellant Authority vide its order dated 17th November, 2017 allowed extension of 90 days from the date of receipt of this order.

III. The Secretary of the Committee informed the Committee that in accordance with specific directions of the Appellate Authority, a letter dated 9th February 2018 was sent to the respondent/ Appellant (e-mailed notice subsequently) requesting him to make it convenient to be present before the Disciplinary Committee on Saturday, the 17th February, 2018 at 2.30 pm at Western India Regional Council of The Institute of Cost Accountants of India, Rohit Chambers, 4th Floor, Janmabhoomi Marg, Fort, Mumbai- 400001 for the purpose of cross examination of Shri Ashish Thatte (M/27543) the complainant in terms of Rule 18(14) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

IV. The Committee also considered the written submission given by Shri Ashok B Nawal (M/5720) at the time of Cross-Examination on 17th Feb 2018 at Mumbai, objecting to the very constitution and methodology of formation of Disciplinary Committee and decided not to take cognizance of the same, as the issue related to the conduct of council meeting and the decision taken by the council are not within the purview of Disciplinary Committee and as the respondent has made allegations without any corroborative basis and hence concluded the same as baseless.

V. As per the order of the Appellate Authority, Disciplinary Committee of the Institute in its meeting held on 17/02/2018 at Mumbai, has completed the entire proceedings of Cross examination and the matter was referred back the Appellate Authority for its further consideration. The Committee directed the Secretary to send the proceedings of Cross Examination in original, duly signed by both the parties in presence of the members of Disciplinary Committee to the Appellate Authority for further necessary action.

VI. The extracts of the order passed by the Hon'ble Appellant Authority on 20/04/2018 are as below:

1. Today, one of the members of the Authority namely Shri Pravakar Mohanty is not available for hearing of this matter due to some urgent preoccupation.
2. Pursuant to the directions given vide Order dated 19th July, 2017 passed earlier by this Authority, to the Disciplinary Committee of the Institute of Cost Accountants of India, whereby, the Disciplinary Committee was directed to issue notice compelling the attendance of the witness in response of the request of Mr. Ashok B. Nawal, the Appellant herein, for cross examination thereof and the entire proceedings in the matter was required to be completed within a period of three months from the date of the receipt of the said order and thereafter the matter was required to be referred back to the Appellate Authority for its further consideration, as mentioned under Para (9) of the aforesaid Order, the Disciplinary Committee held its proceedings in the matter and accordingly, a compliance report dated 17th February, 2018 was submitted by the Institute of Cost Accountants of India in the Registry of the Authority, whereby, it is informed that CMA. Ashok B. Nawal, appellant herein, did the cross-examination of CMA. (Dr.) Ashish P. Thatte. However, the Disciplinary Committee put a stop thereafter, as if, the Order, if any, was finally required to be passed by the Appellate Authority.



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3. We, therefore, wish to clarify that it was also incumbent upon the Disciplinary Committee to pass a fresh Order on consideration of the examination, cross examination of the witness and the evidence, if any, as came on record after hearing the Appellant as well as the complainant / witness in the matter.
4. Furthermore, the original complainant of this matter, namely CMA (Dr.) Ashish P. Thatte also filed an Appeal in this Authority against Order dated 27th June, 2017 passed by the Disciplinary Committee of the Institute of Cost Accountants of India in Complaint No.21/CA (20)/2014 titled as Ashish Thatte vs. Ashok Nawal, requesting for reframe the charges against Mr. Ashok B. Nawal and to hold him guilty of Professional and Other Misconduct under clause (6) and clause (7) of Part First of the First Schedule to the Cost and Works Accountants Act, 1959 also.
5. We have noted that according to sub-section (1) of Section 22E of the Cost Accountants Act, 1959, the Appeal filed by the complainant is not maintainable as the Appellant, not being an aggrieved Member of the Institute, is not entitled to file an appeal before the Appellate Authority. The said sub-section (1) of Section 22E of the Act reads as under:-

“22E: - Appeal to Authority:-

1. Any member of the Institute aggrieved by any order of the Board of Discipline or the Disciplinary Committee imposing on him any of the penalties referred to in sub-section (3) of Section 21A and sub-section (3) of Section 21B, may within ninety days from the date on which the order is communicated to him, prefer an appeal to the Authority;

Provided that the Director (Discipline) may also appeal against the decision of the Board of Discipline or the Disciplinary Committee to the Authority, if so authorized by the Council, within ninety days;

Provided further that the Authority may entertain any such appeal after the expiry of the said period of ninety days, if it is satisfied that there was sufficient cause for not filing the appeal in time.

6. Therefore, this Section clearly states that only that member of the Institute can file an Appeal before the Appellate Authority, who has been awarded any of the punishment as provided under Section 21A (3) or Section 21B (3) of the Cost Accountants Act, 1959.
7. However, a prayer was made on behalf of the original complainant in this case to consider his Appeal as a cross objection under Order 41 Rule 22 of the Civil Procedure Code, 1908 in Appeal No. 04/ICWAI/2017 namely Ashok B Nawal Vs. Institute of Cost Accountants of India & Others.
8. In view of the above observations and considering the legal position, we hereby remand back the matter relating to Appeal No. 04/ICWAI/2017 namely Mr. Ashok B. Nawal Vs.



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ICWAI & Others to the Disciplinary Committee of the Institute of Cost Accountants of India for the purpose of passing a fresh Order on consideration of the examination and cross examination of the witness besides other submissions made on behalf of the complainant as well as respondents. We also wish to clarify that the Disciplinary Committee is free to consider all submissions, objections, cross objections on behalf of the complainant as well as respondent in addition to considering of all other relevant evidences which may come on record including the aspect of quantum of punishment, during the proceedings before the Disciplinary Committee before passing a fresh Order in the matter for which the matter is being remanded back. The entire proceedings in this matter shall be completed within a period of three months from the date of receipt of this Order and Appeal No. 11/ICWAI/2017 namely CMA (Dr.) Ashish P. Thatte Vs. ICWAI & Others as well as his miscellaneous application dated 9th April, 2018 filed under Rule 20 of the 'Procedure to be followed for the Appeals by the Appellate Authority, 2013', by CMA (Dr.) Ashish P. Thatte, the original complainant in the matter, is hereby disposed of, as not maintainable.

9. Appeal No. 04/ICWAI/2017 namely Ashok B. Nawal Vs. ICWAI & Others is disposed of in terms of the observations/directions as noted above. Further, needless to mention that if Mr. Ashok B. Nawal feels aggrieved from the Order which shall be passed by the Disciplinary Committee in terms of the directions as being given vide this Order, he may approach the Appellate Authority by filing a fresh Appeal or alternately matter be treated as closed if he does not wish to file an Appeal against the Order to be passed by the Disciplinary Committee.

10. A copy of this order be kept in both the files.

VII. The Disciplinary Committee in its 38th Meeting held on 09th May, 2018 considered the order passed by the Hon'ble Appellate Authority on 20th April, 2018 and analysed the procedures followed in this matter and observed that the following procedures were followed:



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Complaint No.	Complaint No. Com-21/CA(20)/2014
Date of Complaint	14th November, 2014
Letter Sent to complainant regarding Acknowledgement of Registration	27th November 2014
Letter sent to Respondent for written Statement	20th November 2014
Written Statement	18th December, 2014
Copy of Written Statement sent to Respondent for rejoinder	31st December, 2014
Rejoinder	19th February, 2015
Copy of Rejoinder sent to respondent	04th March, 2015
Letter Sent to Respondent for further investigation	06th March, 2015
Another Letter sent to Respondent for further Investigation	11th March, 2015
Information Received In connection to our letter dated 06 March, 2015	23rd February, 2015
Information Received In connection to our letter dated 11th March, 2015	17th March , 2015
Cogent Evidence sought from the Complainant	09th April, 2015
Information sought from the Respondent	09th April 2015
Information sought from the Third party (Secretary)	13th April 2015 22
Information Received from Respondent In connection to our letter dated 09th March, 2015	20th April 2015
Cogent evidence Received from the Complainant In connection to our letter dated 09th April, 2015	20th April 2015
Letter sent to Respondent regarding further information	04th May, 2015



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Information Received from the Respondent In Connection to our letter dated 04th May, 2015	12th May, 2015
Cogent proof Sought from the Complainant In Connection to previous Cogent Evidence received dated 20th April 2015	20th August, 2015
Reminder letter sent Regarding Cogent proof Sought from the Complainant In Connection to previous Cogent Evidence received dated 20th April 2015	28th September 2015
Cogent proof Received from the Complainant In Connection to our letter dated 20th August, 2015	24th September 2015
Additional Cogent proof with previously proof once again Received from the Complainant In connection to our letter dated 28th September 2015	13th October 2015
Information sought from third party (Director (Membership))	07th March 2016
Information Received from Director (Membership) In connection to our letter dated 07th March 2016	09th March 2016
Date of PFO	20th May, 2016
Copy of PFO sent to Respondent for his Written Statement	15th June 2016
Copy of PFO sent to Complainant for his Written Statement	15th June 2016
Complainant Requested to send once again some of Enclosure which is not received by them	19th July 2016
Letter sent to complainant with Requested Enclosure /letters to file written Statement	01st August, 2016
Reminder letter sent to Respondent to file written Statement	16th December, 2016
Letter Sent to Respondent to present before the Disciplinary Committee, Mumbai 03.03.2017	20th February, 2017



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Letter Sent to Complainant to present before the Disciplinary Committee, Mumbai 03.03.2017	20th February, 2017
Written Statement received from the respondent In connection to our letter dated 15th June 2016 against PFO	02nd March,2017
Oral submissionboth Parties present on Meeting.	03rd March, 2017
Copy of Written Statement Sent to Complainant for his Information	20th March, 2017
Letter sent to Complainant to present before the Disciplinary Committee on the Next meeting 7th April ,2017 (Kolkata) in term of rule 18(9)/18(10)	23rd March, 2017
Letter sent to Respondent to present before the Disciplinary Committee on the Next meeting 7th April ,2017 (Kolkata) to produce documentary evidence in term of rule 18(9)/18(10)	23rd March, 2017
Email Received from the respondent showing inability to present on DC 7th April 2017	6th April, 2017
Information/response Received from the Complainant In connection to our letter dated 20th March, 2017 with ref letter dated 23rd March, 2017	07th April, 2017
Called for Production of witness letter dated 23rdMarch, 2017	07th April,2017(Respondent Absent)
Letter sent to Respondent to furnish the Information (Audit Report)	10th April 2017
Reminder letter sent to Respondent In Connection to our Letter dated 10th April 2017 (Audit Report)	28 April, 2017
Information sought from the Third party (Director (membership)	02nd May, 2017



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Information received from Director Membership In connection to our letter dated 02nd May, 2017	03rd May, 2017
Further Information sought from the Third party (Director Membership)	03rd May, 2017
Documentary evidence produced by the complainant on 7th April, 2017 duly forwarder to Respondent for his information and reference	19th April, 2017
Letter sent to Respondent to present before the DC on the Next meeting 5th May, 2017 (Mumbai) to produce document or material evidence in term of Rule 18(9) / 18(10)	25th April, 2017
Information Received from the Third Party (Director Membership) In connection to our letter dated 03rd May, 2017	03rd May, 2017
Called for production of document and material evidence letter dated 25th April, 2017	5th May, 2017 (Respondent present)
Letter sent to Respondent to present before the DC on the Next meeting 2nd June, 2017 (Kolkata) to enable an opportunity of being heard in term of sub-rule(1)of Rule 19 before passing any order	25th may, 2017
Letter sent to Respondent Requesting In reference to present before the DC 2nd June, 2017 same was postponed to 3rd June 2017.	26th May, 2017
Reminder Letter sent to Respondent Requesting In reference to present before the DC 2nd June, 2017 same was postponed to 3rd June 2017.	30th May, 2017
Letter sent to Respondent to Present before the DC on Next Meeting 27th June, 2017	19th June, 2017
Additional & Final Submission in the way of written statement Received from the Respondent	24th June, 2017
An Email Also Received from the Respondent Requesting to Cross	24th June, 2017



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Examine to Complainant	
Order of Disciplinary Committee	27th June, 2017
Interim Order of Appellate Authority	19th July,2017(Order for Cross Examination)
Notice for cross examination issued to the parties fixing the same on 8 Jan 2018	Respondent vide his mail dated 2 Jan 2018 sought 1 month time on medical grounds and the same was granted.
Notice for cross examination issued to the parties fixing the same on 12 Feb 2018 at Delhi	<p>Response of the Respondent</p> <p>"As explained you, due to my hernia surgery had on 6th January 2018, I have been advised by my surgeon not to travel, however earlier you have kept the hearing at Mumbai and it was only 2.5 hrs travel for me that to sleeping condition, I have agreed to attend, you have changed the venue at Delhi on 12th @ 5:00 pm and I have consulted my surgeon, who has strictly advised me not to travel considering my existing health status.</p> <p>In view of the above, kindly grant me the adjournment on the humanitarian ground"</p> <p>His request was considered by the Committee and the Cross examination was fixed at Mumbai on on 17 Feb 2018, as requested by the respondent.</p>
Date of Cross Examination	17th February,2018
Order of Appellate Authority	20th April, 2018

VII. The Disciplinary Committee after considering the above proceedings in the matter, came to the conclusion that all opportunities as available under Rule 8, & (Procedure of Investigation) of Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 were followed by the Director (Discipline) and all opportunities as per Rule 18 under Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 and as per the natural justice were extended to the respondent.

IX. However, in order to comply with the order passed by the Hon'ble Appellant Authority on 19.04.2018, Committee deliberated on the matter and decided, to give the respondent an opportunity of being heard in terms of sub-rule (1) of Rule 19 of Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 before any order is passed under sub-section (3) of Section 21B of the Cost and Works Accountants Act, 1959.

X. Accordingly, letter dated 16th May, 2018 was sent to the Respondent giving him an opportunity of being heard in terms of sub-rule (1) of Rule 19 of Cost and Works Accountants (Procedure of Investigations of



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Professional and Other Misconduct and Conduct of Cases) Rules, 2007 before any order is passed under sub-section (3) of Section 21B of the Cost and Works Accountants Act, 1959, for appearance before the Disciplinary Committee on 25 May, 2018

XI. On behalf of Respondent- Shri Ashok B Nawal (M/5720), 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 matter on 25th May 2018

XII. The respondent, in the meantime, vide his email dated 25th May, 2018 sent at about 5:18 PM to Disciplinary Committee, authorizing Mr. Mahfooz Nazki, Mr. Priyank Mangal, Mr. Arpan Behl along with CMA Vijender Sharma to represent Mr. Ashok B. Nawal (M/5720) before the Disciplinary Committee. The Disciplinary Committee could not allow the representatives of the respondent, as authorisation letter in original was not submitted.

XIII. However, the Committee decided to provide one more opportunity to the respondent and call him in the future meeting of the Committee for being heard in terms of Rule 19(1) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 before passing any order under sub-section (3) of Section 21B of the CWA Act, 1959.

XIV. Accordingly, letter dated 18th June, 2018 was sent to the Respondent giving him an opportunity of being heard on 27 June 2018, in terms of sub-rule (1) of Rule 19 of Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 before any order is passed under sub-section (3) of Section 21B of the Cost and Works Accountants Act, 1959 and appear before the Committee on 27th June 2018, at New Delhi.

XV. The Committee further considered the sequence of events leading to the cross examination and thereafter. The Committee also studied the letter dated 16th February, 2018 submitted to the Disciplinary Committee on 17th February, 2018 by the respondent wherein he was raising questions about the decisions taken by the Council of the Institute about the formation of Disciplinary Committee. The Committee further noted that the respondent vide his email dated 8th June, 2018 once again raised the composition of the Disciplinary Committee as decided by the Council of the Institute and sought to keep the proceedings against him in abeyance till the time the Disciplinary Committee is legally or lawfully constituted. The extracts of email received from the Respondent on 25th May 2018 and 8th June 2018 are as below:

nawal <abn@bizsolindia.com>

Jun
8

to Priyank, Mahfooz, Arpan, Naresh, Ashish, Vijender, ashoknawal55, me

To,
The Director Discipline,
The Institute of Cost Accountants of India



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Delhi

Dear Sir,

At the very outset, it is informed that the undersigned vide the instant reply is collectively replying to the letters referred above as the averments made in the afore-referred letters are same/similar in letter and spirit.

It is submitted that the averments/submissions made by you in the above-referred letters are incorrect, erroneous and devoid of any truth or merit whatsoever and all the averments made by you in the afore-referred letters are denied in toto.

That despite sending the duly authorized legal representatives alongwith copies of Vakalatnama, Authority letters and emails authorizing the legal representatives and despite duly informing you about the said authorization vide email dated 25.05.2018 (copy encl.), you alongwith the Disciplinary Committee, neither allowed duly authorized legal representatives to appear on my behalf nor allowed my legal representatives to attend the proceedings of the Disciplinary Committee.

Further, in-spite of my legal representatives being duly present at the premises where the meeting of Disciplinary Committee dated 25.05.2018 was taking place, you/the Disciplinary Committee, illegally and unlawfully did not mark the attendance of my 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 my duly authorized legal representatives to appear on my behalf and present my case. It is duly submitted that the actions of the Disciplinary Committee were in violation of the principles of natural justice and violated my legal and natural rights.

It would not be out of place to mention that the Disciplinary Committee adjudicating upon the disputes referred above is not only constituted illegally and unlawfully but also holds an element of bias against me which had been communicated to the Disciplinary Committee time and again but unfortunately, no action has been taken by the committee on the submissions made by me through various representations.

It will not be out of place to mention that Mr. Sanjay Gupta, presiding Officer of the Disciplinary Committee is holding the post of President and is illegally occupying the position of Chairman. Further, Mr. Padmanabhan who was appointed by Chairman of the Council was removed from the post of Chairman of the Disciplinary Committee even when he did not resign from the post. The removal of Mr. Padmanabhan is illegal.

In the Council Meetings Mr. Sanjay Gupta time and again makes allegation against me on the basis of Disciplinary Complaints filed against me which itself shows that Mr. Gupta is bias and an interested party, therefore, should not be on the Disciplinary Committee.



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Moreover, I fear that justice won't be served to me in case the Disciplinary Committee continues to adjudicate the aforementioned disputes/complaints, wherein false and baseless allegations are levelled against me. It is once again, humbly requested that in the interest of justice, all the proceedings against me must be kept in abeyance till the time the Disciplinary Committee is legally and lawfully constituted.

CMA Ashok B Nawal
Mobile : 9890165001

----- Forwarded message -----

From: nawal <abn@bizsolindia.com>

To: Director Discipline <discipline.director@icmai.in>

Cc: "debasish.bandopadhyay@gov.in" <debasish.bandopadhyay@gov.in>, "RAKESH.TYAGI@mca.gov.in" <RAKESH.TYAGI@mca.gov.in>, "president@icmai.in" <president@icmai.in>, NIRANJAN MISHRA <niranjan13060@gmail.com>, "AVIJIT GOSWAMI" <jeetswami@hotmail.com>, Priyank Mangal <priyankmangal@elp-in.com>, "Vijender Sharma" <vijender.sharma@vsa.net.in>, "nawal@bizsolindia.com" <nawal@bizsolindia.com>

Bcc:

Date: Fri, 25 May 2018 11:47:41 +0000

Subject: Authority letter

Dear Sirs,

I am enclosing herewith the Authority letter in the name of Mr. Mahfooz Nazki, Mr. Priyank Mangal, Mr. Arpan Behl alongwith CMA Vijender Sharma to represent me in the following Disciplinary cases:

1. Complaint No. Com/21-CA(20)/2014 – Shri Ashish Prakash Thatte (M/27543) [Complainant] Vs Shri Ashok B. Nawal (M/5720) [Respondent]
2. Complaint No. Com-21/CA (33)/2015 –Shri Ashish Prakash Thatte (M/27543) {Complainant} Vs. Shri Ashok B Nawal (M/5720) {Respondent}
3. Complaint No. Com-21/CA (48)/2017 –Dr. Ashish Prakash Thatte (M/27543) {Complainant} Vs. Shri Ashok B Nawal (M/5720) {Respondent}
4. Complaint No. Com/21-CA(50)/2017 –Dr. Ashish Prakash Thatte (M/27543) [Complainant] Vs Shri Ashok B. Nawal (M/5720) [Respondent]

This is for your information.

With warm regards.

CMA Ashok Nawal
Contact: Cell - +91 9890165001 Direct - + 020 40702031



A handwritten signature in blue ink, appearing to be "F. B.", located at the bottom right of the page.

----- Forwarded message -----

From: nawal <abn@bizsolindia.com>

To: Director Discipline <discipline.director@icmai.in>, "debasish.bandopadhyay@gov.in" <debasish.bandopadhyay@gov.in>, "RAKESH.TYAGI@mca.gov.in" <RAKESH.TYAGI@mca.gov.in>, "president@icmai.in" <president@icmai.in>, NIRANJAN MISHRA <niranjan13060@gmail.com>, "AVIJIT GOSWAMI" <jeetswami@hotmail.com>, Priyank Mangal <priyankmangal@elp-in.com>, "Vijender Sharma" <vijender.sharma@vsa.net.in>

Cc: Arpan Behl <ArpanBehl@elp-in.com>, Mahfooz Nazki <mahfooznazki@elp-in.com>, "Vijender Sharma" <vijender.sharma@vsa.net.in>, Naresh Thacker <NareshThacker@elp-in.com>, Ashish Prasad <AshishPrasad@elp-in.com>, "nawal@bizsolindia.com" <nawal@bizsolindia.com>, Priyank Mangal <priyankmangal@elp-in.com>

Bcc:

Date: Mon, 28 May 2018 05:04:01 +0000

Subject: FW: Sub:- Complaint No. Com/21-CA(48)/2017 –Dr. Ashish Prakash Thatte (M/27543) [Complainant] Vs Shri Ashok B. Nawal (M/5720) [Respondent]

Dear Sirs,

It is so unfortunate that in spite of giving Authority Letter and sending you through mail (enclosed herewith), you have not allowed my advocates and authorized representative to represent the following cases, which were listed for Personal Hearing. This has been done deliberately in spite of their personal representation to you to allow them to represent me before your committee.

1. Complaint No. Com/21-CA(20)/2014 – Shri Ashish Prakash Thatte (M/27543) [Complainant] Vs Shri Ashok B. Nawal (M/5720) [Respondent]
2. Complaint No. Com-21/CA (33)/2015 –Shri Ashish Prakash Thatte (M/27543) {Complainant} Vs. Shri Ashok B Nawal (M/5720) {Respondent}
3. Complaint No. Com-21/CA (48)/2017 –Dr. Ashish Prakash Thatte (M/27543) {Complainant} Vs. Shri Ashok B Nawal (M/5720) {Respondent}
4. Complaint No. Com/21-CA(50)/2017 –Dr. Ashish Prakash Thatte (M/27543) [Complainant] Vs Shri Ashok B. Nawal (M/5720) [Respondent]

Since, all the Disciplinary Committee Meetings have been held either at Mumbai or Delhi, I have appointed the Advocate from Delhi, therefore I request you to grant me the next hearing at Delhi only.

CMA Ashok Nawal
Mb : 9890165001

From: Arpan Behl <ArpanBehl@elp-in.com>

Sent: 25 May 2018 6:38

To: nawal <abn@bizsolindia.com>; Mahfooz Nazki <mahfooznazki@elp-in.com>; 'Vijender Sharma' <vijender.sharma@vsa.net.in>

Cc: Naresh Thacker <NareshThacker@elp-in.com>; Ashish Prasad <AshishPrasad@elp-



A handwritten signature in blue ink, appearing to be "Vijender Sharma".

[in.com>; nawal@bizsolindia.com](mailto:nawal@bizsolindia.com); 'Vijender Sharma' <vijender.sharma@vsa.net.in>; Priyank Mangal <priyankmangal@elp-in.com>; nawal@bizsolindia.com

Subject: Re: Sub:- Complaint No. Com/21-CA(48)/2017 –Dr. Ashish Prakash Thatte (M/27543)
[Complainant] Vs Shri Ashok B. Nawal (M/5720) [Respondent]

Dear All,

This is to record that despite our protests and representations, we were not allowed to represent Mr. Nawal by the committee for lack of original authority letter.

We requested them to at least allow us to appear and record our presence, but the said request was also declined by the committee.

The committee did not inform us the next date of hearing and informed that the same will be duly notified.

Regards,
Arpan Behl

XVI. The Committee came to the conclusion that the behavior of the respondent questioning and casting doubts about the Committee as a whole, with reference to the Council's proceedings of the Institute is highly deplorable and concluded not to take cognizance as the same are made for the purpose of vexation, delay, and for defeating the ends of justice. Despite the fact that the appointed lawyer of the respondent informing the Respondent that the Committee did not allow him for lack of original authority letter, the respondent immediately started sending mails levelling allegations against the Committee. However, the Committee decided to offer one more opportunity to the Respondent and on 27th June 2018, the respondent sent his Counsel with Vakalatnama in original and the same was allowed by the Committee.

XVII. On 27th June, 2018, when Respondent was given an opportunity of being heard, in terms of sub-rule (1) of Rule 19 of Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 before any order is passed under sub-section (3) of Section 21B of the Cost and Works Accountants Act, 1959, he appeared through his legal representative. The Committee after hearing the arguments advanced by the learned Counsel of the Respondent, Mr Arpan Behal and after considering the the Written Arugments placed by the said Learned Counsel, came to the following conclusions on the arguments raised:

1. *It is most respectfully submitted that the order dated 20.05.2016 passed by the Ld. Disciplinary Directorate is erroneous as the Ld. Disciplinary Directorate has failed to consider the arguments put forthwith by the Respondent herein and has wrongly arrived at a conclusion as to the prima facie liability of the Respondent. From the documents, it is clear that there is no misconduct on the part of the Respondent either under Schedule I or Schedule II of the Cost and Works Accountants Act, 1959 (hereinafter referred to as CWA Act).*



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Conclusion by the Disciplinary Committee: The Director (Discipline) framed his prima facie opinion which was placed and accepted by the Disciplinary Committee at its 25th meeting held on 20th May 2016 holding the respondent prima facie guilty on two counts:

- (i) Clause (10) of Part I of First schedule to the CWA, Act, 1959
- (ii) Clause (1) of Part II of Second schedule to the CWA, Act, 1959

As regards the arguments that there is no misconduct on the part of the Respondent either under Schedule I or Schedule II of the Cost and Works Accountants Act, 1959 (hereinafter referred to as CWA Act) the same has been answered in detail elsewhere in this Order

2. *Further, it is the case of the Respondent that the Disciplinary Committee constituted lacks the inherent jurisdiction to entertain the said Complaint, as it has been illegally constituted under the CWA Act. Furthermore, the members of the Disciplinary Committee are inherently biased towards the Respondent and are trying to settle their personal grudges through the Complaint in-order to fulfill their political vendetta.*
3. *The said order passed by Disciplinary Directorate is liable to be set aside, inter alia, on the following grounds:*

A. THE CONSTITUTION OF THE DISCIPLINARY COMMITTEE IS AGAINST THE SCHEME OF COST AND WORKS ACCOUNTANTS ACT, 1959

(I) The Disciplinary Committee is constituted under Section 21 B of the CWA Act which provides that the Council shall constitute of a Disciplinary Committee consisting of a President or the Vice-President of the Council as the Presiding Officer and two members to be elected from amongst the member of the council and two members to be nominated by the Central Government from amongst the persons of eminence having experience in the field of law, economics, business, finance etc.

(II) It is submitted that the two members have to be elected from the amongst the members of the council and the government members are nominated as per rules prescribed under the Cost and Works Accountants (Nomination of Members to the Council) Rules, 2006.

(III) However, the Disciplinary committee was not formulated in accordance with Section 21 B of the CWA Act but was constituted/reconstituted by the President and Presiding Officer of the Disciplinary Committee, which was objected to by various Council members from time to time. It is submitted that the members of Disciplinary Committee were not elected which is against the express provisions of the CWA Act.



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Conclusion of the Disciplinary Committee: The respondent's questioning of the constitution of the Disciplinary Committee is not substantiated with any evidence. The arguments of the Respondent on the constitution of the Committee tantamounts to selecting his own judge and hence the same is against natural justice and hence not accepted by the Committee. Further, the Committee from the Minutes of the 308 Meeting of the Council, hosted in the website of the Institute, noted that the Respondent did not attend the meeting of the 308 Meeting of the Council in which the Disciplinary Committee was constituted. Further, the minutes of the meeting shows that the Disciplinary Committee was constituted unanimously. Hence, the arguments of the Respondent do not stand. The Committee further noted that the Disciplinary Committee, after the Respondent became Council Member was constituted in its 295th Meeting held on 22 Jul 2015 and he never raised his objection to the formation of the Committee and during the course of this Committee only the Prima Facie Opinion (OFO) was framed. In his written statement dated 2 March 2017, to the PFO, the respondent never raised any objection to the constitution of Disciplinary Committee. The Committee also noted that the Respondent when the order of the Disciplinary Committee dated 27 June 2017, went against him, in his appeal dated 10 July 2017 before the Appellate Authority, raised his objection against the constitution of Disciplinary Committee. The Committee there came to the conclusion that the argument of the Respondent against constitution of Disciplinary Committee is just afterthought and without any substance. As regards the argument that the members of the Disciplinary Committee are inherently biased towards the Respondent and are trying to settle their personal grudges through the Complaint in-order to fulfill their political , vendetta, the Committee concluded that the Respondent has merely leveled such arguments without any corroborative evidence. Further, the respondent could not explain how each of the members of the Disciplinary Committee (including two nominees of Government) is biased against him. Hence, the Committee rejects this argument as to one made without any corroborative evidence or reasons. Further, the Committee also noted that the Disciplinary Committee is constituted by the Central Council of the Institute not for any individual complaint but for looking into complaints in general against many Cost Accountants.

Further, the Committee noted that the procedures started against the Respondent in the year 2014 and the Committee had different members with different Presiding Officers and just raising allegations against each of the Committees without providing any substantial evidence is deplorable to say the least. This matter was placed before 4 different Disciplinary Committees in the past and the Respondent never raised any bias against those Committees and raising allegations against the members of the current Committee, that too without any substantial and corroborative evidence is simply an act of after thought. Hence, the Committee comes to the conclusion, that the arguments are made with the intention of pressurising the Disciplinary Committee and delaying the process of justice. Further, the Committee observed that apart from this particular complaint, there are three more complaints filed



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against the respondent and the same are before the Committee at different stages. This Disciplinary Committee, had in fact, on 27th June 2018, after following due process dropped one of the complaints i.e Complaint No.Com/21-CA(48)/2017 filed against the respondent. This is quoted just to highlight the unbiased approach of the Committee towards the complaints filed against the Respondent. Therefore, the allegations of the Respondent against the Disciplinary Committee, are made out of frustration as he could not disprove the allegations made against him.

IV. Moreover, the Presiding Officer of the Disciplinary Committee is biased against the Respondent, as the Respondent was a whistle blower against the misdeeds of the then presiding officers and submitted a task force report where the Presiding Officers were involved in malpractices. It is settled law that a presiding officer of quasi-judicial authority must be a person of moral and integrity in-order to serve due and proper justice and in-order to maintain integrity of the post held.

Conclusion of the Disciplinary Committee: The Respondent has simply made the allegations without any substantial evidence. The respondent could not substantiate his allegation how the current Presiding Officer is biased against him, when the alleged task force report (again unsubstantiated) was against the then Presiding Officers. Hence, the Disciplinary Committee could not accept this argument of the Respondent.

V. Unfortunately, it has now become pertinent to highlight that the Chairman of the Disciplinary Committee was also reprimanded by the erstwhile Disciplinary Committee for several misdeeds during his earlier tenure and that the Chairman of the Disciplinary Committee also accepted those charges and had paid hefty fines as was ordered by the erstwhile Disciplinary Committee. Thus, it is abundantly clear that the Chairman of the Disciplinary Committee is not a fit person to hold the post of chairman and decide on the Complaint herein.

VI. It is pertinent to mention here that Disciplinary Committee by virtue of Section 21C of the CWA Act has the same powers as vested with the Court under Civil Procedure Code. Therefore, the Disciplinary Committee being a quasi- Judicial authority is mandated to act in fair and impartial manner. It is submitted that the Courts have time and again stressed upon the independent functioning of the quasi-judicial authorities. It is submitted that as the Disciplinary Committee is inherently biased against the Respondent and is constituted illegally, it should refrain from hearing the Complaint. Furthermore, any decision by such authority will be non-est for being illegal, against principles of natural justice.

Conclusion of the Disciplinary Committee: Again, the Respondent has levelled unsubstantiated allegations against the Chairman of the Disciplinary Committee. The Committee noted that there was a



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Disciplinary Proceeding against the current Chairman of the Disciplinary Committee in the past and it went to the Appellate Authority on appeal. The Hon'ble High Court of Delhi, in its Order dated 26/10/2017 in WP (C0 6284/2016 had set aside the order dated 20.06.2016 of the Appellate Authority. Hence, the allegations made by the Respondent are not sustainable and just made to put pressure on the Disciplinary Committee.

VII. It would not be out of place to mention that in an earlier case with similar facts (Shri Mukesh Kumar Sharma v. Shri Praveen Kumar Gupta [Complaint No. Com. 21-CA(36)/2015]) the Disciplinary Committee removed the name of the Respondent only for 3 months. Assuming but not conceding that the Respondent is guilty of the charges, similar standards must have been applied by the Disciplinary Committee but on the contrary, the punishment provided by the Disciplinary Committee itself shows that the Disciplinary Committee is biased against the Respondent and that due justice would not be served to the Respondent if the matter is heard by this Disciplinary Committee.

VIII. It is most respectfully submitted that assuming, on demurer, that an alleged misconduct has been committed, the impugned order removing the name of the Appellant from the register of members is grossly disproportional. In this regard, the Appellant craves leave of this Hon'ble Tribunal to refer to the observations of the Hon'ble Supreme Court in Bhagat Ram vs. State of Himachal Pradesh and Ors. AIR 1983 SC 454, wherein it has been held as under:

"It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution."

(emphasis supplied)

Conclusion of the Disciplinary Committee: The allegations against the respondent in Complaint No. Com. 21-CA(36)/2015] are different from that of the allegations against the Respondent in this matter. Hence, the quantum of punishment could not be comparable with this matter quoted by the Respondent. Further, the Committee concluded that the quantum of punishment is just and proportionate to the gravity of the misconduct of the respondent, as he continued to hold the position of Managing Director that is in contravention of CWA Act 1959, even after the complaint was filed against him in this regard.

IX. Another instant of abuse of power, which is pertinent to highlight at this very juncture is that the name of the Respondent was immediately removed by the Secretary of the Institute by a notification dated 04.07.2017 without complying with Section 20(2) of the Act, which mandates that it is the "Council" which has the power to remove the name of the Register. It is a matter of



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fact and record that no meeting of Council has taken place after passing of the Impugned order and thus the act of the removal of the name of the Respondent was done in clear violation of the provision of the act and is an illustrative example of the gross abuse of power by the members of the Committee and personal bias against the Respondent.

Conclusion of the Disciplinary Committee: The Committee noted that the role of the Committee comes to an end with the passing of the order. It is for the Institute to take up follow up action on the orders of the Disciplinary Committee, as per the Institute's Rules and Regulations. Hence, the arguments of the Respondent citing bias against him by the Committee is not sustainable. Further, the Institute has already restored his membership sequel to the order of the Hon'ble Appellate Authority and hence the arguments made the Respondent on this score, are not relevant.

Overall conclusion of the Disciplinary Committee

The Disciplinary Committee also further observed that the Respondent has the habit of addressing all his communication and sending the same to all members of the Disciplinary Committee (extracts given under para XV of this order) directly through emails and this amounts to influencing the process of justice. Further, the Disciplinary Committee comes to the conclusion that the respondent could not specifically show on record with any corroborative evidence, how the Disciplinary Committee Members are biased to him, when all his requests for dates or place of hearing were accepted in his favour on the basis of natural justice. Despite all these facts, the Disciplinary Committee is not recommending any action against the respondent, by taking a liberal view and choose to ignore his allegations being made out of frustrations. Thus the Respondent has scant respect for the process of Disciplinary Mechanism and being the elected member of the Council of the Institute, it is his added responsibility to respect the process of law. The Disciplinary Committee further advises the Respondent to be careful and not communicate directly to the Disciplinary Committee Members on the issues relating to the pending cases against him. As regards the contention of the Respondent relating to disproportionate punishment awarded to him by the Committee, the Committee is of the view that the misconduct continued for a very long duration even after the complaint was filed and hence the punishment awarded to him is just proportion to the Misconduct committed by him. As regards the abuse of power by the Institute in removing him from the membership without the approval of the Council, the same being set aside by the Appellate Authority and hence has no relevance as of now, besides beyond the jurisdiction of this Committee. As regarding the allegations made by the Respondent that "In the Council Meetings Mr. Sanjay Gupta time and again makes allegation against me on the basis of Disciplinary Complaints filed against me which itself shows that Mr. Gupta is bias and an interested party, therefore, should not be on the



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Disciplinary Committee" the Committee concluded that the Respondent has not provided any corroborative evidence in support of his allegations and hence the mere allegations without any corroborative evidence cannot be accepted. Further, the Disciplinary Committee concluded that the Respondent has been making allegations randomly against each and every authorities linked to the Disciplinary Committee without any corroborative evidence and hence concluded that these allegations are made to delay the process of justice and hence reject these allegations. . "The Disciplinary Committee further concluded that all other points raised by him in his submission on 27th June 2018, were adequately addressed

B. RESPONDENT IS NOT AN EMPLOYEE AND HAD NO MAJOR RESPONSIBILITIES AS A MANAGING DIRECTOR

I. It is most respectfully submitted that the only finding against the Respondent is that he was guilty of misconduct under Clause 10 Part I of Schedule 1 of the CWA Act of the CWA Act and Clause I of Part II of the Second Schedule of CWA Act. The said provisions reads as under:

"(10) engages in any business or occupation other than the profession of cost accountant unless permitted by the Council so to engage

Provided that nothing contained herein shall disentitle a cost accountant from being a director of a company (not being a managing director or a whole-time director) unless he or any of his partners is interested in such company as accountant."

PART II of SECOND SCHEDULE

(1) Contravenes any of the provisions of this Act or the regulations made there-under or any guidelines issued by the Council;

(emphasis supplied)

II. It is most respectfully submitted that in the present case, there was no allegation of any misconduct mentioned in the 2nd Schedule. However, since the Director (Discipline) with a malafide intention, intended to place the matter before the Disciplinary Committee without any finding on any professional misconduct under the Second Schedule, a finding (without any basis) whatsoever, was arrived at stating that there has been a misconduct of a provision mentioned in the 2nd Schedule.

Conclusion of the Disciplinary Committee: The Committee noted that the Respondent when he filed his Written Statement on 2 March, 2017 to the Prima Facie Opinion dated 20 May 2016 sent to him vide letter dated 15th June, 2016 never raised any such allegations against the then Director (Discipline) or placed his arguments against inclusion of Clause (1) of Part II of Second Schedule to the CWA, Act 1959.



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Raising such allegations against the Director (Discipline) at this stage is not sustainable. Clause (1) of Part II of Schedule 2, objected to by the Respondent reads as below:

“Contravenes any of the provisions of this Act or the regulations made there under or any guidelines issued by the Council”

As per the Resolution passed by the Council of the Institute in its meeting held on 20th and 21st May 2009 (as given in Appendix No. 6 to the CWA Regulations, 1959), a member in practice should apply for an obtain the specific permission of the Council before engaging himself as a Managing Director within the meaning of Companies Act. It has been proved in this matter that the respondent did not seek or obtain any specific permission from the Council of the Institute for occupation of the position of Managing Director. It is also pertinent to note that the respondent himself has accepted in his written statement dated 2nd March 2017, to the PFO that he applied for permission to be the Managing Director from the Council on 8th August, 2016 . Hence, it is clear that the respondent on the date of the complaint filed against him i.e. 14 Nov 2014 was the Managing Director in contravention of the CWA Act/Regulations and hence attracts provisions of Clause (1) of Part II of Schedule 2,

III. It is pertinent to note that neither in the complaint nor in the prima facie opinion or in the impugned order there was any discussion on the relevance of 2nd Schedule. It is therefore evident that the alleged misconduct mentioned in the 2nd Schedule was invoked by the Director Discipline with malafide intentions in connivance with Mr. Sanjay Gupta who was a part of the Disciplinary Committee and was desirous of punishing the Respondent for settling the personal course against him.

Conclusions of the Committee: The Committee noted that the Prima Facie Opinion (PFO) of 20th May 2016 clearly indicates that the Respondent has not sought the permission of the Council for accepting the position of Managing Director of Bizolindia Services Private Limited and hence the Respondent appears to be guilty of

- (i) Clause (10) of Part I of First schedule to the CWA, Act, 1959
- (i) Clause (1) of Part II of Second schedule to the CWA, Act, 1959

Hence, the argument of the Respondent that too at this stage that the PFO did not contain any discussion of the relevance of 2nd Schedule is not correct. Further, the argument of the Respondent that the Director (Discipline) with malafide intentions in connivance with Mr Sanjay Gupta who was part of Disciplinary Committee is not correct, as Mr Sanjay Gupta was not part of the Disciplinary Committee that considered the PFO on 20.5.2016. Therefore, the arguments made by the Respondent on this score are contrary to the facts and hence rejected.



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IV. A bare perusal of the said provision would reveal that it is only when a Cost Accountant engages in any "Business or Occupation" other than profession or Cost Accountant that he can be stated to have been committed to professional misconduct.

V. In the present case, a bare perusal of the documents on record would reveal that the Respondent had never engaged in any "Business or Occupation" other than the profession of Cost Accountant. While it is correct that the Respondent was designated as a Managing Director of Bizsolindia Services Private Limited ("Company"), however, no special powers were ever delegated on the Respondent.

Conclusion of the Committee: Clause (10) under Part I to the First Schedule, reads as below:

"10) engages in any business or occupation other than the profession of cost accountant unless permitted by the Council so to engage: Provided that nothing contained herein shall disentitle a cost accountant from being a director of a company (not being a managing director or a whole-time director) unless he or any of his partners is interested in such company as accountant;"

The respondent has quoted one part of the Clause (10) under Part I to the First Schedule and omitted to quote the proviso given under the same. This proviso is clear that the Respondent violated the Provisions of CWA Act, 1959, by accepting to be the Managing Director of Bizsolindia Services Private Limited. Hence, the argument of the Respondent does not hold.

VI. It is a settled law that unless special powers are delegated on a Managing Director, he cannot be stated to be any better than other Directors. In this regard, the Respondent craves leave of this Hon'ble Tribunal to place reliance on the judgment of Hon'ble Bombay High Court in the case of Umesh Sharma, Managing Director, Aristo Pharmaceuticals Ltd. and Ranjit Sharma, Director, Aristo Pharmaceuticals Ltd. vs. S.G. Bhakta, Drugs Inspector, Food and Drug Administration 2002 SCC OnLine Bom 991. In the said case the Hon'ble High Court observed that:-

"The distinction between Manager and Managing Director is that, while the Manager by virtue of his office has the management of whole or substantially whole of the affairs of the company, the Managing Director has to be entrusted with such powers of the management as may be thought fit. The powers of management are required to be delegated upon the Managing Director, either by an agreement with the company or by a resolution passed by the Board of Directors in its general meeting or by virtue of its memorandum or article of association. It is not the name by which the person is called but the position he occupies and the functions and duties which he discharges that determines whether infact, he is in charge of and responsible to the company or not."

(emphasis supplied)



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VII. It is most respectfully submitted that the aforesaid observations apply squarely to the facts of the present case. In the present case, not only no special powers were conferred upon the Respondent, the same was also affirmed by Chairman of the Company. The Chairman of the said Company in which the Respondent was a Managing Director, i.e. Mr. R. Venkitachalam issued a letter dated 04.03.2017 on the letterhead of the Bizsolindia Services Pvt. Ltd. categorically stating as under:-

- a. Board of Directors of Bizsolindia Services Pvt. Ltd. had never given any special powers to the Managing Director of the Company nor any extra remuneration was given to the Respondent by the Company in his capacity as Managing Director.
- b. All the Directors on the Board are and have always been entrusted with collective duties and responsibilities to manage the affairs of the Company.
- c. As per the Memorandum of Association and Article of Association of Bizsolindia Services Pvt. Ltd. the duties of all Directors are identical and collective, irrespective of their designation.
- d. None of the Directors, called by whatever name, is given fixed remuneration in the capacity of Director till date.
- e. The Respondent have been rendering services to Bizsolindia Services Pvt. Ltd. in their professional capacity as a Cost Accountant and the professional services have been hired by the Company on retainership basis.

VIII. Additionally, the mere fact that Respondent was a Managing Director would not imply that the Respondent had taken up employment. The same is evident from the following:

- (i) It has been held by the Hon'ble Court Bombay High Court in the case of Employees' State Insurance Cooperation (through its Regional Director) Nagpur v. Apex Engineering Pvt. Limited (Through its Managing Director, Shri V.M. Dhanwate), Nagpur 1987 SCC Online BOM 136 observations whereof may gainfully be reproduced as under:

"18. All the above powers and duties, therefore, show that the Managing Director belongs to the class of the "Principal employer" as defined in S. 2(17) of the E.S.I Act and not to the class of "employee" as defined in S.2(9) of the said Act. A person who is an employer within the meaning of the said Act cannot at the same time be treated as an employee within the meaning of the said Act as held by the Supreme Court in the case of Employees' State Insurance Corporation, Trichur v. Ramanuja Match Industries, [1985-1 L.L.N 249] (vide supra). The judgment of the Supreme Court in Sri Ram Prasad v. Commissioner of Income-tax, New Delhi, (1972) 2 SCC 696:



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[(1972) 2 SCC 696: A.I.R 1973 S.C 637] (vide supra), is not, therefore, of any assistance to the Respondent- Corporation so far as the scheme of the E.S.I Act is. The view taken by the learned Courts below, therefore, deserves to be affirmed.”

(emphasis supplied)

- (ii) The Respondent had duly placed on record his returns filed for the years 2014-15, 2015-2016 & 2016-2017 which categorically record that the said returns were filed as an income from business and profession and not as an employee. It is pertinent to mention here that the income tax returns clearly elicit that the Respondent is showing its income from profession and not salary and paying its taxes accordingly.
- (iii) Further, a perusal of the engagement letter dated 01.04.2014 in favor of the Respondent would clearly reveal that he has been engaged as a consultant. Some of the relevant points in this regard may be highlighted as under:
- The Company (Bizsolindia Services Pvt. Ltd.) renewed the previous contract with the Respondent with respect to professional services on Retainership basis for professional advice and implementation thereof.
 - The Respondent shall be responsible for training the business development team w.r.t. several aspects of defining polices for capturing business market etc.
 - The Respondent will provide professional expertise services for conducting project assignments and conducting audits.
 - The services to be availed by the company are expected to be of Independent professional nature.
 - The Respondent shall raise monthly bill for professional fee and necessary service tax deduction at source.
- (iv) From a perusal of the above, it is ex-facie evident that the Respondent was not an employee of the Bizsolindia Services Pvt. Ltd. and was only advising Bizsolindia Services Pvt. Ltd. in his profession capacity. In this regard, it is most respectfully submitted that the order dated 20.05.2016 passed by Disciplinary Committee has rendered an erroneous interpretation on Clause 7 of the Contract dated 01.04.2014 to a conclusion that the said Clause employed with the Respondent was fully employed with Bizsolindia Services Pvt. Ltd. and cannot employment form anyone else.



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- (v) *However, a perusal of the aforesaid provision would reveal that the same is only in the nature of a restrictive covenant forbidding the Respondent to take up any assignment on his own account or through any agent, individual, company, agency etc. which is directly related to Bizsolindia's business activities except with prior approval of the management.*
- (vi) *The said provision cannot be construed to imply an exclusive employment as alleged and therefore the impugned order is liable to be set aside on this ground also.*
- (vii) *Notwithstanding anything stated hereinabove, even assuming (although not admitting) that the Respondent is allegedly guilty for accepting title of Managing Director, it is submitted that the same would fall under the category of Misconduct under Schedule I of the CWA Act and therefore is liable to be heard by Board of Discipline and the matter is liable to be remanded in toto to the "Board of Discipline".*
- (viii) *Further, it is submitted that the Respondent had not accepted the post of Managing Director of Bizsolindia Services Private Limited with fixed remuneration and there was no employer-employee relationship. Also, it is pertinent to highlight at this juncture that the terms and conditions of the contract specifically provide that the Respondent shall maintain sufficient staff and recruit for providing support services and assist the company's team, however require any expenses incurred in maintaining and running of such office shall be borne by the Respondent.*
- (ix) *Furthermore, in the contract it was also provided that the Respondent will be paid a fixed retainership on monthly basis subject to deduction of TDS. The turnover statement of the Respondent specifically bifurcate the professional fees from Bizsolindia Services Pvt. Ltd. and the professional fee received from other clients, which clearly indicates that the professional fee received from other clients which is much higher than that of professional fee received from Bizsolindia Services Pvt. Ltd.*

Conclusion by the Disciplinary Committee: Committee noted that the Respondent has repeated his earlier arguments. However, from the contract dated 1st April 2014 of the Respondent, it is amply clear that he was entrusted with substantial power. Further, the contract is a reflection of existence of employer-employee relationship, since all the terms and conditions that are applicable in such relationship are applicable in the instant case. The Committee also recalled the submission made by Shri Venkat R. Venkitachalam, Chairman of Bizsolindia Services (P) Ltd (the witness of the Respondent) , extract of which reads as below:



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- He was aware that the respondent was holding full time Certificate of Practice of the Institute while he was designated as Managing Director in Bizolindia Services (P) Ltd.
- Although the respondent was designated as Managing Director, he did not hold substantial powers of management. It was only to give an impression to the world at large that the respondent held substantial powers of management.
- He also wanted the respondent to devote full time and attention to the job profile assigned to him.

Based on the statement made by the witness of the Respondent, it is clear that the Respondent was holding substantial powers of Management, eventhough it was to give an impression to the world at large that the respondent held substantial powers of management. Further, it cannot be denied that the Respondent was the promoter Director of the Company in which he was made Managing Director. The other arguments of the Respondent relating to remuneration, employer-employee relationship were raised earlier and considered too by the Committee. The Committee considered the extracts of the Minutes of the *BIZSOLINDIA SERVICES PRIVATE LIMITED*, which reads as below:

"EXTRACTS OF THE RESOLUTION PASSED AT THE MEETING OF THE BOARD OF DIRECTORS OF BIZSOLINDIA SERVICES PRIVATE LIMITED HELD ON THE MONDAY THE 23RD DAY OF DECEMBER, 2013 AT 11:00 A.M., AT THE REGISTERED OFFICE OF THE COMPANY AT 14-17, SUYASH COMMERCIAL MALL, S. NO. 74 & 75, NEAR PAN CARD CLUB, BANER PUNE – 411045

RESOLUTION NO. 35

CREATION OF CHARGE

"RESOLVED THAT, the draft of Agreement for creation of charge from HDFC Bank Ltd., Swargate Branch, Pune, presented before the Board for initialization by the Chairman for the purpose of identification be and is hereby approved by the Board."

"RESOLVED FURTHER THAT, the Company does hereby create charge for Rs. 27, 80, 000/- (Rupees Twenty Seven Lakhs Eighty Thousand Only) in favour of 'HDFC Bank Limited, Swargate Branch, Pune, for availing loan against Vehicle Audit A4 by way of hypothecation by exclusive charge over the vehicle/asset i.e. Audit A4 on the terms and conditions as may be decided between the Company and the Bank/Lender."

"RESOLVED FUTHER THAT, Mr. Ashok Nawal, Managing Director of the Company be and is hereby authorized to make applications, submit documents and papers, give guarantees and sign other agreement, documents and papers as the Bank may require for the purpose of creation of charge and availing the said loan facilities and to accept, on behalf of the Company, such terms and conditions as the Bank may impose for that purpose."



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“RESOLVED FURTHER THAT, the Common Seal of the Company be affixed on documents such as deed of hypothecation, Loan agreement or such other documents as the Bank may require, under the signature of Mr. Ashok Nawal, Managing Director of the Company who shall sign in token thereof pursuant to the Provisions of the Articles of Association of the Company”.

From the above it is clear that the Respondent was given substantial power in the Company and hence the arguments of the respondent that he was not holding substantial power in the Company do not hold.

XVIII. Based on the Evidences submitted before by the Complainant, Director (Discipline) and the arguments, witness and documents advanced by the Respondent, , it is proven beyond doubt that Shri A B Nawal (M/5720) was holding the Position of Managing Director. Further, during the Cross-Examination on 17th Feb 2018 Shri A B Nawal could not prove that he was not holding the position of Managing Director as alleged by the Complainant and he did not violate the provisions of CWA Act, 1959 by accepting the position of Managing Director . Further, the respondent admitted that he was working as a Managing Director and also received annual remuneration and this facts were recorded by the Hon’ble Appellate Authority in its order dated 19.07.2017

XIX. In the considered view of the Disciplinary Committee, the moot question to be raised and decided was whether the respondent Shri Ashok B Nawal (M/5720) was holding the Post of Managing Director in contravention of CWA Act/Rules/Regulations as alleged by the Complainant Shri Ashish P Thatte and whether Shri A B Nawal (M/5720) has contravened the Clause (10) of Part I of First schedule to the CWA, Act, 1959 and Clause (1) of Part II of Second schedule to the CWA, Act, 1959 to the CWA Act, 1959 and these questions were provided against the respondent beyond doubt.

XX. Therefore, the Committee concluded that the respondent has nothing more to offer to prove that he was not guilty and did not violate the provisions of CWA Act/Regulations and confirms the order issued by the Disciplinary Committee on 27th June, 2017 and concluded that the respondent is guilty of professional misconduct and take the following action under Section 21B(3) of Cost and Works Accountants Act, 1959;

- (a) Reprimand
- (b) Removal of name from the Register of members for a period of two years
- (c) Fine of Rs.25000/- (Rupees twenty five thousand)

The fine is to be paid within 30 days from the date of receipt of the order.




SANJAY GUPTA
Presiding Officer