

BEFORE THE APPELLATE AUTHORITY
(Constituted under The Cost Accountants Act, 1959)

APPEAL NO. 04/ICWAI/2017

IN THE MATTER OF:

Ashok B. Nawal

Versus

...Appellant

**Institute of Cost Accountants of India
and others**

...Respondents

CORAM

Hon'ble Mr. Justice M.C. Garg
Hon'ble Mr. B.M. Sharma
Hon'ble Dr. Navrang Saini

Chairperson
Member
Member

PRESENT

For the Appellant:

1. Mr. Ashok B Nawal, Appellant in person
2. Mr. Pradeep Dahiya, Advocate

For the Respondents:

1. Mr. Peeyoosh Kalra, Advocate appearing for Respondent no. 1
2. Mr. Rajendra Bose, Director (Discipline), ICWAI
3. Mr. Kush Chaturvedi and Mr. Rahul Malhotra Advocate appearing for Respondent no. 2
4. Mr. D. Kavin Prabhu, Advocate appearing for Respondent no. 2
5. Mr. Ashish P. Thatte, Respondent no. 2 in person

ORDER

Date: 19.07.2017

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".

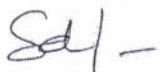
2. The Appellant has submitted that the impugned order has not been passed in accordance with the law as contained in the Cost Accountants Act, 1959 and the Cost

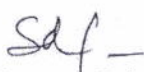
doing so, but in the present case, it is apparent that on the very first date of receipt of this request, it was refused, but not for the reasons as specified and aforesaid mentioned.


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 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-CWR

(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.


Justice M. C. Garg
Chairperson


Dr. Navrang Saini
Member


B.M. Sharma
Member

Certified to be True copy.

RAVINDRA SINGH PUNDIR
Registrar
Appellate Authority
'ICAI Bhawan'
A-28, Sector-62, NOIDA