THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

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The Institute of Cost Accountants of India
Board of Discipline u/s 21A of The Cost and Works Accountants Act 1959

In the matter of

Complaint No. Com/21-CA(90)/2020 –

` CMA Vijender Sharma (M/18513) .....Complainant

Vs

CMA Sandeep Goel (M/17120) .....Respondent

ORDER

1. CMA Vijender Sharma, (hereinafter referred to as the "complainant"), bearing membership number 18513 filed a complaint dated 4th July 2020 in Form I in triplicate with the prescribed complaint fee of Rs 2950/- (inclusive of GST) against CMA Sandeep Goel (hereinafter referred to as the "respondent") bearing membership number 17120 alleging the following:

(i)CMA Sandeep Goel has, without authorisation of the competent authority, filed a writ petition on 29th July, 2020 at the Hon'ble Delhi High Court in the name of Northern India Regional Council (NIRC) on matters for which there is no resolution of the NIRC and hence has acted ultra vires and thereby violated the provisions of Regulation 123 of the Cost & Works Accountants, 1959.

Regulation 123(a) reads as follows:

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"The Chairman of a Regional Council shall exercise such powers and perform such duties as are conferred or imposed on him by the Act or these regulations or as may be delegated to him by the Regional Council from time to time".

On a careful perusal of Regulation 123(a) above, it is amply clear that the Chairman has to be conferred with powers either by the Act or by the Regulations or by the Council of NIRC to enable him exercise his powers and to perform his duties.

In the instant case, CMA Sandeep Goel was neither conferred with powers under the CWA Act or Regulations nor there was any resolution passed by NIRC conferring such power to CMA Sandeep Goel to file writ petition on behalf of NIRC. Therefore, he has done this act with a mala-fide intention and his act is not only unilateral and arbitrary but also beyond his powers and authority. When no resolution was passed by NIRC conferring power to file a writ petition at the Delhi High Court, such an action by CMA Sandeep Goel is against the spirit of Regulation 123(a) and is void ab initio.

(ii) At the 295th meeting of the Council held on 22nd July 2015, The Council had decided that if any defamatory mail/ communication in whatsoever form is written against the Council, Council Member, President, Vice President, Government Nominees, Government Department, officials of the Institute etc. the President is authorized to take necessary action including referring the matter to disciplinary authority for disciplinary action on behalf the Council.

(iii) As CMA Sandeep Goel has filed a petition involving the Institute without having any sanction or approval from the competent authority, i.e. Regional Council of NIRC he has brought disrepute to the profession and liable to be proceeded against under Clause (2), Part- IV of First Schedule to the Cost and Works Accountants Act, 1959, which reads as follows :

"A member of the Institute whether in practice or not, shall be deemed to be guilty of other misconduct if in the opinion of the Council he brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional works".

Along with the complaint in Form I, the complainant has also attached with his complaint a copy of the writ petition – Forwarding letter, Notice of Motion, Request for urgent hearing dated 29th June 2020 filed with Hon'ble Delhi High Court.

2. On receipt of the complaint in Form I dated 4th July 2020 of the complainant, the instant complaint was registered by the Disciplinary Directorate after it was found to be in order and

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the same proceeded with in the manner as prescribed in Chapter III of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. A unique complaint number Com-21/CA(90)/2020 was allotted to the complaint.

3. The Complaint having been registered by the Disciplinary Directorate, the same, together with all the annexure as attachments, was emailed to the respondent vide Disciplinary Directorate's mail Ref No. G/DD/Com-C-90/1/07/2020 dated 27th July 2020 at or about 5.47 PM requesting for his response in the matter by way of a written statement within 21 days from the date of email dated 27th July 2020 of the Disciplinary Directorate. The respondent, by his email dated 17th August 2020 sent at or about 3.03 PM forwarded his written statement in due compliance with Rule 8(3) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. The respondent inter alia replied that:

a) The instant complaint dated 04.07.2020 filed by the complainant is misconceived, false, frivolous besides being abuse and misuse of process of law and actuated with mala-fide to serve his vested interests.

b) He has not committed any professional or other misconduct far less under Part IV, Clause (2) of the First Schedule to the Cost and Works Accountants Act, 1959 ("CWA Act, 1959") or violated any provisions thereof or any regulation of the Cost and Works Accountants Regulations, 1959 ("CWA Regulations, 1959") as falsely alleged by the complainant.

c) The present complaint is nothing but arm-twisting tactics adopted by the complainant to pressurise the members of NIRC to not pursue the Civil Suit No. 374 of 2017 filed against him seeking recovery of Rs. 41,44,422/- (Rupees Forty One Lakhs Forty-four thousand four hundred twenty-two) together with the interest @ 18% per annum, amongst other, from him. The said Civil Suit, at present, is pending in the Court of Sh. Sanjay Sharma, Learned Additional District Judge, District: South East, Saket Court, New Delhi.

d) After following the due procedure, Debit Notes were raised on the complainant. The Chairman NIRC was authorized by the Executive Committee in its meetings held on 17.10.2016 and 23.01.2017, which was further confirmed in Regional Council meeting held on 25.01.2017 as well as in the 58th AGM held on 01.08.2017, to start recovery proceedings against the complainant for recovery of said amount. Accordingly, the said Civil Suit was filed by NIRC through its Chairman against the complainant, which is sub judice.

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e) The authority of the Chairman, NIRC to file the said case on behalf of NIRC has not been disputed by the Complainant in his written statement filed in the said Civil Suit. Therefore, the Complainant is aware that the Chairman, NIRC is competent person to file cases on behalf of NIRC.

Relevant portion of the Plaint of the Civil Suit No. 374 of 2017	**Relevant portion of the Written Statement filed by the Defendant/Complainant.**
23. That the suit is being filed through the Chairman of the NIRC who is statutorily authorised. However, the Chairman has been further authorised file the suit and sign the necessary documents vide NIRC resolution dated 23.01.2017	23. That the contents of Para No. 23 are matter of record and hence need no reply. However, it is submitted that in view of the decision taken by the Central Council in its meeting held on 21.05.2016, all the legal expenses if any incurred by Regional Council or chapter without approval of the HQ's shall be debited to the concern sanctioning authority of the Regional Council or Chapter. It is matter of record that the Chairman has not taken any permission from the HQ's for incurring legal expenses for filing the present suit on behalf of Regional Council.

Thus, in the said Written Statement, the complainant has admitted that the Chairman, NIRC is competent to file cases on behalf of NIRC.

f) The Institute of Cost Accountants of India (ICAI) is a body corporate created under Section 3 of the CWA Act, 1959.

g) The Northern India Regional Council (NIRC) is a statutory body created under Section 23 of the CWA Act, 1959 read with Regulation 114(1) of the CWA Regulations, 1959 and it is one of the four Regional Councils of the ICAI. NIRC is a statutory body consisting of elected as well as nominated members. At present, there are 7 elected 3 nominated members from Central Council and 3 Government Nominee members. The respondent has quoted the provisions of Section 23 of the CWA Act 1959 and Regulation 114(1) of the CWA Regulations 1959.

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h) As per Regulation 123 of the CWA Regulation, 1959, the Chairman of the Regional Council is vested with the powers and he is authorized to perform such duties as conferred or imposed by the CWA Act, 1959 or the CWA Regulations, 1959 or may be delegated to him by the Regional Council from time to time. Therefore, there are three sources of power and duties of the Chairman, NIRC.

i) CWA Act, 1959;
ii) CWA Regulations 1959 ; and
iii) Delegation by Regional Council.

i) Majority of the members (i.e. 5 members excluding the Chairman, thus, total six members) of the Regional council vide emails dated 28.06.2020 authorized the Chairman to take appropriate action in respect of the email dated 18.06.2020 sent by the Secretary, ICAI calling upon to explain as to why NIRC should not be dissolved under Regulation 145(1)(a) of CWA Regulations, 1959 for alleged non-compliance of the purported directions issued by the Council under Regulation 145A of CWA Regulations 1959 vide letter dated 18.01.2019. Copies of the email dated 28.06.2020 and copy of the email dated 18.06.2020 were enclosed.

j) The then Secretary (Acting), ICAI vide letter dated 18.01.2019 directed the Chairman of NIRC to pass the necessary entries in the books of accounts as on 28.09.2018 to give effect to alleged cancellation of the Debit Notes raised on the complainant. The Chairman, NIRC duly responded to the said letter dated 18.01.2019. Copy of the letter dated 18.01.2019 was enclosed.

k) The said direction cannot be said to be a direction conducive to fulfillment of the objects of the CWA Act, 1959 as envisaged by Regulation 145A of the CWA Regulations, 1959. To regularize a financial irregularity and/or embezzlement of funds cannot be said to be the object of the CWA Act, 1959.

l) From the aforesaid facts, it is apparent that the said letter dated 18.01.2019 and said email dated 18.06.2020 are concerning the Debit Notes raised on the complaint. In other words, the issue of said Debit Notes is the basis for issuing the said Letter dated 18.01.2019 and said email dated 18.06.2020.

m) Since physical meeting of the members of NIRC was not possible in view of outbreak of pandemic of Covid-19, therefore, the majority members vide their respective email dated 28.06.2020 authorized the Chairman, NIRC to take appropriate action in respect of the said email dated 18.06.2020. Thus, the Chairman, NIRC having authorized was/is competent to file writ petition before the Hon'ble High Court of Delhi.

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n) Even otherwise, the Chairman, NIRC is authorized to file the writ petition as the issue of said Debit Notes and said email dated 18.06.2020 are inter-connected and the Chairman, NIRC has been authorized by the Executive Committee in its meetings held on 17.10.2016 and 23.01.2017, which was further confirmed in Regional Council meeting held on 25.01.2017 as well as in the 58th AGM held on 1.08.2017 Copy of the minutes of the Executive Committee meetings dated 17.10.2016 & 23.01.2017, copy of the Regional Council meeting dated 25.01.2017 and copy of the minutes of 58th AGM dated 01.08.2017 are enclosed herewith.

o) Furthermore, the majority of the members of the Executive Committee of NIRC in its meeting held on 16.07.2020 passed the agenda regarding filing of the writ petition and reiterated and reaffirmed the authorization in favour of the Chairman, NIRC for filing the writ petition and also ratified the whole process undertaken by NIRC following the said email dated 18.06.2020. Copy of the minutes of the Executive Committee meeting held on 16.07.2020 was enclosed.

p) Thereafter, the Regional Council in its meeting held on 04.08.2020 has also approved the filing of the writ petition by the Chairman, NIRC. Copy of the minutes of the Regional Council meeting held on 04.08.2020 was enclosed.

q) In view of the afore stated facts, it cannot be said that the Chairman, NIRC is not authorized to file the writ petition before the Hon'ble High Court of Delhi. Even otherwise, the Chairman, NIRC is competent to file the writ petition challenging the proposed threatened dissolution of NIRC as he is also the member of the Regional Council and any adverse action proposed to be taken by ICAI will also impair his invaluable rights and interests.

r) It is factually incorrect that the respondent had filed the writ petition before the Hon'ble Delhi High Court. Rather NIRC has filed the writ petition through its Chairman. The Chairman, NIRC has been authorized by the majority members of the Regional Council in this behalf, who otherwise is also competent.

s) NIRC is a collective body and any of its member aggrieved by threatened dissolution, is competent to approach the court of law and there cannot estoppels against the law. To approach the court of law, is a fundamental right of an aggrieved person and the same cannot be taken away. Any attempt to abridge or nullify the said right, is illegal and arbitrary and not binding.

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t) Approaching the court of law ventilating one's grievance and seeking redressal thereof in accordance with law, does not amount to defaming anyone as has been completely misconceived by the Complainant. The respondent has claimed that he had not written any defamatory email/letter/communication against either the Council or Council members or President or Vice President or Government nominees or Government department or officials of the Institute as such the Chairman, NIRC has not violated the resolution passed in 295th meeting of the Council held on 22.07.2015.

u) The respondent has not filed the writ petition as such it cannot be said that he had brought disrepute to the profession in terms of Part IV, Clause (2) of the First Schedule to CWA Act, 1959 as falsely alleged by the Complainant.

v) It is the complainant himself who by misusing his powers filed false complaint and maligned the image of NIRC and its members and harassed them unnecessarily.

w) In law, it is well settled that no one is permitted to do something indirectly which he cannot do directly. The issue related to said Debit Notes is sub-judice before the competent court at Saket Courts, New Delhi as such the complainant cannot be permitted to circumvent the said Civil Suit by filing a false and frivolous complaint under reply.

x) The issues related to the said email dated 18.06.2020 and letter dated 30.06.2020 are subject matter of the writ petition bearing W.P.(C) No. 3947/2020 pending before the Hon'ble High Court of Delhi. By the Complaint under reply, the Complainant has made an attempt to interfere in the administration of justice. Copy of the order dated 06.07.2020 passed by the Hon'ble High Court of Delhi was enclosed.

The respondent prayed that in view of the afore-stated facts, the present false, frivolous, malicious and misconceived Complaint be dismissed and recommend/start disciplinary proceedings against the complainant for filing, false and frivolous complaints against the respondent and others.

4. The respondent along with his reply had also attached a copy of the Order of the Hon'ble High Court of Delhi dated 6th July 2020 in the Writ Petition No WP Northern India Regional Council (NIRC) Vs. The Institute of Cost Accountants of India (ICAI). The main points of the said order of the Hon'ble High Court of Delhi, are as hereunder:

(a) The present petition has been filed by the Northern India Regional Council (hereinafter 'NIRC') against the Institute of Cost Accounts of India (hereinafter 'ICAI'). The

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disputes appear to have arisen between the NIRC and ICAI owing to some allegations against the complainant who is alleged to have misappropriated a sizeable amount of funds to the tune of Rs. 41,44,422/-.

(b) The allegations against complainant in the instant complainant were raised way back in 2015 and as per the Id. Counsel for the Petitioner, the same is part of the finalized accounts of the NIRC as well as the ICAI. The Ld. Counsel further submits that as per the resolution passed by the ICAI itself, a debit note was raised which recorded the irregularities in respect of the said amount and the said accounts were placed before Parliament. Thereafter, the NIRC also filed a suit, being Suit No. 374/2017, before the Ld. District Judge against Mr. Sharma seeking recovery of the said amount.

(c) On 18th June, 2020, a notice was issued by the ICAI calling upon the NIRC to appear before the ICAI for a hearing in relation to alleged non-compliance of the directions issued under Regulation 145A of Cost and Works Account Regulations, 1959 (hereinafter 'CWA Regulations'). It is stated that the said hearing could not be attended by the NIRC's representative owing to the non-availability of records due to the COVID-19 lockdown. Deferment of the hearing was therefore sought by the NIRC on 26th June, 2020. However, despite this request, on 30th June, 2020, the ICAI has passed an order to the following effect:

> "…..
> *After detailed deliberations, the Council decided that since the NIRC has repeatedly violated the direction of Council issued under Regulation 145A of the Cost and Works Accountants Regulations, 1959, a strict action is required to be taken to ensure that the said directions are implemented in letter & spirt and also to ensure that the Accounts of the Northern India Regional Council show a True and Fair View. Accordingly following orders /directions were issued by the Council of the Institute in accordance with and under Section 15(2) (1) of The Cost and Works Accountants Act, 1959, Regulation 93 (2) 93 (3) & 145 A of The Cost and Works Accountants Regulations, 1959.*
> *Headquarters would take over the charge of Administration, Finance and Legal functions of NIRC until further orders. The accounts of NIRC are also be finalized under supervision of Headquarters.*
>
> *Further, all officers and employees of NIRCE would henceforth report directly to the Secretary of the Institute until further orders. The official email IDs of NIRC issued by the Headquarters are also to be suspended. The Head of Finance was authorized*

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to take over the accounts of NIRC for 2019-20 and arrange for getting the same audited and the Secretary was authorized to sign the accounts and all other statements for the year 2019-20 and issue a notice for Annual General Meeting of NIRC.

It was also decided to file disciplinary case against the defaulting members of NIRC for violation of direction issued under Regulation 145A of The Cost and Works Accountants Regulation, 1959 and not appearing before the Council on due date. The Secretary was instructed to refer the case to Director (Discipline).

Further, it was decided that the legal expenses borne in any court case filed/defended by NIRC shall be recovered from the past & present members of NIRC who approved the same, in view of decision taken by Council at its 299th meeting held on 21st May, 2016, which is as follows :

> *"It was also decided that legal expenses, if any, incurred by Regional Council or Chapter without approval of the Headquarters shall be debited to the concerned sanctioning authority of the Regional Council or Chapter." "*

(d) The submission of NIRC was two-fold. One, that the dispute regarding the misappropriation of funds is now the subject matter of a civil suit and the NIRC could not have been asked to withdraw the debit note raised in this regard. Secondly, it is submitted that as per Regulations 145 and 145A, any action can be taken by the ICAI against the NIRC only after affording NIRC a hearing. Since NIRC had sought deferment of the hearing, in effect, there has been no hearing in this matter. Accordingly, NIRC has prayed that the impugned order be stayed and a hearing be granted by the ICAI.

(e) The learned Counsel appearing for the ICAI submitted that the notice for hearing was adequate and was given to the NIRC. Moreover, as a preliminary ground he submitted that the NIRC has no independent existence outside the ICAI and cannot even file a writ petition or a suit as per the applicable statutes and regulations. He further submitted that the ICAI has no objection to giving NIRC a hearing.

(f) The Ld. Counsel appearing on behalf of the ICAI has also brought to the notice of this Court the order dated 3rd July, 2019 in W.P. (C) 6030/2016 which was filed by Mr. Vijender Sharma against the ICAI. This was, however, dismissed as withdrawn. Insofar as the disputes between the NIRC and the ICAI is concerned, the prima facie view of

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this Court is that the same was not adjudicated in the said writ petition. The claim of NIRC against the complainant is also to be adjudicated in the civil suit that is pending.

(g) Considering the overall facts, all this stage, without going into the merits of whether the impugned order passed on 30th June, 2020 is as per the statute and the Regulations, it is directed as under:

i) The NIRC shall be afforded a hearing by the ICAI on 22nd July, 2020 at 2:00 p.m. The NIRC is permitted to file any written response to the notice issued by the ICAI on or before 18th July, 2020. The ICAI, after affording a hearing to the NIRC, shall pass a detailed order in this regard;

ii) The operation of the order dated 30th June, 2020, by which the administration, finance and legal functions of the NIRC have been taken over by the ICAI, shall stand stayed. Both NIRC and the ICAI shall continue to perform their respective activities as they were performing prior to the passing of the order dated 30th June, 2020.

(h) Any order that is passed by the ICAI shall be filed on record along with its counter affidavit which shall be filed on or before 14th August, 2020. Rejoinder, if any, be filed within two weeks thereafter.

5. The written statement dated 17th August 2020 of the respondent together with all annexure of the respondent was emailed to the complainant vide mail Ref. No. G/DD/Com- CA(90)/(18513)/2/08/2020 dated 25th August 2020 at or about 1.11 PM in terms of sub-rule (4) of Rule 8 of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of cases) Rules, 2007 with a request to send his rejoinder on the written statement within 21 days of the mail. The complainant, by an email dated 10th October 2020 sent at or about 5.52 PM emailed his rejoinder dated 9th October 2020 on the written statement which inter alia stated that:

a) That the contents of Para 1 are wrong and hence denied. It is submitted that rather the respondent himself is having some personal vendetta against the complainant and all of his actions smells biasedness.

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b) That the contents of Para 2 are wrong and hence denied. The Respondent has very much committed a misconduct and liable to be punished.

c) That the allegations made in this Para 3 are wrong and hence denied. As far as filing of Civil suit against the complainant is concerned, the same is not relevant to the complainant in hand. The allegation in the present complaint against the respondent is that he has without any authority of Regional Council has filed a Writ Petition before Delhi High Court.

d) That the contents of this Para 4 having no bearing on the facts of the case and therefore need no reply and the Complainant reserves its right to contest the matter before appropriate forum.

e) That the contents of Para 5 regarding the written statement are wrong and hence denied. The Respondent by making such submissions is mixing up the issue. The Civil Suit pending filed by NIRC is a different issue and has been contested on its own merits and the same has no bearing and/or consequences on the present proceedings. It is a matter of record that no resolution was passed by NIRC authorizing the Chairman to file writ petition before the Hon'ble Delhi High Court. The email that has been referred to by the respondent is not a resolution as the same was circulated amongst the chosen six Regional Council members. Even if for the sake of arguments it is presumed to be an resolution the same is required to be circulated amongst all the members of the Regional Council as well as passing a specific resolution that Chairman is authorized to file a Writ Petition in the matter. In the said email a vague authorization has been given only by six members of the Regional Council and that can't be in anyway termed as resolution by the Regional Council.

The complainant has quoted the relevant provisions of Regulation 79 and 135 of the Cost and Works Accountants Regulations 1959 which are not repeated here.

f) That the contents of this Para 6 is matter of record and does not need any reply.

g) That the contents Para 7 are wrong and hence denied. The contention of the Respondent that NIRC is a statutory body is totally misplaced. As per Section 23 of the CWA Act, Regional Council is a constituent of the Council on its discretion. Further, attention is also drawn to Regulation 90 which clearly stipulates that the Council shall be in-charge of administration and finances of the Institute, the Regional Councils, Chapter and/or Branches which itself make it clear that the Regional Council is subservient to Council and for assisting the Council. Further Regulation 122 provides

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that the Council may if in its opinion circumstances so warrant, extend or shorten the life of Regional Council. Not only this Regulation 145A empowers the Council to issue directions to Regional Council and the Regional Council shall be bound to carry out such directions. A perusal of the above provisions clearly shows that NIRC has no independent existence.

h) That the contents of Para 8 related to the provisions of Regulation 123 which is matter or record. However, in the present case none of three sources of power as stated has empowered the Chairman NIRC to file the Writ Petition.

i) That the contents of Para 9 are totally misplaced. NIRC is in itself consists of 14 members. Therefore, any proposal/resolution seeking its authorization has to be circulated amongst the all14 members and not less than that. The Respondent in this para himself admitted that the authorization was given only by 5 which itself proves the allegation that the Chairman was not authorized by the Regional Council for filing Writ Petition. Moreover, the so called resolution circulated among the chosen ones does not specifically authorize the Chairman NIRC to file a Writ Petition but only talks about taking appropriate steps.

j) That the contents of Para 10 is a matter of record.

k) That the contents of Para 11 are wrong and hence denied. It is submitted that the averments made in this Para have no bearing on the facts of the compliant.

l) That the contents of Para 12 are wrong and hence denied. It is submitted that the averments made in this Para have no bearing on the facts of the compliant.

m) That the contents of Para 13 are wrong and hence denied. It is an admitted fact that physical meeting cannot be held at point of time but it is to be understood that in place of holding physical meeting any proposal/agenda /resolution has to be circulated and approved by all members of the Regional Council and not the selected six ones. As per Regulation 114(2) of CWA Act, 1959, the NIRC consists of 14 members and any proposal/resolution by any number less than that, cannot be termed and/or treated as if taken by Regional Council.

n) That the contents of the Para 14 are wrong and hence denied. It is the respondent's own stand in the writ petition that he has been authorized 6 members (including himself) to take appropriate action in the matter. The averment of the respondent in this Para is beyond comprehension that how a meeting which has been convened even

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prior to issuance of show cause notice issued by Secretary, ICAI can authorize him to file a writ petition challenging the same.

o) That the contents of Para 15 are wrong and hence denied. The complainant reiterates its submission made in Para 6, 10 and 14 hereinabove.

p) That the contents of Para 16 are wrong and hence denied.

q) That the contents of Para 17 are wrong and hence denied. The complainant reiterates its submission made in Para 6,10 and 14 hereinabove.

r) That the contents of Para 18 are wrong and hence denied. The respondent has not brought out any material on record which shows that Chairman NIRC was authorized by the Regional Council (NIRC) to file a writ petition. The documents which have been produced only states that he has been authorized by the 6 members including him which cannot be treated as a resolution of the Regional Council.

s) That the contents of this Para 19 are wrong and hence denied. The respondent in this Para has changed its stand and now stated NIRC to be a collective body.

t) That the contents of this Para 20 are wrong and hence denied.

u) That the respondent in Para 21 has tried to twist the fact. The allegation made by the complainant is that, the respondent without being having any authority has filed a writ petition before Delhi High Court and as such the act attracts the provisions of Clause (2) Part (IV) of First Schedule to the Act.

v) That the contents of Para 22 are wrong and hence denied.

w) The contention raised by the respondent in the Para 23 under response are totally misplaced. The only limited issue in the present complaint is that the respondent without having any authority of NIRC has filed writ petition before Delhi High Court and therefore violated all norms of governance.

x) That the contents of Para 24 are wrong and vehemently denied. Moreover, the same is already pending before appropriate court of law.

The complainant concluded by stating that the respondent had intentionally circulated a vague email authorizing him to take appropriate steps amongst chosen 6 members

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(including himself) instead of circulating amongst all members of NIRC i.e. 14 members and invite their views and get a specific authorization to file a writ petition before Hon'ble High Court of Delhi. This act of the respondent is a clear act amounting to bringing disrepute to the Institute/profession and therefore the respondent is liable to be punished accordingly.

6. As part of the investigation that the Director (Discipline) is empowered to do under Section 21(4) of the Cost and Works Accountants Act, 1959, by an email Ref No. G/DD/Com-CA(90)/2/11/2020 dated 5th November 2020 sent at or about 11.48 AM, the respondent was requested to enlighten the Disciplinary Directorate on the following:

i. The present status of the Civil Suit No. 374 of 2017 filed in the Hon'ble District South East, Saket Court, New Delhi and the relief sought in such petition.
ii. The date of filing of Writ Petition WP (C)No. 3947/2020 in the Hon'ble High Court at Delhi and the present status thereof.
iii. A copy of the extract of the resolution authorizing the Chairman, NIRC to file the Writ Petition referred to in Para (ii) above.
iv. The reasons for filing the Writ Petition as in Para (ii) above and the relief sought for.

Having received no response, another email Ref. No. G/DD/Com-CA(90)/3/12/2020 dated 18th December 2020 was sent to the respondent at or about 6.00 P.M. seeking information on the above queries with a request to enlighten the Disciplinary Directorate within 07 (seven) days of the date of the email. The respondent did not respond to the above mentioned emails dated 5th December 2020 and 18th December 2020 of the Disciplinary Directorate. Another email Ref No. G/DD/Com-CA(90)/4/06/2021 dated 25th June 2021 was sent at or about 12.03 PM to the respondent requesting him to send in his response on or before 2nd July 2021.

7. The respondent vide his email dated 2nd July 2021 sent at or about 3.15 PM furnished the following reply to the Disciplinary Directorate which is quoted below:

"Dear Sir

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This refers to your email dated 25th June 2021 Ref. No. G/DD/Com-CA(90)/4/06/2021 regarding Complaint made by Shri Vijender Sharma (M/18513) in Form 'I', which has been registered with the Disciplinary Directorate as Complaint No./21-CA(90)/2020, seeking certain information in the matter which has already been answered vide my emails. Please refer to the email sent on 25th December 2020 and 1st July 2021 to you.

Further please note Point wise Response as under:

i. The present status of the Civil Suit No.374 of 2017 filed in the Court of Hon'ble District Judge, South East, Saket Court, New Delhi and the relief sought in such a petition:

Reply- ***The Civil Suit No 374 of 2017 is filed by NIRC and as per the information received through NIRC the next date of hearing in the Civil Suit no 374/2017 is 23.09.2021 the copy of email dated 1st July 2021 of counsel and order of court dated 17.04.2021 attached herewith along with the copy of the said Civil suit filed by NIRC for your kind perusal and the relief sought in the said civil suit is self-explanatory.***

ii. The date of filing of Writ Petition W.P.(C) No.3947/2020 before the Hon'ble High Court at Delhi and the present status thereof.

Reply- ***The said Writ petition is filed by NIRC-ICAI and as per the information received from NIRC the said Writ Petition was filed before the Hon'ble High Court of Delhi on 02.07.2020. As per the email dated 1st July 20201 received from counsel of NIRC the next date of hearing is 19.07.2021, As per the order dated 16.03.2021 the matter is listed for final hearing.***

iii. A copy of the extract of the resolution authorizing the Chairman- NIRC to file the Writ Petition referred to in Para (ii) above.

Reply - As desired the copy of the extract of Resolution passed at Agenda Item no 4.5 of Regional Council Member meeting dated 04.08.2020 authorising the Chairman -NIRC to file the writ Petition referred to in Para (ii) above is attached herewith for your kind perusal.

iv. The reasons for filing the Writ Petition as in Para (ii) above and the relief sought for.

Reply –A true copy of the Writ Petition NO 3947/2020 is enclosed herewith for your kind perusal, reasons for filing the said Writ Petition has been mentioned and explained therein and similarly the reliefs sought for are also in the said writ petition filed by NIRC.

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Hope this satisfies the queries, however, it shall be my pleasure to furnish any further information and/or clarification in the matter on hearing from

Thanks & Regards,

CMA Sandeep Goel"

8. The Disciplinary Directorate by an email Ref. No. G/DD/Com-CA(90)/5/07/2021 dated 6th July 2021 sent at or about 10.44 A.M. raised the following queries on the respondent requesting for his response within a week of the date of this email:

(a)Whether the directives dated 30th June 2020 issued by the Secretary of the Institute to the NIRC to withdraw the administrative, legal and financial powers of NIRC were complied with.

(b) If the same have not been complied with, the reason(s) there for.

(c) The sanctity / validity of the resolution dated 4th August 2020 passed by the NIRC authorizing the filing of Writ Petition by NIRC, while the Writ Petition WP(C) No. 3947/2020 was filed at least a month back, i.e., on 2nd July 2020.

(d) Whether NIRC had the legal powers to file the Writ Petition WP(C) No. 3947/2020 dated 2nd July 2020 against the Institute of Cost Accountants of India.

9. The respondent vide his email dated 12th July 2021 sent at or about 10.04 PM submitted his response to the above mentioned queries which is reproduced in verbatim:

"Dear Sir

This is in reference to your trailing email Ref. No : G/DD/Com-CA(90)/5/07/2021 dated 06.07.2021, regarding complaint dated 4th July 2020 made by Shri Vijender Sharma (M/18513) against the undersigned in Form 'I' which has been registered with the Disciplinary Directorate vide Complaint No. Com/21-CA(90)/2020.

My point wise reply to your query are as under:

(a) Whether the directives dated 30th June 2020 issued by the Secretary of the Institute to the NIRC to withdraw the administrative, legal and financial powers of NIRC were complied with.

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The said directive dt. 30th June 2020 is stayed by the order dated 06.07.2020 passed by the Hon'ble Delhi High Court in writ petition (civil) No. 3947 / 2020 and the same is pending. The Copy of the order dt. 06.07.2020 is enclosed herewith for your kind perusal.

(b) If the same have not been complied with, the reason(s) there for.

The order dt. 30.06.2020 issued by the secretary of the Institute being prejudicial to the right and interest of NIRC has been challenged by way of filing the writ petition (civil) No.3947 / 2020 by NIRC before the Hon'ble High Court of Delhi and the same is pending.

(c) The sanctity / validity of the resolution dated 4th August 2020 passed by the NIRC authorising the filing of Writ Petition by NIRC, while the Writ Petition WP(C) No. 3947/2020 was filed at least a month back, i.e., on 2nd July 2020.

The said WP is pending before the Hon'ble Delhi High Court and issues involved therein are Sub judice, therefore, it's not appropriate to comment on the same at this juncture.

(d) Whether NIRC had the legal powers to file the Writ Petition WP(C) No. 3947/2020 dated 2nd July 2020 against the Institute of Cost Accountants of India.

The matter is Sub Judice in the said writ petition before Hon'ble High court, and the issue will be addressed as per the decision of the court.

Thanks & Regards,

CMA Sandeep Goel"

10. On perusal of the complaint dated 4th July 2020 of the complainant, it is observed that the complaint of the complainant is on three counts:

(i) First, the respondent has, without authorization of the competent authority, filed a writ petition on 29th July, 2020 at the Hon'ble Delhi High Court in the name of Northern India Regional Council (NIRC) on matters for which there is no resolution of the NIRC and hence has acted ultra vires and thereby violated the provisions of Regulation 123 of the Cost & Works Accountants, 1959.

Now, whether the respondent had the authority or not to file a Writ petition with Delhi High Court is the moot question under consideration in the instant complaint. For this reference may be made to the written statement dated 17th August 2020 of the respondent wherein he has attached, inter alia, copies of emails dated 28th June 2020 of 04 (four) of his

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Council colleagues in the Regional Council, namely, CMA Santosh Pant, CMA Rajendra Bhati, CMA Harkesh Tara and CMA Manish Kandpal and also his own. The contents of all the emails are more or less same whereby they had authorized the then Chairman – NIRC, to take appropriate legal steps to protect the interest of NIRC. It is pertinent to note that on 28th June 2020, NIRC had 7 (seven) elected members of the Regional Council, and 3 (three) elected Ex-Officio members who were members of Central Council and 3 (three) government nominees. Thus, the total number of members of the Northern India Regional Council including the members of the Central Council and the Government Nominees stood at 13 (thirteen). This has also been admitted by the respondent himself in his written statement dated 17th August 2020 addressed to the Director (Discipline). Para 9 of the written statement dated 17th August 2021 of the respondent states that "Majority of the members (i.e. 5 members excluding the Chairman, thus, total six members) of the Regional council vide emails dated 28.06.2020 authorized the Chairman to take appropriate action in respect of the email dated 18.06.2020 sent by the Secretary, ICAI....."

In any case, the authorization was given only by 05 (five) RCMs while at the relevant date, the NIRC consisted of 13 members and any proposal/resolution by any number less than that cannot be termed and/or treated as if taken by Regional Council. Even if for the sake of argument it is presumed to be a resolution, the same was required to be circulated amongst all the members of the Regional Council and not to a chosen few.

Thus, there is no dispute in regard to the fact that on the date the email dated 28th June 2020 was being referred to by the respondent, there were 13 members of the Regional Council in total. As a natural corollary, the majority members of the Regional Council would imply 07 (seven) or more (total strength being 13) and not 05 (five). Thus, it is observed that only 05 (five) members authorized the then Chairman, to "take appropriate action". What constituted "appropriate action" has not been mentioned in the email of 28th June 2020. Even if it is assumed that the said "appropriate action" implied filing of Writ Petition before the Hon'ble High Court of Delhi and considering the respondent's own consent, the total number becomes 06 (six) which falls short of majority number which is 07 (seven). Therefore, it is a fact that the respondent has no authority to file a Writ petition with Delhi High Court or any other Court for that matter, without the authorization of the competent authority. Regulation 123(a) of the Cost and Works Accountants Regulations, 1959 reads as follows:

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"The Chairman of a Regional Council shall exercise such powers and perform such duties as are conferred or imposed on him by the Act or these regulations or as may be delegated to him by the Regional Council from time to time".

On a careful perusal of Regulation 123(a) above, it is amply clear that the Chairman has to be conferred with powers either by the Act or by the Regulations or by the Council of NIRC to enable him exercise his powers and to perform his duties. It is also true that the matters of Legal nature are under the jurisdiction of Secretary of the Institute who is empowered to do so by virtue of Regulation 99 (r) of the Cost and Works Accountants Regulations, 1959, and thus filing of the Writ Petition (C) No. 3947/2020 by the respondent on behalf of NIRC is without any authority and approval of the Institute.

The respondent in his written statement dated 17th August 2020 had stated in Para 16 that " Thereafter, the Regional Council in its meeting held on 04.08.2020 has also approved the filing of the writ petition by the Chairman, NIRC. Copy of the minutes of the Regional Council meeting held on 04.08.2020 is enclosed herewith." In this connection, the Disciplinary Directorate vide email G/DD/NIRC/RCMs/1/07/2021 dated 6th July 2021 requested NIRC to provide the Directorate with a certified copy of minutes of the meeting of Regional Council members of Northern India Regional Council (NIRC) held on 4th August 2020 and a copy of the attendance sheet of Regional Council Members of NIRC who had attended the meeting on 4th August 2020. NIRC vide its email dated 8th July 2021 received at or about 3.00 PM duly complied with the request of the Disciplinary Directorate. The relevant portion (Agenda Item No 4.5) of the minutes of meeting dated 4th August 2020 of the Regional Council of NIRC is quoted below:

4.5 " To approve the Legal fee of the Advocate for filing writ petitions before the Hon'ble Delhi High Court challenging email dated 18.06.2020 from Secretary, ICAI and also the letter dated 30.06.2020.

Secretary NIRC put up the matter before the members regarding email dated 18.06.2020 addressed to Chairman-NIRC with copy to all Council Members, sent by the Secretary- ICAI whereby it was called upon to explain as to why the NIRC should not be dissolved under Regulation 145(1)(a) for alleged non-compliance of the purported directions issued by the Council under Regulation 145A of the CWA Regulations, 1959 vide Letter dated 18.01.2019 issued by the then Secretary (Acting), ICAI. The above said mail dated 18.06.2020 of the Secretary-ICAI is reproduced below:

The Institute of Cost Accountants of India Board of Discipline

"The Chairman
The Institute of Cost Accountants of India
Northern India Regional Council

Dear Sir,

The Council of the Institute at its 324th Meeting held on 17th & 18th May, 2020 has decided to call you and other members of Northern India Regional Council for a hearing on non-compliance of directions issued under Regulation 145A of the CWA Regulations, 1959 vide letter dated 18th January, 2019. Copy of the said letter is attached herewith.

You are required to explain to the Council under Regulation 145(1)(a) as to why Northern India Regional Council should not be dissolved for non-compliance of directions issued by the Council under Reg. 145A.

You and all members of Northern India Regional Council are hereby given an opportunity of hearing by the Council of the Institute on 28th June, 2020 at 12.30 p.m.

Yours faithfully
CMA Kaushik Banerjee
Secretary
The Institute of Cost Accountants of India
CMA Bhawan, 12, Sudder Street, Kolkata- 700016
CMA Bhawan, 3, Institutional Area, Lodhi Road, New Delhi- 110 003.
P: 033-22520204 p/f: 033-22527993 m:93309 64982 w:www.icmai.in"

Pursuant to said email dated 18.06.2020, NIRC vide Reply dated 26.06.2020 (sent by email), inter-alia, requested the Secretary- ICAI for extension of time by four weeks for justified reasons mentioned therein. Copy of said Reply is enclosed herewith.

CMA Shailender Paliwal, Treasurer- NIRC kept himself aside from the said request for extension of time and he decided to appear for personal hearing before the Centre Council on 28.06.2020.

Considering the proposed arbitrary action and illegal threat of being dissolved by the Centre Council (ICAI), NIRC decided to approach the Hon'ble Delhi High

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Court by impugning the said email dated 18.06.2020. On 29.06.2020, the urgent mentioning application was filed and the same was allowed vide *vide*reference number 1593402629049_36115 for listing of the writ petition on 01.07.2020. Thereafter, on 29.06.2020, the writ petition was filed after serving the copy thereof on the Secretary- ICAI (email Id. secy@icmai.in), however, due to ignorance the PDF copy of the writ petition was filed through email dhcfiling@gmail.com instead of filing through then recently launched "online e-filing management system", therefore, the said writ petition was not processed for listing. The Chairman-NIRC had consent and authority from the six Regional Council members to file the said writ petition.

On 30.06.2020, without giving any opportunity to hearing to NIRC, the CentreCouncil arbitrarily and illegally passed the direction to withdraw the Administrative, Financial and Legal functions of the NIRC. The said decision of the Centre Council (ICAI) is bad in law for various reasons. Copy of said Letter dated 30.06.2020 is enclosed herewith.

As the said order dated 30.06.2020 passed by the CentreCouncil is unlawful, arbitrary and contrary to the provisions of the CWA Act, therefore, respective RCMs of NIRC decided to challenge the same before the Hon'ble Delhi High Court to safeguard the interest of NIRC and profession at large, Respective RCMs have given their consent in favour of Chairman- NIRC and authorised him to file a fresh writ petition. Accordingly, the fresh writ petition being W.P.(C) No. 3947/2020 was filed on 02.07.2020 against the email dated 18.06.2020 and Letter dated 30.06.2020, PDF copy thereof was served upon the Secretary-ICAI. The said writ petition came up for hearing on 06.07.2020 at 11:35 am before the Hon'ble Delhi High Court.

On hearing the counsel for the parties, Hon'ble High Court passed the self speaking order dated 06.07.2020, whereby, inter-alia, stayed the Letter/order dated 30.06.2020 and directed that both NIRC and the ICAI shall continue to perform their respective activities as they were performing prior to the passing of the order dated 30th June, 2020.

The Hon'ble High Court directed the Centre Council to grant personal hearing to NIRC on 22.07.2020 (2.20 p.m.) and also permitted the NIRC to file written

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response on or before 18.07.2020 and thereafter ICAI shall pass a detailed order. Copy of said order dated 06.07.2020 is enclosed herewith.

The NIRC filed the written response on 18.07.2020 via email and members of NIRC appeared for personal hearing on 22.07.2020 at 2 p.m.
The NIRC held it's Executive Council (EC) meeting on 16.07.2020 where in members of EC Committee passed the agenda regarding filing of writ petition and reiterated and reaffirmed the authorisation in favour of the Chairman- NIRC for filing the writ petition and also ratified the whole process undertaken by NIRC and respective RCMs, following the impugned mail dated 18.06.2020 CMA ShailenderPaliwal kept himself aside from this agenda item.

NIRC has called its Regional Council (RC) meeting on 04.08.2020 through virtual mode to adopt its un-audited accounts along-with other agenda items mentioned in the Notice dated 24.07.2020.

On 29.07.2020, ICAI-HQ is shown to have filed an Application being C.M. Appl. No. 17422/2020 in the said writ petition and prayed that any agenda in respect of Debit Notes raised on CMA Mr.Vijender Sharma not to be considered by NIRC during the pendency of the said writ petition. After hearing the Counsels for the parties and in view of the submissions made by the Counsel for NIRC that the issue of debit notes stands finalized in the audited accounts for the year 2015-16 and in the forthcoming meeting dated 04.08.2020, no issue relating to the debit note would be raised and deliberated upon, the Hon'ble High Court disposed of the said application vide order dated 31.07.2020 and fixed the writ petition for hearing on 08.10.2020.

After receiving the email dated 18.06.2020 from the Secretary- ICAI, NIRC has hired and appointed Adv. Thakur Sumit to file and pursue the said writ petitions. It is relevant to mention that Adv. Thakur Sumit is also Counsel for NIRC in two cases going on in Saket Courts, New Delhi. NIRC has negotiated one time fee of Rs. 1.5 lakh for drafting the two writ petitions (one filed but not listed and one is pending) and for pursuing the said pending writ petition before the Hon'ble Delhi High Court.

Now I put up the whole matter for discussions and members' approval.

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Since the decision to file the said writ petition against the Centre Council is unanimous, therefore, CMA Rakesh Bhalla, who is a Centre Council member, abstained from this agenda.

CMA Paliwal recorded his dissent on the matter.

CMA Balwinder Singh, President and CCM also gave his dissent mentioning that legal expenses and filing of writ petition is not under the domain of NIRC.

Other member CMA Sandeep Goel, passed and approved the agenda mentioning that it is our fundamental right and the writ petition has been filed in the interest of the entire northern region.

Similarly, other Regional Council members namely CMA Harkesh Tara, CMA Santosh Pant, CMA Manish Khandpal, CMA Rajendra S. Bhati and CMA Anil Sharma gave their consent and passed the agenda and approved the filling of writ petitions dated 29.06.2020 and 02.07.2020 before the Hon'ble Delhi High Court and also approved the one time legal fee of Rs. 1.50 lakh payable to Adv. Thakur Sumit.

The said six Regional Council members are of unanimous view that NIRC is empowered to file the writ petition or other petition, application etc. necessary for protecting its existence and interest and also the interests of members of the northern region."
(The word "Central" has been wrongly spelt in above as "Centre" in several places)

The above mentioned resolution contains the following lines "As the said order dated 30.06.2020 passed by the Centre Council is unlawful, arbitrary and contrary to the provisions of the CWA Act, therefore, respective RCMs of NIRC decided to challenge the same before the Hon'ble Delhi High Court to safeguard the interest of NIRC and profession at large, Respective RCMs have given their consent in favour of Chairman-NIRC and authorised him to file a fresh writ petition. Accordingly, the fresh writ petition being W.P.(C) No. 3947/2020 was filed on 02.07.2020 against the email dated 18.06.2020 and Letter dated 30.06.2020.....

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The words used in the above Para is "respective RCMs of NIRC" and not "majority of RCMs". Thus, the resolution on the strength of which the Writ Petition was filed is itself flawed and suffers from a major defect. Further, the last Para of the resolution states that " The said six Regional Council members are of unanimous view that NIRC is empowered to file the writ petition or other petition, application etc.." From the above mentioned resolution it is amply clear that only 06 (six) members of the Regional Council had consented for the resolution while CMA Rakesh Bhalla had abstained and CMA Balwinder Singh and CMA Shailendra Paliwal had dissented to the resolution. Had the resolution been unanimous, all the members present would have consented to the same. Thus, the resolution that had been passed was not unanimous as it fails the test of unanimity.

The respondent had with his written statement of 17th August 2020, enclosed an extract of minutes of Executive Committee meeting dated 16th July 2020 which was referred by him in Para No.15 of his written statement. The said Para 15 speaks about reiteration and reaffirmation of authorization in favour of the Chairman of NIRC to file the writ petition. However, on a careful perusal of the minutes of the above referred meeting dated 16th July 2020 of the Executive Committee, it is observed that no authorization had been given to the Chairman, NIRC to file the writ petition. In fact, there has been no resolution to this effect, not to speak of the number of members who had or not given their authorization in favour of Chairman, NIRC to file the writ petition. Thus the minutes of the meeting dated 16th July 2020 of the Executive Committee has no relevance in this matter.

It is also observed from the minutes of the Regional Council Meeting that the writ petition W.P.(C) No. 3947/2020 was filed on 02.07.2020 against the email dated 18.06.2020 and letter dated 30.06.2020, while the decision to file the Writ Petition as referred above, was taken by NIRC on 4th August 2020,i.e., after a month of the date of filing of the writ petition. Thus, the respondent clearly lacked authority to file the writ petition W.P.(C) No. 3947/2020 as this was done at least a month before the Regional Council meeting which took place on 4th August 2020.

(ii) The second allegation of the complainant was that at the 295th meeting of the Council held on 22nd July 2015, the Council had decided that if any defamatory mail/ communication in whatsoever form is written against the Council, Council Member, President, Vice President, Government Nominees, Government Department, officials of the Institute etc. the President is authorized to take necessary action including referring the matter to disciplinary authority for disciplinary action on behalf the Council.

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The respondent's view is correct that he has not written any defamatory email/letter/communication against either the Council or Council members or President or Vice President or Government nominees or Government department or officials of the Institute. Thus, this allegation of the complainant does not hold any ground as there was no defamatory mail/ communication in whatsoever form to anybody against the Council, Council Member, President, Vice President, Government Nominees, Government Department, officials of the Institute etc.

(iii) The respondent has filed a petition involving the Institute without having any sanction or approval from the competent authority, i.e. Regional Council of NIRC. He has brought disrepute to the profession and liable to be proceeded against under Clause (2), Part- IV of First Schedule to the Cost and Works Accountants Act, 1959.

In regard to this allegation, the respondent had authorized CMA Anil Sharma, the then Chairman, NIRC to take appropriate action which led to filing of the above mentioned WP (c) 3947 / 2020 on 2nd July 2021 in the name of NIRC. This action on the part of the respondent was ultra vires and it appears that the respondent has brought disrepute to the profession in terms of Clause (2), Part- IV of First Schedule to the Cost and Works Accountants Act, 1959.

11. On a query dated 6th July 2021 raised by the Disciplinary Directorate on the respondent as to the sanctity / validity of the resolution dated 4th August 2020 passed by the NIRC authorizing the filing of writ petition, the latter vide email dated 12th July 2021 stated that the said WP is pending before the Hon'ble Delhi High Court and issues involved therein are sub judice. As such it is not appropriate to comment on the same at this juncture and the matter is sub judice in the said writ petition before Hon'ble High court, and the issue will be addressed as per the decision of the court. It is also pertinent to note that the content of the Writ Petition challenging the impugned directives dated 18th June 2020 and 30th June 2020 of the Institute is not the subject of the complaint but the authority of the respondent to file the Writ Petition is under challenge. Thus, the subject matter of the Writ petition and the instant complaint are two entirely different things and the fact that the Writ petition is sub judice before the Hon'ble High Court of Delhi does not bar the disciplinary proceedings in the instant complaint.

12. The Prima facie opinion dated 6th August 2021 holding the respondent guilty of violating the provisions of Clause (2) of Part I of the First Schedule to the Cost and Works Accountants Act, 1959 was placed before the Board of Discipline at its

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meeting in terms of Rule 9(2)(a)(i) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 and the same was agreed to by the Board of Discipline in terms of Rule 9(2)(b) of the said Rules. The Board directed Director (Discipline) to ensure compliance of Rule 14(2) and 14(3) of the Rules and to call upon the respondent to file a written statement along with supporting documents within 02 (two) weeks from the date of service of PFO.

13. The prima facie opinion dated 6th August 2021 was duly forwarded both to the respondent and the complainant requesting the respondent to forward his written statement within two weeks from the date of service of the PFO. The respondent by his email dated 30t August 2021 sent at or about 11.03 A.M. to the Disciplinary Directorate prayed for extension of time till 15th September 2021 for submitting his reply to the PFO.

14. In the 34th meeting of the Board of Discipline held on 4th September 2021, after perusing the email dated 28th August 2021 of the respondent, the learned members of the Board decided to extend the time for filing written statement by another three days so as to reach the Disciplinary Directorate by 7th September 2021. Director (Discipline) was directed to send email intimation to the respondent to this effect. The Board also directed Director (Discipline) to call both the complainant and the respondent in the next meeting of the Board under Rule 14(6) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 to make oral submissions, if any.

15. In the meantime, the respondent by his email dated 6th September 2021 received by the Disciplinary Directorate at or about 4.23 P.M. had sent the following communication which is quoted in verbatim:

"Dear Sir

This is to inform you that undersigned in receipt of the aforesaid letter and thereafter there was Regional Council meeting dated 29th August 2021, in which Resolution Passed on agenda Item No 2 was as under :

To discuss the debit notes of Rs. 41,44,422/- lying in the books of accounts since long.

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" It was unanimously adopted and approved by all present members and resolved that the debit note lying in the books of accounts of NIRC shall be reversed and the Chairman, was authorized to do, with the consent of regional council, all necessary legal formalities related to court cases and HQ."

"It was further unanimously resolved that honoring the direction of HQ, all pending legal matters/cases/complaints, pertaining to the NIRC or to past or present RCMs of NIRC in Courts/Disciplinary Committee/ Disciplinary Board or any authority related to the debit note stands null and void and hence shall be resolved/withdrawn by the concerned parties/authorities."

"It was also resolved and adopted that no legal cases/litigation/complaints shall be filed directly and indirectly related to this matter against any of the current/past Regional council members of NIRC in future."

I understand with the above Resolution the Direction of the Central Council is complied by the undersigned being a Regional Council Member of NIRC.

I humbly request you to drop the disciplinary proceedings against the undersigned since the compliance of direction under Regulation 145 A of CWA Regulations 1959 of HQ is already done by NIRC and undersigned has consented to follow the direction of Central Council.

It is prayed that a Complaint filed against the undersigned vide complaint no. Com 21/(90)/2020 by CMA Vijender Sharma (M/18513) be dismissed in light of the above facts.

Thanking you in anticipation

Warm Regards,

CMA Sandeep Goel"

16. In response to the notices dated 7th September 2021 which were emailed both to the complainant and the respondent calling upon them to appear before the Board (either in person or through virtual mode) on 10th September 2021 at The Institute of Cost Accountants of India, CMA Bhawan, 3, Institutional Area. Lodi Road, New Delhi to make oral submissions, if any, in terms of sub-rule (6) of Rule 14 of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, both the complainant and the respondent appeared at the scheduled date and time. The respondent placed before the learned members of the Board a copy of minutes of meeting dated 29th August 2021 of the Regional Council Members where in it was unanimously resolved, adopted and approved that the debit note of Rs. 41,44,422/- lying in the books of accounts of NIRC shall be reversed in line

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with the direction of the Council of the Institute dated 18th September 2019. The minutes relating to this particular agenda of the meeting was confirmed at its Extra Ordinary General Meeting (EGM) held on 7th September 2021 which has been verified by the Disciplinary Directorate. The respondent also signed on the minutes of meeting dated 29th August 2021 of the Regional Council members in the presence of members of Board of Discipline stating that he approves the said minutes.

17. The complainant stated that in view of the decision taken on 29th August 2021 he has nothing further to submit.

18. The Board noted that in view of the decision taken by the Regional Council members at its meeting held on 29th August 2021 and 7th September 2021, the complaint need not be pursued and the proceedings against the respondent be dropped. The Board is of the considered view that the respondent is not guilty of professional and other misconduct.

19. The complaint therefore stands disposed of under Rule 15(2) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007,

17 SEP 2021

The Institute of Cost Accountants of India
Board of Discipline

CMA Rakesh Singh
PRESIDING OFFICER