



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

Telephones : + 91-33-2252-1031 / 1034 / 1035
: + 91-33-2252-1619 / 1492 / 1602
: + 91-33-2252-7373 / 7143 / 2204
: + 91-33-2252-0141 / 0191
Fax : + 91-33-2252-7993
: + 91-33-2252-1026
: + 91-33-2252-0147
: + 91-33-2252-2871
Website : www.icmai.in

ORDER

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

In the matter of –

Shri Ashish P. Thatte.....Complainant

Vs.

Shri Ashok B. Nawal.....Respondent

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.
- (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 complaint, 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 provided 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 as retainership basis and charges to the company professional fees and company has not paid him any salary or remuneration other than professional fees.
 - 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%

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

Telephones : + 91-33-2252-1031 / 1034 / 1035
 : + 91-33-2252-1619 / 1492 / 1602
 : + 91-33-2252-7373 / 7143 / 2204
 : + 91-33-2252-0141 / 0191
Fax : + 91-33-2252-7993
 : + 91-33-2252-1026
 : + 91-33-2252-0147
 : + 91-33-2252-2871
Website : www.icmai.in

- 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:



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(STATUTORY BODY UNDER AN ACT OF PARLIAMENT)

CMA BHAWAN

12, SUDDER STREET, KOLKATA-700 016

Telephones : + 91-33-2252-1031 / 1034 / 1035
 : + 91-33-2252-1619 / 1492 / 1602
 : + 91-33-2252-7373 / 7143 / 2204
 : + 91-33-2252-0141 / 0191
Fax : + 91-33-2252-7993
 : + 91-33-2252-1026
 : + 91-33-2252-0147
 : + 91-33-2252-2871
Website : www.icmai.in

- 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 Bizolindia, 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 –



**THE INSTITUTE OF
COST ACCOUNTANTS OF INDIA**

(STATUTORY BODY UNDER AN ACT OF PARLIAMENT)

CMA BHAWAN

12, SUDDER STREET, KOLKATA-700 016

Telephones : + 91-33-2252-1031 / 1034 / 1035
: + 91-33-2252-1619 / 1492 / 1602
: + 91-33-2252-7373 / 7143 / 2204
: + 91-33-2252-0141 / 0191
Fax : + 91-33-2252-7993
: + 91-33-2252-1026
: + 91-33-2252-0147
: + 91-33-2252-2871
Website : www.icmai.in

- 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
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".

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 & 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.



**THE INSTITUTE OF
COST ACCOUNTANTS OF INDIA**

(STATUTORY BODY UNDER AN ACT OF PARLIAMENT)

CMA BHAWAN

12, SUDDER STREET, KOLKATA-700 016

Telephones : + 91-33-2252-1031 / 1034 / 1035
: + 91-33-2252-1619 / 1492 / 1602
: + 91-33-2252-7373 / 7143 / 2204
: + 91-33-2252-0141 / 0191
Fax : + 91-33-2252-7993
: + 91-33-2252-1026
: + 91-33-2252-0147
: + 91-33-2252-2871
Website : www.icmai.in

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:

- 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



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

Telephones : + 91-33-2252-1031 / 1034 / 1035
 : + 91-33-2252-1619 / 1492 / 1602
 : + 91-33-2252-7373 / 7143 / 2204
 : + 91-33-2252-0141 / 0191
Fax : + 91-33-2252-7993
 : + 91-33-2252-1026
 : + 91-33-2252-0147
 : + 91-33-2252-2871
Website : www.icmai.in

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.
- 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 retainerhip 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 Simplicator** 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 Simplicator**.
- The respondent has completely misguided the Disciplinary Committee about his change in designation in Bizsol India Services Private 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 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 Simplificitor' used by the complainant in para 10 of his submissions dated 7th April 2017, the respondent stated that the expression 'Director Simplificitor' 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.
- (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.



**THE INSTITUTE OF
COST ACCOUNTANTS OF INDIA**

(STATUTORY BODY UNDER AN ACT OF PARLIAMENT)

CMA BHAWAN

12, SUDDER STREET, KOLKATA-700 016

Telephones : + 91-33-2252-1031 / 1034 / 1035
: + 91-33-2252-1619 / 1492 / 1602
: + 91-33-2252-7373 / 7143 / 2204
: + 91-33-2252-0141 / 0191
Fax : + 91-33-2252-7993
: + 91-33-2252-1026
: + 91-33-2252-0147
: + 91-33-2252-2871
Website : www.icmai.in

- (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 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



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

Telephones : + 91-33-2252-1031 / 1034 / 1035
 : + 91-33-2252-1619 / 1492 / 1602
 : + 91-33-2252-7373 / 7143 / 2204
 : + 91-33-2252-0141 / 0191
Fax : + 91-33-2252-7993
 : + 91-33-2252-1026
 : + 91-33-2252-0147
 : + 91-33-2252-2871
Website : www.icmai.in

"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)

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

Dated:- 27th June 2017

Manas Kumar Thakur
Presiding Officer, Disciplinary Committee