

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

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The Institute of Cost Accountants of India
Disciplinary Committee u/s 21B of The Cost and Works Accountants Act
1959

In the matter of

Complaint No. Com/21-CA(63)/2018 –

Dr. Dhananjay V. Joshi (M/4923.....Complainant

Vs

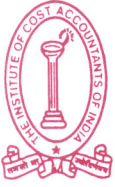
M/s M.R. Pandit and Company (FRN 000268)Respondent Firm

Facts

1. The Disciplinary Directorate was in receipt of a complaint in Form I dated 23rd February, 2018 from Dr. Dhananjay V. Joshi (hereinafter referred to as "the complainant") against M/s M.R. Pandit and Company (hereinafter referred to as "the respondent firm" bearing membership number FRN 000268 along with the prescribed complaint fee alleging professional misconduct against the respondent firm.
2. The complaint was made on the following grounds:
 - a) 'A Company named as Maharashtra Natural Gas Limited (MNGL), Pune (a joint venture of GAIL (India) Ltd. and BPCL) for appointment of agency for Cost Audit of financial year "2017-18" of MNGL, Pune Bid Document No. MNGL/C&P/2017-18/46 dated 26-07-2017(Annexure-A)
 - b) On 27th July 2017, technical issue (defect) was communicated by the Complainant to the Company. It was pointed out that the Institute of Cost Accountants of India had issued a gazette notification whereby the cost accounting firms are not to respond to the tenders for Cost Audit unless the minimum fee for the statutory assignments are prescribed by the clients. (Annexure-B)



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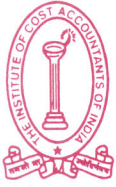
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- c) On 29th July 2017, MNGL floated "Reply to bidder's queries against tender by appointment of agency for Cost Audit of Financial year 2017-18 of MNGL, Pune." Bid No: MNGL/C&P/2017-18/46(Annexure – C). Vide this document the minimum Cost Audit fees payable by MNGL for the Cost Audit of 2017-18 was fixed by the Company. The Company also revised the scope of work and essential eligibility of Cost Auditor. The revised scope of work was given in Annexure – I termed as "Revised Cost & Management Audit scope for FY 2017-18" which was specified in two parts as "General" and "Specific".
- d) It was understood that M/s M R Pandit and Company, Cost Accountants were selected and appointed as Cost Auditors by MNGL and M/s M R Pandit and Company had accepted the said Cost enumerated by the Company in its bid document dated 29.07.2017
- e) M/s M R Pandit and Company, Cost Accountants while accepting the position as Cost Auditors of MNGL for 2017-18 had also accepted the "scope of work as outlined by the Company" to carry out certain services which are in the form of "Management Services". Section 141(3) (i) of the Companies Act, 2013 read in conjunction with sec. 144 of the same Act provides that Auditor (Cost Auditor) cannot render certain services which are in the form of "Management Services"
- f) M/s M R Pandit and Company, Cost Accountants had contravened the various provisions of the Companies Act, 2013, The Companies (Cost Records and Audit) Rules, 2014 and The Cost and Works Accountants Act, 1959 and the rules & regulations made their under.
- g) M/s M R Pandit and Company, Cost Accountants are guilty of professional misconduct as contemplated under The Cost and Works Accountants Act, 1959. Particularly mentioned under the following-
- A. The First Schedule Part I Clause (5)
 - B. The First Schedule Part I Clause (6)
 - C. The First Schedule Part III Clause (3)
 - D. The First Schedule Part IV Clause (2)
 - E. The Second Schedule Part I Clause (7)
 - F. The Second Schedule Part II Clause(1)

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In support of the complaint, the complainant had annexed the following documents:

Annexure 'A' – Bid Document No. MNGL/C&P/2017-18/46 dated 26.07.2017

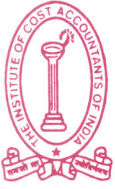
Annexure 'B' – Mail dated 27.07.2017 sent by the complainant to MNGL.

3. Annexure 'C' - "Reply to bidder's queries against tender by appointment of agency for Cost Audit of Financial year 2017-18 of MNGL, Pune." Bid No.: MNGL/C&P/2017-18/46 On receipt of the complaint in triplicate Form I dated 23rd February 2018 of the complainant, the instant complaint was registered by the Disciplinary Directorate after it was found to be in order and the same proceeded with in the manner as prescribed in Chapter III of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. A unique complaint number Com/21-CA(63)/2018 was allotted to the complaint.
4. The respondent firm was intimated vide letter dated 20th March 2018 to send response to the complaint through a written statement in his defence within 21 days from the date of service of the letter. The respondent firm submitted a copy of the resolution passed by authorizing CMA R.P. Gore, Partner of the respondent firm to represent the firm on behalf of the firm/on behalf of all the partners of the firm in respect of and in the matter of complaint filed by the complainant. CMA R.P. Gore, Partner of the respondent firm vide his letter dated 19th April 2018 denied the allegations made against him and stated inter alia as below:-

At the outset he pointed out the technical defect in complaint raised. The complaint is filed against his firm so list of partners should include only names of partners of his firm. However, the list of partners also includes the name of other firms i.e. M/s MRP & Associates (Firm Reg no 101001) & M/s Jayant K Hampiholi & Co. (Firm Reg. no 100419) Both these firms had separate registration and his firm M R Pandit (Firm Reg. no 000268) has got a separate registration number as per Institutes' records and had separate existence and separate identity Bringing these two firms in this matter, had vitiated the complaint and the enquiry process and it should not had been allowed by being quasi-judicial authority. He requested to take note of this objection on the records. He then went on to state the following in his written statement:



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The crux of the complaint is that they had agreed to take cost audit assignment of Maharashtra Natural Gas Ltd in spite of scope of work which (alleged) contained Management Services and thus had contravened provisions of the Companies Act 2013, The Companies (Cost Records and Audit) Rules 2014 & The Cost and Works Accountants Act, 1959 with rules & Regulations as amended.

In the complaint the wording used is 'certain services' which are in form of Management Services. This is a vague allegation and it surely indicates that the complainant is not having clear understanding of the terms 'Management services'

The complaint is, thus, filed without understanding the meaning of 'Management Services' under the provisions of the Companies Act 2013, The Companies (Cost Record and Audit) Rules 2014 & The Cost and Works Accountants Act, 1959 with rules & Regulations as amended.

Now, let see, what is the meaning of the 'Management services' (or, 'Management Consultancy Services')

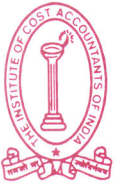
It should be noted that Section 144(h) of the Companies Act, 2013 has used the words "Management services". These words do not find any place either in Institute of Chartered Accountants Act or our Institutes' Act – Institute of Cost & Works Accountant Act 1959. Both the Institute use the same words "Management Consultancy Services." For the word 'Management Services'

Section 2(2)(iv) of the Chartered Accountants Act, 1949 read with Regulation 190A has used the words-"Management Consultancy Services." Giving details of various services which financial Auditor are not supposed to give.

The Council of the Institute of CostAccountants of India has passed the Resolutions under Regulation III of the Cost and Works Accountants Regulations, 1959 & has clarification of the meaning of the words "Management Consultancy Services" {Refer Annexure R 2 to understand the relation between 'Management services' & the 'Management Consultancy Services'.
([://cmaicmai.in/external/Public Pages/ Website Display/ Members-code- ethics.aspx](http://cmaicmai.in/external/Public Pages/ Website Display/ Members-code- ethics.aspx))}



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Thus, it follows that the scope of section 144(h) of the Companies Act, 2013 cannot go beyond section 2(2)(iv) and Regulation 190A (supra), in light of the provisions contained in aforementioned Clause 11 of Part I of the First Schedule to the Chartered Accountant Act, 1949 as far as financial auditor is concerned, & for Cost Auditor the clarification given by Council of our Institute (ref Appendix 6 of the ICWA Regulations 1959) is only applicable (Refer Annexure R I).

The respondent firm had quoted the relevant provisions here THE COST AND WORKS ACCOUNTANTS REGULATIONS, 1959 (as amended) Appendix No. 6 The Resolution passed by the Council under Regulation III.

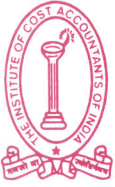
Definition/meaning of "Management Consultancy Services"

The expression 'Management Consultancy Services' shall not include the function of statutory periodical audit, tax, (both direct taxes and indirect taxes) representation or advise concerning tax matters of acting as liquidator, trustee, executor, administrator, arbitrator or receiver, but shall include besides all functions done as cost accountant, the following:

- i) Financial management planning and financial policy determination
- ii) Cost/Financial Accounting System Design and Implementation;
- iii) Cost/Financial management planning and costing/financial policy determination.
- iv) Capital structure planning and advice regarding raising finance;
- v) Working capital management;
- vi) Preparing project reports and feasibility studies;
- vii) Preparing cash budget, cash flow statements, profitability statements, statements of sources and application of funds;
- viii) Budgeting including capital budgets and revenue budgets;
- ix) Inventory management, material handling and storage;
- x) Market research and demand studies;
- xi) Price-fixation and other management decision making;
- xii) Management accounting systems including TCM, TQM, BPR, cost control and value analysis;

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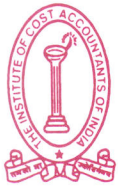
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- xiii) Control methods and management information and reporting;
- xiv) Personnel recruitment and selection;
- xv) Setting up executive incentive plans, wage incentive plans etc;
- xvi) Management, operational, quality, environmental and energy audits;
- xvii) Valuation of shares and business and advice regarding amalgamation, mergers and acquisitions etc;
- xviii) Business policy, corporate planning, organisation development, growth and diversification;
- xix) Organization structure and behaviour, development of human resources including design and conduct of training programmes work study, time study, job-description, job evaluation and evaluation of work-loads;
- xx) Systems analysis and design and computer related services including selection of hardware and development of software in all areas of services which can otherwise be rendered by a cost accountant in practice and also to carry out any professional services relating to EDF, e-filing etc;
- xxi) Acting as advisor or consultant to an issue, including such matters as :-
 - a) Of prospectus and memorandum containing salient features of prospectus. Drafting and filing of listing agreement and completing formalities with Stock Exchanges, Registrar of Companies and SEBI.
 - b) Preparation of publicity budget, advice regarding arrangements for selection of
 - (i) ad-media
 - (ii) Centers for holding conferences of brokers, investors etc.
 - (iii) bankers to issue
 - (iv) collection centers
 - (v) brokers to issue
 - (vi) under- writers and the underwriting arrangement, distribution of publicity and issue material including application form, prospectus and brochure and deciding on the quantum of issue material (In doing so, the relevant provisions of the Code of Conduct must be kept in mind).
 - c) Advice regarding selection of various agencies connected with issue, namely Registrar to issue, printers and advertising agencies.

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d) Advice to the post issue activities e.g follow up steps which include listing of instruments and dispatch of certificates and refunds with the various agencies connected with the work.

Explanation: For removal of doubts, it is hereby clarified that the activities of broking underwriting and portfolio management are not permitted.

- xxii) Counselling in respect of securities [as defined the Securities Contracts (Regulation) Act, 1956 and other financial instruments] (In doing so, the relevant provisions of the Code of Conduct must be kept in mind);
- xxiii) Acting as registrar to an issue and for transfer of share counselling in respect of securities [as defined in the Securities Contracts (Regulation) Act, 1956 and other financial instruments] (In doing so, the relevant provision of the Code of Conduct must be kept in mind);
- xxiv) Acting as registrar to an issue and for transfer of share /other securities (In doing so, the relevant provision of the Code of Conduct must be kept in mind Acting as recovery consultant in Banking Sector;
- xxv) Insurance Financial Advisory services under the Insurance Regulatory Development Authority Act, 1999, including Insurance Brokerage.

The written statement of the respondent firm requested the Disciplinary Directorate to go through each point given in the definition of Management Consultancy Services and then to compare the same with scope of work as given by MNGL. Not a single Point as given in the scope matches with points or services given above falling under definition / or clarification of Management Consultancy Services as defined by the Council of the Institute. Thus, as per the Institute's clarification / definition of Management Consultancy Services, whatever services are given under the scope of work are allowed to be done as they are not disallowed services or Management Consultancy Services. There is no merit in the complaint.

Although the above clarification on its own count is suffice to dismiss the complaint, he has cited one more ground for easier understanding. The Performance Appraisal Report (PAR) which was an important part of Cost Audit Report in 2011 (to be given only to the Management) did not find any place in Cost Audit Report in 2014. But submission of PAR was not prohibited or was disallowed



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anywhere in Companies Act 2013 or Cost Audit (records & rules), 2014. The point which was part of legal report suddenly cannot become illegal to report without specific provision added in act & rules prohibiting/ barring its reporting. It remains the matter to be decided in between the management and Cost Auditor. The Cost Auditor still has liberty to give PAR

He now compared the scope of work as given by MNGL and analysed it one by one and to consider its allowability with respect to Cost audit report format along with PAR. He gives below a table analysing total scope of work point by point giving there with his comments to make the matter easy to understand.

	Revised Cost and Management Audit Scope for FY 2017-18 as per MNGL	Comment
	GENERAL	
I	To conduct the cost audit of the Company in accordance with the provisions if the Company (Cost Audit Records) rules 2014 and amendment thereof and the Cost audit standard issued by the Institute of Cost Accountants of India from time to time.	No Comment required It is the basic requirement
II	Examination and Verification of the correctness of Cost Records maintained by the Company as per the cost auditing standards as referred in section 148 of companies Act 2013.	No Comment required It is the basic requirement
III	Reconciliation of Profit/loss as per Costing and Financial Accounting records	No Comment required It is the basic requirement as per report format
IV	Suggestions for improvement (requisite modification and /or Additions) to the present accounting system to facilitate proper Cost analysis and cost record maintenance in the future.	No Comment required Pl refer form CRA 3(Points V, VI & VII)
V	Submission of Performance Appraisal Report (PAR) to the Company. The PAR report shall be prepared and submitted after prior discussion	No ban on submission of PAR



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	With the management as per provisions of guidance note issued by ICAI on the subject.	
VI	The cost auditor should report offence of fraud if found to be committed by an employees or offices of the company in terms of section 143(12) of the CA 2013.	No comment required This is requirement under the Companies Act 2013
VII	Submission of Cost Audit Report in CRA- 3 format as per statutory requirements	No Comment required
VIII	Compliance Certificate as per Statutory requirement	No Comment required
IX	Filing of cost Audit & Compliance Report (if any) in XBRL mode/any other mode with MCA or with any other Statutory authority	Word "if any "are important. If filing is not required (as per law / rules) Then it need not be filed by Cost Auditor
X	Any other activity/report to meet the statutory requirement of cost Audit, as may be specified by Statutory authorities, from time to time till completion of subject 'Cost Audit'	No Comment required
	Revised Cost and Management Audit Scope for FY 2017-18	Comment
	SPECIFIC	
1	Project Appraisal for each CNG, Industrial and Commercial Projects undertaken	All the project are working. It is only profitability analysis As required in PAR Point 5 In our Cost Audit Report also we have to prepare Product-wise cost & profit working
2	Sector wise detailed cost and profitability analysis for	Requirement as per



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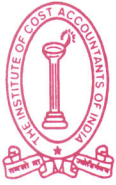
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	<ul style="list-style-type: none"> a. CNG b. PNG – Domestic c. PNG – Commercial d. PNG – Industrial 	Cost Audit Report (We have to prepare Product – wise cost sheet)
3.	<p>Profit and Resources optimization module based on two years actual data</p> <p>For CNG Station (e.g. – Traffic vs. Number of CNG Stations in Area)</p>	As required in PAR Point 1 & PAR Point 5
4.	<p>Process audit of CNG Stations to identify-</p> <ul style="list-style-type: none"> A. Utility (Power and Gas) Consumption and scope of reduction B. Best model Station wise for GED or EMD or combine use C. Efficiency analysis of Compressors based on utilization factor 	As required in PAR Point 3
5.	<p>Gas Reconciliation –</p> <p>Monthly/ Quarterly reconciliation of Gas Purchased (Source wise) And sold (Sector wise) and alert system in case of any diversion in usage of gas</p>	Requirement as per Cost Audit Report- -Quantity Reconciliation
6.	Audit of Bill Generation, Distribution & Realisation for Domestic Customers including reconciliation of bills with Meter Readings	As required in PAR Point 6
7.	Cost Centre –wise Cost Estimation (HR Cost, C&P Cost, O&M Cost etc.)	Requirement as per Cost Audit Report
8.	Working Capital Analysis (Movement of Debtors Vs. Credit Sales, Days Debtors Analysis, Impact on Cash flows & Profitability)	As required in PAR Point 7
9.	Manpower Analysis (Responsibility /Role Assigned Vs. Performance)	As required in PAR Point 9

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Thus, all points given in the scope of work covered as per the Cost Audit report along-with PAR. Thus, there is no problem either in the scope of work or any problem to any CMA as Cost Auditor accepting the scope of work.

It would become crystal clear that either the complaint is raised without understanding the concept of 'Management Consultancy Services' or without studying the provisions of the Companies Act 2014 & our institutes' rules & regulations or is raised with some (malicious) intentions.

CMA Gore, Partner of the respondent firm summarises that -

- a) The Complaint of the respondent firm is having technical defect
- b) The notice given by the Director (Discipline) is not as per procedure specified by the ICWA Act. Also, no time limit is specified to file reply to the valid notice of the Director (Discipline).
- c) The clarification given by the Council of the Institute of the term 'Management Consultancy Services' does NOT include any services as given under the revised scope of work.
- d) The performance Appraisal Report submission is not prohibited and the scope of work contains nothing other than what is required from Cost Audit report with PAR
- e) The complaint is filed with malicious intentions

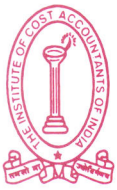
Hence, this complaint does not have any merit. It does not have support of the provisions under the Companies Act 2013 or Institute of Cost & Works Accountant Act 1959 or Cost Audit & Record Rules 2014 and therefore, the Complaint should be quashed.

5. The written statement dated 19th April 2018 of the respondent was sent to the complainant vide letter dated 1st May, 2018 for sending rejoinder on the same. The complainant submitted his rejoinder dated 24th May 2018 which inter alia states that -

1. The respondent was totally careless and had not even bothered to file his written statement in order.
Page 3 – line 1 –half hazard line which starts with the words "Accountants Act 1949".
Page 3 – the last serial number is (xix) with 2 lines. Ending with the word "Work" which is again not completed on the next page no 4.

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Page 4 – has the first line “Acting as Recovery Consultant in banking sector” which is in fact Sr No (xxiv).

Thus the respondent had not even cared to reproduce the definition of “Management Consultancy Services” given in Appendix No 6 to The CWA Regulations, 1959.

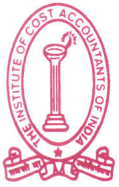
Page – 6 had the first line “been brought to our notice –” is again an illustration that certain lines are missed out from the WS.

This shows the casual and unprofessional approach of the Respondent.

2. Page 2 – Para 2 – The Names and Addresses of the Partners of the Firm M R Pandit & Co., Cost Accountants, are mentioned as they appear in the Institute of Cost Accountants of India Records of the Partnership Firm having Firm Registration No 000268. The Respondent had tried to mislead by raising such objections. It is reiterated that the Names and addresses of the partners CMA Jayant K Hampiholi and CMA Murlidhar Ramkumar Pandit are mentioned exactly as per the data available on the Institute’s website in “Members Online System”. The complaint is against the Firm the naturally against all the Partners of the Firm as they appear in the Institute’s Records on the day when the complaint is lodged on 23rd February 2018. Only the names and the addresses of the Partners of the Respondent Firm are given under Sr No 2 of Form I.
3. Page 2 – Para 3 – The Respondent is challenging the procedure to be followed by the Director (Discipline). The Complainant had nothing to comment on this objection of the Respondent and as such it is of no consequence.
4. The Companies Act, 2013, Section 144 applies also to Audits conducted u/s 148 of The Companies Act, 2013. Section 144 specifically provides the services which are not to be provided by an Auditor (Cost Auditor).
The Respondent had reproduced Appendix No 6 of The CWA Regulation, 1959 under which Definition of “Management Consultancy Services” is stipulated. The Respondent had not made any submission as to how the Scope of Services accepted by the Firm does not fall under the provisions of Section 144 of The Companies Act, 2013 OR the Definition of Management Consultancy Services as per the Resolution passed by the Council of The Institute. The Respondent had only made a vague statement that “none of the points or services agreed to



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be rendered by the Firm falls under Definition or clarification of Management Consultancy Services.” Thus the Respondent had miserably failed to prove the fact that the scope of services to be rendered accepted by the Firm along with Statutory Cost Audit is not falling under Management Consultancy Services. In fact it is a tacit acceptance by the Respondent of his own guilt.

5. The Respondent had accepted to render the services in the nature of Management Services while accepting the Statutory Cost Audit of the Company.

The Bid Document itself defines Annexure – 1 “Revised Cost & Management Audit Scope for FY 2017-18”. It is pertinent to note that the Respondent had accepted “Management Audit” Scope which is nothing but Management Services. The Companies Act, 2013 provides for Audit (Financial Audit), Cost Audit and Internal Audit. It is also imperative that a firm of Cost Accountants carrying out Cost Audit of a company cannot carry out the Internal Audit for the same company and vice a versa. The same applies also in case of financial audit. Thus the acceptance of the scope under the title “Management Audit” is nothing but accepting the scope of the services of management services.

The scope of services accepted by the Respondent and how it amounts to Management Services is explained below.

5.1 Project Appraisal for each CNG, Industrial and Commercial Projects undertaken

“Project appraisal is the process of assessing, in a structured way, the case for proceeding with a project or proposal, or the project’s viability. It often involves comparing various options, using economic appraisal or some other decision analysis technique” – the definition by Wikipedia.

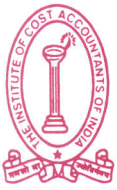
This squarely falls under “Management services”-

Appendix No 6 to CWA Regulations, 1959 Definition of “Management Consultancy services”- Above service falls under item (iii) Financial Policy Determination.

5.2 Sector wise detailed cost and profitability analysis for

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- a. CNG
- b. PNG – Domestic
- c. PNG – Commercial
- d. PNG – Industrial

The respondent under the column "Our Comment" had stated the following:

"Requirement as per Cost Audit Report (We have to prepare Product-wise Cost Sheet.)"

Thus it is very clear that the respondents had even assumed and accepted the role of Cost Accountant for the company for preparation of Cost Sheets. It is a complete admission by the respondents of carrying out of "Accounting & Book Keeping Services." Sec 144 of the Companies Act prohibits Cost Auditors for providing the service of Accounting and Book Keeping for the company for which he is carrying out the Cost Audit.

5.3 Profit and Resources Optimization module based on two years actual data for CNG station (e.g. – Traffic Vs Number of CNG Stations in Area)

The Cost Audit assignment is for the year 2017-18. The Respondent had accepted the scope of Professional services beyond the year 2017-18. Under this Service, the Respondent is to use data for 2 years and provide a Module for profit and Resource optimization to the Company for its CNG Stations. Thus this service is beyond the scope of Cost Audit and certainly it is in the nature of Management Services.

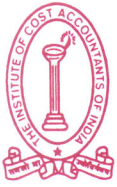
Appendix No 6 to CWA Regulations, 1959 Definition of "Management Consultancy services" – Above service falls under item (xii) Management Accounting Systems.

5.4 Process audit of CNG Stations to identify-

- A. Utility (Power and Gas) Consumption and scope of reduction
- B. Best model Station wise for GED or EMD or combine use

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C. Efficiency analysis of Compression based on utilization factor

All these areas squarely fall under "Management Services".

Appendix No 6 to CWA Regulations, 1959 Definition of "Management Consultancy services" – Above service falls under item (xi) Management Decision Making.

5.5 Gas Reconciliation

Monthly / Quarterly reconciliation of Gas Purchased (Source wisely) and sold (Sector wise) and alert system in case of any diversion in usage of gas.

The Respondent as Cost Auditor's had to carry out Quantitative Reconciliation on monthly and quarterly basis which is nothing but "Accounting and Book Keeping Services." It may also amount to Maintenance of Cost Records by the Respondent along with Statutory Cost Audit. The Respondent is also to provide "Alert System". Certainly these areas go beyond the scope of Cost Audit and are nothing but "Management Service".

5.6 Audit of Bill Generation, Distribution & Realizations for Domestic Customers including reconciliation of bills with Meter Reading.

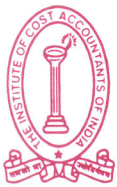
This service squarely falls under "Internal Audit" specifically prohibited to be rendered by Statutory Cost Auditor under section 144 of the Companies Act, 2013. The service calls for "reconciliation of Bills with Meter Reading". Consider the number of customers, bills which are raised normally on monthly basis and the Meter readings of all these customers for all the months; it certainly fits in the service of "Internal Audit".

5.7 Cost Center wise Cost Estimation (HR Cost, C&P Cost, O&M Cost etc)

The concept of "estimation" itself falls under Management Services. As a statutory Cost Auditor there is no role for Cost Auditor for estimation. Cost estimations are the internal



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processes of Management and acceptance thereof under the engagement of Cost Auditor is itself contravention under Section 144 of the Companies Act, 2013.

5.8 Working Capital Analysis (Movement of Debtors Vs Credit Sales, Day Debtor, Analysis, Impact on Cash flows & Profitability)

Again this service falls under "Management Services" or "Internal Audit" or "Designing and implementation of any financial information system". Rendering of this service by the Respondent is itself contravention under Section 144 of the Companies Act, 2013.

Appendix No 6 to CWA Regulations, 1959 Definition of "Management Consultancy services" – Above service falls under item (v) Working Capital Management.

5.9 Manpower Analysis (Responsibility / Role Assigned Vs Performance)

This service squarely falls under "Management Service". Responsibility or Role Assigned to the employees (Manpower) engaged by the Company and evaluation of their performance is certainly Management service.

Appendix No 6 to CWA Regulations, 1959 Definition of "Management Consultancy services" – Above service falls under item (xix) "Organization Structure ---- job evaluation and evaluation of workloads."

6. The Companies Act, 2013 Section 144 was notified w.e.f 1/4/2014. This is a new provision applicable to all Companies and seeks to provide for the services which the Auditor cannot provide directly or indirectly, to the company.
7. The Respondent is appointed as Cost Auditors of a Public Sector Company. It may be pertinent to note that the Cost Audit Fees for the Previous Year 2016-17 were Rs. 35,000/- only, whereas the Cost Audit Fee for the Year 2017-18 is revised by the company at Rs. 86,000/- plus GST. This enhancement in fees itself is an indicator that the Company is expecting much wider scope of services under the assignment of Cost Audit for the Year 2017-18, in the form of Management services under the garb of Cost and Management Audit.





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8. There is nothing like Management Audit as such under The Companies Act, 2013, but the Respondent had submitted his Bid accepting the scope of Management services while bidding for Cost Audit.
9. As regards Performance Appraisal Report (PAR)- The Companies (Cost Records & Audit) Rules 2014 are notified by Government of India, Ministry of Corporate Affairs, under Section 469 and Section 148 of The Companies Act, 2013 and in supersession of Companies (Cost Accounting Records) Rules 2011, Companies (Cost Audit Report) Rules 2011, had totally eliminated Performance Appraisal Report. Any reference to PAR or comparison therewith is a futile exercise on the part of respondent. Hence the complainant does not wish to comment on such superseded piece of legislation. It had no legal value or standing as the law stands today.

It may be stated that after introduction of Section 144 of The Companies Act, 2013, it is mandated by the Act itself that a statutory Cost Auditor is prohibited from providing certain services. Possibly the scope of PAR may be contradictory to Section 144 of the Companies Act, 2013, and hence it has not found place under The Companies (Cost Records & Audit) Rules 2014.

10. As regards the "intentions", they had clearly mentioned in Disciplinary complaint why they are filling this complaint. It is on records and they had clearly mentioned that since it was an open bid from a Public Sector undertaking Maharashtra Natural Gas Limited, they had also presented Bid to the company. On our insistence only the company had to specify the minimum Cost Audit Fees in their revised Bid. While Bidding they had "qualified" his Bid giving a complete statement as regards the deviation and reasons for deviations. They had clearly mentioned in his Bid that many areas covered under Scope of Cost and Management Audit cannot be carried out by the Cost Auditor.

Later on the Company opened the Tenders on 2/8/2017 at 3 pm in the presence of representative of all the bidding Firms. There were 5 Cost Accountants Firms which had quoted the same Professional Fees of Rs. 86,000/- These 5 Firms included the Firm of the



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Complainant where he is Partner, i.e. M/s Dhananjay V Joshi & Associates, Cost Accountants, Firm Registration No. 000030 and the Firm of the Respondent.

The respondent accepted the entire scope of Cost & Management Audit which in fact included the scope of Management Services, Internal Audit etc. prohibited u/s 144 of The Companies Act, 2013.

Thus it is strongly felt that the Respondent were selected as Cost Auditors by the Company in preference to the Complainant since the Respondent accepted the entire scope of Cost & Management Audit which in fact included the scope the Management Services, Internal Audit etc. prohibited u/s 144 of The Companies Act, 2013, whereas the Complainant declined to accept the said scope.

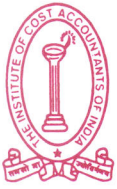
The Complainant strongly believes that accepting Management services, Internal Audit Areas etc. under the garb of Cost Audit is totally unethical and un professional. It will do a great harm to the profession if such wrong and unlawful trends are developed in the Profession of Cost Accountants. The Senior Professionals and Senior Practitioners have to abide strictly by the provisions of statutes and not to circumvent the provision by illusory arguments and understandings.

Thus the main intention is to get a considered decision on whether such practice of securing Cost Audit by accepting additional work in the form of Cost Accounting and preparation of Product cost sheets for the client or rendering services in the nature of "Management Services" is allowable and acceptable under the provisions of the Companies Act, 2013 or the CWA Act, Rules and Regulations. They firmly believe that this principle needs to be set so as to make a level playing field for all the practitioners of our profession. If such practice is not nipped in the bud, the entire regulatory force of sec. 144 of the Companies Act, 2013 will get defeated. It will give rise to unhealthy practice for securing cost audit work.

It may also be mentioned that the Companies (Cost Records & Audit) Rules, 2014 under form CRA-3 had provided "Form of the Cost Audit Report" along with Annexure to the Cost Audit Report. Thus the scope of Statutory Cost Audit is well defined under the Rules (CARR). Para 2 of the Cost Audit Report itself provides for "Observations and suggestions" of the Cost Auditor



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DISCIPLINARY DIRECTORATE

relevant to Cost Audit which offers large scope for the Cost Auditor to report his observations and suggestions for improvement in the performance, efficiency etc. of the Company.

The respondent in fact had secured the Cost Audit by accepting such scope which is not open for a firm of Cost Accountant who are getting appointment as a Cost Auditor. Hence respondents are guilty of Professional Misconduct.

The scope of services accepted by the respondents along with Cost Audit Work is in fact in the nature of activities which fall under "Outstanding and Support Services" to be provided to the company while accepting the position as Cost Auditor.

Hence the complainant reiterates that the respondent firm is guilty of Professional Misconduct as contemplated under The Cost and Works Accountants Act, 1959 Section 21 (3), Section 21A(3) and Section 22 of the CWA Act, 1959. more particularly mentioned under the following clauses:

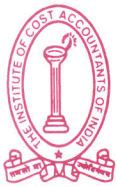
- A. The First Schedule Part I Clause (5)
- B. The First Schedule Part I Clause (6)
- C. The First Schedule Part III Clause (3)
- D. The First Schedule Part IV Clause (2)
- E. The Second Schedule Part I Clause (7)
- F. The Second Schedule Part II Clause (1)

6. The Prima facie opinion was formed in terms of Rule 9(2)(a)(ii) of the Rules and the same was placed before the Disciplinary Committee at its 55th meeting held on 8th September 2021 holding the respondent firm guilty of violation of the following clauses of the First and the Second Schedule:

- Clause (5) of Part I of the First Schedule to the Cost and Works Accountants Act, 1959.
- Clause (3) of Part III of the First Schedule to the Cost and Works Accountants Act, 1959.
- Clause (7) of Part-I of the Second Schedule to the Cost and Works Accountants Act, 1959.
- Clause (1) of Part-II of the Second Schedule to the Cost and Works Accountants Act, 1959.

Disciplinary Director





DISCIPLINARY DIRECTORATE

The Committee perused the complaint, written statement and the documents relating to the complaint and the prima facie opinion formed by the Director (Discipline). The Committee discussed and deliberated at length as to whether there has been a violation of the above mentioned clauses by the respondent firm as opined in the prima facie opinion framed by Director (Discipline). The Committee, however, did not agree with the prima facie opinion formed by Director (Discipline) and opined that the scope of work stated in the Tender Document dated 26th July 2017 of Maharashtra Natural Gas Ltd (MNGL), Pune for appointment of agency for cost audit of Financial year 2017-18 falls within the scope of work of a cost auditor and the same is in conformity with Para 2 of CRA-3 (Form of Cost Audit Report). Under Para 2 the matters relating to scope of cost audit expects from a cost auditor the comments/suggestions on performance of the auditee. In this case, the auditee has already specified its key areas to comment thereon. The Committee decided to deliberate on the same in the next meeting of the Committee.

7. In the next meeting of the Disciplinary Committee held on 18th September 2021, Director (Discipline) brought to the notice of the learned members that there is a Gazette Notification No. CWA/1/2017 dated 19th April 2017 which reads as follows:

'In exercise of the powers conferred on it under clause (1) of Part II of the Second Schedule of the Cost and Works Accountants Act, 1959, the Council of the Institute of Cost Accountants of India hereby issues the following guidelines for compliance by the members of the Institute:

(i) A member of the Institute shall not respond to any tender issued by an organization or user of professional services in areas of services such as audit and attestation services which are exclusively reserved for Cost Accountants by a statute. However, such restriction shall not be applicable where minimum fee of the assignment is prescribed in the tender document itself or where the areas are open to other professionals along with the Cost Accountants.

(ii) These guidelines shall come into force on the date of publication in the Gazette of India."

From the reply dated 29.07.2017 to Bidders' queries against Tender for appointment of agency for cost audit of Financial year 2017-18 of MNGL, Pune it is observed that Maharashtra Natural Gas Ltd (MNGL) has stated that the minimum cost audit fees payable by MNGL for cost audit for FY 2017-18 was Rs 86,000/- + GST extra at actual. Thus, a minimum price has been fixed by the

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company for undertaking cost audit. It is also observed that in the request for quotation dated 26.07.2017, the fee for the assignment was not mentioned but was mentioned subsequently on 29.07.2021.

8. It was also brought before the notice of the learned members that from the records and documents that an email dated 12.01.2018 was sent at or about 15.34 hrs by the complainant to one of the partners of M/s M.R. Pandit & Co. bringing to his notice the fact that the scope of cost audit given in the Tender document by MNGL was in contravention of the provisions of the Companies Act 2013. The said email also pointed out that the respondent firm M.R. Pandit & Co. had not raised any objection to the scope of cost audit assignment.
9. Director (Discipline) brought before the notice of the learned members of the Committee the provisions of Section 144 of the Companies Act, 2013 which reads as follows:

‘An auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be, but which shall not include any of the following services (whether such services are rendered directly or indirectly to the company or its holding company or subsidiary company), namely:-

- (a) accounting and book keeping services;
- (b) internal audit;
- (c) design and implementation of any financial information system;
- (d) actuarial services;
- (e) investment advisory services;
- (f) investment banking services;
- (g) rendering of outsourced financial services;
- (h) management services; and
- (i) any other kind of services as may be prescribed:

Provided that an auditor or audit firm who or which has been performing any non-audit services on or before the commencement of this Act shall comply with the provisions of this section before the closure of the first financial year after the date of such commencement.”

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Therefore, it appears that an auditor appointed u/s 144 of the Companies Act, 2013 cannot undertake management services as per clause (h) above.

Findings of the Disciplinary Committee

10. The Committee after carefully perusing the complaint of the complainant, the written statement of the respondent, the rejoinder of the complainant and other papers and documents available with the Disciplinary Committee is of the considered view that:

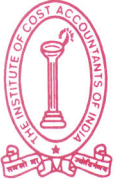
(a) the services undertaken by the respondent firm as reflected in the Tender document dated 26th July 2017 of Maharashtra Natural Gas Ltd (MNGL), Pune for appointment of agency for cost audit of Financial year 2017-18 falls within the scope of work of a cost auditor and the same is in conformity with Para 2 of CRA-3 (Form of Cost Audit Report)

(b) I In the instant case, the auditee has already specified its key areas to comment thereon. These areas have nothing to do with management consultancy services but forms part and parcel of cost audit.

11. The Committee has also taken cognizance of the statement made in the written statement dated 19th April 2018 by the authorized representative of the respondent firm that "the performance Appraisal Report submission is not prohibited and the scope of work contains nothing other than what is required from Cost Audit report with PAR". There is logic in the contention made by the respondent firm that the Performance Appraisal Report (PAR) which was an important part of Cost Audit Report in 2011(to be given only to the Management) did not find any place in Cost Audit Report in 2014. But submission of PAR was not prohibited or was disallowed anywhere in the present Companies Act 2013 or Cost Audit (records & rules), 2014.

Diwan Singh





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ORDER

12. The Committee is of the unanimous opinion that none of the clauses as has been levelled by the complainant against the respondent firm has been violated by the respondent firm. These clauses are:
- A. The First Schedule Part I Clause (5)
 - B. The First Schedule Part I Clause (6)
 - C. The First Schedule Part III Clause (3)
 - D. The First Schedule Part IV Clause (2)
 - E. The Second Schedule Part I Clause (7)
 - F. The Second Schedule Part II Clause (1)
13. The complaint of the complainant is without merit as the foregoing analysis would show that the services undertaken by the respondent firm falls within the scope of cost audit and not management consultancy services.
14. The proceedings against the respondent firm Associates be dropped in terms of Rule 9(2)(c) of the Rules. The complaint, accordingly, stands disposed of.

Biswarup Basu
25.11.2021
CMA Biswarup Basu
PRESIDING OFFICER

