



**THE INSTITUTE OF
COST ACCOUNTANTS OF INDIA**
(STATUTORY BODY UNDER AN ACT OF PARLIAMENT)
CMA BHAWAN
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DISCIPLINARY DIRECTORATE

**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(33)/2015 -

**CMA (Dr.) Ashish P.Thatte (M/27543) & CMA Amit S. Shahane (M/26078)
[Complainants]**

Vs.

CMA Ashok B. Nawal (M/5720) [Respondent]

ORDER

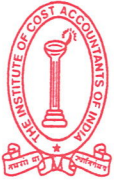
Quorum

- | | |
|---|---|
| 1. CMA Ashwin G Dalwadi, | - Presiding Officer |
| 2. CMA Manoj Kumar Anand | - Member |
| 3. CMA TCA Srinivasa Prasad | - Member |
| 4. Shri Saraswati Prasad, IAS (Retd.) | - Nominee of Central Government, Member |
| 5. Smt. Meenakshi Sharma, IA&AS (Retd.) | - Nominee of Central Government, Member |

Facts

1. A complaint dated 9th September 2015 in Form I in triplicate was filed with prescribed application fee of Rs 2500/- under Section 21 of the Cost Accountants Act, 1959, read with Sub-Rule (1) of Rule 3 of the Cost and Works Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, (hereinafter referred to as "the Rules") by CMA Ashish Prakash Thatte (hereinafter referred to as the 'complainant') bearing membership number 27543 and CMA Amit S. Shahane, bearing membership number 26078 against Shri Ashok B. Nawal (hereinafter referred to as the 'respondent') bearing membership number 5720 alleging contravention of certain provisions of the Cost and Works Accountants Act, 1959 and the rules made there under.





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2. The complaint dated 9th September 2015 was made mainly on the following grounds highlighting the following contraventions of the respondent :

Contravention of the provisions of the Cost and Works Accountants Acts, Rules and Regulations made there under and the Chapter Bye laws framed by the Council under Regulation 146 of CWA Regulations.

Chapter Bye laws framed by the Council under Regulation 146 – Regulation 25(1) deals with finance and accounts and provides that “No funds of the Chapter shall be applied, either directly or indirectly for payment to the members of the Managing Committee of the Chapter except for reimbursing them for any expenses incurred by them in connection with the business of the chapter.”

- a) During the accounting years 2002-03 to 2014-15 M/s Infosoft Systems, Address - Bizsol India Services Private Limited (M/s Infosoft Systems) proprietor Mrs. Chitra Ashok Nawal was paid professional charges for imparting computer training to the students of ICWAI (inter and switchover/final students exceeding Rs. 1.04 crore (Rs. One crore and four lakhs). As per the information received under RTI under the RTI Act, 2005, the respondent was the spouse of Mrs. Chitra Ashok Nawal, Proprietor of M/s Infosoft Systems. The respondent was the office bearer of Nashik-Ojhar Chapter of the Institute of Cost Accountants of India during the relevant period and was also member of WIRC of the Institute of Cost Accountants of India and the Executive Committee and Chairman of the WIRC of the Institute during the relevant period.
- b) Some of the invoices raised by M/s Infosoft Systems on the Nasik - Ojhar Chapter of Cost Accountants were signed by the respondent himself as authorized signatory for M/s Infosoft Systems. This clearly shows total involvement of the respondent in the receipts of the professional charges by M/s Infosoft Systems. The respondent is a related party of M/s Infosoft Systems, whose proprietor was Mrs. Chitra Ashok Nawal.
- c) The respondent, at no point of time, expressed or disclosed his relationship with M/s Infosoft Systems or the proprietor thereof and as such concealed the facts throughout the relevant period when he was office bearer and Chairman, when such payments towards professional services were made to M/s Infosoft Systems.

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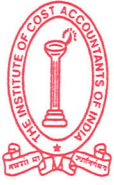


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- d) Thus the funds of the Chapter were applied, either directly or indirectly for payment to the member of the Managing Committee of the Chapter. There is a clear contravention of the chapter Bye-laws as mentioned herein above and hence, the respondent is guilty of professional misconduct/misconduct in relation to Cost Accountants in practice/ member of the Institute generally.
- e) M/s Infosoft Systems had raised its invoices from the address 203, Rohan Heights, D'Souza colony, college road, Nasik-422,005 which gives all communication details including email, website address, telephone No., fax no etc. of Bizsol India Private Limited of which the respondent was the Managing Director. The classes were also conducted in the premises of Bizsol India Private Limited where the respondent was having his professional / official address. For the convenience of students, the board must have been put up at such premises in a prominent place where the name of "Nasik-Ojhar Chapter of Cost Accountants with the emblem of the Institute of Cost Accountants of India must have appeared in a prominent position, such that a wrong impression is created in the minds of the readers that the registered / main office of the ICMAI- Nasik Ojhar Chapter is located there.
- f) The respondent's act of commission mentioned above falls under professional misconduct:
- In relation to Cost Accountant in practice, clause (5) of Part I of the First Schedule
 - In relation to Cost Accountants in Practice, clause (10) of Part I of the First Schedule
 - In relation to Members of the Institute generally, clause (1) of Part II of the Second Schedule.
- g) The respondent's involvement in relation to payments made to M/s Infosoft Systems has brought disrepute to the profession or the Institute as a result of his action whether or not related to his professional work.
3. In support of the complaint, the complainant had annexed the following documentary evidences:



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- i. Information received from Nasik Ojhar Chapter vide letter dated 24.02.2015 under RTI Act, 2005 (3 pages). Rs. 65, 32,125/- Paid to M/s Infosoft Systems, Proprietor, Mrs. Chitra Ashok Nawal, spouse of the respondent. (Evi-1-3)
 - ii. Information received from Nasik Ojhar Chapter vide letter dated 21.04.2015 under RTI Act, 2005 (3 pages). Rs. 32, 72,050/- Paid to M/s Infosoft Systems, Proprietor Mrs. Chitra Ashok Nawal, spouse of the respondent. (Evi-4-6)
 - iii. Information received from Nasik Ojhar Chapter vide letter dated 06.05.2015 under RTI Act, 2005 (1 page). Rs. 40,385/- Paid to M/s Infosoft Systems Proprietor, Mrs. Chitra Ashok Nawal, spouse of the respondent. (Evi-7)
 - iv. Email from Shri P.V. Wandrekar, former Chairman and Council Member, WIRC 2007-2011, dated 9th June 2015 sent to President ICAI (Evi-8-9)
 - v. Invoice dated 6th November 2005 for Rs. 4,30,520/- signed by the respondent as authorized signatory for M/s Infosoft Systems. (Evi-10)
 - vi. Invoice dated 18th February 2004 for Rs. 47,990/- signed by the respondent as authorized signatory for M/s Infosoft Systems. (Evi-11)
 - vii. Invoice dated 14th September 2006 for Rs.5,30,610/- signed by the respondent as authorized signatory for M/s Infosoft Systems. (Evi-12)
 - viii. Invoice dated 22th September 2007 for Rs.7,55,160/- signed by the respondent as authorized signatory for M/s Infosoft Systems. (Evi-13)
 - ix. Invoice dated 2nd April 2006 for Rs.5,01,395 /- signed by the respondent as authorized signatory for M/s Infosoft Systems. (Evi-14)
 - x. Information received from Nasik Ojhar Chapter vide letter dated 25.06.2015 under RTI Act, 2005 (1 page) regarding non-disclosure of interest submitted by the respondent regarding his relationship with Infosoft Systems Proprietor Mrs. Chitra Ashok Nawal. (Evi-15).
4. The complaint was registered by the Disciplinary Directorate after it was found to be in order and the same was proceeded with in the manner as prescribed in Chapter III of the Cost and Works Accountants (Procedure of Investigations of



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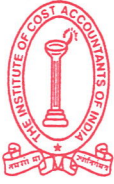
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Professional and Other Misconduct and Conduct of Cases) Rules, 2007. A unique complaint number Com/21-CA(33)/2015 was allotted to the complaint.

5. The respondent was intimated vide letter dated 16th November, 2015 to send his response to the complaint through a written statement in his defence within 21 days from the date of service of the letter. In reply to the complaint, the respondent vide his written statement dated 28th December, 2015 submitted para wise comments/objections to the said complaint which are as follows:
- There are two complainants namely Shri Ashish Thatte (M/27543) and Shri Amit S. Shahane (M/26078) filing one complaint and there is no provision in the CWA Act & Regulations to file common complaint by more than one member and hence this complaint cannot be entertained. Further they have deposited Rs. 2500/- only rather than depositing Rs. 2500/- by each complainant separately. Neither both the complainants are partners of one partnership firm nor a partnership firm can file the complaint and hence it should be treated as null and void and needs to be closed on this ground alone.
 - Sr. No.5 of Form I specifically require to provide particulars of allegation serially numbered together with corresponding part/clause of relevant schedule under which alleged facts and commissions or omissions or both would fall. Allegations are misleading without the factual position. It has been mentioned without any evidence that the respondent has at no point of time expressed or disclosed his relationship with M/s Infosoft System or the proprietor thereof and as such totally concealed the facts throughout the relevant period when he was an office bearer of Nashik Ojhar Chapter and also of WIRC. No evidence has been produced as to how the complainant is aware of whether the respondent had disclosed the same or otherwise.
 - Further, the complaint has been made on imagination and assumptions and presumption that the Board must been put up at such premises in the prominent place where the name of Nashik-Ojhar Chapter of Cost Accountant with emblem of Institute of Cost Accountants of India must have appeared in the prominent position such that wrong impression has been created in the minds of readers that registered/main office of the ICMAI Nashik-Ojhar Chapter is located there. No evidence has been produced as to how the complainant is making such allegation as stated above.
 - It has been alleged that respondent action falls under Professional misconduct in relation to Cost Accountants in practice, [First Schedule - Part I - Clause (5), whereas in the said schedule / part / clause, it has been mentioned that:



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Quote:

Clause (5): secure either through the services of a person not qualified to be his partner or by means which are not open to a Cost Accountant, any professional business; "A man must stand erect, and not be kept erect by others" is a dictum by Marcus Aurelius which though applicable for a man in every walk of life is more so in the case of a professional. He must seek work not through any agency, but by the respect that he is able to command for his professional talent and skill and by the confidence he is able to inspire by his reputation. All forms of canvassing on that account are regarded unethical and are prohibited.

Unquote:

In the present case, no evidence has been produced as to how and which action has been alleged to done, so as to fall under this clause, he stated that, he has not sought or secured any work which are not open to the Cost Accountant nor any work through any agency nor canvassed on that count which are regarded un – ethical and are prohibited.

Failure to provide to any concrete evidences, it is an allegation only to malign the image of the respondent and just to take revenge of his utter rejection of the complainant in election by voters to his candidature. Any complaint filed with the motive due to revenge or frustration needs to be not only quashed but such person should be punished.

- e. It had been alleged that that respondent's act of commission falls under professional misconduct in relation to professionals in practice of the institute generally in the First Schedule – Part I - Clause (10), whereas it states that :

Quote:

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

Provided that nothing contained herein shall disentitle, a cost accountant from being a director of a company, unless he or any of his partners is interested in such company as accountant;





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This is a provision introduced to restrain a member in practice from engaging himself in any business or occupation other than that of accountant except when permitted by the Council to be so engaged. The objective is to restrain members from carrying on any other business in conjunction with the profession of accountancy and combining such work with any business which is not in keeping with the dignity of the profession. Another reason for the introduction of such prohibition is that a cost accountant, if permitted to enter into all kinds of business, would be able to advertise for his other business and thereby secure an unfair advantage in his professional practice.

It is important to note that the respondent was neither engaged in coaching activities nor conducting any classes and therefore he had not made any contravention of any regulations as alleged.

- f. It has been alleged that he had committed an Act of Commission which falls under Professional Misconduct in relation to Members of the Institute generally, the Second Schedule, Part II clause (1), whereas it states that :

Quote:

Clause (1): contravenes any of the provisions of this Act or the regulations made thereunder;

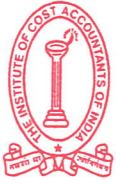
Unquote:

This is very general allegation without giving any evidences and hence the complaint needs to be quashed and the complainant should be punished for making false complaint.

- g. Evidences produced are based on the reply received to RTI query, where from it can be noted that payment has been made to M/s Infosoft System which is the proprietary firm, whereas the respondent was the proprietor of M/s A B Nawal & Associates – Cost Accountant and no payment has been received by him from Nashik Ojhar Chapter of Cost Accountants.
- h. The respondent strongly relied on the letter sent by Chairperson of Nashik Ojhar Chapter of Cost Accountants to CMA S R Saha, Director – Finance, Institute of Cost Accountant of India, Kolkata vide their letter dated 28.09.2015 in reply to information requested by Ministry of Corporate Affairs (MCA) w.r.t. 2/6/2008 – P1 dated 09.09.2015.



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The respondent highlighted the following points mentioned in the letter dated 28.09.2015 -

Quote:

Approval Given: By Managing Committee of Nashik Ojhar Chapter of Cost Accountants, led by then Chairman Mr. V.S. Datey. The Committee felt that is the best arrangement possible in the given situation. Mr. Ashok Nawal was secretary of Chapter that time. He became office bearer of WIRC of ICWA only in 2007-08.

They had talked to Mr. V S Datey, the Chairman and Mr. R K Deodhar, the Vice Chairman of Nashik Ojhar chapter of Cost Accountants. They had confirmed that Mr. Ashok Nawal had disclosed his interest and final selection was done without involving Mr. Ashok Nawal in the decision making process.

Unquote:

This itself proves that the allegations made by the complainant are not on facts and therefore needs to be quashed.

It will not be out of place to mention that complainants themselves use their office and put the board of Pune Chapter of Cost Accountants of India which itself proves they themselves contravene the provisions of the Act and bring disrepute to the profession as well as indirectly canvass for their profession showing the link/relation with Pune Chapter of the Institute of Cost Accountants. One of the complainants is the partner of Joshi Apte & Associates and other complainant is working from the same office. It is also important to note that there is no office premises of Pune Chapter of Cost Accountants of India at that location but still misleading to others as indirect canvass of their business, which itself falls under the misconduct.

In view of the above it was requested to quash the complaint ab initio and take disciplinary action against the complainant for lodging wrong complaint and rather canvassing for their business putting the board of Pune Chapter of Cost Accountants of India along with their own firms.

6. The written statement dated 28th December 2015 of the respondent was sent to the complainant vide letter Ref. No. G/Com-CA(33)/M-27543/2/02/2016 dated 10th





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February 2016 for sending his rejoinder on the same. The Complainant, in his rejoinder dated 7th March 2016, submitted point wise comments on the written statement of the respondent which is reproduced below in verbatim:

1. "Point No 1 a – The Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, (hereinafter referred to as the "Rules") CHAPTER II, Rule No.3 deals with Procedure for filling complainant.

Sub-rule (1) "a complaint under section 21 of the Act against a member or a firm shall be filed in Form I, in triplicate before the Director in person or by post or courier."

Thus there is no bar for complaint being filed by two complainants. The respondent is under mistake of law. The respondent is trying to mislead and give his own interpretations which are totally untenable. The other point regarding partners / partnership firm etc. are totally irrelevant and out of place which shows a confused state of mind of the respondent or a deliberate attempt to create confusion when there is none.

The Complaint made by the complainant satisfies all the requirements of the Rules. It is perfectly legal and valid.

2. Pont No. 1 b – The Respondent is making false and reckless statement. Form I, Sr. no. 5 includes acts of omission and commission by the Respondent, contravention of provisions of CWA Act, Rules and Regulations made thereunder and the Chapter Bye laws framed by the Council under Regulation 146 of the CWA Regulations. Paras "A" to "E" clearly mention how the respondent had contravened multiple provisions and derived financial benefits for himself out of the funds of Nasik Ojhar Chapter of Cost Accountants. The respondent has misused his positions as the office bearer of Nasik Ojhar Chapter of Cost Accountants and as the Council Member of WIRC during the relevant period when such payment of Rs. 1.04 crores was made to M/s Infosoft Systems (Proprietor – Mrs. Chitra Ashok Nawal) who happens to be the wife of the Respondent. The Complaint filed includes evidences marked as "Evi 1 to Evi 15". The respondent is again trying to mislead by raising the issue of "disclosure". It may be noted that the



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respondent is raising such issues neglecting the evidences already attached with the complaint and on this issue particularly Evi-15 i.e. the letter from Chairperson of Nasik Ojhar Chapter of Cost Accountants which clearly settles the issue of Non-disclosure of relationship/ interest by the respondent, with M/s Infosoft Systems (proprietor – Mrs. Chitra Ashok Nawal). It is also to be noted that the respondent, himself has not furnished/ produced any evidence to support his stand. In any case, the Evi-15 is a conclusive proof of evidence which is undisputed and settles the issue.

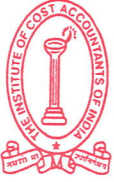
The complainant has brought out very clearly that M/s Infosoft Systems (proprietor – Mrs. Chitra Ashok Nawal) has raised the invoices from the address of Bizsolindia Private Limited of which the respondent was the Managing Director and the classes were also conducted in the premises of Bizsol India Private Limited and where the respondent was also having his professional office address at the relevant point of time. These facts show and establish clear relationship between M/s infosoft Systems (Proprietor- Mrs. Chitra Ashok Nawal) and the respondent. The “putting up” of Board etc. is a consequential issue. It is very logical that for the information of the students undergoing computer training, there must have been Board at prominent place of Nasik Ojhar Chapter of Cost Accountants. Without such board, how the students will understand that the computer training of students of Nasik Ojhar Chapter of Cost Accountants is being carried out by Bizsol India Private Limited.

If there is no such board containing the name of Nasik Ojhar Chapter of Cost Accountants, then the matter will be still serious. It will amount to non-disclosure of identity of Nasik Ojhar Chapter of Cost Accountants and concealment of facts by the M/s infosoft Systems (proprietor – Mrs. Chitra Ashok Nawal), the service provider to the Nasik Ojhar Chapter of Cost Accountants. Such an act amounts to suppression of facts by M/s Infosoft Systems (Proprietor – Mrs Chitra Ashok Nawal).

Shri Ashok B Nawal, Respondent has not denied the placing of Board of Nasik Ojhar Chapter of Cost Accountants at the place where the computer training was conducted by M/s Infosoft Systems (proprietor – Mrs. Chitra Ashok Nawal).



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3. Point No. 1c – it is undisputed fact that the respondent, was having his professional office, M/s Infosoft Systems (Proprietor – Mrs. Chitra Ashok Nawal is not a qualified Cost Accountant and hence, cannot be a partner of the respondent and as such the act of securing business through her amounts to professional misconduct.
4. Point No. 1 d – It is unfortunate that the respondent is even giving wrong quotes of the CWA Act, 1959 in his written statement. The respondent is intentionally, knowingly and with ulterior motives giving wrong quotes before the judicial authorities. This must be considered as a very serious misrepresentation with malafide intentions.

Wrong quote given by the respondent, “provided that nothing contained herein shall disentitle, a cost accountant from being a director of a company, unless he or any of his partners is interested in such company as accountant”

The correct quote of the First Schedule part I clause (10) provision-
“Provided that nothing contained herein shall disentitle, a cost accountant from being a director of a company (not being a managing director or a whole time director), unless he or any of his partners is interested in such company as accountant”

The respondent had deliberately omitted “(not being a managing director or a whole time director)” from his quote. He was working as Managing Director of M/s Bizsolindia Services Private Ltd from the year 2004, for almost a period 10 years. This is clearly in contravention of the provisions of CWA Act and falls under the professional misconduct in relation to cost accountant in Practice, the First Schedule, Part I clause (10).

The respondent is already facing a disciplinary complaint on this issue. Complaint No.Com/21-CA (20)/2014.

It is pathetic for the respondent, to write something and act differently. In his written statement, he has brought out the reasons why a practicing cost accountant should not carry on any other business activity etc. At the same time, his actions and behaviour are exactly opposite to the intentions and spirit of the CWA Act. A practicing cost accountant just cannot occupy the



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position that of a Managing Director which he was occupying for more than 10 years and during the same period in which he has derived the financial rewards from Nasik Ojhar Chapter of Cost Accountants.

It may also be noted that the respondent was also engaged in the business of M/s infosoft Systems. It is very clear from the evidence already produced along with Form I. Evi- 10, Evi-11, Evi-12, Evi-13 and Evi-14 are the invoices raised by M/s Infosoft Systems on the Nasik Ojhar Chapter of Cost Accountants covering the period from the year 2004 to 2008, which are signed by the respondent in the business of M/s Infosoft Systems (Proprietor – Mrs. Chitra Ashok Nawal).

5. Pont No 1 e – It is evident from the above mentioned para that the respondent is guilty of professional misconduct under various provisions of CWA Act, Rules and Regulations made thereunder, Chapter Bye Laws framed by the council and hence the Second Schedule Part II, Clause (1) becomes squarely applicable for his professional misconduct.
6. Pont No. 1 f – The complainant has made the complaint on the facts which are admitted by the respondent.

However, the respondent has grossly omitted / neglected / concealed the following facts:-

- The payment has been made to M/s Infosoft Systems (Proprietor – Mrs. Chitra Ashok Nawal) which is a proprietary firm and Mrs. Chitra Ashok Nawal is the proprietor who happens to be the spouse of the respondent.
- The respondent himself has signed the invoices of M/s Infosoft System (proprietor – Mrs. Chitra Ashok Nawal)
- The respondent has never disclosed his relationship, interest etc. in M/s Infosoft Systems (proprietor – Mrs. Chitra Ashok Nawal) to Nasik Ojhar Chapter of Cost Accountants.
- At the relevant point of time the respondent was the Managing Committee Member of Nasik Ojhar Chapter of Cost Accountants and was also a Regional Council member of WIRC of ICAI.





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- The amount involved is also considerable i.e. Rs. 1.04 crores. The respondent was in fiduciary relationship as an elected representative at Chapter as well as at Region.
- Chapter Bye Laws framed by the Council under Regulation 146 clause 25(1) clearly provides that “No funds of the Chapter shall be applied, either directly or indirectly for payment to the members of the managing Committee of the Chapter” Shri Ashok B Nawal, Respondent has clearly contravened this provision of Chapter Bye Law.
- Point No. 2 – The respondent has not furnished the copy of the letter sent by Chairperson of Nasik Ojhar Chapter of Cost Accountants dated 28/9/2015 to CMA S R Saha, Director- Finance, ICMAI, Kolkata. Similarly, the complainant has also not received the copy of the letter written by CMA S R Saha, Director Finance, ICMAI to Nasik Ojhar Chapter of Cost Accountants.

Since no such copy was furnished by the respondent or by the Director (Discipline) to the complainant, the written statement provided by the respondent cannot be of any consequence and cannot be taken on record, or given any weightage in the proceedings before DD. We reserve our right of submitting our rejoinder to this point till the time we receive the copy of the letter of the Chairperson of Nasik Ojhar chapter of cost Accountants. Without prejudice to our right of submitting further rejoinder on this point, they would like to present their views as follows –

- The letter of the Chairperson clearly mentions that “Mr. Ashok Nawal was Secretary of Chapter that time.” This clearly establishes that Shri Ashok B Nawal, Respondent was fully involved in the arrangement between Nasik Ojhar Chapter of Cost Accountants and M/s Infosoft Systems (proprietor – Mrs. Chitra Ashok Nawal). The position of Secretary is a statutory provision under Chapter Bye Laws no. 12 and he is regarded as office bearer. As a member of the Managing Committee and also being the office bearer of Nasik Ojhar Chapter of Cost Accountants Shri Ashok B Nawal, Respondent had certain duties, responsibilities and authorities under the CWA Act, Regulations and Chapter Bye Laws. However, it appears that he had misused his position for personal gains and a large sum of money was paid to M/s Infosoft Systems (Proprietor - Mrs. Chitra Ashok Nawal) during the relevant period.





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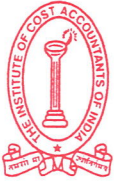
- The letter of the Chairperson of Nasik Ojhar chapter of Cost Accountants also appears to be vague in many respects. We reserve our right of submitting our rejoinder to this point till the time we receive the copy of the letter.
- As regards use of office and Board of Pune Chapter of Cost Accountants etc. along with the annexure and supporting/emails etc. I may like to mention that, it is a subject matter not connected with the present complaint filed by the Complainant against the Shri Ashok B Nawal, Respondent. The written statement by Shri Ashok B Nawal, Respondent on this complaint is totally out of place.

The separate disciplinary proceedings are already on records of Director (Discipline) and deny all the charges levelled against me by the complainant in that case.

7. (a) It was requested to the Director (Discipline) to provide following document so as to submit rejoinder on the same.
- i. Copy of the letter sent by Chairperson of Nasik Ojhar Chapter of Cost Accountants dated 28/9/2015 to CMA S R Saha, Director-Finance, ICAI, Kolkata
 - ii. Copy of the letter written by CMA S R Saha, Director Finance, ICAI to Nasik Ojhar Chapter of cost Accountants
 - iii. Copy of letter received from ministry of Corporate Affairs (MCA) asking for certain information from the institute.

(b)The complainant stated that he fails to understand that how the respondent has received all the copies of the letters mentioned in Para 7(a) above and no copy of such letters is being provided to the complainant either by the respondent or by the Director (Discipline) or by the Institute. It appears to the complainant that since the respondent is a Central Council member, all such copies are available / made available to him and not to the complainant. This is very strange in the process of fair & unbiased justice and needs to be looked into very seriously. The grievance of the complainant is requested to be resolved by all those involved in such disciplinary proceedings.

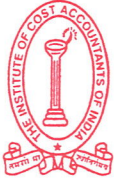




DISCIPLINARY DIRECTORATE

- (c) It may be put on record that there was inadvertent and avoidable delay in furnishing a copy of written statement of the Respondent to the Complainant. The written statement of the Respondent is dated 28/12/2015, the copy of the same is dispatched with covering letter dated 10/2/2016 to the Complainants after 40 days and is actually received by the Complainants on 22nd February 2016.”
8. As part of the Investigation, Director (Discipline) was empowered to do under Section 21 of the CWA Act, 1959, a letter Ref No. G/DD/NOCCA/1/07/2016 dated 6th July, 2016 was addressed to the then Chairman, Nasik-Ojhar Chapter seeking certain information regarding information on computer training to the students of Nasik-Ojhar Chapter of Cost Accountants during 2002-03 till 2014-15 which were as follows:
- Which organization (vendor) imparted computer training to the intermediate/final students of Nasik-Ojhar Chapter Cost Accountants during the period 2002-03 to 2014-15?
 - How was the organization i.e., vendor selected? Was any methodology followed for the same?
 - A request was made to provide a copy of the minutes of the Managing Committee of the Chapter, where the decision to select the vendor was taken.
 - How much amount was paid to the said vendor(s) for the service provided to Nasik Ojhar Chapter of Cost Accountants in each of the years since 2002-03 to 2014-15?
 - Documentary evidence as to the above.
9. The then Chairman, vide his letter dated 20th July 2016 replied *inter alia*, as follows:
- M/s Infosoft Systems, Nasik
 - The arrangement with M/s Infosoft Systems is continuing since 25th April 2002. The arrangement was finalized after discussion with the party. The payment terms were on the basis of number of students trained.
 - Minutes of the meeting are not available on Chapter's Record.
 - Rs. 3375/- Per student
 - Bills were attached as documentary evidence.
10. Disciplinary Directorate vide letter Ref. No. G/DD/NOCCA/02/09/2016 dated 20th September, 2016 addressed to the then Chairman, Nasik - Ojhar Chapter sought certain information regarding information on computer training to the students of





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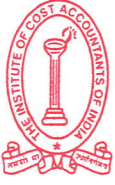
Nasik Ojhar Chapter of Cost Accountants during 2002-03 till 2014-15 which were as follows:

- i. Copy of letter dated 28.09.15 of Nasik-Ojhar Chapter addressed to Shri S.R. Saha, the then Director (Finance) of this Institute.
 - ii. Letter No.2/6/2008-PI dated 9.09.15 of the Ministry of Corporate Affairs on the subject.
 - iii. Copy of disclosure of interest, if any, made at any time between FY 2002-03 to FY 2014-15 by Shri A.B Nawal to the effect that M/s Infosoft Systems, Nasik was a related party.
11. The then Chairman, vide his letter dated 28th September, 2016 submitted/replied, *inter alia*, as follows:
1. Copy of letter dated 28.09.15 addressed to Shri S.R. Saha, the then Director (Finance) of this Institute.
 2. Letter No.2/6/2008-PI dated 9.09.15 of the Ministry of Corporate Affairs on the subject.
Email received from CMA S.R. Saha – Copy of the same is attached
 3. Copy of disclosure of interest, if any, made at any time between FY 2002-03 to FY 2014-15 by Shri A.B Nawal to the effect that M/s Infosoft Systems, Nasik was a related party.

Disclosure was made by Shri A. B Nawal before Managing Committee of Nasik Ojhar Chapter of Cost Accountants. This has been confirmed by then Chairman and Vice Chairman of the Chapter. Reference has been made to Para 3 of their reply dated 28th September 2015.

12. Again, a letter Ref. No.G/DD/NOCCA/3/11/2016 dated 15th November, 2016 was addressed to the then Chairman, Nasik-Ojhar Chapter seeking information as to whether or not any written objection at any time during 2002-03 till 2014-15 has been received from any Chairman/Vice Chairman/any other office bearer of Nasik-Ojhar Chapter to the award of contract of imparting computer training to M/s Infosoft Systems, Nasik. The then Chairman, vide his letter dated 26th November, 2016 replied that they have not received any written objection during 2002-03 till 2014-15 from any Chairman/ Vice Chairman/any other office bearer to the award of contract of imparting computer training to M/s Infosoft Systems, Nasik.





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13. The above-mentioned complaint was examined in pursuance of Section 21 of the Cost and Works Accountant Act, 1959 as amended in 2006 read with Rule 9 of the Cost and Works Accountants (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007. Prima facie opinion dated 16th January 2018 was formed stating that the respondent was guilty of contravening Clause (1) of Part-II of Second Schedule to the Cost and Works Accountants Act, 1959.
14. In the 35th meeting of the Disciplinary Committee held on 16th January 2018, the Committee members noted the prima facie opinion formed by Director (Discipline) in terms of Rule 9(2)(b) against the respondent and agreed with the same. Director (Discipline) who is the Secretary of the Disciplinary Committee was directed to ensure compliance of Rule 18(2)/18(3) of Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.
15. The respondent submitted his second written statement dated 12th March 2018 pursuant to Rule 18(3) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 denying once again the allegations levelled by the complainant in his complaint dated 9th September 2015 and in the rejoinder dated 7th March 2016.
16. The said written statement of the respondent was sent to the complainant vide letter Ref. No. G/DD/(M-27543)/Com-CA(33)/04/03/2018 dated 21st March 2018 for rejoinder on the same. The Complainant in his second rejoinder dated 12th June 2018 *inter alia* stated that:
 - i. Prima Facie opinion formed by Director (Discipline) is correct and since this case is of siphoning of above Rs. 1.00 Cr by respondent it must be taken up seriously by Disciplinary Committee.
 - ii. The respondent has demanded certain copies of letter. He requested to give all those copies to complainant as well.
 - iii. This case is prima facie for the siphoning off more than Rs. 1.00 Cr. by the respondent through his spouse namely Mrs. Chitra Ashok Nawal who is the sole proprietor in M/s Infsoft Solutions. This case cannot be reached to





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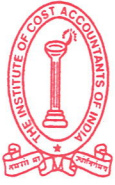
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justice unless Mrs. Chitra Ashok Nawal is cross examined by the Disciplinary Committee and the complainants. Also the respondent must be cross examined in the case as certain vouchers are signed by him on behalf of the sole proprietor mentioned above. He urged the Disciplinary Committee to allow the complainants to cross examine both the respondent and his spouse and owner of M/s Infosoft Solutions.

17. In the 37th meeting of the Disciplinary Committee held at New Delhi on 24th April, 2018, the Disciplinary Committee advised Director (Discipline) to call the complainant and the respondent at a 'future' meeting of the Committee for making oral submissions in terms of Rule 18(6) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. Accordingly, letters dated 9th May 2018 were sent to both the parties requesting them to make oral submissions, if any in accordance with Sub-rule (6) of Rule 18 of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 at New Delhi on 14th May 2018.
18. In the 39th meeting of the Disciplinary Committee held at New Delhi on 14th May 2018, the Committee noted that both the complainant and the respondent have failed to attend for making oral submission in terms of Rule 18(6) of the Rules. The Committee deliberated on the same and decided to provide one more opportunity to the complainant and the respondent and call them in the next meeting of the Committee to make oral submissions, if any in accordance with sub-rule (6) of Rule 18 of the Rules. Accordingly, letters dated 16th May, 2018 were sent both to the complainant and the respondent, requesting them to make oral submissions, if any, in accordance with sub-rule (6) of Rule 18 of the Rules at New Delhi on 25th May 2018.
19. The respondent, in the meantime, by an email dated 16th May 2018 stated that M/s Infosoft System is an independent proprietary firm having separate PAN number and filing Income Tax return separately after considering income received through computer coaching and expenses including salary of IT professionals and other expenses and it is assessed by Income Tax Authorities independently without clubbing of income with his income. Further, as stated by the Chairperson, Nasik Ojhar Chapter, vide her letter dated 20.07.2016 that, arrangement of M/s Infosoft System was continuing since 25th April 2002 and arrangement was finalised after discussion with the party. Payment terms were on the basis of number of students





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trained. It itself denotes that even though he was not the office bearer of the chapter or the member of Managing Committee of the Chapter, the arrangement was continued till 2015. Therefore, this itself denotes the independent transactions and contractual arrangement made by Chapter with M/s Infosoft Systems. He also drew attention to the letter of Nasik-Ojhar Chapter dated 28th Sept 2016, wherein it was stated that disclosure was made by the respondent before Managing Committee of Nasik-Ojhar Chapter of Cost Accountants of India and this has been confirmed by then chairman and Vice Chairman of the Chapter. Further, he stated that he had not signed any cheque issued by Nasik Ozhar Chapter of Cost Accountants of India in favour of Infosoft System. He requested to cross examine the complainant and all the persons including Chairman, Vice Chairman and other members of Managing Committee including office bearers, who were involved in decision making i.e., awarding the contract to Infosoft System and payment to M/s Infosoft System.

20. In the 40th Meeting of the Disciplinary Committee held at New Delhi on 25th May 2018, on behalf of the respondent, Mr. Arpan Behl submitted Photocopy of 'Vakalatnama' dated 24th May 2018 authorising Mr. Mahfooz Nazki, Mr. Rohit Sharma (D/4072/2010), Mr. Arpan Behl, Ms. Mukta Dutta, Mr. Avinash Tripathi (D/1003/2013) and Mr. Priyank Mangal Advocates, along with CMA Vijendra Sharma to represent the respondent in the instant case. The respondent, by his email dated 25th May, 2018 sent at or about 5:18 PM to Disciplinary Committee, authorized Mr. Mahfooz Nazki, Mr. Priyank Mangal, Mr. Arpan Behl along with CMA Vijender Sharma to represent the respondent before the Disciplinary Committee. The Committee perused the matter and concluded that the Photocopy of 'Vakalatnama' cannot be considered to represent the respondent in pursuance of Rule 18(6) of the Rules.
21. The Committee decided to provide one more opportunity to the complainant and respondent for making oral submission in terms of Rule 18(6) of the Rules. Letters dated 5th June 2018 were sent both to the complainant and the respondent requesting them to make oral submissions, if any in accordance with sub-rule (6) of Rule 18 of the Rules at New Delhi on 12th June 2018. In the meantime, the respondent vide letter dated 8th June 2018 stated that despite sending the duly authorized legal representatives along with copies of Vakalatnama, authority letters and emails authorizing the legal representatives and despite duly informing about the said authorization vide email dated 25th May 2018, the Disciplinary Committee, neither allowed duly authorized legal representatives to appear on his behalf nor allowed his legal representatives to attend the proceedings of the Disciplinary Committee.





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Further, the respondent alleged that inspite of his legal representatives being duly present at the premises where the meeting of Disciplinary Committee dated 25th May 2018 was taking place, the Disciplinary Committee, illegally and unlawfully did not mark the attendance of his authorized legal representatives. Furthermore, the Disciplinary Committee also failed to provide any reason, as to why the legal representatives duly present at the venue of the Disciplinary Committee meeting were not allowed to attend the meeting. Even after waiting for almost two hours outside the meeting room, the Disciplinary Committee did not allow his duly authorized legal representatives to appear on his behalf and present his case.

22. Be it as it is, in the 41th meeting of the Disciplinary Committee held at New Delhi on 12th June, 2018, on behalf of the Complainant, CMA (Dr.) Dhananjay V Joshi (M/4923) was present on the basis of an authority letter dated 12th June 2018 of the complainant and made oral submission stating *inter alia* that the respondent had never disclosed his interest or his relationship with M/s Infosoft Systems and has applied Chapter Funds for his personal gains. CMA (Dr.) Dhananjay V Joshi further stated that the respondent has contravened the provisions of The Cost Accountants' Chapters Bye-Laws and has also brought disrepute to the profession.
23. The Committee decided to provide one more opportunity to the respondent and call him in the next meeting of the Committee for making oral submission in terms of Rule 18(6) of the Rules. Accordingly, letter dated 18th June, 2018 was sent to the respondent, requesting him to make oral submissions at New Delhi on 27th June 2018. On behalf of the respondent his advocates Mr. Priyank Mangal and Mr. Arpan Behl appeared before the Committee and made oral submissions u/r 18(6) of the Rules. Since, respondent has not pleaded guilty, the committee noted the submission of the respondent and advised Director (Discipline) to call the respondent in the 'future' 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 Rules.
24. Accordingly, letter dated 19th September 2018 was sent to both the parties requesting them to appear before the Disciplinary Committee on 5th October 2018 at the office of Western India Regional Council of The Institute of Cost Accountants of India, 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. The respondent, in the meantime, vide his email dated 26th September 2018 informed that due to CESTAT hearing at 10.30 A.M which is likely to be over by 3:00 P.M, he



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will attend the only after 3:00 pm. He requested to grant him pass over of time or if pass over is not possible then adjourn the hearing. Director(Discipline), vide email dated 3rd October 2018 granted the respondent's request to appear before Disciplinary Committee at 3.00 pm. However, the respondent by his email dated 3rd October 2018 sent at or about 3.17 PM informed that hearing notice has been received by him for appearing before principal commissioner of Customs, Ahmedabad and hence, he requested for adjournment at any time in Mumbai. The complainant appeared before the Disciplinary Committee at the scheduled date and time and reiterated the grounds of his complaint and also produced material evidence against the respondent confirming the allegations against the respondent.

25. In the 44th Meeting of the Disciplinary Committee held at Mumbai on 5th October 2018, the Committee deliberated on the same and decided to provide one more opportunity to the respondent and call him 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 Rules. Accordingly, letter No G/DD/(M-5720)/Com-CA (33)/07/09/2018 dated 16th October, 2018 was sent to the respondent requesting him to appear before the Disciplinary Committee on 26th October 2018 at Institute HQ at Kolkata 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.
26. The respondent, in the meantime, vide his email dated 23rd October 2018 requested to note that his left leg is swollen and he is advised for rest and not to take the load hence informed that he will not able to attend the meeting. Further, he requested to keep the hearing either at Pune or Mumbai for granting the justice. The Committee noted that the respondent has failed to attend the meeting. The Committee deliberated on the same and decided to provide another opportunity to the respondent and call him 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 Rules.
27. A letter dated 19th March, 2019 was sent to the respondent requesting him to appear before the Disciplinary Committee on 1st April 2019 at EIRC at Kolkata 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. Shri Amit Apte, Presiding Officer recused himself from the hearing since the complainant happens to be his partner.



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Shri Debasish Bandopadhyay, Nominee of Central Government and Member, Disciplinary Committee presided over the meeting when this agenda was taken up.

28. On behalf of the respondent, Adv. Kiran Sawale appeared before the Committee on 1st April 2019 and produced document /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. The Committee deliberated on the same and advised Director (Discipline) to call the information from Nasik – Ojhar Chapter that what was the alternative to provide computer training to the students. Further, Mr. V S Datey, the then Chairman and Mr. R K Deodhar, the then Vice Chairman of Nashik Ojhar chapter of Cost Accountants, may be called as witness.
29. The Disciplinary Directorate vide letter Ref No. G/DD/Nasik-Ojhar/1/10/2020 dated 21st October 2020 sought the following information from Nasik-Ojhar Chapter within two weeks from the date of service of the said letter:
- Is it true that during the years 2002-03 to 2014-15, M/s Infosoft System was engaged as a vendor for imparting computer training to CMA (formerly ICWAI) students undergoing intermediate and final courses?
 - In whose name were the bills raised? (documentary evidence to be provided)
 - Was there a mandatory requirement to impart computer training to the students of the Chapter undergoing intermediate and final courses?
 - In case imparting computer training to the students of intermediate and final courses was not mandatory what was the other alternative to imparting computer training for the students?
30. Since no reply was received even after the expiration of more than ten weeks from the date of service of the letter dated 21st October 2020, another letter Ref No. G/DD/Nasik-Ojhar/2/1/2021 dated 11th January 2021 was sent seeking the above mentioned information within a week from the date of service of this letter. CMA Kailas Shinde, the then Chairman of Nasik-Ojhar Chapter, vide his letter dated 27th October 2020 (the receipt of the Postal Department on the reverse side of the envelope showed the letter to be posted on 4th February 2021) sent the following





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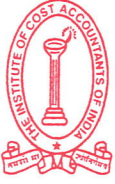
reply on the queries raised by the Disciplinary Directorate vide letters dated 21st October 2020 and 11th January 2021:

- a) Is it true that during the years 2002-03 to 2014-15, M/s Infosoft System was engaged as a vendor for imparting computer training to CMA (formerly ICWAI) students undergoing intermediate and final courses?
Answer:-Yes, Infosoft Systems, Nasik.
- b) In whose name were the bills raised? (Please provide documentary evidence)
Answer:-Bills were raised in the name of Infosoft Systems. (Scanned copies of Bill dated 1/09/2014 were attached)
- c) Was there a mandatory requirement to impart computer training to the students of the Chapter undergoing intermediate and final courses?
Answer:-Yes, it was compulsory.

The letter of the Chairman of Nasik-Ojhar Chapter, however, remained silent on the query raised by the Disciplinary Directorate which was based on the advice of the Disciplinary Committee as to whether there was any alternative option to imparting computer training for the students, in case imparting computer training to the students of intermediate and final courses was not mandatory.

31. In the 50th meeting of the Disciplinary Committee held at Chennai on 12th March 2021, the Committee perused all relevant documents relating to the instant complaint and the prima facie opinion of the Director (Discipline) and observed that based on records and documents available with the Disciplinary Directorate, the respondent has not maintained an arms' length distance in regard to payment of professional charges paid to the proprietor Smt. Chitra Ashok Nawal, who happens to be the spouse of the respondent for imparting computer training to the students of ICAI (inter and switchover/final students). The respondent was the office bearer of Nashik - Ojhar Chapter during the relevant period and was also member of WIRC of ICAI. The all important question before the Committee was whether the respondent obtained any pecuniary benefit from the transactions arising out of payment of professional charges to Smt. Chitra Ashok Nawal on account of computer training. The Committee directed Director (Discipline) to write to the respondent to obtain a written statement on affidavit from him in the instant matter.





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32. In compliance with such a decision of the Disciplinary Committee, an email Ref No. G/DD/(M-5720)/Com-CA(33)/10/04/2021 dated 5th April 2021 was sent (after hard copy of the letter dated 24th March 2021 was returned undelivered) to the respondent calling upon him to provide an affidavit in respect of the following matters within 10 (ten) days from the date of service of this letter:

- (i) Whether or not the address of M/s Infosoft Systems is the same as the address of Nasik Branch of Bizoindia Services Pvt. Ltd.
- (ii) Whether or not he had disclosed your interest about his relationship with the Proprietor of M/s Infosoft Systems and details in respect thereof.
- (iii) Whether or not some of the invoices raised by M/s Infosoft Systems on the Nasik – Ojhar Chapter of Cost Accountants was signed by him as authorized signatory for M/s Infosoft Systems and if so the details thereof.
- (iv) The total amount of fee received by M/s Infosoft Systems from Nasik Ojhar Chapter of Cost Accountants showing year wise break up of fees received and details thereof.

The respondent, vide his email dated 9th April 2021, received at or about 5.10 PM replied as follows which is given below in verbatim:

"Dear Sir,

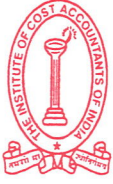
I am in receipt of your trailing mail dtd 5th April 2021. You have enclosed the letter which has been posted by you but returned, since you have not updated my changed address which is already available with the Institute and Office of Director Discipline.

Kindly note my Residential Address and kindly make the changes in all your records: A-1001 & 1004, F Residences CHS Ltd., S. NO. 44 / 45,

Near SopanBaug, Baner- Hinjewadi Link Road,

Balewadi Pune - 411045.





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W.r.t. complaint filed against me, I have already submitted my detailed reply vide my letter dtd 12th March 2018. As required by you, I give below my clarification to your queries -

(i) Whether or not the address of M/s Infosoft Systems is the same as the address of Nasik Branch of Bizsolindia Services Pvt. Ltd.

Reply : Yes. It was given on rent to Infosoft System. However, they have also operated from other location for some period.

(ii) Whether or not you had disclosed your interest about your relationship with the Proprietor of M/s Infosoft Systems and details in respect thereof.

Reply : Yes, the same has been communicated to you by office bearers of Nashik-Ozar Chapter of Cost Accountants

(iii) Whether or not some of the invoices raised by M/s Infosoft Systems on the Nasik - Ojhar Chapter of Cost Accountants was signed by you as authorized signatory for M/s Infosoft Systems and if so the details thereof.

Reply : I don't remember.

(iv) The total amount of fee received by M/s Infosoft Systems from Nasik Ojhar Chapter of Cost Accountants showing year wise break up of fees received and details thereof.

Reply : This information can be collected from Nashik-Ozar Chapter of Cost Accountants only, since they have paid professional charges for conducting computer coaching for the students of ICMAI to Infosoft System

Kindly acknowledge the receipt.

With warm regards.

CMA Ashok B Nawal"

33. In the 51st meeting of the Committee held on 29th June 2021, the Committee after detailed discussion and deliberation was of the opinion that it was evident that the respondent had not maintained an arms' length distance in regard to payment of



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professional charges to Smt. Chitra Ashok Nawal, Proprietor of M/s Infosoft Systems, who was his spouse. From the above reply dated 9th April 2021 of the respondent also, it is quite evident that the respondent has not chosen to give reply to query numbers (iii) and (iv) raised by the Disciplinary Directorate He has also not submitted the affidavit as was asked for, vide email dated 5th April 2021. The Committee directed the Director (Discipline) to afford an opportunity to the respondent at a subsequent meeting of the Committee, under Rule 18(13) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 to enable him to enter upon his defence and produce evidence.

34. In the 53rd meeting of the Disciplinary Committee held at New Delhi on 5th August 2021, the Committee noted that the respondent was requested to furnish an affidavit as to certain matters, who, by an email dated 30th July 2021, received by the Disciplinary Directorate at or about 4.14 P.M., had sent an evasive reply on a white paper which does not serve the purpose for which the affidavit was intended to be sought. The affidavit should have been submitted on a Non-Judicial stamp paper as per the requirements of Section 21C of the Cost and Works Accountants Act, 1959. *The Committee once again noted the fact that there are circumstances which clearly prove that the respondent had not maintained an arms' length distance in regard to payment of professional charges paid to M/s Infosoft Systems, whose proprietor was Smt. Chitra Ashok Nawal, who happened to be the spouse of the respondent. Thus, it was very much apparent on the face of it that the respondent must have been a beneficiary from such a training contract which was awarded to a related party.* The Committee also noted the following evidence produced by Director (Discipline) in support of the contraventions made by the respondent in terms of Rule 18(12) of the Rules:

- (i) Absence of any letter / statement by the respondent disclosing his interest in the contract that was awarded to M/s Infosoft Systems whose proprietor was Mrs. Chitra Nawal, the spouse of the respondent.
- (ii) Letter dated 25th June 2015 of Dr. Shilpa Parkhi, Chairperson, Nasik-Ojhar Chapter of Cost Accountants replying to RTI filed by one Shri Sandesh Badkas stating that the Chapter "had not received any communication regarding disclosure of relationship/interest by CMA Ashok B. Nawal (M. No. 5720) with Infosoft Systems Proprietor, Mrs. Chitra Ashok Nawal imparting Computer Training to the students of Nasik Ojhar Chapter of Cost Accountants and postal students registered with the Chapter".



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- (iii) Evidence 15 (Evi-15) of the complainant highlighting the above.
- (iv) Affidavit (on plain paper) dated 30th July 2021 of the respondent where he has stated in his own words that **"I state that I don't remember whether I have signed the invoices raised by Infosoft Systems on the Nasik-Ojhar Chapter of Cost Accountants. However, I state that I might have signed some of the invoices, when the accountant of Infosoft Systems or Proprietor of Infosoft Systems might be out of office"**.

35. After discussion and deliberation, the Committee reaffirmed its decision taken at its 52nd meeting held on 19th July 2021 to afford an opportunity to the respondent at a subsequent meeting of the Committee, under Rule 18(13) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 to enable him to enter upon his defence and produce evidence. In compliance with the aforesaid directives of the Committee letter/mail dated 23rd August 2021 was sent to the respondent calling upon him to appear before the Disciplinary Committee on 28th August 2021 at the Institute headquarters at Kolkata under Rule 18(13) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 to enter upon his defence and produce evidence. The respondent failed to make an appearance on the scheduled date and time. The Committee, after perusing in detail the facts and circumstances of the subject complaint together with the records and documents available, arrived at a finding under Rule 18(17) of the Rules that the respondent was found guilty of professional and other misconduct for not maintaining an arms' length distance in regard to payment of professional charges to the proprietor Smt. Chitra Ashok Nawal, spouse of the respondent. There is also no record available with the Disciplinary Directorate to suggest that the respondent had disclosed his interest except for a letter dated 28th September 2016 of CMA Pradnya Chandorkar addressed to Director (Discipline) who, in turn, referred to a letter of CMA (Dr.) Shilpa Parkhi, the then Chairman of the Chapter addressed to Shri S.R. Saha, the Director (Finance) stating that *"we talked to Mr. V.S. Datey, the Chairman, and Mr. R.K. Deodhar, the Vice Chairman of Nasik-Ojhar Chapter of Cost Accountants. They have confirmed that Mr. Ashok Nawal had disclosed his interest and final selection was done without involving Mr. Ashok Nawal in the decision making"*. But the disclosure itself is not available in the records. Even the respondent himself has not been able to produce the



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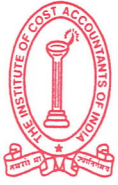
same. The respondent has also admitted in his affidavit dated 30th July 2021 submitted on a plain paper that he might have signed some of the invoices, when the accountant of M/s Infosoft Systems or Proprietor of M/s Infosoft Systems might be out of office, thereby confirming the fact that the respondent is a related party and may have obtained financial gains through M/s Infosoft Systems.

36. As per the Order dated 21st June 2023 of the Hon'ble Appellate Authority, the scheme of the CWA Act and the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, a recording of the guilt arising out of findings under Rule 18 (17) of the Rules 2007 is mandatory as per the mandate provided in the Rules. In accordance with such findings, we now proceed to record the findings against the respondent. In the 77th meeting of the Disciplinary Committee held on 9th November 2023, the learned members of the Committee Director (Discipline) informed the learned members of the Committee that it is imperative to arrive at a finding on whether the respondent is guilty or not of any professional or other misconduct. Once the findings are recorded by the Disciplinary Committee, the same has to be communicated to the respondent. Only when the Committee arrives at a finding that the respondent is guilty of professional or other misconduct, he has to be called for hearing under Rule 19(1) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.
37. The Committee took note of the same and directed Director (Discipline) to record the findings for being placed at the next meeting of the Committee.

Findings

After carefully perusing the complaint of the complainants, the written statements of the respondent and other material and documents on record including the past record of the respondent (Appellant), the following findings under Rule 18 (17) of the Rules, have been arrived:





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- (a) That the payment of Rs 1.04 cr as has been alleged by the complainant has been made to a related party who is the spouse of the respondent.
- (b) That the respondent has failed to provide any documentary evidence of disclosure of interest regarding his relationship with M/s Infosoft Systems
- (c) That a request was made by the Disciplinary Directorate to Nasik Ojhar Chapter to provide a copy of the minutes of the Managing Committee of the Chapter, where the decision to select the vendor was taken. The then Chairman of Nasik Ojhar Chapter by his letter dated 20th July 2016 stated that "minutes of the meeting are not available on Chapter's records". Thus, the decision to select M/s Infosoft Systems must have been done unilaterally by the respondent.
- (d) That in response to a letter No. G/DD/NOCCA/1/07/2016 dated 6th July, 2016 addressed to the then Chairman, Nasik-Ojhar Chapter seeking information on the methodology of selection of M/s Infosoft Systems as the vendor, the letter dated 20th July 2023 of the then Chairman of Nasik-Ojhar Chapter stating that "the arrangement was finalized after discussion with the party" itself clearly indicates that no procedure, not to speak of the tendering procedure, was followed in selecting M/s Infosoft Systems and it was simply by 'choice' rather than by selection.
- (e) That the respondent had failed to maintain an arm length's distance as his spouse happened to be the proprietor of M/s Infosoft Systems, which is a 'related party'. No disclosure of interest could be found in the records of the Chapter even though statements have been made by CMA V.S. Datey, CMA R.K. Deodhar and CMA (Dr.) Shilpa Parkhi, all former members of the Managing Committee, Nashik-Ojhar Chapter that the respondent had disclosed his interest.
- (f) All above facts clearly demonstrate the professional misconduct of Shri Ashok B Nawal, Respondent.

The respondent has indirectly obtained financial benefit out of such arrangement of providing the contract of computer training to a related party without disclosure of interest leading to violation of the following provisions of The Cost and Works Accountants Act, 1959 and the rules made there under:

- Clause (2) of Part IV of The First Schedule to the Cost and works Accountants Act, 1959 which provides that in the opinion of the Council he brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work.
- Clause (1) of Part II of The Second Schedule to the Cost and works Accountants Act, 1959 which provides that he contravenes any of the provisions of this Act or the regulations made there-under or any guidelines issued by the Council;





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- Proviso 2 to Clause 25 of The Cost Accountants' Chapter Bye-Laws, 2019.

The relevant provisions of clause 25 are stated below:

There shall be established a fund under the management and control of the Managing Committee into which shall be paid all monies received by the Managing Committee by way of membership fees, grants, donations, subscriptions and other incomes of the Chapter and out of which shall be met all expenses and liabilities properly incurred by the Managing Committee.;

Provided that funds of the Chapter shall be applied only as per the approved budget by the Finance Committee of the Council and any fund required to be spent outside the budget shall be spent with the approval of the Chairman and any expenditure in excess of 10% of the approved Budget shall be placed again before the Finance Committee of the Institute with approval of the Managing Committee of the Chapter.

Provided that no funds of the Chapter shall be applied, either directly or indirectly for payment to the members of the Managing Committee of the Chapter except for reimbursing them for any expenses incurred by them in connection with the business of the Chapter.

38. In the 78th meeting of the Committee held on 28th November 2023, the Committee took on record the above findings and directed Director (Discipline) to forward the same to the respondent. The Committee also directed Director (Discipline) to call the respondent in the next meeting of the Committee under Rule 19(1) the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 to afford him an opportunity of being heard before passing before an order under sub-section (3) of Section 21B of the CWA Act, 1959.
39. A copy of the findings was duly served on the respondent vide letter No. G/DD/(M-5720)/Com-CA(33)/Appeal No. 41/15/12/2023 dated 12th December 2023. As directed by the Disciplinary Committee, by a letter No. G/DD/(M-5720)/Com-CA(33)/Appeal No. 41/16/12/2023 dated 13th December 2023 (followed by an email on the same date) the respondent has been called for hearing under Rule 19(1) of the Rules at our Delhi office of the Institute on 20th December 2023, to enable him an opportunity of being heard before passing any order under sub-section (3) of Section 21B of the Cost & Works Accountants Act, 1959. The respondent, however, by an email dated 13th December 2023



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received by the Disciplinary Directorate at or about 4.47 PM prayed for an adjournment of the hearing which is reproduced in verbatim:

"Dear Sir,

We are thankful to you for providing me an opportunity of personal hearing.

In this connection, I would like to specifically request for allowing me to cross examine the Managing Committee Members namely, CMA V S Datey, CMA R K Deodhar, CMA (Dr.) Shilpa Parkhi, who has provided the written confirmation to you that I have disclosed the interest and not participated in the meeting for awarding the assignment to M/s Infosoft System and the same has not been relied by the Disciplinary Committee and hence kindly provide me an opportunity to producing them as a witness either through Video Conference or Personal Attendance.

Further, I will be at Chandigarh for CESTAT Hearing on 20th Dec 2023. Copy of the Hearing Notice is enclosed herewith. In view of the same, kindly adjourn the hearing date provided to me on 20th Dec 2023 and oblige.

I am confident, you will provide me the natural justice of allowing me to produce the witness through video conference or personal attendance, as the case may be.

Thanking you in anticipation.

CMA Ashok Nawal"

40. In the 79th meeting of the Committee held on 20th December 2023, the learned members of the Committee perused through the aforesaid email and directed Director (Discipline) to issue notice to the respondent, as a measure of natural justice, affording another opportunity to the respondent under Rule 19(1) of the Rules in the next meeting of the Committee. The learned members of the Committee noted that the respondent was in the habit of not attending hearing when he was called. The following tables point this trait of the respondent, clearly showing the casual and laid back approach of avoiding hearing dates:





DISCIPLINARY DIRECTORATE

TABLE I

Date of Notice	Date of Hearing	Relevant provisions under which called	Appeared/Not Appeared
9.05.2018	14.05.2018	Rule 18(6) of the Rules	Not appeared
18.06.2018	27.06.2018	Rule 18(6) of the Rules	Appeared
19.09.2018	5.10.2018	Rule 18(9)/18(10) of the Rules	Not appeared
16.10.2018	26.10.2018	Rule 18(9)/18(10) of the Rules	Not appeared
19.03.2019	01.04.2019	Rule 18(9)/18(10) of the Rules	Appeared
23.08.2021	28.08.2021	Rule 18(13) of the Rules	Not appeared
2.09.2021	8.09.2021	Rule 19(1) of the Rules	Not appeared

Table II (After remand by the Hon'ble Appellate Authority)

Date of Notice	Date of Hearing	Relevant provisions under which called	Appeared/Not Appeared
13.12.2023	19.12. 2023	Rule 19(1) of the Rules	Not appeared
28.12.2023	4.01.2024	Rule 19(1) of the Rules	Appeared

41. The respondent was issued notice u/r 19(1) for the second time vide letter No. G/DD/(M-5720)/Com-CA(33)/Appeal No. 41/17/12/2023 dated 28th December 2023 (followed by an email on the same date) affording him another opportunity to appear before the Disciplinary Committee on 4th January 2024 under Rule 19(1) of the Rules. The respondent appeared through the virtual mode on the scheduled date and time and made the following submissions:



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- (a) That at the outset, the respondent does not agree with the findings as according to him the findings have been arrived at without considering the facts of the case.
- (b) That he denies each and every allegation levelled against him regarding being the beneficiary of Rs 1.04 crore.
- (c) That when the computer training was first introduced in Nashik Ojhar Chapter, the then Office Bearers of the Chapter namely Shri V.S. Datey, the then Chairman, Shri R.K. Deodhar, the then Vice Chairman and the respondent himself who was the Secretary of the Chapter along with 07 (seven) other Managing Committee members of the Chapter started searching for experts for providing computer training to the students. The respondent's spouse, being an expert, on the subject; her services were availed of by the Chapter.
- (d) The respondent categorically stated that he had disclosed his interest to the above mentioned office bearers namely Shri V.S. Datey, the then Chairman, Shri R.K. Deodhar, the then Vice Chairman of the Chapter. The respondent claimed that CMA (Dr.) Shilpa Parkhi, Chair Person of the Chapter for the year 2014-15 was also aware of disclosure of interest.
- (e) The respondent desired that he be allowed to produce the witnesses and the opportunity of cross examination be given to him to cross examine Shri V.S. Datey, Shri R.K. Deodhar and CMA (Dr.) Shilpa Parkhi.
- (f) The respondent stated that computer coaching to the students was provided till 2014-15, though he was an office bearer of the Chapter till 2006.
- (g) Finally, the respondent stated that he was innocent and the complainant had filed the complaint to tarnish his image, being politically motivated.
42. During the time of hearing conducted under Rule 19(1) of the Rules, the respondent had asked for cross examination of his witnesses, namely Shri V.S. Datey, the then Chairman, Shri R.K. Deodhar, the then Vice Chairman of the Chapter and CMA (Dr.) Shilpa Parkhi, Chair Person of the Chapter for the year 2014-15, and all other the then office bearers of the Chapter, who according to the respondent, were aware of disclosure of his interest. **However, the documents clearly indicate that there is nothing on record to indicate that the respondent had disclosed his interest.**
43. In fact a letter dated 25th June 2015 addressed to one RTI activist by CMA (Dr.) Shilpa Parkhi stated in unambiguous terms that "Nashik Ojhar Chapter had not received any communication regarding disclosure of relationship/interest by CMA Ashok B. Nawal (M. No. 5720) with Infosoft Systems, Proprietor, Mrs. Chitra Ashok Nawal imparting computer training to the students of Nashik Ojhar Chapter of Cost Accountants".



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44. In regard to Shri V.S. Datey, the Disciplinary Directorate had sent an email dated 23rd August 2021 at or about 6.34 PM requesting Shri V.S. Datey to depose before the Disciplinary Committee on 28th August 2021, but Shri Datey vide his email dated 24th August 2021 received by the Disciplinary Directorate at or about 5.47 PM stated that "Nasik Ojhar Chapter of Cost Accountants have already submitted their reply. I have nothing to add and hence I don't think any purpose is likely to be served by my attending the hearing" A similar email dated 23rd August 2021 was addressed to Shri R.K. Deodhar at or around 6.37 PM which remained un-responded.

Order

45. From the foregoing analysis and discussion, it is abundantly clear that the respondent did not maintain an arm's length distance in regard to payment of professional charges paid to M/s Infosoft Systems, whose proprietor was Smt. Chitra Ashok Nawal, who happened to be the spouse of the respondent. Thus, it is absolutely clear that the respondent must have surely been a beneficiary from such a training contract which was awarded to a related party.
46. By the respondent's own admission in his affidavit dated 30th July 2021 submitted on a plain paper that he might have signed some of the invoices, when the accountant of M/s Infosoft Systems or Proprietor of M/s Infosoft Systems might be out of office, thereby confirming the fact that the respondent is a related party and has obtained financial gains through M/s Infosoft Systems.
47. The respondent's prayer for cross examination of Shri V.S. Datey, Shri R.K. Deodhar and CMA (Dr.) Shilpa Parkhi, believed to be his witnesses, need not be granted in view of the statement made by CMA (Dr.) Shilpa Parkhi regarding non communication of disclosure of interest by the respondent and Shri Datey's statement that he has nothing further to add to what the Chapter has replied. Shri Deodhar chose not to respond to the email dated 23rd August 2021 of the Disciplinary Committee. Thus, the cross examination prayed for the respondent is being perceived as a ploy to drag the proceedings and granting the same would be an exercise in futility. The Committee opined that the records available with the Disciplinary Committee are sufficient for taking a considered decision in the matter.





DISCIPLINARY DIRECTORATE

48. The Committee, in keeping with the directives of the Order dated 21st June 2023 of the Appellate Authority, which stated that "As per the scheme of the Act and the Rules 2007 framed thereunder, after recording the finding of the guilt under Rule 18(17) of the Rules 2007, as per the mandate provided in Rule 19(1) of the Rules 2007, an opportunity of hearing is required to be provided to the Appellant before passing an order under Section 21B (3) of the Act. In the instant matter, composite impugned order was passed by the Disciplinary Committee on 25.11.2021, holding the Appellant guilty and awarding him punishment on the very same day without affording an opportunity of being heard which is in clear violation of the Rules 18(17) and 19(1) of the Rules, 2007". *The Committee noted that the mandate of the Disciplinary Committee was only to arrive at a finding under Rule 18(17) as to whether the respondent is guilty of misconduct or not and if found guilty, the respondent needed to be communicated of the findings separately before giving him an opportunity of being heard under Rule 19(1) of the Rules, before passing an order under sub-section (3) of Section 21B of the CWA Act, 1959. There was no direction of the Hon'ble Appellate Authority to hear the matter afresh. The Committee further noted that the Disciplinary Committee has already complied with such mandate as in the instant case, the respondent had already been communicated of the findings holding him guilty vide letter No. G/DD/(M-5720)/Com-CA(33)/Appeal No. 41/15/12/2023 dated 12th December 2023.*
49. In the case of *Bhagat Ram Vs. State of Himachal Pradesh & others*, AIR 1983 SC 454 decided by the Hon'ble Supreme Court wherein the Apex Court had held that "It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution.
50. In view of the above facts of the case and findings by the Disciplinary Committee based on records available with the Disciplinary Committee, the Committee unanimously proceeds to pass the following orders under sub-section (3) of Section 21B of the Cost and Works Accountants Act, 1959:
- (a) Reprimand
(b) Fine of Rs 2,00,000/- (Rupees Two lakhs)
To be paid within 30 days from the date of service of the order. If the fine is not paid, the name of the respondent shall stand removed from the Register of members for a period of one year.



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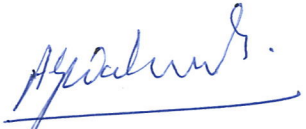
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The Committee, however, noted that the respondent had already deposited the amount of fine of Rs 2,00,000/- in terms of earlier order dated 25th November 2021 of the Disciplinary Committee.

51. As per Section 22E (1) of the Cost and Works Accountants Act, 1959, "any member of the Institute aggrieved by any order of the Board of Discipline or the Disciplinary committee imposing on him any of the penalties referred to in sub-section (3) of Section 21A and sub-section (3) of Section 21B, may within ninety days from the date on which the order is communicated to him, prefer an appeal to the Authority".

Dated:- January 24, 2024


CMA Ashwin G Dalwadi
PRESIDING OFFICER


CMA Manoj Kumar Anand


CMA TCA Srinivasa Prasad


Shri Saraswati Prasad, IAS (Retd.)


Smt. Meenakshi Sharma, IA&AS (Retd.)

