

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 10th November, 2014.

+ **CHAT.A.REF. No.4/2014**

**COUNCIL OF THE INSTITUTE OF CHARTERED
ACCOUNTANTS OF INDIA** **Petitioner**
Through: Mr. Rakesh Agarwal and Mr. Pulkit
Agarwal, Advs.

Versus

TARUN GOYAL & ANR **Respondents**
Through: None.

AND

+ **CHAT.A.REF. No.6/2014**

**COUNCIL OF THE INSTITUTE OF CHARTERED
ACCOUNTANTS OF INDIA** **Petitioner**
Through: Mr. Rakesh Agarwal and Mr. Pulkit
Agarwal, Advs.

Versus

TARUN GOYAL & ANR. **Respondents**
Through: None.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. Chartered Accountant (CA) Mr. Tarun Goyal, a member of the petitioner Institute of Chartered Accountants of India and having

membership No.085813, respondent No.1 in both the petitions (respondent No.2 in both the petitions is the Union of India, a proforma party) having been found guilty of “other misconduct” falling under Section 22 read with Section 21 of The Chartered Accountants Act, 1949, as it stood prior to the amendment with effect from 17th November, 2006, in pursuance to two separate and distinct complaints respectively (subject matter of the two petitions), against him, the petitioner Institute has made these two references, both under Section 21(5) of the Act, forwarding the cases to this Court with its recommendation of removal of the name of the respondent No.1 from the Register of Members for a period of five years in each of the two cases.

2. Notice of each of the petitions was issued. None appears for the respondent No.1 in either of the two petitions. We may notice that the respondent No.1 remained *ex-parte* throughout the proceedings before the petitioner Institute including before the Disciplinary Committee of the petitioner Institute insofar as the complaint subject matter of Chat.A.Ref. No.4/2014 is concerned. However, the respondent No.1 in the complaint subject matter of Chat.A.Ref. No.6/2014, though replied to the initial show cause notice but did not participate in the disciplinary proceedings or submit

any representation on the report of the Disciplinary Committee, despite opportunity. On our enquiry it is informed that the respondent No.1 is alive. In these circumstances, we do not deem it necessary to await the respondent No.1 any further and have heard the counsel for the petitioner Institute.

3. The complaint (dated 17th September, 1998) subject matter of Chat.A.Ref. No.4/2014 was made to the petitioner Institute by the Delhi Stock Exchange (DSE). The same related to the affairs of M/s. Karan Finance Limited. A letter dated 9th October, 1998 in this regard was also received from the Securities Exchange Board of India (SEBI). The respondent No.1 as aforesaid failed to respond. The complaint (dated 22nd March, 2001) subject matter of Chat.A.Ref. No.6/2014 was made to the petitioner Institute by SEBI. The same related to fraudulent public issue of M/s. Zed Investments Limited. The respondent No.1 inspite of opportunity failed to respond thereto also.

4. The petitioner Institute in its 280th meeting held from 7th to 9th August, 2008 and continued on 28th and 29th August, 2008, with respect to the complaint subject matter of Chat.A.Ref. No.6/2014 formed a *prima facie* opinion that the respondent No.1 was guilty of professional and / or other misconduct and referred the matter to the Disciplinary Committee for

enquiry. Similarly, with respect to the complaint subject matter of Chat.A.Ref. No.4/2014 the petitioner Institute in its 284th meeting held on 12th and 13th January, 2009 formed a *prima facie* opinion that the respondent No.1 was guilty of professional and / or other misconduct and referred the matter to the Disciplinary Committee for enquiry.

5. We may clarify that though the complaint subject matter of Chat.A.Ref. No.4/2014 was of 17th September, 1998 as aforesaid, but it appears that the response of the respondent No.1 thereto was invited only on 10th September, 2004 and repeated opportunities till December, 2008 were given to the respondent No.1. Though there is no explanation for the long delay from 17th September, 1998 till 10th September, 2004 in inviting the response of the respondent No.1 to the complaint but the respondent No.1 having throughout remained *ex-parte* vis-a-vis the said complaint, we do not deem it necessary to consider the said aspect, though are of the *prima facie* view that such long delay in dealing with the complaints of professional misconduct may itself be fatal. There was a delay from 22nd March, 2001 to 22nd December, 2003 in inviting response of the respondent No.1 to the complaint, subject matter of Chat.A.Ref. No.6/2014 also. In fact, we are *prima facie* of the opinion that even after the respondent No.1 had failed to

respond to both the complaints, inordinately long time was taken in forming the *prima facie* opinion also. However, as aforesaid, we in these cases are not going into the said aspect, though would call upon the petitioner Institute to bestow consideration on the said aspect and to in future ensure that such complaints are handled expeditiously.

6. The Disciplinary Committee constituted qua complaint subject matter of Chat.A.Ref. No.4/2014 in its report dated 10th February, 2012, found:

- (i) that certain persons namely Mr. Surinder Malik, Mr. Virender Kumar, Mr. Ashok Verma, Mr. Subhash Kumar Malik, Mr. Anil Sehrawat, Mr. Harpal Rathi and Mr. Rajender Singh were desirous of starting a lucky draw / chit company and contacted the respondent No.1 who advised them to incorporate a private limited company;
- (ii) that the requisite memorandum was stamped at Chandigarh and the documents pertaining to incorporation were handed over to the respondent No.1 in March, 1990;
- (iii) that however the plans of the aforesaid persons to start the company ran into rough weather and they informed the respondent No.1 that he should not act further in getting the company incorporated;

(iv) that however on 24th October, 1997 it was discovered that the respondent No.1, contrary to the instructions of the aforesaid persons and by forging their signatures, went ahead to incorporate the company in the name of M/s. Karan Finance Limited on 21st May, 1990;

(v) that the respondent No.1 acted in breach of faith and contrary to his professional instructions and misused the incomplete signed papers lying with him;

(vi) that the respondent no.1 also fabricated resolutions of the said company; though Mr. Harpal Rathi died on 5th February, 1993 but he was shown to have signed the papers for converting the said company from a private limited company to a limited company on 4th August, 1994;

(vii) that the respondent No.1 initially acted as the Auditor of the said company and was also the signatory of all the bank accounts of the company;

(viii) that in the account opening form of the company purportedly signed by Mr. Harpal Rathi, the photograph of an aged man more than 60 was given, while the age of Mr. Harpal Rathi at the time of

incorporation was shown as 29 years;

(ix) that subsequently Mr. R.K. Sharma & Co., Chartered Accountants, a fake accountants firm was shown as Auditor of the company;

(x) that the address given of the registered office of the company of Q-309, South City, Gurgaon, Haryana was merely a plot owned by the respondent No.1 with no construction thereon;

(xi) that the other addresses of the company given at other places were also of properties owned / controlled by the respondent No.1, his wife and close relatives.

The Disciplinary Committee thus concluded that the acts of the respondent No.1 have tarnished the reputation of the profession and brought the profession to bad light in the eyes of general public and found the respondent No.1 guilty of professional and /or other misconduct under Section 22 read with Section 21 of the Act.

7. The Disciplinary Committee constituted qua complaint subject matter of Chat.A.Ref. No.6/2014 also submitted report dated 10th February, 2012, finding:

- (a) that the respondent No.1 was the Lead Manager (working as Head—Merchant Banking of M/s. Geefcee Finance Limited) in the public issue of Zed Investments Limited;
- (b) that the said public issue of Zed Investments Limited was found to be fraudulent with a number of mis-statements and concealment of material facts in the prospectus, besides a number of irregularities committed in the issue process;
- (c) that SEBI had found the respondent No.1 to be instrumental in all acts of omission and commission of the affairs of the said company including its fraudulent incorporation, fraudulent public issue and fraudulent operations;
- (d) that the addresses of all the three Directors of the said company were found to be fictitious and the respondent No.1 inspite of being called upon could not prove their identity;
- (e) that in fact the company was never found to have existed on the address filed of its registered office;
- (f) that Central Bureau of Investigation (CBI) also prosecuted the respondent No.1 on the same grounds and allegations in the Court of ACMM, Karkardooma, Delhi but the respondent No.1 was

acquitted pursuant to entering into the compromise with the investors and consequent lack of evidence;

(g) that the undertaking given by the respondent No.1 as Lead Manager to SEBI was totally false and just to cheat the general public and to induce them to invest their money in the public issue of such a company which was fake and bogus and the Directors shown of which itself were also not in existence;

(h) that the respondent No.1 had failed to prove that the information given to SEBI in the prospectus was true.

The Disciplinary Committee thus concluded that the respondent No.1 is guilty of 'other misconduct' falling under Section 22 read with Section 21 of the Act.

8. The respondent No.1 despite opportunity failed to represent against the report of the either of the two Disciplinary Committees and also failed to participate in the 324th meeting of the petitioner Institute held on 10th and 11th April, 2013 in which both the reports were taken up for consideration. The petitioner Institute, on consideration of both the reports decided to accept the same and held the respondent No.1 guilty of 'other misconduct' falling under Section 22 read with Section 21 of the Act vis.-a-vis. both the

complaints and has in each case recommended that the name of the respondent No.1 be removed from the Register of members for a period of five years.

9. We have perused the records and are satisfied of the proceedings aforesaid having been held in accordance with the prescribed procedure and the principles of natural justice having been followed. We are further satisfied with the reasoning recorded by the Disciplinary Committee of the petitioner Institute for holding the respondent No.1 guilty as aforesaid. We also find the punishment recommended by the petitioner Institute to be proportionate to the misconduct of which the respondent No.1 has been found guilty of.

10. Though the jurisdiction of this Court under Section 21(6) of the Act is wide, without any restriction but in our opinion, the findings of the members of the Disciplinary Committee of the petitioner and the views of the petitioner Council are entitled to great weight in light of the fact that they are the experts with regard to the matters pertaining to profession of chartered accountants and know the intricacies of the profession on account of their personal experience. Moreover, the said bodies have been created to maintain a high standard of conduct and discipline amongst the members

of the petitioner institute. Thus, unless gross violation or disregard of the provisions of the Act or the Regulations made thereunder or of the principles of natural justice and fairness is to be found, this Court would be slow to interfere with the finding of such professional bodies. Reliance in this regard can be placed on *Chief Controller of Exports, New Delhi Vs. G.P. Acharya* AIR 1964 Cal. 174, *Council of the Institute of Chartered Accountants of India Vs. C.H. Padliya* MANU/MP/0139/1976 and *The Council of the Institute of Chartered Accountants of India Vs. B. Mukherjea* AIR 1958 SC 72 (though under the old Section 21).

11. We have however enquired from the counsel for the petitioner Institute, whether the punishment imposed in each of the case of removal of name from the Register for a period of five years is to run concurrently.

12. The counsel for the petitioner Institute has replied in the negative.

13. We however do not find any indication to the said effect in the minutes of the 324th meeting of the petitioner Institute held on 10th and 11th April, 2013. Since the recommendation qua both the complaints has been made in the same meeting, it would have been appropriate for the petitioner Institute to, when at the same time dealing with the two complaints against the same member and recommending the same punishment in both i.e. of

removal of the name from the Register, to at least clarify, whether the said punishment is to run concurrently or not. However, the misconduct of which the respondent No.1 has been found guilty being gross in both the complaints, we this time around, accept the statement of the Advocate for the petitioner Institute and clarify that the punishment in both the cases is not to run concurrently.

14. Before parting with the matters, we wish to highlight another aspect. Besides the delays as aforesaid at the very initial stage in inviting response of the respondent No.1 to the complaint and thereafter in forming a *prima facie* opinion to refer the complaint to the Disciplinary Committee, even after the petitioner Institute had accepted the reports of the Disciplinary Committee and recommended punishment in both cases on 11th April, 2013, there was long delay in filing these references. Chat.A.Ref. No.4/2014 came up first before this Court on 28th July, 2014 i.e. after nearly one year and three months of 11th April, 2013 and the Chat.A.Ref. No.6/2014 came first before us only on 11th August, 2014 i.e. after a delay of one year and four months. We had at the time of issuing notice of both the petitions had brought the said fact to the notice of the Advocate for the petitioner Institute. We also find that other references are also being filed after such

long delay and without any explanation given therefor. Recently, in two of the cases, we have before considering issuance of notice, asked the petitioner Institute to file an affidavit explaining such delay. Though no limitation appears to have been prescribed for filing such reference (though a perusal of The Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 and the Chartered Accountants Regulations, 1988 brought into force since then contain some tentative time limits) but the petitioner Institute which is a professional body also empowered to discipline its members ought not to so delay dealing with the complaints against its members and which delay not only enables the erring members to continue with their erring activities, to the prejudice of the persons dealing with them, but we are of the opinion that such delays on the part of the petitioner Institute is also prejudicial to the members against whom complaints are directed. Such members of the petitioner Institute in the interregnum continue to grow and build their reputations. A punishment at an early stage in the career can have vitally different consequence than a punishment at a time when the professional is at the peak. In fact this Court in *Council of the Institute of Accountants of India Vs. Dinesh Kumar* MANU/DE/0322/1991 and *Council of the*

Institute of Chartered Accountants of India Vs. S.N. Sachdeva

MANU/DE/0440/2011 already rejected the recommendations made by the Institute only for the reason of such delays. In spite thereof the delays continue and which can lead to an inference that the petitioner Institute is not serious about punishing its guilty members. We therefore call upon the petitioner Institute to introspect into the said aspect and to in future ensure that the complaints are dealt with in a time bound manner.

15. We accordingly accept the recommendation of the petitioner Institute in both the cases and remove the respondent No.1 from the membership of the petitioner Institute for a period of five years in each of the two cases and which period shall run separately, in accordance with law.

16. The references are disposed of.

No costs.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

NOVEMBER 10, 2014

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