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

+ **W.P.(C) 9003/2024, CM APPL. 37086/2024**

RAJENDRA EKNATH WAGH

.....Petitioner

Through: Mr. Anand Dilip Landge and
Mr. Dinesh H. Godara, Advocates.

versus

**THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
AND ORS.**

.....Respondents

Through: Mr. Ravinder Agarwal, Advocate for
R-1, 3.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

31.07.2024

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1. The present petition impugns the order dated 18th September, 2023 whereby Respondent No. 3/ Director (Discipline), Disciplinary Directorate of the Institute of Chartered Accountants of India¹ formed a *prima facie* opinion that Respondent No. 2 is not guilty of professional and other misconduct falling in the Item (2) of Part IV of First Schedule and Item (7) of Part I of the Second Schedule of the Chartered Accountant Act, 1949.²

2. The background leading to the filing of the present petition is as follows:

2.1 Petitioner is Director and shareholder of M/s Greewo Noblepack Pvt.

¹ "ICAI"

² "the Act"



Ltd. that is engaged in the business of renting of steel saddle.

2.2. Petitioner's grievance arises from the Audit Report for year 2018-2019 prepared by Respondent No. 2. Through e-mail communication dated 14th March, 2019, the said Respondent had declared the closing stock of INR 77 lakhs but while finalizing the Audit Report, the closing stock was shown as INR 21 lakhs.

2.3. Further in the financial statements for assessment year 2020-2021, Respondent No. 2 has shown fraudulent entries for the year 2020-2021 with the intent to commit fraud.

2.4. Aggrieved by the acts of Respondent No. 2, Petitioner filed a complaint against the said Respondent under the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007,³ before Respondent No. 1 which was forwarded to Respondent No. 3.

2.5 During the proceedings before Respondent No. 3, Petitioner contended that since his company is engaged in services of renting services, all the material purchased by his company should be in the closing stock of the material or, if consumed, it should be in the closing stock of finished goods or all the manufactured products in fixed assets, if capitalized. Respondent No. 2 had failed to comply with Accounting Standard-10 which provides that if the tangible items are held for rental service and not for trading then those items should be considered as fixed assets and should be there in financial statements year by year. Further, Respondent No. 2 has intentionally made false entries in the financial statement of 2018-2020,

³ "the Rules"



thereby showing that steel saddles damaged, booked as material consumed and by doing so, an amount of INR 80 to INR 90 lakhs has been shown as material consumed which has defeated Petitioner's claim for profit.

2.6. After meticulously examining all the allegations made by the Petitioner, on 18th September, 2023, Respondent No. 3 concluded that no *prima facie* case of professional misconduct or other conduct is made out.

The reasoning is spelt out in the following paragraphs:

"9. In respect of first allegation, it is noted that the Complainant had alleged that during the financial year 2018-19, other directors in connivance with the Respondent had removed him from the directorship of the Company and prepared the false financials to cheat him and the Government (C-2). In the extant matter, on the basis of documents available on record, it is observed that the Complainant had not tendered his resignation from the directorship of the Company (D-61) rather he had been removed by the Company from the directorship under Section 169 of the Companies Act, 2013 (D-66) which provides as under: -

"Section 169 (Removal of Directors): -

(1) A company may, by ordinary resolution, remove a director, not being a director appointed by the Tribunal under section 242, before the expiry of the period of his office after giving him a reasonable opportunity of being heard.

(2) A special notice shall be required of any resolution, on to to remove a director under this section, or to appoint somebody in place of a director so removed, at the meeting at which he is removed.

(3) On receipt of notice of a resolution to remove a director under this section, the company shall forthwith send a copy thereof to the director concerned, and the director, whether or not he is a member of the company, shall be entitled to be heard on the resolution at the meeting."

It is noted that the Company had issued the notice of the meeting for removal of the Complainant from the directorship of the Company (D-72 to D-75). As per minutes of the said meeting, the Complainant was given an opportunity of being heard (D- 70 to D-71) and thereafter, the resolution for the removal of the Complainant was passed and the Company filed the DIR-12 on the MCA Portal in which the email Id of the Complainant was mentioned (D-61 to D-69). Hence, it is observed that the Complainant was removed from the directorship as per the provisions of Section 169 of the Companies Act 2013. Therefore, no misconduct can be attributed to the Respondent on this count and accordingly, he is prima facie Not Guilty of



Professional Misconduct in respect of instant allegation.

9.1. In respect of **first leg of second allegation**, it is noted that the Complainant alleged that while preparing the financials of the Company, the Respondent had provided wrong opinion on compliance with Accounting Standard-10 with respect to valuation of steel saddles. The Complainant stated that since the Company was engaged in the renting services of the steel saddles and not for trading of the saddles then the steel saddles should be capitalized and be considered as fixed assets whereas the Respondent had done the accounting treatment in the financials of the Company by considering the steel saddles as inventory instead of fixed assets which was incorrect (C-2). In this regard, it is observed that as per Accounting Standard-10 (Property, Plant and Equipment), the definition of Property, Plant and Equipment was stated as under. -

"Property, plant and equipment are tangible items that:

(a) are held for use in the production or supply of goods or services, for rental to others, or for administrative purposes; and

(b) are expected to be used during more than a period of twelve months."

In the extant matter, it is noted that the normal life of the steel saddle is less than 4 months subject to the actual usage and physical condition of the steel saddles (W- 11). Since, the normal life of the steel saddles are less than 12 months so, as per Accounting Standard-10, the same cannot be considered as fixed assets. Hence, the accounting treatment of considering the steel saddle as inventory appears to be appropriate which was also explained by the Respondent while submitting his written statement. Therefore, the Respondent is prima facie Not Guilty of Professional Misconduct in respect of instant allegation too.

9.2 In respect of **second leg of second allegation**, it is noted that the Complainant has alleged that the materials in metal form should be shown as closing stock of finished goods or closing stock of raw material as no product was sold by the Company. As the Company was providing renting service then the closing stock would not be less than the opening stock plus material purchased (C-2), In response of the instant allegation, the Respondent in his written statement submitted that after 2 or 3 short journeys or after couple of long journeys, the steel saddles were found to be damaged. The damaged and non-repairable saddles had value of steel scrap (W-11). If the same were not sold by 31 March, its valuation was done at the value of steel scrap. In this regard, the Complainant in his rejoinder provided the analysis of the turnover, material purchase and material consumed for the financial year 2017-18 to 2020-21 on the basis of which he has contended that the financials of the Company had been altered with the fraudulent intentions. He also mentioned that from financial year 2017-18 to 2019-20 nothing was sold as scrap. He also stated that the scrap value



of the steel would be Rs. 40 per kg for which he had not provided any evidence and on the basis of this rate, according to him, the value of damaged steel saddles cannot be less than half of its original purchase cost. As a result, the value of closing stock calculated by the Respondent in the financials of the Company are misleading (R-3) as per the Complainant. It is observed that the Respondent had brought on record two quotations regarding valuation of scrap as additional documents on the basis of which he had done the working of stock as on 31 March, 2019 (D-41 to D-43). He submitted that he had done the valuation of stock as per Accounting Standard-2 (Valuation of Inventories). As far as the sale of scrap is concerned, the Respondent submitted that the management has confirmed that since the product as well as the concept was new to the industry, product development/ improvement was going on. Hence, despite some of the saddles were not usable and valued at scrap rate, the management had decided not to scrap the same immediately in the financial 2019-20 and in financial year 2020-21, no sale of scrapped saddles took place till March, 2021 due to Covid-19 pandemic (D-20).

9.3 As per Accounting Standard-2 (Valuation of Inventories), "**Inventories should be valued at lower of Cost or Net Realizable Value. The definition of Net Realizable Value as per Accounting Standard-2 is stated as under: Not realisable value is the estimated selling price in the ordinary course of business less the estimated costs of completion and the estimated costs necessary to make the sale.**"

In the extant matter, the Respondent had done the valuation of scrapped steel saddles as per two quotations received from two separate scrap vendors. Hence, the valuation of scrapped steel saddles done by the Respondent appears to be appropriate as it was done as per Accounting Standard- 2, i.e., Cost or Net Realizable value, whichever is lower. Therefore, the Respondent is prima facie Not Guilty of Professional Misconduct in respect of instant allegation too.

10. Therefore, taking overall view of the facts/ evidences on record, I am of the prima facie opinion that the Respondent is NOT GUILTY of Professional and Other Misconduct falling within the meaning of Item (2) of Part IV of First Schedule and Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949."

3. In the above background, Counsel for Petitioner contends that Respondents No. 1 and 3 have not followed the procedure laid down in the



Rules and have failed to investigate the fraud committed by Respondent No. 2 and that Petitioner has no other remedy available from the order passed by Respondent No. 3.

4. *Per contra*, counsel for Respondents No. 1 and 3 argues the following:

4.1. Present petition is not maintainable as the Petitioner is erroneously approaching this Court as an appellate forum while that no appeal lies to this Court by the complainant from *prima facie* opinions passed by the Director (Discipline) under the Act.

4.2. The *prima facie* opinion was passed only after giving an opportunity of being heard and considering all allegations raised by the Petitioner. Further, the Board of Discipline has agreed to the findings of the Director (Discipline) on 04th October, 2023 and the matter has been closed under Section 21(6) of the Act.

5. The Court has considered the facts and contentions of the parties and finds merit in the contentions of the counsel for Respondents.

6. In the opinion of the Court, Petitioner's grievances as raised in this petition, have been considered and decided upon by the appropriate forum i.e., Director (Discipline), Disciplinary Directorate and, therefore, there is no ground to invoke the jurisdiction of this Court.

7. At this juncture, it must be noted that the proceedings before the Disciplinary Directorate, Board of Discipline and Disciplinary Committee are in the nature of disciplinary proceedings to ensure that the members of ICAI do not conduct themselves in a manner which brings disrepute to the profession of Chartered Accountancy.



8. Notably, disciplinary proceedings are principally between ICAI and its members and a complainant merely provides information of any misconduct on the part of a Chartered Accountant. While it is recognized that the complainant has a right to participate in disciplinary proceedings, the proceedings are between ICAI and its members and not a private dispute between the complainant and the Chartered Accountant.

9. Pertinently, in most cases, the complainant may also have suffered on account of professional or other misconduct on the part of a Chartered Accountant; however, the nature of disciplinary proceedings still remains the same. This is also the rationale for followed in Section 22G of the Act which provides an appellate remedy only to a member of ICAI who is aggrieved by the decision of the concerned authorities and not to the complainant.⁴

10. Therefore, this Court under Article 226 of the Constitution of India, 1950, cannot supplant its views over the views taken by the Director (Discipline).

11. In light of the above, the Court finds no merit in the present petition, along with pending application, is dismissed.

SANJEEV NARULA, J

JULY 31, 2024

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⁴ See also, *Wholesale Trading Services P Ltd v. The Institute of Chartered Accountants of India and Ors.* [W.P.(C) 8071/2019]