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

\+ CHAT.A.REF 5/2014

COUNCIL OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA ..... Petitioner

Through: Mr. Rakesh Agarwal, Advocate alongwith Mr. Pulkit Agarwal, Advocate.

versus

S C BANSAL & ANR ..... Respondents

Through: Mr. Ajay Garg, Advocate alongwith Ms. Kritika Gupta and Mr. Sudesh R. Singh, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

<u>O R D E R</u>

% **19.04.2016**

The present reference is made under Section 21(5) of the Chartered Accountants Act, 1949. By the reference, the Council of the Institute of Chartered Accountants seeks appropriate penalty/punishment to the respondent (a Chartered Accountant and also partner of the Auditing Firm).

One M/s Labotron Instruments Limited (hereinafter referred to as "Company") had appointed the respondent (hereafter referred to as "the Charge Auditor") as its Auditor through the firm. The appointment was in terms of the Annual General Meeting (hereinafter referred to as "AGM") held on 29.09.1997 and for audit for the year ending 31.03.1998 was to be conducted by the respondent. On

12.04.04, the company addressed a complaint to the Institute alleging that the Auditor was guilty of professional misconduct on four counts. This led to initiation of disciplinary proceedings. It is not in dispute that in the course of the proceedings, four heads of complaint were given. The fourth, a more serious one, related to sharing of confidential information (in respect of the complainant's business and financial particulars). The complainant alleged that the respondent auditor unauthorisedly communicated and shared the complainant's information which was unwarranted and contrary to professional ethics. The disciplinary Committee of the Institute after conclusion of its proceedings found the Auditor guilty of professional misconduct. Upon being furnished of its report, the respondent-auditor filed his comments. Based upon an appreciation of this, the Council, after full deliberation of the materials on record including the findings of the disciplinary Committee and further explanation of the respondent-auditor felt that in the circumstances of the case the penalty of reprimand was warranted. It is in these circumstances that reference had been made under Section 21(5).

The Charge-in respect of which the respondent auditor was found guilty reads *as follows:-*

> *"That the Respondent being the auditors of the Company had communicated with the third parties which was unwarranted and which is against the professional ethics".*

The respondent auditor in his explanation urged—an aspect which is highlighted by his counsel in the present proceeding, that -

"*the brief facts in this connection are in the absence of any co-operation from the company M/s Labotron Instruments Limited the complainant for completion of the audit for the year ending 31st March, 1998 is a matter on record. The respondent was left with no alternative and without any mala fide intention rather with his all sincerity and bona fides informs the Risk Capital &Technology Corporation Ltd. (RCTC) a Govt. undertaking, was substantial stakeholder in the complainant company, ROC & Income Tax Department, the intention was to save the company from the penal provisions as the compliance to the provisions such as holding the Annual General Meeting (AGM) not in time similarly the Income Tax Return etc and moreover generally in such cases auditors is held responsible with that in time the auditor was left with no other alternative except to inform the above named persons & authority. Penal provisions are attracted in case the absence of Auditor's Report, non-holding of AGM and non-filing of necessary statutory Returns. There could be prosecution initiated by ROC and Income Tax Department and very often the Auditor is blamed in such situation. As such it is further submitted that the respondent was reeling under fear and seriously disturbed state of mind as such under bona fide and sincere belief took a decision to inform these authorities. The Hon'ble council will appreciate that there was no mala fide Intention. Without prejudice to above, it is further respectfully submitted that the members can be held guilty under Clause 1Part 1of Second Schedule of Chartered Accountants Act l949 if he disclosed information which he acquired in the course of his professional engagement to any person other than the client. From the facts and circumstances the Hon'ble council will appreciate that question of acquiring any information during the course of audit engagement does not arise as he was not at all allowed to conduct the audit. On the facts and circumstances you will appreciate that the respondent cannot be supposed or held to have acquired any information as he was not allowed to conduct the audit. As such the respondent cannot be held guilty that he has acquired information and* *share with the third party. Finally the respondent respectfully submit that the facts and circumstances are covered by the decision given by the Kerala High Court in the case of State Bank of Tranvacore v. Mani S Abraham reported In Volume VII (I) of Disciplinary cases at Page 247. The proceedings in the said case were filed."*

It is urged by the counsel for the respondent/auditor that having regard to the totality of circumstances even the penalty of reprimand is not warranted. It was highlighted that in respect of the alleged misconduct, the complainant approached the Council of Institute of Chartered Accountants of India with the grievance only in 2004. The proceedings prolonged for nearly a decade and having regard to the trauma which the respondent underwent, largest interest of justice would subserved if mere warranting is registered rather than a reprimand which would have an all time effect as the Act does not define the time limit for which it is to operate. Learned counsel relied upon the Division Bench of this Court in the case of Counsel for the ***Institute of Chartered Accountants of India vs Shri D.R.Bahl & Anr.****177 201 DLT 332 (DB).*

This Court has considered the circumstances as well as the explanation afforded by the auditor i.e. that in the absence of cooperation, he felt compelled to share information that in his own admission was confidential with the complainant's shareholder.

The mere circumstances that the shareholders happen to be a powerful entity under Government enterprises or that it was a substantial shareholder (in this case to the tune of Rs. 2500/-), in the opinion of the Court did not authorise the sharing of what essentially was unauthorised sharing of information that the auditor became aware of or came by in the course of his professional engagement. The auditor here does say that the Company was indulging in illegality or irregularity which absolves him from the bond of privilege which ordinarily bound him. The explanation given is that the auditor *bonafide* was of the opinion that penal provisions of the Company Act would have been directed vis-à-vis informing complainant of the provisions by holding of Annual General Meeting. This explanation is unconvincing because there is no correlation between holding of the AGM and the sharing of the information. Furthermore, as to the applicability of the penal provisions, the Company's Act as it stood earlier required sanction in the event of any infraction with provisions that related to late holding or not holding of the AGM. In these circumstances, the auditor's action in sharing what concededly was privileged information with one shareholder was not only an exception but unprofessional and not expected of him having regard to the standards mandated by the Institute.

As far as the question of penalty is concerned, whilst the reprimand is the mildest form of the penalty and is perhaps appropriate in the circumstances, yet there is some substance in the respondent's submission that if left undefined, such mild penalty itself – would have a lasting impact. In the course of the hearing, learned counsel contended that if a reprimand were to be administered that would remain part of the record and might effectively debar the auditor's firm from undertaking work on behalf of Government's agencies.

In these circumstances, this Court holds that the administrating of reprimand to the respondent auditor is warranted. However, the said reprimand shall be in operation for the period of one year. The consequential orders to this effect shall be issued within four weeks from today.

The reference is answered and the disposed of in the above terms.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

APRIL 19, 2016
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