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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: August 08, 2016

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CHAT.A.REF 1/2011

COUNCIL OF THE INSTT OF

CHARTERED ACCOUNTANTS OF INDIA

..... Petitioner

Represented by: Mr.Rakesh Agarwal and
Mr.Pulkit Agarwal, Advocates.

versus

DEVINDER KUMAR JAIN

..... Respondent

Represented by: Ms.Isha Jha, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (Oral)

1. Enquiry into misconduct committed by the respondent pertained to the following three categories:-

(i) The respondent deliberately delayed the audit of the company due to which several difficulties were faced by the company.

(ii) The respondent did the audit of the company despite being aware that his father-in-law was the Director in the company and mis-utilised his position.

(iii) The respondent disclosed the confidential/privilege information to various authorities, acquired by him during the course of audit.

2. The Committee constituted by the Institute of Chartered Accountants absolved the respondent of the first and second limb of the misconduct. The respondent was held guilty of the third limb of the misconduct i.e. of

disclosing confidential/privilege information to various authorities acquired by him during the course of audit. Reference has been made to this Court proposing a penalty of suspending the licence for a period of two months.

3. We have perused the evidence led before the Disciplinary Committee and would find that the company M/s KEW Precision Parts Private Limited did not co-operate with the respondent and this delayed the audit. The respondent has rightly been absolved of the first limb of the misconduct alleged. This sets the setting for the third limb of the misconduct held proved.

4. At page 229 of the record submitted to us is a letter addressed by the company to the respondent making allegations against him and copies thereof was sent to the Registrar of Companies and Assistant Commissioner of Income Tax.

5. The company had no business to mark the copy of the said communication dated May 22, 2004 to the Registrar of Companies and the Assistant Commissioner of Income Tax for the reason the contents of the communication had no concern with the Registrar of Companies or the Assistant Commissioner of Income Tax.

6. The reply dated May 28, 2004 to the said letter dated May 22, 2004 was marked by the respondent to the Commissioner of Income Tax and to the Registrar of Companies.

7. We find justification in the stand taken by the respondent that he did so on account of the fact that the company sent copy of its communication dated May 22, 2004 to the said authorities. The respondent additionally marked a copy of his letter dated May 28, 2004 to the shareholders of the company. To this extent we find no wrong.

8. But the wrong committed is annexing Annexure-1 to Annexure-5 to

the reply in which the respondent, with respect to information which he had gathered as an auditor of the company for the previous years, shared the same pointing out gross violation of the various legal provisions in the running of the company.

9. Now, as a Chartered Accountant the respondent ought to have known that he should not have used privilege information received by him to fight the battle with the company and pass on privilege information received to the third parties. Professional misconduct has been defined in Section 22 of the Chartered Accountants Act, 1949. Misconduct implies failure to act honestly and reasonably either according to the ordinary and natural standard or according to the standard of a particular profession. Betrayal of a trust would be a conduct which is unbecoming of a profession. Thus in the aforesaid background it is apparent that respondent is clearly guilty of professional misconduct.

10. But the company also had to share the blame by trying to defame the respondent. The respondent retaliated.

11. He ought not to have retaliated because as a Chartered Accountant he is bound by the rules to maintain professional good conduct.

12. Given the backdrop the appropriate penalty would be a reprimand. We take note of the fact that the incident took place more than a decade back. The reference under Section 21(5) of the Chartered Accountants Act, 1949 is accordingly disposed of imposing a penalty of reprimand upon the respondent which would meet the ends of justice.

PRADEEP NANDRAJOG, J.

PRATIBHA RANI, J.

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