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

\+ **W.P.(C) 6471/2016 & CM No.26517/2016**

% **Date of decision : 24th July, 2017**

IGL FINANCE LTD. ..... Petitioner
Through : Mr. Sachin Datta, Sr. Adv. with Ms. Puja Dewan Seth and Mr. Vijay Seth, Advs.

versus

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA & ANR ... Respondents
Through : Ms. Pooja M. Saigal, Adv.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

1. By way of the present writ petition, the petitioner *inter alia* assails the provision of Rule 16(5) of the Chartered Accountants (Procedure and Investigations of Professional and other misconduct and conduct of cases) Rules, 2007 as unconstitutional being invalid under Article 14 of the Constitution of India. At the outset, it is submitted by Mr. Sachin Datta, ld. Senior Counsel for the petitioner

that he does not press this challenge. It is therefore not necessary for us to examine the challenge to the constitutional validity of the said rule which is hereby disposed of as not pressed.

2. It is asserted by the writ petitioner that on 5th September, 2013, a complaint was filed against Shri Mukesh P. Shah, Chartered Accountant regarding his alleged involvement in the National Spot Exchange Limited Scam (NSEL Scam). On 3rd October, 2013, the Disciplinary Directorate of the Institute of Chartered Accountant called for the written statement from the said professional. The Disciplinary Directorate on 4th November, 2013 wrote to the petitioner that under Rule 5(4)(a) of the said rule, its complaint has been clubbed with the previous complaint which had been made by Shri Uday Punj and that under the said rule the complaint of Shri Uday Punj shall be treated as the only complaint before it,

3. A previous writ petition by the petitioner *inter alia* challenging the Rule 5(4) of the said rule being WP(C)No.4453/2015 ***IGL Finance Limited v. Institute of Chartered Accountants of India & Ors.*** came to be disposed of by the order dated 5th May, 2015 wherein it was noted that the allegations had been investigated by the Disciplinary Directorate; and that the matter was pending with the Disciplinary Directorate for forming a *prima facie* opinion regarding allegations of misconduct.

Ld. counsel appearing for the Institute of Chartered Accountants had assured this court that further proceedings would expeditiously be taken in accordance with law.

4. It appears that on account of delayed consideration, the petitioner complained of violation of the order passed in WP(C)No.4453/2015 and filed contempt petition No.914/2015 ***IGL Finance v. V. Sagar & Anr.*** which was disposed of on the 30th of November, 2015 after recording the submission that the Disciplinary Committee had already fixed the date of hearing in the third week of December, 2015.

5. It is not disputed that the matter is pending before the Disciplinary Committee which has considered the matter at Mumbai including on the 6th of January, 2016. Though the petitioner complains against the transfer of the matter under consideration to Mumbai, it is explained by Ms. Pooja M Saigal, ld. counsel appearing for the Institute of Chartered Accountants, that the proceedings are being conducted at Mumbai only for the purpose of enabling the concerned Chartered Accountant to place his evidence and defence before the Committee and that the proceedings have not been transferred. It is submitted that there is reference to and reliance upon active voluminous record which would be in the power and possession of the Chartered Accountant who resides and works at Mumbai. It is stated in the counter affidavit filed by the Chartered Accountant Institution – respondent no.1 that it is a practice followed by the Disciplinary Committee, to hear the matter at a place close to where the member practices. Inasmuch as, invariably, the Disciplinary Committee seeks information regarding the complaint from such member which would include his records, this is purely so conducted to ensure that information is readily available.

6. Our attention is also drawn to several occasions on which the petitioner appears to have acceded to the jurisdiction of the committee conducting the proceedings at Mumbai; having sought adjournments from it and also filed applications in the proceedings without objecting at all to the proceedings.

7. Be that as it may, the main grievance of the petitioner as has been pressed before us relates to expeditious dismissal of complaint.

Apprehension is expressed that in case matter is delayed, it may not receive final consideration and that whole purpose of making the complaint would be defeated.

There is some substance in this apprehension.

8. We may note that Shri Mukesh P. Shah, Chartered Accountant has not been impleaded as party respondent in the present case. Having regard to the nature of the order which we propose to pass which can not impact the merits of the complaint, it is not necessary to have his presence in the present proceedings today.

9. Accordingly, this writ petition and the pending application are disposed of with a direction to the respondent to expeditiously dispose of the complaint made by the petitioner in accordance with law, having regard to the nature of the orders contemplated before us.

10. The Disciplinary Committee of the Institution of Chartered Accountants of India shall endeavour to conclude the consideration of the complaint expeditiously, preferably within one year from today.

11. The petitioner shall be informed in writing of the next date of hearing within one week from today.

12. This writ petition and application are disposed of in the above terms.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

JULY 24, 2017
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