$~1

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

\+ **W.P.(C) 10536/2017**

WHOLESALE TRADING SERVICES P LTD. ..... Petitioner
Through: Mr R Subramaniam, Advocate.

versus

INSTITUTE OF CHARTERED ACCOUNTANTS
OF INDIA AND ANR. ..... Respondents
Through: Ms Pooja M. Saigal, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **04.12.2017**

CM Nos. 43119/2017 & 43120/2017

1. Exemptions are allowed, subject to all just exceptions.

2. The applications are disposed of.

W.P.(C) 10536/2017 and CM No. 43118/2017

3. The petitioner has filed the present petition, *inter alia*, praying that direction be issued to the respondents to complete the entire procedure as required under Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 (hereafter 'the Rules') within a maximum period of 14 weeks.

4. The petitioner claims that a firm of Chartered Accountants, namely, M/s K Ramkumar & Company had committed professional misconduct in respect of audit/tax audit of a partnership firm (M/s V R Packers) based in Chennai.

5. The petitioner - which is a company incorporated under the Companies Act, 1956 (hereafter 'the Act') - has filed a complaint with respondent no.1 (hereafter 'ICAI') alleging that there has been professional misconduct in the audit of accounts of the firm M/s V R Packers, for the years 2007-08 to 2009-10. The said complaint was filed on 19.04.2017. ICAI acknowledged the said complaint by a letter issued in May, 2017 and the firm of Chartered Accountants in question was called upon to file the written statement to the said complaint, which was filed by the said firm on 05.09.2017. The petitioner filed a rejoinder to the written statement on 27.10.2017.

6. This Court is informed that thereafter, in terms of Rule 8 of the Rules, the Director (Discipline) sent its opinion to the Disciplinary Committee or the Board of Discipline. Admittedly, the concerned authorities of ICAI are proceeding with the complaint filed by the petitioner.

7. In the meanwhile, the petitioner sent an e-mail dated 31.10.2017 to the Director Discipline Committee of ICAI, *inter alia*, stating as under:-

> ''31.10.2017
> Mr C S Ravi
> Director Disc Committee
>
> Sir
>
> Now that the matter is for consideration under Rule 9 request earliest disposal of the same
>
> As you are aware in LPA 440/2017 in the batch of 4 matters your office had agreed to complete the complete Rule 9 stage – DD and DC/ BOD – within 14 weeks
>
> We hope the same time line can be adopted here

> We would be grateful for your confirmation in this regard so that needless litigation on such issue is averted
> Rgds
> T Sharath Babu
> Director
>
> Sir,
>
> With reference to the trailing mail below, it is to inform that we have received the Rejoinder dated 27.10.2017 sent by you and the matter is under process in terms of the provisions of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.
>
> Regards,
>
> Shashi Mahajan
> Assistant Secretary
> Disciplinary Directorate
> The Institute of Chartered Accountants of India
> 'ICAI Bhawan', Indraprastha Marg
> New Delhi – 110002
> Telephone No. 011-30110435''

8. Concededly, there are no time frames specified for processing of the complaint under Rule 9 of the said Rules.

9. Since the petitioner did not receive any response to its email dated 31.10.2017 demanding that the enquiry under Rule 9 be completed within a period of 14 weeks, the petitioner has filed the present petition, *inter alia*, pleading as under :-

> ''9. The Petitioner states it had that after the completion of the Rule 8 stage of proceedings sought that the Respondents complete the process of enquiry under Rule 9 of the Rules within 14 weeks thereafter. The Respondents wholly refused to

> acceed to the demand and did not even reply to the Petitioner despite the same 14 weeks having been accepted in another set of 4 complaints of the Petitioner.
>
> 10. The Petitioner states and submits that patent illegality is writ large on the face of the inaction by the 1st and 2nd Respondents in respect of not agreeing to decide on the complaint of the Petitioner under Rule 9 of the Rules within a reasonable span of 14 weeks, thereby constraining the Petitioner to approach this Hon'ble Court by filing the present Petition seeking that the 2nd Respondent be directed to complete the enquiry under Rule 8 and Rule 9 within a maximum of 14 weeks from date and in the failure thereof to remand the proceedings to the 2nd Respondent for detailed enquiry under Rule 18. Hence, the present petition.''

10. Ms Pooja M Saigal, learned counsel for the respondents submits that there are several complaints which are pending enquiry, and the petitioner's complaint would be taken on its own turn.

11. It is seen from the above that there is no undue delay in processing the complaint filed by the petitioner and thus there was no cause for the petitioner to have approached this Court. The petitioner has no right to insist that enquiry in respect of its complaint be given precedence over other complaints pending before the Disciplinary Authorities of ICAI.

12. Apparently, the petitioner had filed a writ petition in respect of another complaint which had been pending enquiry for a considerable period time. The said writ petition (W.P. (C) 4873/2017) was dismissed by a Coordinate Bench of this Court on 29.05.2017. The petitioner appealed against the said decision by filing an appeal before the Division Bench of this Court (***LPA NO. 440/2017*** captioned ***Wholesale Trading Services P Ltd v. The Institute of Chartered Accountants of India & Anr.***). The said

appeal was disposed of by an order dated 24.08.2017 in view of the statement made on behalf of ICAI, and the Director Discipline was directed to complete the process of examining the material before him and to communicate his *prima facie* opinion to the Disciplinary Committee or the Board of Discipline within eight weeks and the concerned authority was required to consider the same and proceed with the further course of action in terms of relevant rules within a period of six weeks thereafter.

13. Admittedly, there were considerable delays in processing the petitioner's complaint in that case. However, no such grievance can be made by the petitioner in the facts of the present case, where the Director (Discipline) has already completed the process of examining the petitioner's complaint. In view of the above, this Court is of the view that the present petition is unmerited and wholly unjustified. This court is also of the view that such frivolous petitions ought to be discouraged.

14. It is also noticed that the petitioner does not appear to have any direct interest in the matter, as the complaint is with regard to alleged professional misconduct on the part of the chartered accountants in conducting an audit of a third party.

15. In view of the above, the petition and the application are dismissed with cost quantified at ₹10,000/-. The cost shall be deposited with Delhi High Court Legal Services Committee within a period of three weeks from today.

VIBHU BAKHRU, J

DECEMBER 04, 2017/pkv