IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CREF No. 2 of 2017 (O&M)
Date of Decision: 27.03.2019

The Institute of Chartered Accountants of India through its Secretary

.....Petitioner

versus

Union of India and another .....Respondents

CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present : Mr. Amar Vivek, Advocate with
Mr. Saksham Malhotra, Advocate, for the petitioner.

Mr. B.B.Bagga, Advocate, for respondent No.2.

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KRISHNA MURARI, CHIEF JUSTICE

This reference has been filed by the Institute of Chartered Accountants of India for approval of the findings and recommendations made by the Council of the Institution dated 27.01.2011 in respect of the professional misconduct of one Shri Rajesh Mehru. The approval is being sought in view of section 21(5) of the Chartered Accountants Act, 1949 (for short 'the Act of 1949').

2. The facts relevant for the purpose of adjudication of the controversy in brief can be summarized as under:-

A complaint was filed by a Chartered Accountant, namely, Shri Krishan Kumar of M/s Krishan K.Mittal and Company, Ludhiana, (hereinafter referred to as the complainant) against M/s Rajesh Mehru and

Company, another Chartered Accountant, under Section 21 of the Act of 1949 making the following allegations:-

i) The respondent accepted the appointment as an Auditor of M/s Sai Moh Auto Links Ltd. without ascertaining whether the requirements of Section 225 of the Companies Act, 1956 have been duly complied with or not.

ii) The complainant accepted the appointment as an Auditor previously held by another Chartered Accountant without first communicating him in writing.

iii) The complainant never expressed his unwillingness to accept the audit as stated in the notice conveying AGM of the company M/s Sai Moh Auto Links Ltd. dated 20.08.1999 and it was a misstatement of facts.

iv) The respondent accepted the appointment as an Auditor of the company despite the fact that outstanding fees of the complainant was not paid nor any effort was made to clear it.

3. The aforesaid charges, if proved, would render the respondent guilty of professional misconduct falling within the meaning of clauses 8 and 9 of Part-1 of first Schedule and clause (ii) of Part-II of second Schedule read with sections 21 and 22 of the Act of 1949.

4. In response to the notices, the respondent submitted his written statement. The complainant, however, did not submit his rejoinder despite various reminders. Thereafter in accordance with the provisions of Regulation 12(11) of the Chartered Accountants Regulations, 1988, the pleadings were considered by the Council in its meeting held in

August-2008 at New Delhi and being prima-facie of the opinion that the respondent was guilty of professional misconduct decided to cause an enquiry to be made by the Disciplinary Committee.

5. The complainant never presented himself for hearing despite notice and after hearing the respondent and perusing the record the committee submitted its opinion holding the respondent guilty of professional misconduct falling within the meaning of clause 9 of Part-1 of First Schedule to the Act of 1949. It was further held that the respondent was guilty of professional misconduct under notification No. 1-CA(7)/46/99 dated 28.10.1999.

6. However, the respondent was not found guilty of professional misconduct falling within the meaning of clause 8 of Part-1 of First Schedule to the Act of 1949. For a ready reference, notification No.1-CA(7)/46/99 dated 28.10.1999, is being reproduced hereunder:-

> **"No.1-CA(7)/46/99: In exercise of the powers conferred by clause (ii) of Part-II of the Second Schedule to the Chartered Accountants Act, 1949, the Council of the Institute of Chartered Accountants of India hereby specifies that a member of the Institute in practice shall be deemed to be guilty of professional misconduct, if he accepts the appointment as auditor of an entity in case the undisputed audit fee of another Chartered Accountant for carrying out the statutory audit under the Companies Act, 1956 or various other statutes has not been paid;**
>
> **Provided that in the case of sick unit, the above prohibition of acceptance shall not apply.**
>
> **Explanation 1:**
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> **For this purpose, the provision for audit fee in accounts signed by both- the auditee and the auditor shall be considered as "undisputed" audit fee.**
>
> **Explanation 2:**
>
> **For this purpose, "sick unit" shall mean where the net worth is negative."**

7. A copy of the report of the Disciplinary Committee was forwarded to the parties and they were required to submit the written representation. In response thereto the respondent submitted his representation dated 28.05.2013.

8. After considering the report of the Disciplinary Committee and the representation made by the respondent, the Council held as under:-

a) The respondent was guilty of professional misconduct falling within the meaning of Clause (9) of Part-1 of the First schedule to the Chartered Accountants Act, 1949;

b) Guilty of professional misconduct under Notification No.1-CA (7)/46/99 dated 28th October, 1999 falling within the meaning of Clause (ii) of Part II of the second Schedule to the Chartered Accountants Act, 1949.

9. In reference to charge (a), the Council decided to take separate action under section 21(4) of the Act of 1949. In respect of charge (b) the Council decided to recommend to the High Court that the respondent be reprimanded.

10. It may be relevant to notice at this stage that the Chartered Accountants Act, 1949 was amended in the year 2006 by Chartered Accountants Amendment Act, 2006 whereby certain provisions have been omitted and certain new provisions have been inserted. The amended provisions relating to disciplinary mechanism have become effective from 17.11.2006. Section 21(d) of the amended Act provides that all the complaints pending before the Council or any enquiry initiated by the Disciplinary Committee or any reference or appeal made to the High Court prior to the commencement of the Chartered Accountants (Amendment) Act,

2006 shall continue to be governed by the provisions of the Act as if the same had not been amended by the amending Act of 2006.

11. Since in the case in hand the matter pertains to the complaint filed before the Council prior to the amendment, it is to be dealt with under the provisions of the un-amended Act and accordingly the reference has been made to this Court.

12. We have heard learned counsel for the parties and perused the record.

13. The issue arising for consideration before us is in respect of the findings of the Council against the respondent holding him guilty under Notification No.1-CA(7)/46/99 dated 28th October, 1999 falling under Clause (ii) of Part II of the second Schedule to the Act of 1949 on the ground that the respondent had accepted the appointment despite the fact that the company had not paid the undisputed audit fees for the last four years to the complainant which admittedly tantamount to professional misconduct and accordingly recommendation has been made to this Court to reprimand the respondent.

14. Learned counsel for the respondent contends that the findings returned by the Council holding the respondent guilty of professional misconduct on the ground that he accepted the appointment as auditor, despite there being undisputed fee of another Chartered Accountant unpaid is vitiated and against the evidence on record. It is pointed out that the erstwhile auditor vide letters dated 01.07.2010 and 09.05.2012 addressed to the Secretary of the Institute clearly stated that the dispute regarding the professional fee was settled to the satisfaction after filing the case and he is not interested in pursuing the case. It is submitted that though the copies of

the letters was produced in evidence before the Disciplinary Committee but the Committee failed to consider the impact of the same. The said letters dated 01.07.2010 and 09.05.2012 read as under:-

"**Copy of letter dated 01.07.2010:-**

To
The Secretary,
The Institute of Chartered Accountants of India,
Indraprastha Marg,
Post Box No. 7100,
New Delhi.

Sub: Complaint case.

Sir,

In case of M/s Rajesh Mehru & Co. "a/c Sai-Moh Autolinks Limited", the dispute regarding the professional fees was settled to my satisfaction after filing the case with yourself.

I am not interested to pursue the case.

This is for your information and record.

Thanking you,
Yours sincerely,
Sd/-For Krishan K.Mittal & Co.
Krishan Kumar, Partner".

Copy of letter dated 09.05.2012:-

To
The Secretary,
Institute of Chartered Accountants of India,
New Delhi.

Sub: Complaint case.

Dear Sir,

In the case of complaint against M/s Rajesh Mehru & Co. "a/c Sai Moh Autolinks Limited," the dispute regarding professional fees was settled to my satisfaction after the filing of the case with yourself.

It could be done with the best efforts of Sh.Rajesh Mehru and rightful intervention with the client.

I do not want to pursue the case.

Yours sincerely,
Sd/-For Krishan K.Mittal & Co.
Krishan Kumar, Partner".

15. Once the erstwhile auditor vide the aforesaid letters accepted that the dispute regarding professional fee was settled to their satisfaction and he was not interested in pursuing the case, we see no reason that the respondent could have been held guilty of the said charge in any manner. Apparently, the aforesaid two letters were not taken note of and thereby the findings are vitiated for non-consideration of material piece of evidence.

16. Another aspect in this regard which requires to be noticed is that before accepting the appointment as auditor, the respondent communicated the complainant vide registered letters dated 21.10.1999 and 16.08.2000 making enquiries about the outstanding professional fee, if any, or any objection to the appointment of the respondent as statutory auditor of the company. The aforesaid two letters were never replied by the complainant. This fact itself goes to show that the respondent made all best possible efforts to verify the facts from the complainant in this regard but for want of reply from them proceeded under the assumption that there was no outstanding fees of the complainant due towards the company and that there was no objection to the appointment of the respondent as statutory auditor of the company.

17. Besides above, another important factor which needs consideration is that despite various notices and opportunities, the complainant never appeared to support the complaint nor rebutted the reply submitted by the respondent to the complaint and thus it was not open to the Council to disbelieve the case set up by the respondent. Furthermore, when the complainant himself did not appear to support the complaint the Council could not have upheld any part of the complaint to be proved unless there was an admission on the part of the respondent. Since the respondent did not

admit the complaint or any part thereof and the complainant did not appear to support the complaint, the Council committed error in law in proceeding to act on the basis of the complaint.

18. For the aforesaid facts and reasons we are unable to uphold the findings holding the respondent guilty of professional misconduct under the notification dated 28.10.1999 falling within the meaning of Clause (ii) of Part II of the second Schedule to the Act of 1949. The prayer for approval of the findings on the second punishment thus cannot be granted.

The reference accordingly stands rejected.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

27.03.2019
ravinder

Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No