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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 8081/2019 & CM. APPLNS. 38345-38347/2019**
WHOLESALE TRADING SERVICES P LTD. Petitioner

Through: Mr Arnav Dash, Advocate.

versus

**THE INSTITUTE OF CHARTERED ACCOUNTANTS
OF INDIA AND ORS. Respondents**

Through

**CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU**

ORDER

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01.08.2019

VIBHU BAKHRU, J

1. The petitioner has filed the present petition impugning an order dated 1st February, 2019 passed by respondent no.2 (hereafter after 'the Board of Discipline'). By the said order, the Board of Discipline had concurred with the *prima facie* opinion of the Director (Discipline), recorded under Rule 9(1) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 (hereafter 'the Rules') and the petitioner was informed of the same. The said opinion was recorded on 24th September, 2018 and the Director (Discipline) was of the *prima facie* view that respondent no.3 (Jayesh M. Gandhi – hereafter 'JMG') was not guilty of professional misconduct falling under Clause 7 of Part-I of Second Schedule to the Chartered Accountants Act,

1949 (hereafter 'the Act').

2. JMG is a member of ICAI and is a practicing Chartered Accountant. The petitioner, *inter alia*, alleges that the accounts and audit report in respect of seven separate companies mentioned in the complaint had not been prepared in compliance with the provisions of the Companies Act, 1956 and directions issued by the Reserve Bank of India (RBI) in respect of a non-banking financial company. It is relevant to note that the audit reports and the accounts referred to by the petitioner were for four financial years, *viz.* 2005-06, 2006-07, 2007-08 and 2008-09. These accounts pertain to seven private companies and were certified by a firm of Chartered Accountants, M/s N.M. Raiji & Company. At the material time, JMG was a partner of the said firm.

3. The petitioner claims that it became aware of the alleged irregularities in the audit reports and the financial accounts of the said companies in the year 2015.

4. On 11th May, 2015, the petitioner caused its advocates to send a legal notice to M/s Raiji & Company as well as JMG, calling upon them to respond to the alleged violations, omissions and false statements, in the audit reports of the seven companies for the years 2005-06 to 2008-09. The petitioner did not receive any response to the said notice and on 24th October, 2016 the petitioner filed a complaint with ICAI raising several allegations regarding the conduct of respondent no. 3 with reference to the audit report and accounts of the

seven companies.

5. Since the petitioner's complaints were not taken up, the petitioner filed a writ petition before this Court, being W.P. (C) 4873/2017, which was dismissed by a Coordinate Bench of this Court by an order dated 29th May, 2017. Aggrieved by the same, the petitioner preferred an appeal (LPA No. 440/2017), which was disposed of by the Division Bench of this Court by an order dated 24th August, 2017. The Division Bench issued directions to the Director (Discipline), to complete the process of examining the material placed before it and to communicate his *prima facie* opinion to the concerned authorities within a period of eight weeks. The concerned authorities (Disciplinary Committee or Board of Discipline, as the case may be) were directed to consider the said report and proceed in accordance with the relevant rules within a period of six weeks, thereafter.

6. Thereafter, on 23rd April, 2018, JMG submitted his response to the complaint. He refuted all the allegations and reiterated that the accounts for all years had been prepared in accordance with the Accounting Standards and due disclosure had been made in regard to the transactions with related parties. He also pointed out that the said companies were private companies and did not have any outside shareholding or any borrowing from third parties. He submitted that the audit for the financial year 2008-09 had been completed in June, 2009 and the reports were also submitted in the same month. He contended that the complaint made was malicious, derogatory and only with an intent to tarnish the image of a professional Chartered

Accountant. He also contended that the said complaint had been made after seven years of the last audit report being submitted to the shareholders and thus, the complaint was beyond the period of seven years as contemplated in Rule 12 of the Rules. JMG also stated that he had retired from the firm of auditors – M/s N.M. Raiji & Company – due to unresolved disputes with one of the continuing partners and he felt constrained in accessing information and relevant audit files. However, he had managed to obtain the audit papers available with the said firm in March, 2018.

7. The Director (Discipline) examined the complaint. The petitioner was provided an opportunity to file a rejoinder to the response submitted by JMG and it did so, on 2nd June, 2018.

8. The Director (Discipline) examined the records and concluded that the complaint made by the petitioner was beyond the period of seven years and JMG would be inconvenienced in the said case, as he had already retired from the firm of auditors – M/s N.M. Raiji & Company. He also noted that several complaints had been filed by warring partners of M/s N.M. Raiji & Company and the same had been dealt with by the Disciplinary Directorate. In view of the aforesaid, the Director (Discipline) formed a *prima facie* opinion that JMG was not guilty of professional misconduct as alleged and forwarded the opinion to the Board of Discipline. As noted above, the Board of Discipline accepted the same and concurred with the said opinion.

Reasons and Conclusion

9. It is relevant to note at the outset that the petitioner has no relation whatsoever with JMG or any of the seven companies in respect of which the complaint was made by the petitioner. All the seven companies are closely held private companies. It is not disputed that the said companies also do not have any outside borrowings. It is, thus, apparent that the allegations made by the petitioner do not involve any element of public interest. The petitioner had not dealt with the said companies and no person who had dealt with the said companies, has raised any complaint or any allegation with regard to the accounts not being true and fair or of any mis-statement in the auditor's report.

10. The learned counsel appearing for the petitioner contended that the petitioner had filed the complaint for the general benefit of the profession and society at large. This Court noted that despite the petitioner having no interest or involvement in any of the companies or the Chartered Accountants, it had been making several complaints of misconduct against various Chartered Accountants and further pursuing the same.

11. Since, the petitioner is a company, this Court had called upon the learned counsel appearing for the petitioner to respond as to whether the Memorandum of Association of the petitioner company permitted the petitioner to pursue such complaints against various Chartered Accountants wholly unconnected with its business. The

learned counsel had answered in the affirmative. He has also produced the Memorandum of Association of the petitioner company, in compliance with the orders passed by this Court on 26th July, 2019.

12. The issue whether the petitioner company is permitted to carry on the activity of filing complaints against various Chartered Accountants was considered by this Court in the decision rendered today in W.P. (C) 8071/2019. This Court rejected the contention that the activity of the petitioner in pursuing complaints against various Chartered Accountants was otherwise permitted under its Memorandum of Association. This Court also observed that the use of a corporate façade of the petitioner by its directors/promoters for pursuing complaints against various Chartered Accountants, unconnected with its business, cannot be countenanced.

13. Insofar as the impugned order is concerned, the learned counsel appearing for the petitioner contended that Rule 12 of the Rules could be invoked only in cases where the Director was satisfied that there would be difficulty in securing proper evidence of alleged misconduct. He submitted that in this case, JMG had responded to the allegations and therefore, Rule 12 of the Rules could not be invoked.

14. At this stage, it would be relevant to refer to Rule 12 of Rules, which is set out below:-

“12. Time limit on entertaining complaint or information. – Where the Director is satisfied that there would be difficulty in securing proper evidence of the alleged misconduct, or that the

member or firm against whom the information has been received or the complaint has been filed, would find it difficult to lead evidence to defend himself or itself, as the case may be, on account of the time lag, or that changes have taken place rendering the inquiry procedurally inconvenient or difficult, he may refuse to entertain a complaint or information in respect of any misconduct made more than seven years after the same was alleged to have been committed and submit the same to the Board of Discipline for taking decision on it under sub-section (4) of section 21 A of the Act.”

15. A plain reading of the aforesaid Rule indicates that there are several grounds on which the Director (Discipline) would refrain from entertaining any complaint made more than seven years after the same is alleged to have been committed. The Director (Discipline) would reject the complaint if he is satisfied that it would be difficult for securing proper evidence of the alleged misconduct. The second ground for doing so is if the member, against whom such allegation is made, would find it difficult to lead evidence to defend himself. And, the third is on account of changes, rendering the inquiry to be procedurally inconvenient or difficult.

16. In the present case, JMG had clearly stated in his response that he had retired from the firm of Chartered Accountants that was appointed to conduct the audit in view of disputes *inter se* the partners of the firm. He had also pointed out that the complaint had been made beyond the period of seven years and the Chartered Accountants were not required to maintain audit records for more than seven years. JMG

also pointed out that he had felt constrained with regard to access to information and relevant data files. In addition to the above, the Director (Discipline) had also taken note of the fact that several complaints had been filed *inter se* the partners of the audit firm in question, which had been dealt with by the Disciplinary Directorate. In this view, it was obvious that JMG would face constraints in accessing information and records from the firm.

17. Keeping the aforesaid in view, the Director (Discipline) accepted JMG's plea for invoking Rule 12 of the Rules. He declined to entertain the complaint and forwarded his *prima facie* opinion that JMG was not guilty of the alleged misconduct.

18. This Court finds no infirmity with the said opinion. Plainly, no interference with the opinion of the Board of Discipline is called for in proceedings under Article 226 of the Constitution of India, unless the same is perverse or so unreasonable that no sensible person could possibly arrive at such a view. The contention that since JMG had responded to the allegations after securing the audit papers, the same would preclude recourse to Rule 12 of the Rules, is unmerited. JMG had clearly stated in his written statement that he was responding to the allegations based on audit papers that were available and without prejudice to the contention that the complaint ought not be entertained on account of being made after seven years of the last audit report being signed. He had stated that the last of the reports were signed in June, 2009 and the complaint was dated 26th June, 2016, although it was filed subsequently. In addition to submitting a response, JMG

would also be required to lead evidence to defend himself if the complaint had been escalated further. He had already expressed, in unequivocal terms, the constraints that he would suffer in defending himself.

19. The decision of the Director Discipline to not to entertain the complaint and the decision of the Board of Discipline to concur with the aforementioned opinion cannot be faulted.

20. Before concluding, it is also relevant to note that the petitioner has been filing various petitions before this Court in respect of complaints made before ICAI, despite having no particular interest in the matter. As noticed above, the petitioner has no connection or dealing with the Chartered Accountants or the companies in respect of which complaints have been made. An earlier petition filed by the petitioner (being W.P. (C) 10536/2017) was also dismissed with costs quantified at ₹10,000/-, however, the imposition of costs has not discouraged the petitioner from pursuing such petitions.

21. This Court is of the view that the present petition is a frivolous one and the filing of such petitions ought to be discouraged, as it takes up considerable judicial time at the cost of *bona fide* litigants who are in urgent need of relief. Another petition decided earlier today (W.P. (C) 8071/2019) was also dismissed with costs quantified at ₹1,00,000/-. Notwithstanding the same, the petitioner has chosen to press this petition as well. In the circumstances, this Court is of the view that the present petition should also be dismissed with costs.

22. Accordingly, in view of the above, the present petition is dismissed with costs quantified at ₹1,00,000/- (One Lakh Only). The cost shall be deposited with the Delhi High Court Legal Services Committee within a period of two weeks from today.

23. The pending applications are also disposed of.

AUGUST 01, 2019
pkv

VIBHU BAKHRU, J