

\$~2

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

+ **W.P.(C) 8071/2019 & C.M. APPLs 33381-83/2019**

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

%

01.08.2019

VIBHU BAKHRU, J

1. The petitioner is a private company and its registered office is located in Chennai. The petitioner has filed the present petition, *inter alia*, impugning the order dated 26th February, 2018, passed by respondent no.2 (hereafter 'Board of Discipline'). By the said order, the petitioner was informed that the Board of Discipline had concurred with the *prima facie* opinion of the Director (Discipline) of the Institute of Chartered Accountants of India (hereafter 'ICAI') recorded on 6th October, 2017, holding that respondent no. 3 (Mr. H. Anil—hereafter 'HA') was not guilty of professional misconduct falling within the meaning of Clauses (5) to (9) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 (hereafter 'the Act').

2. HA is a member of ICAI and is a practicing Chartered Accountant. The petitioner alleges that HA is guilty of professional misconduct on account of verifying forms (Forms-23 AC) containing false statements filed in respect of seven separate companies. The said forms were filed online in respect of various financial years commencing from the financial year 2009-10 to 2013-14.

3. The petitioner caused its advocates to issue a legal notice dated 22nd May, 2015 to HA, alleging misconduct and calling upon him to respond within a period of ten days while reserving the right to file a complaint in that regard. Thereafter, on 24th October, 2016, the petitioner filed a complaint with ICAI alleging that HA was guilty of professional misconduct as stipulated under Clauses (5) to (9) of Part-I of the Second Schedule of the Act. As noticed above, the said allegations were made in the context of the forms verified in respect of seven separate companies, namely, Napean Trading and Investment Company Private Limited (hereafter Napean); Prazim Trading and Investment Company Private Limited (Prazim); Regal Investment and Trading Company Private Limited (hereafter Regal); Tarish Investment and Trading Company Private Limited (hereafter Tarish); Vidya Investment and Trading Company Private Limited (hereafter Vidya); Zash Investment and Trading Company Private Limited (hereafter Zash); and Hasham Investment and Trading Company Private Limited (hereafter Hasham)

4. Since the petitioner felt that there was a delay in considering its complaint, 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 29.05.2017. This Court held that the petitioner had not shown any justification for issuance of any directions to ICAI to expedite the hearing of the complaint filed by the petitioner. It was also held that no ground of urgency had been pleaded or shown.

5. Aggrieved by the same, the petitioner preferred an appeal (LPA No. 440/2017) before the Division Bench of this Court. The said appeal was disposed of by an order dated 24.08.2017, whereby the Division Bench expressed its opinion that in view of the statement made by ICAI, the Director (Discipline) should complete the process of examining the materials placed before him and communicate his *prima facie* opinion to the concerned authorities within a period of eight weeks. It was further directed that the Disciplinary Committee or the Board of Discipline, as the case may be, should thereafter, complete the consideration of the said report and proceed in accordance with the relevant Rules within a period of six weeks, thereafter.

6. On 25th January, 2017, HA filed his written response to the complaint made by the petitioner. He countered all the allegations and also provided pointwise explanations disputing the allegation that he had verified any incorrect form in respect of the companies in question. On 6th October, 2017, the Director (Discipline), ICAI examined the material and formed a *prima facie* opinion that HA was not guilty of professional misconduct as alleged. The Board of Discipline concurred with the said view in the impugned order and the same was communicated to the petitioner.

7. The learned counsel appearing for the petitioner submitted that Forms 23AC as verified by HA were, *ex-facie*, false inasmuch as it did not recognize that Hasham – which was one of the companies in respect of which Form 23AC had been verified by HA – to be a holding company of some of the other companies in the group. He submitted that notes to the financial statements forming a part of the balance sheet of Hasham disclosed that three companies, namely Napean, Regal and Vidya, as its subsidiaries, but the Forms-23AC verified by HA had indicated that Hasham did not have any subsidiary. He submitted that this was palpably false and clearly established that false information had been submitted to the ROC. Similarly, he stated that the Forms- 23ACs in respect of other companies, namely, Napean, Vidya and Regal did not reflect that they were subsidiaries of Hasham.

8. He contended that although Hasham did not hold a majority share in the three companies (namely, Napean, Regal and Vidya); the Board of Directors of Hasham had passed a resolution on 18.06.2004 wherein the Chairman of the Company had recorded that Hasham controlled the majority of the Board of Directors of the aforesaid companies. He submitted that in terms of Section 4(1)(a) of the Companies Act, 1956, Hasham was a holding company of the three companies in question. He contended that the opinion formed by the Board of Discipline was thus unsustainable.

Reasons and Conclusion

9. At the outset it is relevant to note that the petitioner has no

relation whatsoever with either HA or any of the seven companies in respect of which allegations of misconduct were levelled against HA. All seven companies are admittedly closely held private companies. It is also admitted that the audited accounts of the companies had disclosed the *inter se* relationship between them. Neither the petitioner nor its Directors have any dealing with the Companies or HA. The learned counsel appearing for the petitioner contended that the petitioner has filed the complaint for the general benefit of all concerns.

10. It is also noticed that the petitioner has been filing repeated complaints against various Chartered Accountants and has been pursuing them almost on a professional scale. The petitioner has also filed several petitions before this Court in respect of the proceedings before the concerned authorities of ICAI, initiated pursuant to the complaint filed by the petitioner.

11. As observed above, the petitioner is a company and therefore, this Court had pointedly asked the learned counsel appearing for the petitioner whether the Charter of the Company (Memorandum of Association) permitted the petitioner to pursue this activity. The learned counsel appearing for the petitioner had responded in the affirmative and had submitted that the petitioner's objects included filing complaints against various Chartered Accountants for the general good of the profession. In view of the aforesaid assertion this Court had, by an order dated 26th July 2019, called upon the petitioner to produce its Memorandum and Articles of Association.

12. In compliance with the aforesaid, the learned counsel appearing for the petitioner has today handed over a copy of its Memorandum of Association. He referred to Clauses 4 and 32 of the Section (B) of Part III of the Memorandum of Association and contended that Clause 4 read with Clause 32 permitted the petitioner to pursue complaints against various professionals.

13. Clauses 4 and 32 of the Objects Incidental or Ancillary to the Attainment of the Main Objects are set out below:-

“4. To carry on the business or vocation of acting as advisers, investigators, consultants, on all matters/problems relating to the Technical, industrial, civil, administrative, financial, organizational, managerial, or such other function/divisions of industry and on commencement or expansion of industry, purchasing techniques (including construction of plants and buildings), production, purchases, sales, material and cost controls, marketing, advertisement, publicity, personnel, export and import for any company, corporation, institution, concerns, bodies, associations (incorporated or unincorporated), departments and services of the government, public or local authorities, trusts, Scientific Research and Development Centres, and to be appointed as technical, financial, industrial, administration, civil consultants.”

*

*

*

32. To promote, assist or take part in and appear or lead evidence before any commission, investigation, inquiry trial or hearing whether public or private relating to matter or connected with any trade business or industry.

14. The aforesaid contention is plainly unmerited. The petitioner company has been formed with the main objects as are set out in Part-A of the Objects Clause. The same are reproduced below:-

“(A) THE MAIN OBJECTS TO BE PERUSED BY THE COMPANY ON ITS INCORPORATION:

1. To carry on the business of wholesalers in all kinds of goods and products including goods, manufactured by and/or for it and to trade by way of wholesale in any articles, goods, rights, possessions of any nature being industrial, commercial, household, technical and in such process to buy, sell, acquire, lease, any merchandise, goods or property of any form whatsoever as unauthorised dealers, stockists, agents, brokers, factors and render all such services in the ordinary course of business.
2. To manufacture, brand, market in any articles, goods, rights, possessions of any nature and of any use being industrial, commercial, household technical and in such process to buy, sell, acquire, lease, any merchandise, goods or property of any form whatsoever as authorised dealers,

stockists, agents, brokers, factors and render all such services in the ordinary course of business.”

15. It is important to note that the Clauses – Clauses 4 and 32 – referred to by the learned counsel appearing for the petitioner are placed under Section (B), which is captioned “Objects Incidental or Ancillary to the Attainment of the Main Objects”

16. It is clear from the above that the purpose of the company is to carry on the business as specified in Part-A of the Objects Clause. The objects as set out in Part-B are Objects, which are incidental or ancillary to the attainment of the objects as set out in Part-A of the Objects Clause.

17. Section 13 of the Companies Act, 1956, containing provisions in respect of the Memorandum, expressly stipulated that the Memorandum of Association of a company is required to expressly state its main objects to be pursued by the company and the objects incidental or ancillary to the attainment of the main objects, as well as other objects. Clause (d) of Sub-section 1 of Section 13 of the said Act is set out below:-

“13. Requirements with respect to memorandum
– (1) The memorandum of every company shall
state –

XXXX XXXX XXXX
XXXX

(d) in the case of a company formed after such commencement, –

(i) the main objects of the company to be pursued by the company on its incorporation and objects incidental or ancillary to the attainment of the main objects;

(ii) other objects of the company not included in sub- clause (i); and”

18. As is apparent from the above, the objects as included under Section (B) of Clause III of the Memorandum of Association are objects which are incidental to obtaining the main object and not objects that can be pursued independent of the main objects. They are, as the heading indicates, incidental or ancillary to the attainment of the main objects.

19. Thus, the activity specified in Clause 4 and Clause 32 are objects, which may be carried on as incidental or ancillary to attainment of the main object. They cannot be pursued independent of the main objects. The Petitioner’s Memorandum of Association includes other objects as well (Section (C) of Part III); however, filing complaints against various professionals, as an organised activity, is not one of them.

20. Having stated the above, it is apparent from a plain reading of Clause 4 that it also contemplates activities, which are for carrying on a business or vocation and not as a vocation, by itself. The activity as contemplated under Clause 32 also does not contemplate filing complaints against various professionals wholly unconnected with the

business or the activities of the petitioner company.

21. It is possible that in the course of business, the petitioner may come across documents or become aware of facts that indicate that a chartered accountant has misconducted himself. In such cases, it may be permissible for the petitioner to file a complaint. However, it is relevant to note that this is not a one-off complaint. As stated above, the petitioner has been filing several complaints against various Chartered Accountants and has also filed repeated petitions before this Court in matters which are wholly unconnected with its business. It is also not the petitioner's case that the alleged defaults were discovered in the course of its principal activities.

22. This clearly indicates that the petitioner is carrying on this activity of filing and pursuing complaints against various Chartered Accountants as an organised activity, independent of the objects for which it was incorporated. Given the objects of the petitioner company, it is clear that such organized activity is wholly *ultra vires* of the Memorandum of Association of the petitioner company. It does appear that the corporate façade of the petitioner is being misused by its directors/promoters. Plainly, this cannot be countenanced.

23. Having stated the above, it is also relevant to examine the nature of the complaint made by the petitioner and its context. The petitioner claims that sometime in 2015, it had discovered that an incorrect statement had been verified by HA in respect of the seven companies as mentioned above. The seven companies are all private companies and

there is no dispute that due disclosure was made by Hasham regarding the names and parties to which the company was related.

24. The only controversy urged before this Court is with regard to the statements verified by HA to the effect that Hasham did not have any subsidiary. HA had submitted that the said statement had been verified as correct since Hasham did not hold majority shares in the three companies (namely Napean, Regal and Vidya). He had explained that Hasham held 10,000 (18%) redeemable cumulative preferential shares of ₹100 each, in Napean, Regal and Vidya. It did not hold any equity shares in the said companies, and at the material time, holding of such preference shares did not create a relationship of a holding and subsidiary company. He had also stated that Hasham was also not a holding company by virtue of Section 4(1)(a) of the Companies Act, 1956.

25. The petitioner had not produced any material on record to establish that Hasham, as a matter of right, controlled the composition of the Board of Directors of any of the other companies. In order to establish that the composition of the Board of Directors of Napean, Regal and Vidya were controlled by Hasham, it was necessary for the petitioner to establish that those companies (Napean, Regal and Vidya) were bound to appoint and remove Directors at the instance of Hasham. This may be provided either by including a provision in the Articles of Association or by execution of any other instrument. However, no such material is produced. The petitioner merely relies on a copy of the resolution passed by the Board of Directors of Hasham on 18th June,

2014 (that is in the next financial year 2014-15). This would not assist the complainant in establishing that a false statement was made in respect of forms verified for the Financial year 2013-14.

26. As noticed above, the companies in question are closely held private companies and there is no element of public interest involved in the complaint made. Even if it is accepted that an error had crept in the form uploaded by HA, it is doubtful that the same could be construed as the petitioner being grossly negligent in his professional duties.

27. It is also relevant to note that the proceedings before the Disciplinary Committee/Board of Discipline are in nature of Disciplinary proceedings to ensure that members of ICAI maintain professional standards and do not conduct themselves in a manner which brings disrepute to the profession of Chartered Accountancy. The disciplinary proceeding is principally between ICAI and its members. A complainant merely acts as a relater party that provides information relating to any misconduct on the part of a Chartered Accountant. Although a complainant has a right to be participate in the proceedings; disciplinary proceedings cannot be viewed as a private dispute between the complainant and the Chartered Accountant. It is also true that in most cases, the complainant may also have suffered on account of professional or other misconduct on the part of a Chartered Accountant; however, that does not change the nature of the disciplinary proceedings.

28. The conduct of ICAI's member (a Chartered Accountant) is to be

evaluated by the concerned authorities of ICAI. The object is to ensure that its members measure up to the standards as set by ICAI for continuing as its member. As stated earlier, the matter is, essentially, between ICAI and its members. This is also the rationale for not providing any appellate remedy to the complainant against the decision of the concerned authorities in terms of Section 22G of the Act. This right is only available to an aggrieved Member of ICAI.

29. This court is also of the view that it is not apposite to supplant its views over the views of the concerned authorities (Board of Discipline or Disciplinary Committee), as the case may be.

30. As notice above, the petitioner has been pursuing complaints against various members of ICAI with relentless fervour and has filed various petitions before this Court in pursuance of its complaints. This Court is of the view that litigants, such as the petitioner, who have made litigation their business/vocation ought to be discouraged. Considerable judicial time is wasted by such litigants in matters that are of little significance. This Court had, in an earlier writ petition filed by the petitioner (W.P. (C) No. 10536/2017), dismissed the petition with costs of ₹10,000/-, however, that does not seem to have discouraged the petitioner from filing such petitions.

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

32. The pending applications are disposed of.

VIBHU BAKHRU, J

AUGUST 01, 2019/pkv

