$~30

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

Date of decision :11th September, 2019

\+ LPA 586/2019 and CM Nos. 40450, 40451, 40452/2019

WHOLESALE TRADING SERVICES P LTD ..... Appellant
Through: Mr. R. Subramanian and Mr. Shailesh Poddar, Advs.

Versus

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA & ORS ..... Respondents
Through: None

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

O R D E R

% **11.09.2019**

D.N. PATEL, CHIEF JUSTICE (ORAL)

CM APPL. Nos. 40451-40452/2019 (***exemption***)

1. Exemption allowed, subject to all just exceptions.

2. The applications stand disposed of.

LPA 586/2019

1. This Letters Patent Appeal has been preferred by the original petitioner, whose W.P.(C) 8081/2019 was dismissed by the learned Single Judge *vide* order dated 1st August, 2019 (Annexure A-1) with costs of ₹ 1 lakh.

2. Factual matrix

- This appellant is the original petitioner, who had preferred W.P. (C) 8081/2019 challenging an order, dated 1st February, 2019, passed by Board of Discipline constituted under the Chartered Accountants Act, 1949 (hereinafter referred to as "Act, 1949") to be read with the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 (hereinafter referred to as "Rule, 2007"). The impugned order of the Board of Discipline, dated 1st February, 2019 (Annexure A-3 to the memo of this LPA), is under challenge, along with the order passed by the Director (Discipline), dated 24th September, 2018 (Annexure A-4).
- This appellant is Wholesale Trading Services Pvt. Ltd. The person who has filed this writ petition has the general authority, as alleged by this appellant, to file complaint under Rule 3(4) of the Rules, 2007. This appellant submits that it is engaged amongst other things, in the business of trading of agricultural commodity, along with other goods.
- This appellant (original petitioner) had filed a complaint on 26th September, 2016 (Annexure A-6) against Respondent No. 3 – Chartered Accountant Sh. Jayesh M. Gandhi who is a member of the Institute of Chartered Accountants of India and is a practicing chartered accountant. It is alleged in this complaint that the accounts and audit reports in respect of the following seven companies have not been prepared in compliance with the provisions of the Companies Act, 1956, and as per the directions issued by the Reserve Bank of India in respect of Non-Banking Financial Institutions. The seven companies are :

(i) Napean Trading and Investment Company Private Limited,

(ii) Prazim Trading and Investment Company Private Limited,

(iii) Regal Investment and Trading Company Private Limited,

(iv) Tarish Investment and Trading Company Private Limited,

(v) Vidya Investment and Trading Company Private Limited,

(vi) Zash Investment and Trading Company Private Limited,

(vii) Hasham Investment and Trading Company Private Limited.

- The audit reports and the accounts referred to by this appellant (original petitioner) were in respect of the following four financial years :

  (i) 2005-06

  (ii) 2006-07

  (iii) 2007-08 and

  (iv) 2008-09

- These accounts pertained to the aforesaid seven private companies, and were certified by a firm of chartered accountants, M/s N.M. Raiji & Company. Mr. Jayesh M. Gandhi was a partner of the said firm of chartered accountants.
- The complaint was filed on 26th September, 2016, which is after seven years of the audit report of the last financial year, 2008-09, for

the aforesaid seven companies.

- This appellant (original petitioner) has nothing to do with those seven companies. This appellant (original petitioner) is totally a stranger to the aforesaid seven companies, for the audit of which the complaint is filed.

- As per the procedure delineated in the Rules, 2007, Director (Discipline) gave his *prima facie* opinion on 24th September, 2018 (Annexure A-4), that the complaint filed by this appellant, who is a complete stranger to the aforesaid seven companies, has filed the said complaint seven years past the last audit reports, which were for the financial year 2008-09, and looking at the written statement filed by Mr. Jayesh M. Gandhi, such a delay is beyond the period, as mentioned in Rule 12 of the Rules, 2007.

- Earlier, the writ petition, as preferred by this appellant (original petitioner), being W.P. (C) No. 4873/2017, which was dismissed by this Court, against which LPA 440/2017 was preferred, was decided by this court *vide* order dated 24th August, 2017 observing, *prima facie,* that opinion should be given within a period of eight weeks and, further proceedings be completed within a period of six weeks thereafter.

- Hence, Director (Discipline) has given a *prima facie* opinion under Section 21A of the Chartered Accountants Act, 1949 and Board of Discipline has also passed an order dated 1st February, 2019 (Annexure A-3), stating therein that the complaint is time barred, looking to the nature of the complaint and the written statement filed by Mr. Jayesh M. Gandhi, and looking to the provisions of the Act, 1949 read with the Rules, 2007.

- Being aggrieved and feeling dissatisfied by the order of the Board of Discipline dated 1st February, 2019 (Annexure A-3) and also being aggrieved by the order of the Director (Discipline) dated 24th September, 2018 (Annexure A-4), this appellant had preferred W.P.(C) 8081/2019.
- As W.P.(C) 8081/2019, preferred by this appellant, was dismissed by the learned Single Judge by order dated 1st August, 2019, the original petitioner has preferred the present Letters Patent Appeal.

3. <u>Arguments canvassed by counsel for the appellant (original petitioner)</u>

- Counsel appearing for the appellant submitted that as per Rule 3(4) of the Rules, 2007, this appellant has general authorisation to make a complaint and as per Rule 3(4) of the Rules, 2007, there is no need of any specific authorisation.
- It is further submitted by counsel for the appellant (original petitioner) that there is no mathematical bar under the Rules, 2007 to file a complaint against a chartered accountant.
- It is further submitted by counsel for the appellant (original petitioner) that law does not require any locus and hence, even if this appellant has nothing to do with the aforesaid seven companies, a complaint can still be filed.
- Counsel for the appellant has placed reliance upon a decision rendered by Hon'ble the Supreme Court reported at ***(1983) 4 SCC 131 Narendra Singh v. Chhotey Singh & Anr.*** Paragraph 12 thereof reads as under :

> *"**12.** Apart from this, a comprehensive view of the legislation as a whole would show that the Bar*

Council of India exercises general supervision and control over State Bar Councils and Disciplinary Committee of State Bar Council is a creature of State Bar Council. Bar Council of India enjoys all ancillary and incidental powers for efficiently discharging and carrying out functions prescribed in Section 7. The question of jurisdiction has to be viewed in this broad perspective and not from any narrow or constricted view which one may take in a private dispute between two individuals. A disciplinary proceedings against a member of a profession whose services are made available to society as a whole is to be viewed as between the profession and its erring member and not between the complainant and the delinquent advocate. This larger perspective must determine the jurisdiction of the bodies set up to carry out the purposes of the Advocates Act."

4. **Reasons**

- Having heard counsel for the appellant (original petitioner) and looking to the facts and circumstances of the case, we see no reason to entertain this Letters Patent Appeal, mainly for the following facts and reasons :

(i) This appellant is an original petitioner whose W.P.(C) 8081/2019 was dismissed by the learned Single Judge *vide* order dated 1st August, 2019, with costs of ₹ 1 lakh and hence, the original petitioner has preferred the present Letters Patent Appeal. The order dated 1st August, 2019 of the learned Single Judge is at Annexure A-1 to the memo of this LPA.

(ii) This appellant has filed a complaint dated 26th September, 2016 (Annexure A-6) against one Sh. Jayesh M. Gandhi, who is a chartered accountant, finding fault with his audit reports etc. for the following seven companies :

(a) Napean Trading and Investment Company Private Limited,

(b) Prazim Trading and Investment Company Private Limited,

(c) Regal Investment and Trading Company Private Limited,

(d) Tarish Investment and Trading Company Private Limited,

(e) Vidya Investment and Trading Company Private Limited,

(f) Zash Investment and Trading Company Private Limited,

(g) Hasham Investment and Trading Company Private Limited.

(iii) This appellant has nothing to do with the aforesaid companies. This appellant has no cause of action with the aforesaid seven companies.

(iv) This appellant has no specific authorisation as required under Rule 3(4) of the Rules, 2007. For the ready reference, Rule 3(4) of the Rules, 2007 reads as under :

> *"3(4) <u>A complaint filed by or on behalf of a company or a firm, shall be accompanied by a resolution, duly passed by the Board of Directors of the company or the partners of the firm, as the case may be, specifically authorizing an officer or a person to make the complaint on behalf of the company or the firm.</u>"*

(Emphasis supplied)

(v) The usage of the words "the complaint" in Rule 3(4) indicate that the "specific authorization" contemplated therein has to be to file the particular complaint – in 'this' case, the complaint dated 26th September, 2016 against Respondent No. 3, Jayesh Gandhi – and not an authorization to file 'complaints' in general. In the facts of the present case, this appellant has no specific authorisation for this appellant company to file a complaint against Mr. Jayesh M. Gandhi – a chartered accountant. This aspect of the matter has been properly appreciated by the learned Single Judge while dismissing W.P.(C) 8081/2019 *vide* order dated 1st August, 2019 (Annexure A-1).

(vi) It further appears from the facts of the case that this appellant has nothing to do with the aforesaid seven companies, against whose audit the complaint has been filed against the chartered accountant. There is no nexus between the cause and action at all, of this appellant with those seven companies. For reasons best known to this appellant, it appears that they have filed a complaint against Respondent No.3.

(vii) Rule 12 of the Rules, 2007 reads as under :

> *"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."*

The last of the audit reports was filed in June, 2009 by M/s N.M. Raiji & Company, in which Mr. Jayesh M. Gandhi was one of the partners. The complaint was filed on 26th September, 2016. Written statement filed by Mr. Jayesh M. Gandhi (Annexure A-7), specifically paragraph 4 thereof, reads as under:

> *"4. I would like to draw your attention that seven companies, which are subject matter of the complaint, are private limited companies without any public borrowings. Further, the complaint is in respect of audit of financial years 2005-06 to 2008-09. Audit of*

the latest year, i.e 2008-09 of all the companies were completed in June 2009 and reports were issued in the same month. The complaint is dated 26 September, 2016 which is after a long gap of more than 7 years from my signing of the relevant audit reports. It is beyond the requirement of maintaining audit records for 7 years as per the announcement of ICAI (refer Annexure I). In my opinion, the complaint should not be entertained as the auditors are not bound to keep their working papers beyond seven years and therefore all the relevant audit papers may not be available for reply to the complaint. I would like to point out that this complaint is filed under The Chartered Accountants (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007 and as per clause 12 of the Rules, this complaint should not be entertained as it is beyond period of seven years from date of signing of the audit reports."

A conjoint reading of Rule 12 with the written statement filed by Respondent No. 3, it appears that the complaint was filed after 7 years, which has led to difficulty for the chartered accountant – Mr. Jayesh M. Gandhi. It has been mentioned categorically by Respondent No. 3 that the working papers may not be available on the basis upon which the last audit report was filed in the year 2009, and the complaint was only filed after several years, in 2016. Thus, no error has been committed by the Director (Discipline) while passing the order dated 24th September, 2018 (Annexure A-4) as well as no error has been committed by the Board of Discipline while passing an order dated 1st February, 2019 (Annexure A-3). No error has also been committed by the learned Single Judge in appreciating Rule 12 of the Rules, 2007, while dismissing W.P.(C) 8081/2019 by order dated 1st August, 2019 (Annexure A-1). We are in full agreement with the reasons given by the learned Single Judge. The complaint of this appellant was absolutely time barred and also, it has created a lot of difficulty for the chartered accountant – Respondent No. 3, against whom the complaint is filed, looking to the written statement filed by the said chartered accountant (Annexure A-7).

(viii) Counsel appearing for the appellant has submitted that law does not require locus. Looking to the peculiarity of the present case, it appears that the present appellant (original petitioner) has nothing to do with the aforesaid seven companies. Moreover, this appellant has no specific authorization, as required under Rule 3(4) of the Rules, 2007. A complaint for improper audit for the year 2005-06 is filed in the year 2016. Similarly, for the year 2006-07, for the year 2007-08, and for the year 2008-09, the complaint is filed in the year 2016, i.e., after several years. Looking to the written statement filed by chartered accountant Sh. Jayesh M. Gandhi, especially as stated hereinabove, paragraph 4 of the written statement (Annexure A-7), the totality of these circumstances lead to the fact that this appellant is harassing Respondent No.3. No justifiable reasons have been given by this appellant as to why he has filed complaint against Respondent No. 3 and that too after several years of the audit of the aforesaid seven companies with which this appellant has no connection. These aspects of the matter have been also properly and appropriately appreciated by the learned Single Judge while dismissing the writ petition preferred by this appellant.

5. We are in full agreement with the reasons given by the learned Single Judge.

6. Hence there is no substance in this LPA and the same is, therefore, dismissed.

<u>CM No.40450/2019</u> ***(stay)***

1. In view of the orders passed in the writ petition, the application stands disposed of.

CHIEF JUSTICE

SEPTEMBER 11, 2019/kr **C. HARI SHANKAR, J.**