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

% Judgment delivered on: 13.05.2021

\+ W.P.(C) 376/2021 & CM APPLS. 996/2021, 997/2021, 998/2021

WHOLESALE TRADING SERVICES (INDIA) PRIVATE LTD
….. Petitioner

versus

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
…..Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. R. Subramanian, Advocate.

For the Respondent: Mr. Dayan Krishnan, Senior Advocate with Ms. Archana Sahadeva and Mr. Sanjeevi Seshadri, Advocates for R-3.

Mr. Rajiv Nayyar, Senior Advocate with Mr. Mahesh Agarwal, Mr. Karan Luthra, Mr. Himanshu Satija, Mr. Shaishir Divatia, Advocates for the intervenor (Hasham Investment and Trading Company Pvt. Ltd.).

CORAM:-
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. The hearing was conducted through video conferencing.

2. Petitioner impugns order dated 16.12.2020 passed by the Institute of Chartered Accountants of India dismissing the complaint filed by the petitioner against respondent No. 3.

3. The case set up by the petitioner is that respondent No. 3 has committed professional misconduct and submitted incorrect reports after scrutiny of the books and papers of the certain companies.

4. A petition for merger was filed by M/s Napean Trading and Investment Company Private Limited, M/s Regal Trading and Investment Company Private Limited, M/s Vidhya Trading and Investment Company Private Limited and M/s Harsham Investment and Trading Company Private Limited. The first three mentioned companies were to be amalgamated into the fourth company.

5. The scheme of arrangement of amalgamation was filed before the High Court of Karnataka. The High Court of Karnataka appointed respondent No. 3 for the purposes of verification of the books and papers of the three transferor companies and to submit his report.

6. Respondent No.3 submitted his reports on 25.11.2014 to the Karnataka High Court. By order dated 26.03.2015, the scheme of merger was sanctioned by the Karnataka High Court.

7. Petitioner is neither a shareholder in any of the companies nor was respondent No.3 ever associated with the petitioner in any manner.

8. The contention of the learned counsel for the petitioner is that petitioner is a public spirited citizen and has noticed that the reports that were submitted to the Karnataka High Court were not correct and accordingly filed a complaint before the Institute of Chartered

Accountants of India for taking disciplinary action against respondent No. 3.

9. By the impugned order, the Disciplinary Committee of the Institute of Chartered Accountants has dismissed the complaint *inter alia* holding as under:-

> *"5. The Committee further noted that the Respondent conducted the audit on behalf of the Respondent firm whereby he, on verification of records, gave his opinion in the reports to the official liquidator. Thus, the Committee viewed that the appointment of the Respondent was made under the Orders of the Hon'ble High Court of Karnataka and that the reports prepared by him were placed before and considered by the Hon'ble High Court of Karnataka. Accordingly, the Committee was of the view that the said report of the auditor was the property of the Hon'ble High Court of Karnataka which alone could pass any order on the same. It also noticed that the matter was sub judice and the Committee had no jurisdiction to take cognizance of the same. It is only the Hon'ble High Court of Karnataka which can take a view on the Report of the Respondent. The Committee can take any action in the matter only if an order to this effect is passed by the Hon'ble High Court of Karnataka and its continuing with an inquiry in the present complaint would not be appropriate. Accordingly, the extant complaint was dismissed by the Committee.*
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> ***Conclusion:***
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> *6. Thus, the Committee dismissed the extant Complaint. However, the Complainant has right to file case before the Disciplinary mechanism of the Institute with the copy of Order of the Hon'ble High Court of Karnataka."*

10. Petitioner aggrieved by order of dismissal of his complaint has

filed the subject petition.

11. On 08.02.2021, Petitioner was directed to file an affidavit, within 2 weeks, indicating his connection with respect to the companies in respect of which subject audit was conducted by respondent No.3. Said order also records the contention of learned counsel of the petitioner that petitioner is not a creditor of the said company.

12. Petitioner impugned order dated 08.02.2021 of this Court by filing a Letters Patent Appeal. Said Letters Patent Appeal was dismissed on 01.03.2021 on the ground that no conclusive determination of rights and liabilities of the parties had been done by the said order.

13. The Division Bench while dismissing the LPA imposed costs of Rs. 10,000/- on the petitioner to be deposited with the Delhi State Legal Services Authority within four weeks.

14. The Division Bench by its order dated 01.03.2021 also directed the learned counsel for the petitioner to take instructions with regard to the deposit of costs imposed in respect of the several orders passed in various petitions filed by the Petitioner before the Delhi High Court. In Paragraph 5 the Division Bench extracted the list of such cases. Said list is as under:-

SI. No.	Case Details	Date of Order	Bench	Costs
1.	Wholesale Trading Services Pvt. Ltd. v. UOI; **WP(C) 5602/2017**	07.07.2017	Division bench of the Hon'ble Delhi High Court	**Rs.10,000/-** Imposed as costs on the Appellant
2.	Wholesale Trading Services Pvt. Ltd. v. UOI; **WP(C) 10536/2017**	04.12.2017	Hon'ble Delhi High Court	**Rs.10,000/-** Payable to Delhi High Court Legal Services Committee within a period of three weeks, imposed on the Appellant.
3.	Wholesale Trading Services Pvt. Ltd. v. ICAI & Ors; **WP(C) 8071/2019**	04.12.2017	Hon'ble Delhi High Court	**Rs.10,000/-** Payable to Delhi High Court Legal Services Committee within a period of two weeks, imposed on the Appellant.
4.	Wholesale Trading Services Pvt. Ltd. v. ICAI & Ors; **WP(C) 8081/2019**	01.08.2019	Hon'ble Delhi High Court	**Rs.1,00,000/-** payable to Delhi High Court Legal Services Committee within a period of two weeks, imposed on the Appellant. This order has been sustained by the Hon'ble Division Bench of this Hon'ble Court in

15. Learned counsel for the petitioner concedes that the costs as imposed by the Division Bench by its order dated 01.03.2021 as also the costs imposed by various orders noticed in Paragraph 5 of the Division Bench order, extracted hereinabove, have not been deposited.

16. Learned counsel for the petitioner further submits that affidavit in terms of order dated 08.02.2021 directing the petitioner to indicate his connection with the companies in respect of which subject audit was conducted by respondent No. 3 has not been filed. He submits that Petitioner has no connection either with the companies or with Respondent No. 3 – the chartered accountant.

17. It is submitted by learned senior counsel appearing for the respondent No.3 that petitioner and his counsel Mr. R. Subramanian have been instrumental in fomenting litigation and harassing respondent No.3.

18. It is submitted that the scheme of merger was sanctioned by the Karnataka High Court on 26.03.2015 and thereafter, an application was filed in the said company petition before the High Court of Karnataka by an entity called *"India Awake for Transparency"* seeking recall of the sanction.

19. It is submitted that one of the grounds taken in the said application seeking recall of the order of merger was the same as taken in the complaint against respondent No.3 i.e., challenge to the

reports submitted by respondent No. 3 before the Karnataka High Court.

20. The recall application has been dismissed by the Karnataka High Court by its order dated 17.03.2021 holding that applicant was not a party to the main petition and did not has the *locus standi* to file the application.

21. Said order records that applicant was not an aggrieved party as was neither a shareholder nor a director or any other person who is connected to or has a nexus with the parties to the proceedings or the impugned order. The order also records that the applicant was guilty of abuse of process of law, as the claim of the applicant had been rejected not only by Ministry of Corporate Affairs but also by the Reserve Bank of India.

22. It is pointed out by learned senior counsel appearing for respondent No. 3 that an appeal filed by the said applicant against the order dated 17.03.2021 being OSA 1/2021 was also dismissed on 24.02.2021 by the Division Bench of Karnataka High Court.

23. One very peculiar fact emerges from a perusal of order dated 17.03.2021 of the Karnataka High Court and that is that the said application filed by *India Awake for Transparency* shows that its authorised signatory is Mr. R. Subramanian, the counsel appearing for the petitioner herein.

24. Further, it may be seen that respondent No. 3 was appointed,

the Karnataka High Court, to scrutinise the accounts and the books of the three companies, which were sought to be merged in the fourth company. After scrutiny, the reports were submitted before the Karnataka High Court. After perusal of the reports, the Karnataka High Court had sanctioned the merger on 26.03.2015.

25. Karnataka High Court has dismissed the application for recall of the merger, in which one of the grounds was that the reports submitted by respondent No. 3 were not correct, on the ground that the applicant has no locus to challenge the same.

26. The Disciplinary Committee of the Institute of Chartered Accountants has also passed the impugned order holding that since respondent No.3 was appointed by the Karnataka High Court and reports were submitted to it for the purposes of sanction of merger, it is only the Karnataka High Court which could comment upon the reports and only if any order to the said effect was passed by the High Court of Karnataka, any inquiry could be conducted by the Disciplinary Committee.

27. What the petitioner and his advocate, Mr. R. Subramanian are seeking to do is to start parallel proceedings to challenge the sanction of merger by Karnataka High Court. As noticed by the Karnataka High Court as also admitted by the petitioner and Mr. R. Subramanian that the petitioner or Mr. R. Subramanian are neither shareholders, nor directors or any person connected or having a nexus to the parties to the scheme of merger.

28. Since the petitioner has no connection or locus and in fact counsel for the petitioner has himself sought to challenge the scheme of merger which was rejected by the Karnataka High Court by its order dated 17.03.2021, I find no ground to permit petitioner to start parallel proceedings to challenge a scheme of merger which has been sanctioned by the Karnataka High Court, before this Court or indirectly challenge the same by way of asking the Institute of Chartered Accountants to return a finding on the reports submitted by respondent No.3 before the Karnataka High Court and acted upon by it.

29. I find no infirmity in the view taken by the Disciplinary Committee of the Institute of Chartered Accountants that as respondent No.3 was appointed by Karnataka High Court and reports were submitted to the Karnataka High Court, it is only the High Court of Karnataka, which could take a view on the reports submitted by respondent No.3.

30. Accordingly, I find no merit in this petition. The Petition is dismissed with costs, which is quantified at Rs.50,000/-.

31. In view of the admission of learned counsel for the petitioner that petitioner has not deposited the costs imposed by the Division Bench by its order dated 01.03.2021 and also by various orders of this Court as noticed by the Division Bench in its order dated 01.03.2021, the Registry is directed not to register and list any petition or proceedings filed by the petitioner till petitioner encloses therewith

the receipts of deposit of costs in the said cases mentioned hereinabove.

32. Copy of the Order be uploaded on the High Court website and be also forwarded to learned counsels through email by the Court Master.

SANJEEV SACHDEVA, J.

MAY 13, 2021
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