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

\+ W.P.(C) 9286/2024, CM APPL. 38092/2024 & CM APPL. 38093/2024

SURAJIT BHOWMICK .....Petitioner

Through: Mr. S.P. Mukherjee, Mr. Avinash Shukla, Advocates.

versus

INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA & ANR. .....Respondents

Through: Mr. Ravinder Agarwal, Mr. Lekh Raj Singh, Advocates for R-1

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% 10.07.2024

1. The Petitioner invokes Article 226 of the Constitution of India, 1950, to seek quashing of the orders passed by the Disciplinary Committee Bench-I (2023-2024)[1], constituted under Section 21B of the Chartered Accountants Act, 1949[2], of the Respondent No. 1– Institute of Chartered Accountants of India. Details of the impugned orders passed by the Committee are as follows[3]:

(a) The order dated 8th February, 2024, passed under Rule 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and

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[1] "the Committee"
[2] "the Act"
[3] *Collectively,* "Impugned Orders"

Other Misconduct and Conduct of Cases) Rules, 2007[4], holds the Petitioner to be guilty for Professional Misconduct and Other Misconduct falling within the meaning of Item (2) of Part IV of First Schedule and Item (7) of Part-I and Item (3) of Part-II of Second Schedule to the Act.

(b) The order dated 26th June, 2024, directs removal of the Petitioner's name from the roll of members for one month with a fine of INR 25,000/-.

2. The findings of the Committee reads as follows:

> *"5- **FINDINGS OF THE COMMITTEE**:*
> *Before giving findings in the matter, the Committee noted the following background about the facts which are given here-in-below:-*
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> *5.1 The Committee noted that at the time of death of Complainant's husband i.e., Mr. Dipak Majumdar, the firm comprised of the Complainant's husband and the Respondent The Committee also observed that the Respondent was well aware about the demise of his partner Late CA. Dipak Majumdar still he continued to operate firm in his sole capacity, while it is settled law that in case wherein the firm comprises of only two partners, if one of the partners leaves the firm due to any reason or in case of death of partner, the firm automatically gets dissolved. In the instant matter, since one of the partners i.e., Late CA. Dipak Majumdar had expired, the firm stands dissolved on the date of death i.e., on 28th June 2020. However, it was seen that even after the death of Mr. Dipak Majumdar on 28th June 2020, the Respondent continued to operate the firm and that he not only continued the attestation work in the firm's name but also kept operating the bank account of firm single handedly. The Respondent in his written submission dated 13th Feb 2023, also submitted that after the demise of Late CA Dipal Majumdar, he inducted Sh. Pradip Datta as a partner. The Committee in this regard noted that despite knowing the very fact that the firm cannot continue with the single partner, he continued signing financial statements in the name of the Respondent firm which tantamount to gross negligence on the part of the Respondent and hence his stand cannot be validated or accepted.*
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> *5.2 The Committee also relied on the letter dated 05th Feb 2021 issued by Generai Secretary of the Society named as G. D Apartment Co-op Society which was signed by 18 members of Complainant's society to the effect that the Respondent attended the funeral of Late CA. Dipak Majumdar.*
>
> *5.3 The Committee also relied on the Bank Statement available on record,*

[4] "the Rules"

wherein it is evident that the Respondent has made several withdrawals from the bank account of the firm leaving the bank balance to almost NIL. The said document was adversely viewed by the Committee thereby holding the Respondent guilty of Professional Misconduct.

6- <u>CONCLUSION:</u>

In view of above noted facts, in the considered opinion of the Committee, the Respondent is Guilty of Professional and Other Misconduct falling within the meaning of Item (2) of Part-IV of First Schedule and under Item (7) of Part-I and Item (3) of Part-II of Second Schedule to the Chartered Accountants Act, 1949."

3. As can be seen from the aforenoted findings, the Committee has found the Petitioner to be guilty of professional and other misconduct, observing that the Petitioner was aware of the demise of his partner late Mr. Dipak Majumdar (CA), and yet continued to operate the firm constituted by the Petitioner along with the deceased partner. The Committee has also observed that if one of the partners leaves the firm due to any reason, or in case of the death of partner, the firm automatically gets dissolved. Since Mr. Dipak Majumdar had expired on 28th June, 2020, the firm ceased to exist on the said date and the Petitioner could not have continued to operate the firm and carry out attestation work in the firm's name. It has also been observed that the Petitioner continued to operate the bank account of the firm single-handedly.

4. Counsel for the Petitioner argues that the Impugned Order dated 8th February, 2024 is unreasonable and arbitrary as it is silent with regards to the declaration dated 13th February, 2023 given by one Mr. Sandip Dutta, stating that he had not attended Mr. Dipak Majumdar's funeral with the Petitioner. It is further argued that the said Impugned Order is vitiated on account of violation of principles of natural justice, as the matter was decided in his absence and without giving an opportunity of being heard. In

this regard, reliance is placed on Petitioner's written submissions dated 24th February, 2024 wherein it is asserted that the Petitioner was logged in the system from morning except for few minutes when he went to the restroom and for having lunch. However, the Committee did not contact him to inform him at the time of passing the order, and the decision was rendered *ex-parte*.

5. The Court has considered the aforenoted submissions. The Committee has rendered its findings on the basis of the material produced before them. While the Petitioner contends that he was not aware of the demise of Late Mr. Dipak Majumdar, however, in law, it cannot be argued that the partnership firm had not ceased to exist upon his demise, as the firm constituted of only two partners. Further, the Committee has observed, on the basis of the firm's bank statement, that the Petitioner also made several withdrawals from the said bank account after Late Mr. Majumdar's demise, leaving the bank balance at almost nil. Consequently, the Petitioner's subsequent attestation work in the firm's name and Petitioner's operation of the firm's bank account amounts to professional misconduct. The Petitioner's ignorance cannot, in any manner, be considered to be a mitigating factor in this regard. Moreover, it is noted that the Committee had relied upon letter dated 5th February, 2021 issued by General Secretary of the G.D Apartment Co-op. Society, which was signed by 18 of its members to the effect that the Petitioner had attended the funeral of Late Mr. Dipak Majumdar, which undermines the Petitioner's assertion that he was unaware of his partner's demise.

6. As regards, the Petitioner contentions of denial of an opportunity to defend itself, the Court is of the opinion that the Committee, in the

Impugned Orders, has duly considered the written submissions filed by the Petitioner and has evaluated all the material produced before them.

7. In view of the above, Court does not find any arbitrariness or perversity in the Impugned Orders, and none of the grounds urged in the instant petition calls for this Court to exercise its extraordinary jurisdiction under Article 226 of the Constitution of India.

8. Accordingly, the present petition is dismissed, along with pending applications.

SANJEEV NARULA, J

JULY 10, 2024/ab