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

% *Date of Decision : September 22, 2016*

\+ **CHAT.A.REF 1/2013**

COUNCIL OF THE INSTITUTE OF
CHARTERED ACCOUNTANTS OF INDIA ..... Relator
Represented by: Mr.Rakesh Agarwal, Advocate with
Mr.Pulkit Agarwal, Advocate

versus

BK DHINGRA & ANR ..... Respondents
Represented by: None

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (Oral)

1. This is a reference under Section 21(5) of the Chartered Accountants Act, 1949 and we find that in spite of being served the respondent has chosen not to enter appearance through a counsel because we do not find any Vakalatnama filed on behalf of the respondent in the file. No response to the reference has been filed. We are thus constrained to decide the reference ex-parte without any assistance from the respondent.

2. As discussed by the Supreme Court in the decision reported as (1986) 4 SCC 538 *Institute of Chartered Accountants of India Vs. L.K.Ratna*, complaints received by the Council have to be dealt with in the manner prescribed by Section 21 of the Act, with the term '*professional misconduct*' defined under Section 22 to include any act or omission specified in any of the schedule but without limiting the power or duty cast on the Council

under Section 21(1) to enquire into the conduct of a member of the institute. The first and second schedule to the Act specifies various conducts which would be misconduct.

3. As per Section 21 the inquiry has two stages. At stage one the Council looks into the material and forms a prima-facie opinion whether case is made out to hold an inquiry. If the decision is that prima-facie case is made out to hold an inquiry then an inquiry has to be held. The then existing Chartered Accountants Regulations, 1988, pertaining to the instant case period, specify the procedure to be followed. The complaint has to be forwarded to the member of the institute for the written statement of defence by the member to which the complainant is given an opportunity to file a rejoinder. The matter is then re-considered by the Council and if recording of evidence is warranted a disciplinary committee is constituted which conducts an inquiry in accordance with Regulation 15 and submit a report as contemplated by Regulation 16. On the basis of the report of the disciplinary committee if the Council is of the opinion that a penalty has to be inflicted upon the member, after hearing the member, final decision is taken which is in the nature of a recommendation to the High Court to take the final decision.

4. We find that in the instant case aforesaid procedure has been followed, with a blemish which has now been cured, inasmuch since finding qua the final recommendations of the Council were sans reasons this Court had remanded the matter vide order dated November 11, 2013 in Ch.Ref.No.3/2006 to the Council which has in its meeting dated March 21, 2011 taken a decision giving reasons recommending name of the respondent to be removed from the Register of Members for a period of three years.

5. Since the respondent has chosen not to appear and assist this Court,

we have gone through the record submitted and suffice it to record that the complaint had been lodged by the Deputy General Manager, Union Bank of India highlighting that the respondent was a Chartered Accountant of the company M/s.Target Plywood Industries Pvt. Ltd. which had obtained a term loan from the bank and as per the loan agreement had to raise equity and unsecured loans in sum of ₹88.58 lacs. Neither equity nor unsecured loans came to the company, the respondent certified the balance sheet as on June 24, 1996 confirming that long term funds were credited to the account of the company and relying on the strength thereof the bank released the funds. Further, on the strength of a proforma invoice issued by M/s.Electronic Ltd. having same address and telephone number the bank was led to issue to a pay order in sum of ₹7,84,852/- to the said M/s.Electronics Ltd. and no machinery was purchased as a matter of fact.

6. The findings by the disciplinary committee and the Council bring out something very disturbing. The address of M/s.Instronics Ltd. is the place wherefrom the respondent carries on his business. He has signed various cheques and letters on behalf of M/s.Instronics Ltd. A letter dated August 01, 1996 issued by the sales tax authorities mentions the dealer as B.K.Dhingra, Director of M/s.Instronics Ltd. The letter appears as if registration granted to the dealer is in the capacity of the dealer being a sole proprietor. The report brings out that as a Chartered Accountant the respondent is carrying on business directly and his claim that he is merely a Director in his professional capacity is incorrect.

7. Since the findings with reasons given by the Council have not been controverted, in that, the respondent has chosen not to contest the present proceedings, we do not repen the findings of the Council which are detailed and would rest at crystallizing the same as above. Indeed, professional

misconduct under clauses 5, 6, 7 and 8 of Part I of the 2nd Schedule is made out and we concur; and thus inflict penalty of removing respondent's name from the membership register of the Council for a period of three years.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

SEPTEMBER 22, 2016
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