



\$~44

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

+ W.P.(C) 7724/2020 & CM APPL. 25493/2020

VIS RAM FINANCIAL SERVICES P LTD ..... Petitioner

Through: Mr. R Subramanian, Advocate

versus

DISCIPLINARY COMMITTEE II FY 2019-20 ICAI & ORS.

..... Respondents

Through: Ms. Pooja M Saigal, Mr. Nipun Gupta, Mr. Nikhil V. Sabri, Mr. Ishank Jha, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**ORDER**

**16.10.2023**

%

1. The instant writ petition has been filed challenging the Order dated 10.02.2020 passed by the Disciplinary Committee, Institute of Chartered Accountants of India, which has been constituted under the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, which rules have been framed under Section 21B of the Chartered Accountants Act, 1949, for looking into the complaints filed against the Chartered Accountants.
2. Vide the impugned order, the complaint filed by the Petitioner has been dismissed by the Respondent/committee primarily on account of non-appearance of the Directors of the complainant/company for recording their statement.
3. Learned Counsel for the Petitioner draws the attention of this Court to Rules 11, 12 and 18 of the Chartered Accountants (Procedure of



Investigations of Professional and Other Misconduct and Conduct of Cases)  
Rules, 2007, (hereinafter referred to as Rules, 2007) which read as under:-

***“11. Certain provisions relating to complaint also to be applicable for information relating to misconduct of members***

*The procedure laid down for dealing with complaints in sub-rule (6) of rule 3, sub-rules (1), (2), (3) and (4) of rule 5, sub-rules (1), (2), (3) and (5) of rule 8, rule 9 and rule 10 shall also apply to information received by the Director relating to misconduct of members.*

***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.*

xxx

***18. Procedure to be followed by the Committee***

*(1) The Committee shall be guided by the principles of natural justice and shall follow the procedure in dealing with all cases before it, as laid down in this Chapter.*

*(2) If the Committee decides to proceed further under clause (b) of sub-rule (2) of rule 9 or if it receives a*



*reference from Board of Discipline under clause (b) of sub-rule (3) of rule 9, it shall expeditiously cause to deliver to the respondent and the complainant, a copy each of the following, –*

*(a) prima facie opinion formed by the Director, and*

*(b) particulars or documents relied upon by the Director, if any, during the course of formulation of prima facie opinion.*

*(3) The Committee shall inform the respondent, as the case may be to file a written statement, within such time as may be specified:*

***Provided*** that the Committee may give him additional time for submitting his written statement, on application by the respondent on his adducing sufficient reasons to the satisfaction of the Committee for seeking additional time:

***Provided further*** that such additional time shall not be given more than once and if the respondent still does not submit a written statement, the Committee shall presume that he has no further submissions to make and shall proceed to decide the case on merits.

*(4) The respondent shall send a copy of his written statement, along with supporting documents and a list of witnesses, to the Director and the complainant within the stipulated time.*

*(5) The complainant or the Director may, after receipt of the written statement, submit a rejoinder to the Committee, with a copy to the respondent, along with supporting documents, if any.*

*(6) The Presiding Officer of the Committee shall fix a date, hour and place of hearing, which shall not*



ordinarily be later than 45 days from the date of receipt of prima facie opinion and the committee shall cause a notice to be sent of such date, hour and place to the Director, respondent and complainant and require them to appear before it in person to make oral submissions, if any.

**[Explanation 1.** – For the purpose of this rule, the appearance includes, unless and otherwise directed, appearance by an advocate or through any authorized representative, who may be a Chartered Accountant, Cost Accountant or Company Secretary.

**[Explanation 2.** - For the purpose of this rule, the appearance also includes the appearances through video-conference, modalities for which may be as formulated by the Institute from time to time.]

(7) During the first hearing, the Committee shall read out the charge or charges to the respondent along with the summary of prima facie opinion arrived at by the Director, and ask the respondent whether he pleads guilty to the charge or charges made against him:

**Provided** that if the respondent does not appear for the first hearing even after one adjournment, the reading out of charge or charges along with the summary of prima facie opinion shall be made in his absence and the case proceeded with in accordance with the provisions of this Chapter.

(8) If the respondent pleads guilty, the Committee shall record the plea and take action as per provisions under rule 19.

(9) If the respondent does not plead guilty, then the Committee shall fix a date for examination of witnesses and production of documents.



(10) The Committee may, on application of the Director, issue notice for appearance to any of his witnesses directing him to attend or to produce any other document or material evidence.

(11) On the date so fixed, the Committee shall proceed to take all such evidence as may be produced by the Director, including oral examination of witnesses and production of documents:

**Provided** that the Committee may permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination.

(12) After the presenting of evidence by the Director is over, the complainant shall be given an opportunity, if present during the hearing, to present any additional evidence after satisfying the Committee that such evidence is relevant and has not been brought forward during the presentation by the Director.

(13) The respondent shall be then called upon to enter upon his defence and produce his evidence.

(14) If the respondent applies to the Committee to issue any notice for compelling attendance of any witness for the purpose of examination or cross-examination, or the production of any document or any material object, the Committee shall issue such notice unless it considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by it in writing.

(15) The witnesses summoned at the instance of the complainant under sub-rule (12) or the respondent under sub-rule (14) shall not be eligible for reimbursement of expenses incurred for attending the



hearing.

(16) After evidences have been presented, the Director and the respondent shall present their arguments before the Committee:

**Provided** that after the Director has presented his argument, if the complainant, provided he is present during the hearing, feels that any vital argument has been left out by the Director, may present the argument, after convincing the Committee of the same.

(17) The Committee shall consider the evidences and arguments produced before it and arrive at a finding on whether the respondent is guilty or not of any professional or other misconduct.

(18) The Committee may, at the request of any of the parties before it or due to other reasons, and on such terms as it thinks fit, and at any stage of the proceedings, adjourn the hearing:

**Provided** that such adjournment shall not be given more than once at any stage of the proceedings.

*Explanation.* - For the purpose of this rule, inability of the complainant, advocate, authorized representative or witness, to appear shall not be treated as a valid reason for adjournment of a hearing.”

4. It is stated by learned Counsel for the Petitioner that in accordance with the Rules, 2007, the Director of a complainant/company has to present the case before the Committee for it to form a prima facie opinion along with all the relevant evidence, whereafter, the Respondent/Committee provides an opportunity to the Respondent in the complaint to present his/her case by way of written statement, along with supporting evidence.



He, therefore, states that the procedure for dismissing a complaint on account of non-appearance of the witness/Directors of the complainant company as in the present case, is not provided for under the Rules, 2007.

5. *Per contra*, learned Counsel for the Respondent/ Institute of Chartered Accountants of India states that the Committee felt that the authorization submitted by the complainant company was shrouded in doubt, and, therefore, it was necessary to summon the Directors of the company to verify the same and adjudicate upon the complaint case.

6. To cut the matter short and with the consent of both sides, this Court deems it expedient to set aside the impugned order and direct the authorized representative of the company along with the Directors to appear before the Disciplinary Committee as and when a notice is received for the appearance by them. On receipt of the said notice, the authorized representative and the Directors of the company shall appear on the fixed date of hearing, as per the notice and the Respondent/Committee shall proceed further in the investigation as per the Rules, 2007.

7. The Authorized Representative of the company is directed to present before the Committee with all the documents in their possession, including those documents which have already been filed before the Committee, for further proceedings.

8. The petition is disposed of along with pending application(s), if any.

9. It is made clear that this Court has not made any observation on the merits of the case.

**SUBRAMONIUM PRASAD, J**

**OCTOBER 16, 2023**

hsk