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

+ W.P.(C) No.9698/2015

ARUN KHANNA ..... Petitioner

Through: Mr. Vimal Dubey, Adv.

versus

THE INSTITUTE OF CHARTERED ACCOUNTANTS

OF INDIA & ANR

..... Respondents

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**ORDER**

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**14.10.2015**

1. The petition impugns the letter dated 10<sup>th</sup> August, 2015 (wrongly mentioned as 10<sup>th</sup> July, 2015 in the letter) of the respondent no.1 Institute of Chartered Accountants of India (respondent no.1 Institute) informing M/s Arun Khanna & Associates Chartered Accountants that the notice served on 24<sup>th</sup> July, 2015 by six partners of M/s Sawhney Verma & Co. Chartered Accountants to M/s Arun Khanna & Associates Chartered Accountants of demerger w.e.f. 1<sup>st</sup> July, 2015 satisfies the criteria laid down by “the Council” and that “the firm is eligible to demerge the firm” w.e.f. 1<sup>st</sup> July, 2015. The petitioner also seeks a declaration of restoration of his rights as partner of respondent no.2 M/s Sawhney Verma & Co. under the Partnership Deed dated 14<sup>th</sup> October, 2013. Direction to the respondent no.1 Institute to take disciplinary action against the other partners of respondent no.2 M/s Sawhney Verma & Co. is also sought.

2. It is the case of the petitioner,

- (i) that he is a practising Chartered Accountant and was working in the name and style of M/s Arun Khanna & Associates;
- (ii) w.e.f. 14<sup>th</sup> October, 2013, he merged his said firm with respondent no.2 M/s Sawhney Verma & Co. having six partners and intimation of the same was given to the respondent no.1 Institute in accordance with Rules of Merger and De-merger of the respondent no.1 Institute;
- (iii) a Partnership Deed dated 14<sup>th</sup> October, 2013 was also executed between the petitioner on the one hand and the original six partners of respondent no.2 M/s M/s Sawhney Verma & Co.;
- (iv) that under the said merger, M/s Arun Khanna & Associates ceased to exist and merged with respondent no.2 M/s Sawhney Verma & Co. and of which the petitioner besides its six original partners, became partners;
- (v) the petitioner on 7<sup>th</sup> July, 2015 and 13<sup>th</sup> July, 2015 gave notices to all the banks with which the merged firm of respondent no.2 M/s Sawhney Verma & Co. had bank accounts, for freezing thereof, owing to the dispute which had arisen between the petitioner on the one hand and the original six partners of respondent no.2 M/s Sawhney Verma & Co. on the other hand;
- (vi) the original partners of respondent no.2 M/s Sawhney Verma & Co. gave notice dated 20<sup>th</sup> / 22<sup>nd</sup> July, 2015 of meeting of all the partners of the firms for resolution of the disputes;

(vii) that though the original partners of respondent no.2 M/s Sawhney Verma & Co. had so admitted the petitioner to be a partner till 20<sup>th</sup> July, 2015 but on 24<sup>th</sup> July, 2015 gave a notice to the respondent no.1 Institute of de-merger w.e.f. 1<sup>st</sup> July, 2015 of M/s Arun Khanna Associates from respondent no.2 M/s Sawhney Verma & Co.;

(viii) the respondent no.1 Institute has vide impugned letter dated 10<sup>th</sup> August, 2015 to the petitioner intimated to the petitioner that notice dated 24<sup>th</sup> July, 2015 served by the original partners of respondent no.2 M/s Sawhney Verma & Co. of de-merger meets the rules of merger / de-merger and satisfies the criteria laid down by the Council of the respondent no.1 Institute.

3. Though the counsel for the petitioner has not placed the Rules of Merger & De-merger framed by the respondent no.1 Institute before this Court but has in List of Dates quoted Rule 4 of the said Rules stated to be relevant and which is as under:-

*“Rule 4*

- (i) The Merger has to precede demerger. The Merger agreement itself shall contain the terms and conditions for demerger. Therefore no concurrence / acceptance is required from continuing partners. The Merger Agreement shall stipulate that in case 75% or more of the continuing partners of one of the erstwhile firm(s) are willing to demerge then they can do so after giving due notice in Form “F” to the other partners and to the Institute.*
- (ii) In case 75% or more of the continuing partners of one of the erstwhile merging firm have demerged*

*after giving due notice to the other partners, then in such case, merger shall come to an end and if the remaining erstwhile merging firms / partners of the erstwhile merged firm decided to continue, then they should enter into a fresh Merger / Partnership Agreement.*

- (iii) The Demerged firm is entitled to practice in its old trade name, which existed at the time of merger.*
- (iv) The Constitution Certificate issued by the Institute to the demerged firm shall state the original date of establishment, the date of its merger and the date of the demerger. For the purpose of computing seniority of the firm, the total period will be reckoned from the original date of establishment.*
- (v) The demerger can be demanded within a period of 5 years from the date of merger.”*

4. The contention of the counsel for the petitioner is that the original partners of respondent no.2 M/s Sawhney Verma & Co., could have given notice of their own de-merger and not of the de-merger of M/s Arun Khanna & Associates which was the sole proprietary of the petitioner.

5. In the present case, only two firms namely that of which the petitioner was the sole proprietor and respondent no.2 M/s Sawhney Verma & Co. of which there were six partners had merged. It is not in dispute that within five years of the said merger, the Rules permitted de-merger in the manner provided therein. All the partners of respondent no.2 M/s Sawhney Verma & Co. which was one of the merging firms, within the said period of five years opted to de-merge, resulting in uncoupling of the two merging firms. I have as such enquired from the counsel for the petitioner as to how the effect of the respondent no.2 M/s Sawhney Verma & Co. de-merging would be different from M/s Arun Khanna & Associates de-merging from respondent

no.2 M/s Sawhney Verma & Co. Rather, since the merged firm adopted the name of respondent no.2 M/s Sawhney Verma & Co., demerger could only be by uncoupling of M/s Arun Khanna & Associates which on merger had lost its identity, therefrom.

6. The only answer forthcoming from the counsel for the petitioner is that the petitioner had taken his work under the name of M/s Arun Khanna & Associates to respondent no.2 M/s Sawhney Verma & Co. and his work and clients have been appropriated by respondent no.2 M/s Sawhney Verma & Co.

7. For that grievance, the remedy of the petitioner has to be elsewhere. The petitioner has not shown any Rule of merger and de-merger dealing with the said aspect. The Rule which is cited is not shown to have been violated by the de-merger approved of by the respondent no.1 Institute.

8. The counsel for the petitioner has also contended that respondent no.2 M/s Sawhney Verma & Co. has indulged in forgery by de-merging w.e.f. 1<sup>st</sup> July, 2015.

9. It is not in dispute that notice given by the original partners of respondent no.2 M/s Sawhney Verma & Co. to the respondent no.1 Institute is dated 24<sup>th</sup> July, 2015. By the said notice, they intimated of the de-merger w.e.f. 1<sup>st</sup> July, 2015. In the Rule quoted by the petitioner in the paper book, there is nothing prohibiting the same. No case of forgery can thus be said to have been made out. There is nothing to show that the original partners of respondent no.2 M/s Sawhney Verma & Co. on 24<sup>th</sup> July, 2015 were not entitled to notify of the de-merger w.e.f. 1<sup>st</sup> July, 2015.

10. The challenge in this writ petition, in so far as to the action of the respondent no.1 Institute of accepting the de-merger, therefore has no merit.

11. The petitioner, with respect to the partnership disputes, would have his remedies in accordance with law.

12. The petition is dismissed.

13. I have however before signing this order examined the “Rules of NETWORK AND Merger – Demerger Amongst The Firms Registered With The Institute Of Chartered Accountants OF INDIA” available on the website of Institute of Chartered Accountants of India. The same are divided into two parts i.e. “Rules of Network” & “Rules of Merger & Demerger Amongst The Firms Registered With The Institute Of Chartered Accountants Of India”. As compared to Merger, Network amongst two or more firms is defined as an arrangement between two or more firms to facilitate the better functioning of the affiliate member firms in the interest of the profession and not for acquisition of any gain. Rules 2 & 3 of the part of the Rules dealing with Merger & Demerger Amongst Firms is as under:

**“2. Concept of Merger & Demerger:**

(i) *The Partnership Act has not prescribed merger & demerger of partnerships. In the corporate world, merger and demerger have become universal practices for securing survival, growth, expansion and globalization of enterprise and achieving multitude of objectives. Merger is the fusion of two or more existing companies. On the other hand, demerger signifies a movement in the company just opposite to merger. ‘Demerger’ is also used to describe spinning off of an*

*“undertaking” of a Corporate entity. The concept of ‘Merger’, ‘Demerger’ & ‘Acquisition’ are arising out of the ‘Arrangement’ under Sections 391-394 of the Companies Act, 1956. Merger and Demerger are natural corollary of globalization.*

- (ii) To incorporate the spirit of Corporate World and to imbibe the consolidation creed, the Council used the term ‘merger’ and ‘amalgamation’ of CA firms. The Council in its 198<sup>th</sup> Meeting held from 25<sup>th</sup> to 27<sup>th</sup> February, 1999 and in 223<sup>rd</sup> Meeting held from 2<sup>nd</sup> to 5<sup>th</sup> February, 2002 considered the Seniority and Mergers of the firm and implications of the decisions, are enclosed in **Tabular form**.*
- (iii) In order to have an orderly and sustainable growth of the CA firms, it is desirable that the coming together of the firms begins with networking and then matures to mergers. Networking will enable the firms to develop working relationships with each other. However, it is not to suggest that there cannot be mergers without networking.*
- (iv) The mergers should be effected to develop core competencies and to render professional services of a larger range spread over bigger geographical area. A merged big entity will always be superior to a network arrangement.*

### **3. Merger**

- (i) To effectuate merger, a merger agreement in **Form ‘E’** (enclosed) is to be filed with the Institute within 30 days from the date of the agreement. The re-constitution agreement/partnership deed shall be filed with the Registrar of Firms.*
- (ii) Upon the merger of the firms, the Institute will freeze the names of the merging firms and shall not allot the same names to any other firm.”*

14. Thereafter, is Rule 4 titled “Demerger” already reproduced above. After Rule 4, are the ‘Council Decision on change in Firm name / Seniority of Firms, the Format of Merger Agreement and the Format of Notice for Demerger. Clauses 1 to 5 of the Format of Merger Agreement are as under:

*“2. And in case 75% or more of the continuing partners of one or more erstwhile merging firm(s) are willing to demerge, they may demerge after giving due notice and will be entitled to the following benefits :*

*(i) They shall be entitled to the total seniority acquired i.e. their earlier pre-merger seniority and the years during which they were in merged firm.*

*(ii) They are entitled to their old firm’s name.*

*Provided in case, 75% is a fraction, then the same shall be rounded off to the next number.*

*3. That the date of establishment of the new demerged firm shall be the date of demerger.*

*4. That to effectuate such demerger, no concurrence/acceptance is required from the other continuing partners of the merged firm. The partners of such demerged firm shall execute a partnership deed. The merged firm as well as the demerged firm shall submit fresh Form 18 as prescribed under the Chartered Accountants Regulations, 1988 to the Institute within the prescribed period.*



*5. In case of 75% or more of the continuing partners of one of the erstwhile merging firm have demerged after giving due notice to the other partners, then in such case, the merger shall come to an end and if the remaining erstwhile merging firms/partners of the erstwhile merged firm decided to continue, then they should enter into a fresh Merger/Partnership Agreement and shall submit fresh Form 18 as prescribed under the Chartered Accountants Regulations, 1988 to the Institute within the prescribed period.”*

15. The Format of Notice of Demerger, given in the Rules supra also requires the date with effect from which demerger is sought to be effected to be specified, meaning that the demerger need not be necessarily from the date of the notice and can be from a date prior to or after the date of notice of demerger.

16. A perusal of the complete Rules, which the counsel for the petitioner himself perhaps did not peruse, clarifies the position beyond doubt and negates the contentions urged before this Court. The same, I may highlight, expressly provides that no concurrence / acceptance from the partners is required and can be effected at the option of 75% or more partners of one of the erstwhile firms. Here, all the partners of one of the two merging firms, opted to demerge. Upon such demerger, the other merging firm viz. Arun Khanna & Associates stood revived.

17. I may in this regard notice that though Section 25 of the Chartered Accountants Act, 1949 prohibits “company” from practising as a Chartered Accountant but does not contain any such bar against a partnership firm. Rather, the First and the Second Schedule to the Act while stipulating what

is professional misconduct describe expressly what conduct as partner of a firm amounts to misconduct. It appears, that in the said spirit, the Rules of Merger and Demerger aforesaid were framed.

No costs.

**RAJIV SAHAI ENDLAW, J**

**OCTOBER 14, 2015**

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