



BEFORE THE
APPELLATE BENCH
COMPETITION COMMISSION OF PAKISTAN
Re-Institute of Chartered Accountants of Pakistan
(Appeal No.11/2008)

Bench Members Mr. Khalid A. Mirza
Chairman

Ms. Rahat Kaunain Hassan
Member (Legal)

Date of hearing: 18-12-2008

Present:

1. Syed Shabbar Zadi, Member Council ICAP
2. Mr. F H Saiffee, Secretary to ICAP
3. Mr. Faisal Kamal Alam, Advocate, Legal Advisor of ICAP
4. Mr. Ali Almani, Advocate from Fazle Ghani Khan & Co

ORDER

The Institute of Chartered Accountants of Pakistan (ICAP) has filed an Application for interim relief in the Appeal filed against the order dated December 04, 2008 passed by a single Member in the matter of fixing minimum hourly charge out rates and minimum fee for audit engagements by chartered accountants (hereinafter referred as the “Impugned Order”).

2. Under Rule 20 of the Competition Commission Appeal Rules, 2007, the (“Appeal Rules”) the Appellate Bench is empowered to give such direction as it considers appropriate *inter alia* in a matter of urgency and for the purposes of protecting public interest. The Applicant asserts that the interim relief sought is for protecting public interest. Submissions in the subject application are accompanied by an affidavit of ICAP’s duly authorized representative.

3. We note that under rule 20(3) of the Appeal Rules, this Bench is required to exercise its power to grant interim relief after taking into account all the relevant circumstances, including the following three crucial factors: i) the urgency of the matter; ii) the effect on the party praying for relief, if relief is not granted; and iii) the effect on competition if relief is granted.

4. It was pointed out by the Bench that since the interim application does not address the above concerns the applicant may submit its arguments supporting grant of an interim relief with emphasis on the above stated factors. The counsels stated that they did not have access to the Appeal Rules, hence the application is not as envisaged. It was argued that since non-compliance by ICAP with the impugned order would attract penalty from December 19, 2008 it would look strange if subsequently the impugned order is not upheld by the Bench. It was further contended that ICAP is not an association in terms of Section 4 of the Ordinance, and that if stay is not granted the Members will not abide by ART-14 which has been declared void and this would result in anti-competitive behavior by encouraging under cutting of fee by the Members. Mr. Shabbar emphasized that the grant of stay would not have an impact as the time (at this stage) is not material and appointments (if any) that could be made in such period is not substantial.

5. While the Applicant has not fully made a case for grant of an interim relief as provided under the said rule, however, this Bench has examined the issue at hand, and we observe that in the given facts and circumstances:

(1).the urgency in the matter can be appreciated as the Applicant would be liable to a penalty of Rs 300,000 per day if it does not comply with the direction of the impugned order on or before December 19, 2008.

(2).we have perused the impugned order which is a detailed and comprehensive order. However, as ICAP has raised several grounds which require due consideration and determination by this Bench during the course of these proceedings. In our considered view it would not be strange as pleaded but perhaps burdensome on ICAP to be held liable for payment of penalty for each day of default beyond December 19, 2008 pending final disposal of the said appeal. Importantly, since ICAP is a professional body and not a commercial undertaking as also appreciated in the Impugned Order, the outcome of these proceedings is likely to impact a large number of professionals across the country. Therefore, it is in public interest that this matter be finally settled by the Commission; allowing any penalty to incur prior to the final decision in this appeal does not appear to serve the interest of justice in the particular facts of this case.

(3).as regards the effect on competition if the relief prayed for is granted, we take note of point that grant of stay would not have any impact on competition as the time (at this stage) is not material and appointments (if any) that could be made in such period are not substantial. While this has not been explained or

elaborated upon, this appears to contradict the earlier submission that if stay is not granted it would encourage Members to under cut each other. If no substantial appointments are to be made at this stage it should not have an impact either way. However, we have given due consideration to the fact that appointment of auditors occurs in the annual general meeting (AGM) of a company which has to take place within four months of the financial close of the company and the fact that mostly companies in Pakistan have their financial close in June. Thus in all such cases new appointments of auditors may already have been concluded. Therefore, suspending the Impugned Order till the final disposal of the appeal is not likely to unduly effect competition in the relevant market at this stage.

6. In view of the foregoing, the operation of paragraphs 35, 36 and 38 of the Impugned Order is hereby suspended pending final decision by this Bench in the subject Appeal.

7. Counsels appearing for on behalf of the Appellant are directed to submit their written arguments on or before January 01, 2009 alongwith the copies of cases/materials relied upon in the Appeal in particular, on the issues that: 1) the Appellant is not an association and/or how Section 4 of the Competition Ordinance, 2007 is not applicable to the Appellant and 2) how enforcement of ATR-14 promotes or ensures competition in the relevant market.

Appeal now to come up for hearing in January, 2009.

KHALID A. MIRZA
(CHAIRMAN)

RAHAT KAUNAIN HASSAN
(MEMBER)

Islamabad the December 18, 2008