

ICAI has suo moto powers to initiate disciplinary actions against CAs without written complaint

The Hon'ble Delhi High Court in ***C.A. Sanjay Jain v. Institute of Chartered Accountants of India & Ors. [W.P.(C) 3372/2020, CM APPL. 11964/2020 dated December 16, 2022]*** has held that the Institute of Chartered Accountants of India ("ICAI") can exercise Suo Moto powers and initiate disciplinary proceedings against its member Chartered Accountants ("CAs") without a written complaint.

Facts:

C.A. Sanjay Jain ("**the Petitioner**") was a member of one of the five firms engaged by the Punjab National Bank ("**PNB**") as the Joint Statutory Auditors for conducting a limited review of its financial statements for the third quarter of the Financial Year ("**F.Y.**") 2017-18 and for the annual audit of the F.Y. 2017-2018. The first meeting between the Joint Statutory Auditors and the management of PNB was held on December 29, 2017 and on January 29, 2019, the Deputy Manager in the PNB Zonal Office at Mumbai lodged a criminal complaint against three firms connected with the fugitive Nirav Modi namely M/s Diamond R US, M/s Solar Exports and M/s Stellar Diamonds.

That certain news articles exposed the scam detected at PNB. Accordingly, disciplinary proceedings were initiated by the ICAI against the Petitioner who are its members and a Show Cause notice ("**SCN**") was issued to the Petitioner asserting that the Joint Statutory Auditors had not complied with the various Standards on Auditing ("**SA**") and the Petitioner was asked to prove why disciplinary proceedings should not be initiated.

The Petitioner assails the validity of the SCN issued as well as the prima facie opinion which has been drawn by the Disciplinary Directorate and forwarded for the consideration of the Disciplinary Committee.

The Petitioner has challenged the suo moto initiation of proceedings by the ICAI with it being principally contended that neither the Chartered Accountants Act, 1949 (“**the CA Act**”) nor the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 (“**the CA Rules**”) empower the Institute to draw proceedings on its own motion.

The Petitioner contended that the proceedings initiated by the ICAI is based on various news articles which appeared in the print and visual media platforms about the Nirav Modi Scam. Further, those newspaper reports, for reasons which shall stand elaborated hereinafter, cannot constitute “information” on the basis of which disciplinary proceedings could have been initiated.

Issue:

Whether the ICAI could be recognised to have a suo moto power to initiate disciplinary proceedings against its CA members?

Held:

The Hon’ble Delhi High Court Delhi in *W.P.(C) 3372/2020, CM APPL. 11964/2020* held as under:

- Noted that, a ‘Complaint’ as well as ‘Information’ is treated distinctively under the CA Rules. The expression ‘Information’ has been defined and understood to mean any instruction or knowledge derived from an external source concerning facts or particulars. It has been further explained to include knowledge acquired from investigation, study or instruction. On the other hand, a ‘Complaint’ means an accusation made in respect of the conduct of a particular person and relates to matters that personally affect the complainant.

- Observed that, the words ‘Information’ and ‘Complaint’ appear to have been consciously used and placed in Section 21 in order to enable the ICAI to proceed against a particular member unfettered by the absence a written complaint being provided to the ICAI.
- Further noted that, even under the scheme of the CA Act and the CA Rules, the word complaint clearly appears to have been used in the sense of a written request for redressal of grievances which is submitted by a person specific and seeks the redressal of grievances that may have been personally suffered. Furthermore, the use of the word ‘any’ before information in Section 21 of the CA Act clearly appears to be a conscious attempt by the authors of the statute to confer an expansive meaning upon the word and not confine or whittle it down to the rigorous and formality that may be attached to a written complaint that may be received by the ICAI.
- Further observed that, the expression “any information” as used in Section 21 of the CA Act thus appears to have been consciously employed so as to enable the ICAI to make an investigation with respect to professional conduct of its members untrammelled by rigorous of form.
- Held that, ICAI is empowered to proceed suo moto and unhindered by the absence of a written complaint or allegation that may be submitted. A written complaint or allegation in writing cannot, in any manner, be understood to be a pre-requisite or a sine qua non for the initiation of action under Section 21.
- Opined that, the action taken by ICAI was not based on mere newspaper reports. In fact, those reports could not have possibly and on their own constituted material at all since they did not carry any allegation against the Petitioners.
- Stated that, the news reports only triggered a deeper examination by the ICAI with respect to the role that had been discharged by the Joint Statutory Auditors and

evaluating whether the standards of performance and enquiry as embodied in the various SAs had been complied with.

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