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

% **Judgment reserved on: 16 November 2022**
Judgment pronounced on: 16 December 2022

\+ W.P.(C) 3372/2020, CM APPL. 11964/2020 (Stay)

C.A. SANJAY JAIN ..... Petitioner

Through: Ms. Sunita Sharma, Ms. Radha Singh and Mr. Deepak Verma, Advs.

versus

INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA & ORS. ..... Respondents

Through: Mr. Ramji Srinivasan, Sr. Adv. with Ms. Pooja M. Saigal, Mr. Simrat Singh Pasay, Ms. Shruti Pandey and Ms. Megha Dugar, Advs. for R-1.

\+ W.P.(C) 3374/2020, CM APPL. 11970/2020(Stay) & CM APPL. 32216/2020(Add. Document)

C.A. AJAY MATHUR ..... Petitioner

Through: Mr. Sudhir Nandrajog, Sr. Adv. with Mr. Dhiraj Abraham Philip, Advs.

versus

INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA & ORS. ..... Respondents

Through: Mr. Ramji Srinivasan, Sr. Adv. with Ms. Pooja M. Saigal, Mr. Simrat Singh Pasay, Ms. Shruti Pandey and Ms. Megha Dugar, Advs. for R-1.

\+ W.P.(C) 3375/2020, CM APPL. 11974/2020(Stay)

C.A. P. VENUGOPAL ..... Petitioner

Through: Mr. Sudhir Nandrajog, Sr. Adv. with Mr. Dhiraj Abraham Philip, Advs.

versus

INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA & ORS. ..... Respondents

Through: Mr. Ramji Srinivasan, Sr. Adv. with Ms. Pooja M. Saigal, Mr. Simrat Singh Pasay, Ms. Shruti Pandey and Ms. Megha Dugar, Advs. for R-1.

\+ W.P.(C) 3392/2020, CM APPL. 12044/2020 (Stay)

C.A. DALBIR SINGH GULATI ..... Petitioner

Through: Mr. Uttam Datt, Ms. Sonakshi Singh and Mr. Kumar Bhaskar, Advs.

versus

INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA & ORS. ..... Respondents

Through: Mr. Ramji Srinivasan, Sr. Adv. with Ms. Pooja M. Saigal, Mr. Simrat Singh Pasay, Ms. Shruti Pandey and Ms. Megha Dugar, Advs. for R-1.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA

J U D G M E N T

1. These writ petitions raise the important question of whether the **Institute of Chartered Accountants of India**[1] could be recognised to have a suo moto power to initiate disciplinary proceedings against its members. The question revolves around the meaning to be ascribed to

[1] Institute

the word *"information"* as occurring in Section 21 of the **Chartered Accountants Act, 1949**[2].

2. The writ petitions themselves emanate from disciplinary proceedings initiated by the Institute against the petitioners who are its members and were employed with firms which were appointed as Joint Statutory Auditors of the **Punjab National Bank**[3]. The writ petitioners assail the validity of the show cause notices which were 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 writ petitions also seek quashing of the disciplinary proceedings itself as initiated against the individual petitioners.

A. ESSENTIAL FACTS

3. All the writ petitioners are stated to be members/partners of different chartered accountancy firms which had collectively been engaged by the PNB for conducting a limited review of its financial statements. The challenge essentially arises from the suo moto initiation of proceedings by the Institute with it being principally contended that neither the Act nor the **Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007**[4] empower the Institute to draw proceedings on its own motion.

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[2] Act
[3] PNB
[4] The Rules

4. The second principal ground of attack to the proceedings initiated by the Institute is based on the contention that the initiation of action under the Rules was clearly based on various news articles which appeared in the print and visual media platforms. Those reports, it would be pertinent to note, related to what is now infamously known as the **Nirav Modi Scam** which unfolded at the Brady Branch of the PNB. The petitioners would contend that those newspaper reports, for reasons which shall stand elaborated hereinafter, cannot constitute *"information"* on the basis of which disciplinary proceedings could have been initiated.

5. Since the issues raised are common and identical in all these writ petitions, the Court for the purposes of brevity, deems it apposite to notice the following salient facts as they emerge from the pleadings of W.P.(C)3374/2020. The petitioner in the aforesaid writ petition is reported to be a member of M/s G.S. Mathur & Co. which was appointed along with four other accountancy firms as the Joint Statutory Auditors of PNB for carrying out a limited review for the third quarter of the Financial Year 2017-2018 and for the annual audit of the Financial Year 2017-2018. The five auditing firms were appointed as such by PNB on 18 December 2017.

6. The writ petitioners disclose that the first meeting between the Joint Statutory Auditors and the management of PNB was held on 29 December 2017. On 29 January 2018, the Deputy Manager in the PNB Zonal Office at Mumbai is stated to have 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. The First Information Report alleged that the aforesaid firms had defrauded PNB to the tune of Rs 280.70 crores. An FIR is thereafter stated to have been registered against Nirav Modi and his group of firms on 31 January 2018. The incident of fraud detected at the concerned branch of PNB and information connected therewith is also stated to have been provided to the National Stock Exchange of India on 05 February 2018.

7. On the same date, the management of PNB is stated to have held a meeting with all its auditors including the representatives of the Joint Statutory Auditors to discuss the suspected fraud which had occurred. In the course of this discussion, the Joint Statutory Auditors are stated to have been apprised of PNB having provided requisite information to the concerned regulators as well as the **Central Bureau of Investigation**[5].

8. The minutes of the discussion also records that the liability which would arise would have to be decided based on further examination of the legality and genuineness of the various transactions which constituted the fraud. These minutes further record that since the fraud was detected in the current quarter of March 2018 and the financial statements which formed subject matter of the limited review related to December 2017, no provision was required to be made. In view of the aforesaid, PNB as well as the other members are stated to have opined that no provision was required to be made in the limited review results. These minutes further record that the amount of Rs.280.70 crores was not material as per the policy

[5] CBI

of the bank. On the conclusion of this discussion, the Joint Statutory Auditors are stated to have submitted their **Limited Review Report**[6] on 06 February 2018.

9. On 13 February 2018, PNB is stated to have lodged three separate criminal complaints for fraud amounting to Rs.6498.20 crores, Rs. 9.10 crores and Rs. 4886.72 crores against various firms and companies connected with Nirav Modi. Upon these complaints being filed, various newspapers carried articles exposing the scam detected at PNB and the liability suffered by PNB being quantified at Rs.11,400 crores.

10. Upon the publication of these news reports, the respondent No.2 issued a show cause notice dated 21 February 2018 to the petitioner asserting that the news reports would indicate that the Joint Statutory Auditors had not complied with the various **Standards on Auditing**[7] and in particular SA-299. It accordingly called upon the petitioner to show cause why disciplinary proceedings be not initiated. The petitioner replied to the aforesaid show cause notice on 27 February 2018. While responding to the notice issued by the second respondent, he firstly asserted that since the initiation of disciplinary proceedings has serious repercussions, it must necessarily be based on a prima facie review of documents and material available and could not be founded on mere newspaper reports which have no evidentiary value. It was further asserted that the fraud itself emanated from various **Letters of Understanding** [LOU's] which were allegedly not been

[6] LRR

[7] SA

recorded on the CBS system of PNB. It was highlighted that none of those LOUs' related to the period pertaining to the last quarter of 2017 being the period of limited review. The petitioner went on to assert that the auditors had only carried out a limited quarterly review as distinct from an audit during the period for which the fraud may have been reported.

11. Upon receipt of the said reply, a further communication of 13 March 2018 was issued by the Institute. The relevant parts of that communication are extracted hereinbelow: -

> "On perusal of the afore stated news reports and or further examination of the matter, it has been noticed that prima facie you have failed to comply with the various applicable provisions of Companies Act 2013 as well as standards of Auditing and Accounting inter alia the following:
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> (a) Section 143(12) read with Section 30(2) of The Banking Regulations Act, 1949 and further read with Guidance Note on Reporting on Fraud under Section 143(12) of the Companies Act, 2013 requires an auditor to immediately report to the Central Government on fraud if in the course of performance of his duties as an auditor, the auditor has reason to believe that an offence involving fraud is being or has been committed against the company by its officers or employees. The provision of aforesaid section is re-produced herewith:
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> *143(12) Notwithstanding anything contained in this section if an auditor of a company, in the course of the performance of his duties as auditor, has reason to believe that on offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government within such time and in such manner as may be prescribed.*
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> (b) SA 240- THE AUDITOR'S RESPONSIBILITIES RELATING TO FRAUD IN AN AUDIT OF FINANCIAL STATEMENTS casts a responsibility on an auditor that while conducting an audit in accordance with SAs he is responsible for obtaining reasonable assurance that the financial statements taken as a whole are free from material misstatement, whether caused by fraud or error. SA 240 inter alia states as under:

the risk of the auditor not detecting a material misstatement resulting from management fraud is greater than for employee fraud, because management is frequently in a position to directly or indirectly manipulate accounting records, present fraudulent financial information or override control procedures designed to prevent similar frauds by other employees.

When obtaining reasonable assurance, the auditor is responsible for maintaining professional skepticism throughout the audit considering the potential for management override of controls and recognizing the fact that audit procedure that are effective for detecting error may not be effective in detecting fraud. The requirements in this SA are designed to assist the auditor in identifying and assessing the risks of material misstatement due to fraud and in designing procedures to detect such misstatement.

(c) Further to above, as per SA 265 COMMUNICATING DEFICIENCIES IN INTERNAL CONTROL TO THOSE CHARGED WITH GOVERNANCE AND MANAGEMENT, the auditor is required to obtain an understanding of internal control relevant to the audit when identifying and assessing the risks of material misstatement. In making those risk assessments, the auditor considers internal control in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of internal control. The auditor may identify deficiencies in internal control not only during the risk assessment process but also at any other stage of the audit. This SA specifies which identified deficiencies the auditor is required to communicate to those charged with governance and management.

From the perusal of the Limited Review Report of the Bank for quarter ended 31 December, 2017, it has been noticed that you were one of the signatory to the said report on behalf of your firm who was Joint Statutory Auditors of aforesaid Bank but in your aforesaid report for the said period, you have nowhere disclosed /pointed out such financial irregularities by the PNB or its employees as stated in various media reports. It is also quite surprising that your aforesaid Limited Review Report for the quarter ended on 31.12.2017 was issued on 6th February, 2018 while PNB had lodged its complaint to CBI on 29.01.2018 meaning thereby that at the time of signing the above report, the irregularity was already detected and reported by the bank to the investigating agency. Thus there appears to be a serious professional lapse on your part while undertaking above review done for the relevant period.

> In this regard, a show cause notice dated 21 February, 2018 was issued to you giving an opportunity to clarify your position in the matter. You vide your letters dated 27thFebruary, 2018 and 1st March, 2018 has submitted your response, but the same is found unsatisfactory.
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> In view of the above, the matter has been treated as 'Information' within the meaning of Rule 7 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. A copy of the aforesaid Rules is also enclosed herewith for your ready reference.
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> The aforesaid allegations, if proved, would fall within the purview of professional misconduct falling within the meaning of Clauses (5), (6), (7) and (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949.
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> Further, in accordance with the provisions of clause (a) of sub-rule (1) of Rule 8 read with Rule 11 of the aforesaid Rules, we are requesting you to submit your Written Statement duly signed, if any, in triplicate, **within 21 days** of the receipt of this letter."

12. The petitioner submitted a detailed response to the aforesaid communication by way of a letter dated 03 April 2018. By a subsequent letter of 21 May 2018, the respondents rejected the objection of the petitioner that the Disciplinary Directorate could not take suo moto cognizance or proceed further in terms of the information which stood comprised in the letter of 13 March 2018. The petitioner was consequently directed to file his written statement within a period of seven days. That written statement came to be filed by the petitioner on 15 June 2018.

13. On a due consideration of the material placed before it, the Director (Discipline) came to form the prima facie opinion that circumstances warranted the petitioner being tried for acts of professional misconduct. It was further observed that the record and

the material gathered would prima facie evidence the guilt of the petitioner and appears to indicate that he was liable to be tried for professional misconduct. The prima facie opinion makes the following significant observations: -

> "8.4 In relation to review of interim financial information, it is observed that matter pertains to whether the Respondent being the (joint) issuer of Limited Review Report had complied with its disclosure and reporting obligations. It is noted that the Respondent was the (joint) statutory auditor of the PNB, therefore, he had an understanding of the entity and its environment and thus provisions of SRE 2410. *"Review of Interim Financial Information performed by the Independent auditor of the Entity*" are applicable in the extant case. It is noted that Paragraph 6 of SRE 2410 states the General Principles of Review when it states as follows:
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> *"6. The auditor should plan and perform the review with an attitude of professional skepticism, recognizing that circumstances may exist that cause the interim financial information to require a material adjustment for it to be prepared, in all material respects, in accordance with the applicable financial reporting framework."* From the above, it is seen that when an auditor undertakes to review of interim financial information, he is required to ensure that interim financial information is prepared in all material respects in accordance with the applicable financial reporting framework.
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> 8.4.1 Further it prescribes the reviewer to make inquiries, analytical and other review procedures to enable him to conclude whether there is anything that causes him to believe that the interim financial information is not prepared, in all material respects, in accordance with the applicable financial reporting framework. The matters for such inquiry has been laid out in Paragraph 21 of SRE 2410 which also include - **Significant changes in contingent liabilities including litigation or claims and Knowledge of any fraud or suspected fraud affecting the entity involving employees.** Paragraph 26 and 29 defines obligation of the reviewer/ auditor to determine if any event requires adjustment or disclosure in the interim financial information when it states as follows:
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> ***"26. The auditor should inquire whether management has identified all events up to the date of the review report that may require adjustment to or disclosure in the interim financial***

information. It is not necessary for the auditor to perform other procedures to identify events occurring after the date of the review report."

"29. When a matter comes to the auditor's attention that leads the auditor to question whether a material adjustment should be made for the interim financial information to be prepared, in all material respects, in accordance with the applicable financial reporting framework, the auditor should make additional inquiries or perform other procedures to enable the auditor to express a conclusion in the review report."

8.4.2 it is noted that while conducting enquiry with the management the auditor/ reviewer should also inquire about significant changes in contingent liabilities/ claims and knowledge of fraud or suspected fraud committed by the employees that affects the entity. If any such event occurs then an auditor is under an obligation to determine if such event requires adjustment or disclosure in the interim financial information. It is noted that in extant case as per the Respondent's submissions, it was on the date when Limited Review Report was being signed that management had represented to him about a fraud relating to issuance of amounting Rs. 280.70 crore that had occurred through the connivance of one of its employees at Brady House Branch (B30A-B30B). It is further submitted that the amount of fraud reported by the management was not considered material in view of Bank's policy. Hence, the matter was not mentioned in the report. It was viewed that matter raised does not relate to detection of fraud at Brady House Branch but that despite having knowledge of such an event whether non-disclosure of the same in interim financial information can be treated as compliance of all applicable financial reporting requirements as required under SRE 2410.

8.4.3 It is noted that as per the requirement of SRE 2410, if an auditor/ reviewer come across any event upto the date of review report then he is required to make additional inquiries as well as perform procedures to conclude that interim financial information is complete in all material aspects as per applicable financial reporting framework. So now the question arises as to whether as per applicable financial reporting framework such an event requires any adjustment or disclosure in view of the materiality involved.

8.4.4 It is further noted that the Respondent has produced on record the written confirmation of the management that as on that date, a fraud to tune of Rs. 280 crores had been detected by the

management, but the same was under investigation by the Bank and CBI. The Management has also confirmed the detailed discussions held between management and the auditors (including the Respondent) on 5th February 2018 before the submission of the Limited Review Report in which the Bank has confirmed as under **(B30-830B)-.**

a That the quantum of fraud as per information available with the management on that date was Rs 280.70 crores and a further detailed investigation was in progress by the bank and CBI officials simultaneously.

b. That as per Bank's Management, as on that date documentary evidence was not available to prove that these import transactions were bonafide trade transactions.

c. That the liability arising out of these LOU'S on PNB would be decided based on the legality and genuineness of underlying transactions.

d. That the fraud was detected during the current quarter i.e. March 2018 whereas financial statements under limited review relates to December 2017 and as per extant RBI guidelines provision would be required to be made in the quarter ending March 2018. As such, no provision was required to be made in December 2017 limited review results.

e. That the above amount of Rs. 280.70 crores was not material as per the policy of the Bank.

On the basis of said representation, the management was of the opinion that a disclosure regarding the above said fraudulent transaction and related provision, if any was not required in the Limited Review Report for the period ending 31.12.2017.

8.4.5 It is noted that apart from making submissions with respect to difference in responsibilities of an auditor in respect of statutory audit vis-a-vis that of review of interim financial information, the Respondent has also contended that the fraud discovered to a limited extent which was not material and did not involve any transactions that had taken place during the quarter for which the limited review Report was being submitted Further, the total advance to PNB as of 31 March 2017 stood at Rs. 4,19,49,315/- Crores and Rs. 280.70 crores constitutes 0.00067 % of the entire amount (B6). It is further submitted that the requirements of SRE

2410 has been complied with by the Respondent in the matter of making report on quarterly review.

8.4.6 With respect to compliance of SRE 2410, the Respondent has submitted that each of the procedures prescribed thereunder, to the extent applicable to the Respondent as per the division of work in accordance with SA 299, were performed in a proper manner by the Respondent. With regard to management representation received, it is submitted that each of the matters required to be reviewed, enquired, evaluated and verified had been appropriately addressed.

8.4.7 From the submissions made by the Respondent summarized in para 8.4.4 to 8.4.6 above, it is noted that as on the date of management representation, although FIR of fraud to the extent of Rs. 280 70 crore was filed. it was also submitted that the detailed investigation was in progress. that too by bank as well as CBI Hence, the fraud discovered was not limited to Rs 280.70 crore and whereby the question arises as to how the auditor assessed the judgement of the management that the interim financial information would not be materially misstated as a result of fraud. in respect of materiality, the Respondent as well as Management has argued about the doubt on transactions involved being bonafide. liability being assessed based on legality and that the fraudulent transactions involved not to have taken place during December quarter.

8.4.8 It is noted that SRE 2410 lays down following principles for evaluation of misstatement and materiality:

“30. The auditor should evaluate, individually and in the aggregate, whether uncorrected misstatements that have come to the auditor's attention are material to the interim financial information."

"31. misstatements which come to the auditor's attention, including inadequate disclosures, are evaluated individually and in the aggregate to determine whether a material adjustment is required to be made to the interim financial information for it to be prepared, in all material respects, in accordance with the applicable financial reporting framework (emphasis supplied)."

"33. The auditor may designate an amount below which misstatements need not be aggregated, because the auditor expects that the aggregation of such amounts clearly would not have a material effect on the interim financial information. In so

doing, the auditor considers the fact that the determination of materiality involves quantitative as well as qualitative considerations, and that misstatements of a relatively small amount could nevertheless have a material effect on the interim financial information (emphasis supplied),"

8.4.9 It is therefore, viewed that in order to assess the facts being presented by the Management, the auditors/reviewers were required to assess the then prevailing circumstances in view of their understanding of obligations involved due to the fraud detected. It is noted that when such a fraud is individually evaluated, its qualitative impact was considerable Such fraud had occurred due to failure of internal control on non-linkage of SWIFT with CBS system of entity. Further, it is observed that the Respondent appears to have neither considered the obligations that the entity had undertaken when its employees had fraudulently sent SWIFT messages to the overseas branches of Indian banks nor he has brought on record the opinion of any third party on the basis of which they had assessed the view of the management that such liability may not devolve on the entity as prescribed in Para 37 of SRE 2410:

"37... When discussing the matter with the entity's management, the auditor considers the validity of the other information and management's responses to the auditor's inquiries, whether valid differences of judgment or opinion exist and whether to request management to consult with a qualified third party to resolve the apparent misstatement of fact..."

8.4.10 As regards RBI Directions, it is noted that it has issued Directions on "Provisioning pertaining to Fraud Account" stating that provision was required to be made in the quarter in which it is detected but there is no such Direction which exempt the banks to disclose it in notes to accounts

8.4.11 Further with respect to financial reporting framework applicable on Limited Review Report, it is noted that Clause 33 relating to "Financial Results" of Securities and Exchange Board of India (Listing Obligations And Disclosure Requirements) Regulations 2015' prescribes to follow AS 25 Interim Financial Reporting, wherein it has been stated as follows:

"The quarterly and year to date results shall be prepared in accordance with the recognition and measurement principles laid down in Accounting Standard 25 or Indian Accounting Standard 31 (AS 25/ Ind AS 34- Interim Financial Reporting), as

applicable, specified in Section 133 of the Companies Act. 2013 read with relevant rules framed thereunder or as specified by the* Institute *of Chartered Accountants of India, whichever is applicable."

8.4.12 It is also noted that format of condensed financial statement has been prescribed by SEBI but explanatory notes are to be disclosed as required in paragraph 16 of AS 25, even in the case of banks (Refer Illustrative Format of Condensed Financial Statements for a bank given in AS 25) which states as under:

"16. An enterprise should include the following information, as a minimum, in the notes to its interim financial statements, if material and if not disclosed elsewhere in the interim financial report;

(h) material events subsequent to the end of the interim period that have not been reflected in the financial statements for the interim period;
….."

As regards materiality, it is noted that Paragraph 21 of AS 25 also define 'materiality' when it states as follows:

"In deciding how to recognise,measure, classify, or disclose an item for interim financial reporting purposes, materiality should be assessed in relation to the interim period financial data.In making assessments of materiality, it should be recognised that interim measurements may rely on estimates to a greater extent than measurements of annual financial data (emphasis supplied)."

8.4.13 It is noted that SRE 2410 read with AS 25 prescribes to disclose material events subsequent to balance sheet date The fraud occurred had devolved liabilities on the entity which cannot be estimated with substantial degree of Hence there exist contingent liabilities which was material by nature to the extent that external investigating agencies were called in to investigate into the matter. As regards quantitative materiality, it is noted that such materiality is to be assessed in terms interim financial data though the Respondent has argued it in terms of advances as on previous annual data.

8.4.13.1 It is also noted that such LOU liabilities were off balance sheet item which was not separately disclosed in the quarterly results. However, the then reported fraud of Rs.280.70 crore was

more than PAT of that period Le Rs.230.11 crore (C1) It is accordingly observed that as per applicable financial reporting framework such event was required to be disclosed. Thus, inadequate disclosures amount to mis-statement of interim financial information. It is viewed that the liabilities accruing due to such fraud were neither evaluated by the Respondent himself nor by third party whereby there is no conclusive evidence to show that the Respondent had exercised reasonable diligence to determine that interim financial information is not misleading in the then prevailing circumstances.

8.5 It is further noted from the allocation chart which defines the division of work amongst joint auditors **(B64-865)** that the responsibility of limited review reports had been assigned to M/s Suri & Company. However, it is noted that matter of PNB fraud was brought to the notice of all joint auditors in the meeting held with management on 5th February 2018. Accordingly all of them shared the responsibility to evaluate the information received. The matter of such importance cannot be delegated by presuming that the concerned joint auditor would have reasonably evaluated the matter. It is noted that the Respondent has given submissions as to why he does not find it à material matter which requires separate disclosure. It is also viewed that each of them carry individual responsibilities and none of them are bound by the views of the majority joint auditors. They are always free to report their disagreement, if any. In the absence of disclosure of the matter either in explanatory notes or limited review report, it is viewed that the Respondent is *prima facie* guilty with respect to this allegation falling within the meaning of Clauses (5), (6) & (7) of Part 1 of Second Schedule to the Chartered Accountants Act. 1949.

8.6 It is also noted that the Respondent in his Written Statement **(B21- B22)** has submitted that the interim financial information was prepared by the management in accordance with the applicable financial reporting framework in keeping with the principles of materiality and that the report does not confirm the applicability of the various standards. It is further submitted that the said report was issued only to the Board of Directors of PNB and that too after the said Board had approved the interim financial statements in respect of which the report was issued. In this regard, it is observed that para 4 of the Limited Review Report (A3) for the said quarter states that "nothing has come to our attention that causes us to believe that the accompanying statement of unaudited interim financial results together with the notes thereon, prepared in accordance with applicable accounting standards and other recognised accounting practice and policies, has not disclosed

> information required to be disclosed in terms of Regulation 33 of the SEB! (Listing Obligations and Disclosure Requirements) Regulations 2015 including the manner in which it is to be disclosed or that it contains any material misstatement or that it had been prepared in accordance with the relevant prudential norms issued by RBI in respect of income recognition, asset classification provisioning and other related matters." Accordingly, it is viewed that the Respondent had reported on the compliance of Accounting Standards in terms of regulation 33 of SEBI (LODR) Regulations 2015 which in view of the discussion held above was not correct Hence the report does not provide the correct information. Moreover, considering the criticality of this report in view of PNB fraud, it is opined that the same has substantial implication since the Limited Review Report was meant to be filed with the Stock Exchanges for the use of various stakeholders. Thus the averments made by the Respondent that it was management which was responsible for the said report is not acceptable."

14. The petitioner was provided a copy of the prima facie opinion and on receipt of which he submitted a detailed response both on the issue of jurisdiction as well as on merits on 15 November 2018. The disciplinary proceedings thereafter commenced before the Disciplinary Committee before whom the petitioners appeared and participated. The instant writ petitions came to be filed thereafter and on or about 01 June 2020. It would appear that although the petitioners had continued to participate in the ongoing disciplinary proceedings, it was the judgment delivered by a learned Judge of the Gujarat High Court in **Manubhai and Shah LLP Chartered Accountants vs. Secretary, Institute of Chartered Accountants of India**[8] on 13 March 2020 which appears to have emboldened them to file the present writ petitions.

15. In **Manubhai**, the Gujarat High Court was dealing with the question whether the report pertaining to **Multi National Auditing**

[8]2020 SCC OnLineGuj 3439

Firm[9] which had been taken cognizance of by the Supreme Court would constitute information for the purposes of initiation of disciplinary proceedings against a firm or a member thereof. The learned Judge in **Manubhai** observed as follows: -

> **"25.** It is relevant to note that prima facie opinion is silent with regard to applicability of Rule 7 of the Rules-2007 which provides that the information has to be in form of any written information containing allegation or allegations against the member or a firm, received in person or by post or courier. However, the report of operation of MNAF in India and the judgment referred to in Paragraph No. 3 of the prima facie opinion, there is no reference to petitioner and therefore, question arises whether it would constitute the "Information" as per Rule 7 of the Rules-2007 or not. However, it appears from the material on the record that what is to be treated as "Information" within the meaning of Rule 7 of the Rules-2007 is missing because from the contents of the Paragraph No. 3 of the prima facie opinion, which is extracted herein above, it does not reveal any written allegation or allegations against the petitioner so as to treat the same as "Information" within the meaning of Rule 7 of the Rules-2007. The report of operation of MNAF in India and the judgment referred to in Paragraph No. 3 of the prima-facie opinion, it cannot consider as "information" withing the meaning of Rule 7 of the Rule-2007. Therefore, entire basis of formation of prima facie opinion is contrary to Rule 7 of the Rules-2007. The report of operation of MNAF in India and the judgment referred to in Paragraph No. 3 of the prima-facie opinion, it cannot consider as "information" within the meaning of Rule 7 of the Rules-2007. Therefore, entire basis of formation of prima-facie opinion is contrary to Rule 7 of the Rules-2007.
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> **26.** Letter dated 05.04.2018 in form of show cause notice which refers to the earlier communication dated 03.08.2016 and reply of the petitioner-firm dated 24.09.2016 is also based on report on operation of MNAF in India so as to consider the said report and recommendation contained in Paragraph No. 7 of the said report as Information. Relevant extract of same is as under:—
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> > *"In this regard, Hon'ble Apex Court has observed violation of Section 25 and Section 29 of the Chartered Accountant Act, 1949 and has also raised certain questions on the way and manner the fee is being shared by the Indian CA firms who are associates of multinational international entities. Therefore, in light of the above judgment as quoted above and*

[9] MNAF

facts/submissions on record, it is felt that your firm has violated the provisions of Item (2) of Part I of First Schedule and Item (1) of Part II of Second Schedule to the Chartered Accountants Act, 1949 for alleged sharing of fee and for violation of Section 25 and 29 of the Chartered Accountants Act, 1949 respectively.

Therefore, in the light of material available on record and observations of Hon'ble Supreme Court in the aforesaid case, whereby inter alia, it has been directed to ICAI to further examine/investigate the matter, it has been decided to treat the matter as "Information" within the meaning of Rule 7 of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct of Cases) Rule-2007 for the alleged violations of Section 25 & 29 of the Chartered Accountants Act, 1949 and which would fall within the meaning of professional misconduct in terms of Item (1) of Part-II of Second Scheduled of the Chartered Accountants Act, 1949.

In totality, the alleged acts of professional misconduct by your firm, if proved, would fall within the purview of professional misconduct falling within the meaning of Item (2), (5) of Part I of First Schedule and Item (1) of Part-II of Second Schedule to the Chartered Accountants Act-1949.

Accordingly, in accordance with the provisions of clause (b) of sub-rule (1) of Rule 8 read with Rule 11 of the aforesaid Rules, you are requested to disclose the name or names of the member or members who is/are answerable to the allegation/s and send a copy of the aforesaid Information letter along with its enclosures to the said member/members. Thereafter, the member/members answerable is/are required to forward his/her written statement, if any, in triplicate, within 21 days of the receipt of this letter."

27. On perusal of the above contents of the letter dated 05.04.2018, it emerges that the very basis to treat the material available on record and observations of the Supreme Court as the "Information" within the meaning of Rule 7 of the Rules-2007 for alleged violation of Section 25 and Section 29 of the Act-1949 cannot be considered as "Information" in absence of any written information containing allegation or allegations against the petitioner-firm as provided under Rule 7 of the Rules-2007. Therefore, merely on the basis of inference drawn by the respondent no. 2, and thereby, analyzing various terms of the representation agreement between the petitioner and the HLBI to form prima facie opinion is without any basis in absence of information as contemplated in Rule 7 of the Rules-2007.

28. On perusal of the prima-facie opinion recorded by the Director (Discipline), wherein reference was made to the meaning of agreement and other provisions of the agreement to come to the conclusion that one cannot say that, there was absolute intent of securing business through the international tie-up, is without any basis. It appears that the submissions made by the petitioner-firm that the payments made to the HLBI were only for the membership fees and conference fees is totally ignored while arriving at prima facie opinion is without any basis as is evident from the extract as under:

> *"10.14 Thus, it is opined that considering there has been payments made and there is no categorical denial by the respondent-firm of the references work received from HLBI (the firm is only stating that mere referral does not entail acceptance), there appears a cause for further investigation and accordingly, the respondent-firm is prima facie guilty for professional misconduct falling within the meaning of Item (5) of Part I of First Schedule to the Chartered Accountants Act-1949."*

29. Similarly, reference was made to Clause (h) of the agreement to form an opinion regarding violation of item (2) of Part-I of the First Schedule by observing in Paragraph No. 11.3 as under:—

> *"11.3 Therefore, though the firm is taking a plea that this amount being paid by it to HLBI is no way a fee or profit sharing and it is merely a membership fee, yet it is really incomprehensible that only for the sake of knowledge sharing and or to maintain the quality standard or to keep its membership intact with the international entity, the firm shall be paying such a considerable and differential payment/amounts to the international entity over the period of time which might be from the year 1997 when it became the member of the international entity. It is also noted that there was nothing on record to indicate as to how the amount of membership fees has been/is being determined. It is coming out on the basis of other related firm (Ref : DD/46/INF/18) having tie up with the same entity HLBI, membership fees was payable based upon the revenue of the CA Firm. Since the respondent firm was also member of the same group (HLBI) and the amount of membership varies each year, it can be inferred that the membership fees was perhaps being determined on the revenue of the respondent-firm. It is, therefore, incomprehensible that if the payment made was for membership only then how this can be payable based upon the revenue of the respondent-firm. The respondent-firm has thus failed to bring in any corroborative evidences which may prove/substantiate that the firm has paid the amount on*

account of membership fee only and in no way this was a fee/profit sharing of professional fee based on referrals with HLB international. Thus, at this stage, the respondent-firm is prima facie guilty of professional misconduct falling within the meaning of item (2) of Part I of First Schedule to the Chartered Accountants Act-1949."

30. With regard to violation of item (2) of Part I of the First Schedule, following prima-facie opinion is arrived at:—

"12.1 Thus, it has been observed that the firm is taking a plea that the none of the above provisions are applicable to his firm as they do not have a corporate as a partner in his LLP, they have not shared any fees or have paid for advertisement as stated in their explanation above. In this regard, it needs to be mentioned that HLBI is an English Company Limited by guarantee. The international entity is having a global presence with may firms being its member including non-CA firms. In this regard, the observations made by Hon'ble Supreme Court read as under:—

In the present context, having regard to the statutory framework under the CA Act, current FDI Policy and the RBI circulars, it may prima facie appear that there is violation of statutory provisions and policy framework effective enforcement of which has to be ensured. Statutory regulatory provisions intended to advance the object of law have to be enforced meaningfully. No vested interest can flout the same by manifesting compliance only in form. Compliance has to be in substance. The law enforcing agencies are expected to see the real situation. As found by the Expert Committee in its respect, there is a compliance by MAFs only in form and not in substance, by having got registered partnership firms with the Indian partners, the real beneficiaries of transacting the business of Chartered Accountancy remain the companies of the foreign entities. The partnership firms are merely a face to defy the law. The principle of lifting the corporate veil has to apply when the law is sought to be circumvented.

(Emphasis provided)."

31. Without reference to any facts only on the basis of observations made by the Supreme Court, following prima-facie opinion is arrived at:—

"12.2 Thus, from an overall perusal and consideration of facts of the case, papers/documents on record and in light of the above observations of the Hon'ble Apex Court, at this stage, the possibility of the respondent firm allowing HLBI to stand on

pan-india platform through it cannot be ruled out. Therefore, the matter requires to be investigated further to establish whether the respondent-firm in collaboration with the international entity, HLBI was involved in encouraging surrogate practice in India as highlighted in the judgment of the Hon'ble Supreme Court being referred to above. As of now, the respondent-firm in terms of reasoning at preceding paragraphs read with judgment of Hon'ble Supreme Court, therefore, seems to have facilitated HLBI overcome the barriers imposed through it, is prima facie guilty for professional misconduct falling within the meaning of Item (2) of Part I of First Schedule and Item (1) of Part-II of Second Schedule to the Chartered Accountants Act, 1949."

32. Thus, it appears from the above prima facie opinion that in absence of any "Information", as contemplated under Rule 7 of the Rules-2007, the respondent no. 2 has formed prima facie opinion only to do fishing inquiry and investigation. The intention of prima facie opinion is not for initiating disciplinary inquiry for the purpose of investigating further to establish whether the petitioner-firm in collaboration with the international entity, HLBI was involved in encouraging surrogate practice in India as highlighted in the judgment of the Supreme Court or not. For such purpose, the petitioner-Firm which is in existence for more than 70 years cannot be put to rigors of disciplinary proceedings in absence of any specific allegation and in absence of any written information containing allegation as per Rule 7 of the Rule-2007."

16. Upon arriving at the aforesaid conclusions, the learned Judge proceeded to allow the writ petition and quash the communication issued by the Institute impugned therein. It would be pertinent to note that the aforesaid judgment has been stayed by a Division Bench of the Gujarat High Court in Letter Patents Appeal No.383/2020. While placing the said decision in abeyance, the Division Bench in its interim order has provided as follows: -

"List for final disposal/hearing on 9th September, 2020.As an interim measure, it is provided that the effect and operation of the judgment of the learned Single Judge shall remain stayed. The appellants would be at liberty to proceed with the proceedings pursuant to the notice dated 2-1-2019.However, no final decision

> be taken without leave of the Court. The respondent shall cooperate in the said proceedings."

17. It is thus evident that the instant writ petitions came to be preferred only after judgment had been rendered by the Gujarat High Court in **Manubhai** and prior to stay being granted in respect thereof by the Division Bench of the Gujarat High Court. On 08 June 2020, when these writ petitions were taken up for admission, a learned Judge of the Court while noticing the rival contentions in great detail provided for the following interim arrangement: -

> "24. The main controversy in the present petitions is about the jurisdiction of the Disciplinary Committee to proceed with the Disciplinary Inquiry against the Petitioners, in light of various provisions of the CA Act and the CA Rules. It is, therefore, directed that pending the decision by this Court, the Disciplinary Proceedings may go on, however, in case the Respondents pass a final order, the same would be placed in a sealed cover and will not be given effect to, without the leave of the Court.
>
> 25. It is further made clear that the Disciplinary Proceedings will be subject to the outcome of the present petitions."

18. The Court has heard Mr. Nandrajog, learner Senior Counsel as well as Mr. Uttam Datt, learned counsel on behalf of the petitioners and Mr. Srinivasan, learned Senior Counsel along with Ms. Pooja Sehgal, learned counsel for the respondents.

B. SUBMISSIONS ON BEHALF OFCHARTERED ACCOUNTANTS

19. Leading submissions on behalf of the petitioners, Mr. Nandrajog firstly assailed the assumption of jurisdiction by the Institute purporting to act in exercise of suo moto powers. Drawing the attention of the Court to Section 21 of the Act, Mr. Nandrajog

firstly submitted that on an ex facie reading of the said provision, it would be evident that no power to initiate disciplinary proceeding suo moto stands specifically conferred upon the Institute. Learned Senior Counsel submitted that Section 21 confers a power on the Institute to try and investigate a matter on receipt of any information or complaint. According to learned Senior Counsel, the meaning to be ascribed to the word "information" would have to necessarily be gathered from the manner in which it has been treated and explained under the Rules since the Act fails to independently define the said expression.

20. Taking the Court through the provisions pertaining to the registration of a complaint and the treatment of information contained in Chapter II of the Rules, it was submitted that Rules 3 and 7 contemplate and envisage information being provided or a complaint being submitted in writing. The submission essentially was that since both a complaint under Rule 3 and information under Rule 7 is envisaged to be material that may be submitted to the Institute in writing against a member, this would establish that neither the Act nor the Rules contemplate a suo moto power being exercised by the disciplinary authority.

21. Elaborating on the aforesaid issue, Mr. Nandrajog submitted that in terms of Rule 3, a complaint against a member or a firm has to be filed in Form-I before the Directorate. That complaint has to be duly accompanied with the requisite fee as prescribed. The complaint once received in the Directorate is thereafter to be duly registered in accordance with the procedure prescribed in Rule 5. Insofar as

information is concerned, Mr. Nandrajog laid emphasis on the provisions of Rule 7 which is extracted hereinbelow: -

> "7.Information
>
> (1) Any written information containing allegation or allegations againsta member or a firm, received in person or by post or courier, by the Directorate, which is not in Form I under sub-rule (1) of rule 3, shall be treated as information received under section 21 of the Act and shall be dealt with in accordance with the provisions of these rules.
>
> (2) On receipt of such an information, the sender of the information, including the Central Government, any State Government or any statutory authority, shall be, in the first instance, asked whether he or it would like to file a complaint in Form I apprising him of, the following information −
>
> (a) that relatively longer time is taken for disposal of any information than the complaint;
>
> (b) that the person giving information will not have the right to be represented during the investigation or hearing of the case;
>
> (c) that the Institute will be under no obligation to inform the sender the information of the progress made in respect of the information received under sub-rule (1) including the final orders: Provided that where the sender of the information is the Central Government, any State Government or any statutory authority, a copy of final order shall be sent to such sender.
>
> (3) An anonymous information received by the Directorate will not been entertained by the Directorate."

22. Learned Senior Counsel would contend that it is apparent from a reading of Rule 7 that it is only written information containing allegations against a member or a firm which can possibly be treated as "information" received under Section 21 of the Act. In view of the aforesaid, it was his submission that news reports and any other material that may appear on different media platforms cannot possibly be equated with information. In any case, and it was so contended by Mr. Nandrajog, disciplinary proceedings against a member or a firm

would essentially be dependent upon whether a complaint or information in writing has been received by the Institute against a particular member. According to Mr. Nandrajog, a conjoint reading of Section 21 and Rule 7 would lead one to the irresistible conclusion that the Institute cannot arrogate to itself a power to initiate proceedings on its own motion since both a complaint as well as information is understood under the statute to be written material that may be received against a member laying specific allegations with respect to an act of professional misconduct.

23. Mr. Nandrajog laid stress on the fact that in order to commence an inquiry with respect to the alleged misconduct of a member or a firm, the complaint or the information must necessarily be specific and disclose an identified act of misconduct that may be leveled against a member or a firm. Learned Senior Counsel submitted that neither the Act nor the Rules can be interpreted as empowering the respondents to initiate proceedings based on an unsubstantiated statement that may appear in a newspaper. Mr. Nandrajog further underlined the fact that even the newspaper reports on the basis of which cognizance was taken by the Institute neither referred to nor named the petitioner specifically.

24. Learned Senior Counsel then drew the attention of the Court to the provisions contained in the **Chartered Accountants, the Cost and Works Accountants and the Company Secretaries**

(Amendment) Act, 2022[10] in terms of which Section 21 as existing is proposed to be amended to read as follows: -

> "**21.** For section 21 of the principal Act, the following section shall be substituted, namely: -
>
> 21. (1) The Council shall, by notification, establish a Disciplinary Directorate consisting of a Director (Discipline), at least two Joint Directors (Discipline) not below the rank of Deputy Secretary of the Institute and such other employees appointed under section 16, for making investigations either *suo motu*, or on receipt of an information or a complaint, in such form, along with such fees as may be specified.
>
> (2) Within thirty days of receipt of an information or a complaint, the Director(Discipline) shall decide in such manner as may be specified, whether a complaint orinformation is actionable or is liable to be closed as non-actionable:
>
> Provided that the Director (Discipline) may call for additional information from the complainant or the informant, as the case may be, by giving fifteen days time before deciding whether the case is actionable or non-actionable:
>
> Provided further that the recommendations of the Director (Discipline) on non-actionable complaints or information shall be submitted to the Board of Discipline within sixty days of its receipt and the Board of Discipline may, after looking into its merits refer such complaint or information to the Director (Discipline) for conducting further investigation.
>
> (3) While making investigation into a case which is found to be actionable, the Director (Discipline) shall give an opportunity to the member or the firm, as the case may be, to submit a written statement within twenty-one days which may further be extended by another twenty-one days, for reasons to be recorded in writing.
>
> (4) Upon receipt of the written statement under sub-section (3), if any, the Director (Discipline) shall send a copy thereof to the complainant or the informant, as the case may be, and the complainant or the informant shall, within twenty-one days of the receipt of such written statement, submit his rejoinder.
>
> (5) Upon receipt of written statement under sub-section (3) and rejoinder under sub-section (4), the Director (Discipline) shall submit a preliminary examination report within thirty days, if a

[10] 2022 Amending Act

prima facie case is made out against a member or a firm, as the case may be.

(6) In case a *prima facie* case is made out for any professional or other misconduct mentioned in the First Schedule, the Director (Discipline) shall submit the preliminary examination report to the Board of Discipline and where *prima facie* case is made out for any professional or other misconduct mentioned in the Second Schedule or in both the First Schedule and the Second Schedule, he shall submit a preliminary examination report to the Disciplinary Committee:

Provided that a complaint or information filed by any authorised officer of the Central Government or a State Government or any statutory authority duly supported by an investigation report or relevant extract of the investigation report along with supporting evidence, shall be treated as preliminary examination report:

Provided further that where no *prima facie* case is made out against the member or the firm, the Director (Discipline) shall submit such information or complaint with relevant documents to the Board of Discipline and the Board of Discipline may, if it agrees with the findings of the Director (Discipline), close the matter or in case of disagreement, itself proceed further or refer the matter to the Disciplinary Committee or advise the Director (Discipline) to further investigate the matter.

(7) For the purpose of investigation under this Act, the Disciplinary Directorate shall follow such procedure as may be specified.

(8) A complaint filed with the Disciplinary Directorate shall not be withdrawn under any circumstances.

(9) The status of actionable information and complaints pending before the Disciplinary Directorate, Boards of Discipline and Disciplinary Committees and the orders passed by the Boards of Discipline under section 21A and by the Disciplinary Committees under section 21B shall be made available in the public domain by the Disciplinary Directorate in such manner as may be prescribed."

25. It may be pertinent to note at this juncture that the Court shall be in the course of this judgment referring to the aforesaid as the "proposed amendments" since undisputedly the provisions of the 2022

Amending Act are yet to be enforced. Before proceeding further, it would also be pertinent to advert to the Statement of Objects and Reasons of the aforenoted 2022 Amending Act which reads as follows:-

"STATEMENT OF OBJECTS AND REASONS

The Chartered Accountants Act, 1949, the Cost and Works Accountants Act, 1959 and the Company Secretaries Act, 1980 (hereinafter referred to as the Acts), were enacted to make provision for the regulation of the profession of the chartered accountants, cost accountants and company secretaries, respectively. On account of changes in the economic and corporate environment in the country, it has become necessary to amend the Acts. Further, recent corporate events have put the profession of chartered accountancy under a considerable scrutiny.

2.The amendments to the Acts are based on the recommendations of a High Level Committee constituted by the Ministry of Corporate Affairs, *inter alia*, to examine the existing provisions in the Acts and the rules and regulations made thereunder, for dealing with the cases of misconduct in the three Professional Institutes, namely, the Institute of Chartered Accountants of India, the Institute of Cost Accountants of India and the Institute of Company Secretaries of India and with a view to strengthening the existing mechanism and ensure speedy disposal of the disciplinary cases.

3. The Chartered Accountants, the Cost and Works Accountants and the Company Secretaries (Amendment) Bill, 2021 proposes to further amend The Chartered Accountants Act, 1949, the Cost and Works Accountants Act, 1959 and the Company Secretaries Act, 1980, *inter alia*, to-

(i) strengthen the disciplinary mechanism by augmenting the capacity of the Disciplinary Directorate to deal with the complaints and information and providing time bound disposal of the cases by specifying the time limits for speedy disposal of the cases against members of the Institutes;

(ii) address conflict of interest between the administrative and disciplinary arms of the Institute:

(iii) provide for a separate chapter on registration of firms with the respective Institutes and include

firms under the purview of the disciplinary mechanism;

(iv) enhance accountability and transparency by providing for audit of accounts of the Institutes by a firm of chartered accountants to be appointed annually by the Council from the panel of auditors maintained by the Comptroller and Auditor-General of India:

(v) provide for autonomy to the Council of the respective Institutes to fix various fees.

4. The Bill seeks to achieve the above objectives.

NIRMALA SITHARAMAN.

NEW DELHI:
The 11th December, 2021."

26. Reverting then to the contentions which were addressed by Mr. Nandrajog and which revolved upon the amendments proposed, learned Senior Counsel submitted that it is the said proposed amendment which for the first time purports to confer a suo moto power on the Disciplinary Directorate. According to learned Senior Counsel, the aforesaid amendments are clear evidence of such a power having neither been conferred nor recognized to exist in the Disciplinary Directorate. According to learned Senior Counsel, the proposed amendments are of immense significance and would clearly be indicative of the absence of a suo moto power existing in Section 21 as it stands presently.

27. The petitioners also seek to draw sustenance in this respect from the fact that the Disciplinary Directorate had never initiated suo moto proceedings in purported exercise of powers conferred under Section 21 in the past. This according to Mr. Nandrajog would be evident of

the respondents themselves having never understood or interpreted Section 21 as being the repository of a power to proceed suo moto against a firm or a member.

28. Mr. Nandrajog then invited the attention of the Court to a detailed interim order passed by a learned Judge in **N. Sampath Ganesh versus The Institute of Chartered Accountants of India and Anr**[11] where again proceedings which had been initiated based on various news reports came to be assailed and questioned. While dealing with the aforesaid challenge, the learned Judge in **N. Sampath Ganesh** observed thus: -

> "31.I am *prima facie* in agreement with the argument, of learned Senior Counsel for the petitioners, that strict and rigourous adherence to the 2007 Rules, is the *sine qua non* for a valid enquiry, thereunder. This is apparent from the use of the word "shall" in Section 21 (4), as well as Section 21-B(2), of the CA Act.
>
> 33.Section 21(1) requires the ICAI to, by Notification, establish a Disciplinary Directorate, headed by the Director, for making investigations in respect of any information or complaint received by the Directorate. On receipt of any information or complaint, accompanied by the prescribed fee, sub-section (2) mandates that the Director shall arrive at a *prima facie* opinion on the occurrence of the alleged misconduct. Proceedings can, therefore, clearly be initiated consequent to receipt either of "information" or a "complaint". However, significantly, the CA Act does not condescend to define either of the said expressions, namely "information" or "complaint". This is a clear lacuna, which the legislature would do well to plug.
>
> 36."Complaints", under Section 21 of the Act, have, as per Rule 3(1) of the 2007 Rules, necessarily to be filed in Form I annexed to the 2007 Rules, in triplicate, before the Director, in person or by post or by courier, and are required to be acknowledged, under Rule 3(6), by the Directorate, by ordinary post along with an acknowledgement number. Rule 4 requires the complaint to be accompanied by a fee. Rule 5(1) contemplates registration, by the

[11] W.P(C) 1183/2019

Director, or by officers/ officers authorised by him, of the date on which the complaint is presented to the Director, by way of endorsement on the complaint itself, accompanied by the signature of the Director or officer/officers. Sub- rule (2) of Rule 5 requires the complaint to be scrutinised by the Director, or by the authorised officer/officers and, if it is found in order, sub-rule (3) contemplates registration of the complaint and allocation, to it, of a unique reference number, to be quoted in all future correspondence. Where the complaint is, on the other hand, found to be defective, sub-rule (5) of Rule 5 requires the complaint to be returned for ratification and resubmission, within such time as may be determined by the Director. Where the defect/defects is/are not so rectified, the Director is mandatorily required, by sub-rule (6) of Rule 5, to form an opinion that there is no *prima facie* case, and to present the complaint before the BOD, for its closure, whereupon there is the option, under sub- rule (7), either to agree with the opinion of the Director and pass an order for closure of the case, or to disagree with the opinion of the Director and advice to further investigate the matter. Rule 6 deals with withdrawal of a complaint.

37.It is nobody's case that any "complaint", as would attract Rules 3 to 5 of the 2007 Rules, was ever received, at any point of time, by the Directorate, against any of the petitioners.

41.Rule 7 of the 2007 Rules, which has been invoked in the present case, deals with "information". At the same time, it is significant that Rule 7 does not *define* "information". No definition of "information" is, for that matter, to be found anywhere in the 2007 Rules – as was the position obtaining in the CA Act as well. What Rule 7 ordains, *prima facie*, is that any information, which satisfies the indicia laid down in sub- rule (1) thereof, is liable to be treated as "information" received under Section 21 of the CA Act. These indicia are that the information is in writing, it contains allegations against a member/ members of the firm, and is received in person, or by post or courier.

43.Learned Senior Counsel appearing for the petitioners are correct in their submission that the consequence of having to suffer the ignominy of enquiry, under the provisions of the CA Act and the 2007 Rules, are by itself deleterious, irrespective of the outcome, and that the result, were the final decision, of the Disciplinary Committee, to be adverse to the members of the firm being enquired into, could be disastrous. This is also apparent from the fact that a very detailed and exhaustive procedure has been prescribed, in the 2007 Rules, to be followed before such a decision is arrived at. In case, as the petitioners contend, the proceedings before the Committee are actually bad for want of

> jurisdiction, or have been commenced in a manner foreign to the scheme contained in the 2007 Rules, it would be a travesty of justice to require them to suffer the said proceedings."

29. Upon recordal of the aforesaid prima facie conclusions, the learned Judge framed the following operative directions: -

> "44.As has already been noted herein above, the petitioners had taken a preliminary objection, before the Disciplinary Committee, to the effect that the entire proceedings are vitiated *ab initio*, not having been initiated in accordance with Rule 7 of the 2007 Rules. In my opinion, it would be appropriate, before this Court arrives at a *prima facie* view regarding the said objection, to have, before it, the opinion of the Disciplinary Committee thereon. I am, therefore, of the opinion that, in the interests of justice, the Disciplinary Committee ought to be directed to address the preliminary submission, by the petitioners, that the enquiry proceedings being conducted by, and before, it, are unsustainable *ab initio*, not having been commenced on the basis of any "information", as would satisfy the test laid down in Rule 7 of the 2007 Rules, and to return a finding, thereon, before proceeding with the enquiry. I have made certain observations, hereinabove, in this regard, without returning any categorical finding, even tentative, on this issue which should, in my view, firstly engage the attention of the Committee."

30. It may be pertinent to note that while proceedings before the Institute were pending consequent to the remit as framed and the writ petitions retained on the board of the Court, the same ultimately came to be dismissed as withdrawn consequent to all issues relating to the M/s Infrastructure Leasing & Financial Services Scam being referred for the consideration of the National Financial Reporting Authority for investigation.

31. Mr. Nandrajog would submit that while the detailed order passed by the learned Judge on the aforesaid group of writ petitions may, strictly speaking, have been interlocutory, the observations and the prima facie conclusions as recorded therein are liable to be

accorded due weight and are clearly of persuasive value. This since, according to learned senior counsel, the learned Judge had prima facie accepted the challenge raised and the detailed order sheds light on the interpretation which is liable to be accorded on the scope of Section 21 of the Act and the Rules framed thereunder.

32. Turning then to the narrow scope of a limited review, Mr. Nandrajog drew the attention of the Court to the **Standard on Review Engagements-2410**[12] to submit that the limited review is restricted to interim financial information only. It was submitted that a limited review is not akin to a formal audit that may be conducted. Mr. Nandrajog drew the attention of the Court to the principal objectives of a limited review as set forth in SRE-2410 and which are extracted hereinbelow: -

> **"Objective of an Engagement to Review Interim Financial Information**
>
> 7. The objective of an engagement to review interim financial information is to enable the auditor to express a conclusion whether, on the basis of the review, anything has come to the auditor's attention that causes the auditor to believe that the interim financial information is not prepared, in all material respects, in accordance with an applicable financial reporting framework. The auditor makes inquiries, and performs analytical and other review procedures in order to reduce to a moderate level the risk of expressing an inappropriate conclusion when the interim financial information is materially misstated.
>
> 8. The objective of a review of interim financial information differs significantly from that of an audit conducted in accordance with International Standards on Auditing (ISAs). A review of interim financial information does not provide a basis for expressing an opinion whether the financial information gives a true and fair

[12] SRE-2410

> view, or is presented fairly, in all material respects, in accordance with an applicable financial reporting framework.
>
> 9. A review, in contrast to an audit, is not designed to obtain reasonable assurance that the interim financial information is free from material misstatement. A review consists of making inquiries, primarily of persons responsible for financial and accounting matters, and applying analytical and other review procedures. A review may bring significant matters affecting the interim financial information to the auditor's attention, but it does not provide all of the evidence that would be required in an audit."

33. Mr. Nandrajog submitted that the disciplinary proceedings initiated in any case lose sight of the fact that the limited review was restricted to the period 01 October 2017 to 31 December 2017 only. The submission was that since the incidents which formed the foundation of the Nirav Modi Scam had not occurred in the quarter which was reviewed or formed part of the limited review, the petitioners could not have been proceeded against for any act of alleged professional misconduct.

34. It was then urged that the show cause notices which came to be issued were wholly vague and lacked material particulars relating to the steps taken by the petitioners and which could have been viewed as constituting professional misconduct. It was highlighted that the original show cause notice only referred to certain newspaper reports and an alleged violation of SA-299. The subsequent communication of 13 March 2018 and which has been described by the respondents as "information" thereafter proceeded to level various additional allegations including violations of Section 143(12) of the **Companies**

Act, 2013[13] read with Section 30(2) of the Banking Regulation Act, 1949, SA-240 and SA-265.

35. The prima facie opinion, Mr. Nandrajog highlighted, went even further and set up additional grounds with it being observed that the action of the petitioners appeared to be in violation of the obligations placed under SRE-2410. According to Mr. Nandrajog, the aforesaid action and steps taken by the respondents would appear to indicate that the entire proceedings were initiated without any application of mind and at a stage when the respondents themselves were uncertain and unsure of the specific violation with which the petitioners could have been charged. According to Mr. Nandrajog, the respondent appears to have sought to build and improve the case against the petitioners periodically and being totally unsure of whether they could have been charged of professional misconduct.

36. The petitioners also seek to draw sustenance from the discussion notes which were drawn by PNB and which had clearly recorded that the disclosure with respect to the fraudulent transactions was not required to be made in the limited review and also because as per the guidelines of the PNB, the same would not be "material" for the purposes of disclosure.

37. Insofar as the issue of a suo moto power vesting in the Institute is concerned, the written submissions tendered on behalf of the petitioners also alludes to the **Position Paper on Regulation of**

[13] 2013 Act

Accountancy Profession and Oversight Mechanismin India[14] published by the Institute in 2018 and which had made the following suggestions for the consideration of the Union Government:-

> "An appropriate amendment to be made in Section 21 of the Chartered Accountants Act, to enable the Institute to initiate either suo motu or on a reference made to it by the Central Government or by any other Government agency in any matter of professional or other misconduct committed by any member or firm of Chartered Accountants except as provided in Section 132 of the Companies Act. 2013 and Rules framed thereunder"

38. It would be pertinent to note that the aforesaid recommendation essentially sought the Institute being conferred a power identical to that which stood vested in the NFRA in terms of Section 132(4) of the 2013 Act.

39. The petitioners in their written submissions have further asserted that a suo moto power must be specifically spelt out and conferred by the statute itself before the authority may be considered as vested with the power to do so. Reliance in this regard was placed on the following decisions:-

(a) **Shrikrishnavs. State of Maharashtra**[15]**,**

(b) **Indira Gandhi vs. J.C. Shah**[16] **and**

(c) **Mohinder Singh and others vs. State and others**[17]

40. Mr. Datt, learned counsel appearing for the petitioners in W.P.(C) 3392/2020,while adopting the submissions addressed by Mr. Nandrajog, laid emphasis on the 2022 Amending Act and submitted

[14] Position Paper
[15] 2007 SCC Online Bom 988
[16] (1980) ILR 1 Delhi 552
[17] 2013 Lab IC 13608

that the same is clear evidence of a specific conferral of power upon the Institute to proceed suo moto. According to Mr. Datt, the proposed amendment is telling evidence of the Institute having no existing power to proceed suo moto against a member. Mr. Datt further referred to the provisions of Section 132 of the 2013 Act which while dealing with the powers that could be exercised by the NFRA had specifically conferred and clothed it with the authority to proceed on its own motion. According to Mr. Datt, Section 21 when contrasted with the aforesaid and the provisions contained in different statutes which expressly confer a suo moto power, would constitute telling evidence of the Institute having no authority or jurisdiction to proceed on its own motion. Mr. Datt also sought to draw sustenance from the judgment rendered by the Gujarat High Court in **Manubhai** as well as the prima facie observations as they appeared in the interlocutory order passed by a learned Judge of this Court in **N. Sampath Ganesh**.

C. THE STAND OF ICAI

41. Refuting the aforesaid submissions, Mr. Srinivasan, learned Senior Counsel appearing for the Institute, firstly contended that the writ petitions clearly represented a premature challenge since no final decision had yet been taken by the Disciplinary Committee. It was further pointed out that the Act itself makes adequate provisions for any aggrieved person preferring an appeal against any final adverse order that may come to be made. Mr. Srinivasan contended that the sole ground which appears to have prompted the petitioners to approach this Court was the decision of the Gujarat High Court in **Manubhai** since prior thereto they were admittedly participating and

cooperating in the disciplinary proceedings which were ongoing. Mr. Srinivasan submits that challenges by way of a writ petition at the stage of a show cause notice or the formation of a preliminary view must necessarily be based on an assumption of jurisdiction by an authority which is either ex facie illegal or where proceedings are initiated by an authority which patently lacks jurisdiction or the power to initiate action. According to Mr. Srinivasan, the lack of jurisdiction which would justify a challenge being entertained under Article 226 of the Constitution must necessarily be patent, stark and self-evident. According to learned Senior Counsel, the instant challenge clearly fails to meet the aforesaid parameters viewed in light of the information on the basis of which the Institute had initiated proceedings against the petitioners.

42. Mr. Srinivasan submitted that the tests that stand judicially formulated for a writ court to entertain a challenge to a show cause notice or proceedings relating to disciplinary action are fairly well settled. It was his submission that unless it is established that the proceedings drawn suffer from an apparent or an inherent lack of jurisdiction or authority, courts would be slow, hesitant and circumspect before interdicting proceedings at a nascent stage. This more so when the statute may provide for an adequate and efficacious remedy to appeal against any adverse order that may ultimately be passed and lays in place a fair and transparent process for examination of complaints. Mr. Srinivasan contended that the instant writ petitions fail to meet the aforesaid tests and clearly are an ill-advised foray

against proceedings which had been validly initiated and drawn by the Institute.

43. Turning then to the issue of a suo moto enquiry and the powers exercised by the Institute in that respect, Mr. Srinivasan laid stress upon the language employed in Section 21 and which empowers the Disciplinary Directorate *"to make investigation"* in respect of *"any information"*. Learned Senior Counsel submitted that a reading of the Act as well as the Rules would clearly establish that the expressions "information" and "complaint" are treated and understood as being dissimilar. Learned Senior Counsel further laid emphasis on the conscious deployment of a disjunctive between the words "information" and "complaint" in Section 21. This, according to Mr. Srinivasan, is an intelligible indicator of the legislative intent to treat "information" and "complaint" on a separate pedestal. Learned senior counsel also highlighted the use of the word "any" which is used as a prefix to the word "information" in Section 21 and submitted that the same embodies the intent of the Legislature of information being considered as a word of wide import and not being understood in a restrictive manner.

44. Mr. Srinivasan argued that it must be borne in mind that the Act in question has been promulgated for the purposes of regulating the profession of Chartered Accountants. It was submitted that the noble profession to which Chartered Accountants belong, is liable to be regulated bearing in mind the high professional standards which are expected of members and firms and since their actions impact the decision that are made by a wide variety of people who may come to

place reliance and trust on reports and returns that are prepared by them. In view of the above, it was his submission that the Institute is obliged to play a proactive role in ensuring that the ethics and values of the profession are upheld. Mr. Srinivasan would contend that bearing in mind the aforesaid objectives underlying the regulatory power which stands conferred on the Institute, it would be wholly incorrect to restrict its oversight functions only to cases where a third party were to make a complaint or submit information.

45. According to learned Senior Counsel the word "information" in light of the above is liable to be viewed as being unmistakably distinguishable from the word "complaint". It was submitted that while a complaint may relate to a particular grievance which an individual may have against a member or a firm, information on the other hand would include any material or fact that may be placed for the consideration of the Institute or may otherwise come to its knowledge. Mr. Srinivasan submitted that an informant may not necessarily have an individual grievance or seek redressal against a member or a firm. However, any material or fact that such an informant may choose to place before the Directorate would also clearly fall within the ambit of Section 21 and if found sufficient to initiate an enquiry, be taken into consideration.

46. Learned Senior Counsel submitted that the suo moto power that is available with the Institute is one which was recognised even by the Division Bench of the Court in **Institute of Chartered Accountants**

of India VS. P. Rama Krishna[18] as would be evident from the following observations as appearing in that decision: -

> **"31.** No doubt Section 21, both unamended and post amendment, refers to information and complaint but it would be incorrect to hold that the legislature wanted to make a distinction between complaint or information cases in Section 21D of the CA Act, 1949. Such distinction may be relevant and material as in the case of a complaint there is a complainant, a third party, who wishes to prosecute and has an interest, whereas in the case of information the action may be suo motu or information may be provided by the third party who does not want to, for various reasons, file a formal complaint; but the said distinction is not relevant for Section 21D of the CA Act, 1949. In view of this difference between a complaint and information case, some specific procedures or requirements have been prescribed for complaint cases. In case of information, there is greater flexibility and latitude. Other than this, there cannot be any distinction between information which is made basis of disciplinary proceedings or enquiry, and a complaint case. The object and purpose, both in an information case and in a complaint case, is to find out and enquire into the allegations of professional or other misconduct. This is the purpose and the primary aim of the proceedings. Under Regulation 13 of 1988 Regulations, the procedure prescribed is the same and no distinction in substance is made. If information cases and complaint cases are treated differently for the purpose of Section 21D of the CA Act, 1949, an anomalous situation would arise, which can lead to difficulties and even challenge to the amended provisions. In a complaint case the old procedure and the punishment prescribed in First Schedule and the Second Schedule will apply, but in an information case which is still pending before the Council, the new procedure and the new (even harsher/stringent) punishments and the amended Schedules 1 and 2 will apply. It is difficult to fathom any reason and ground why any such distinction should be made or this is the legislative intention, as the word "complaint" is mentioned in Section 21D of the CA Act, 1949.
>
> The word "complaint" as used in Section 21D would include all pending matters including information cases on which the Council has applied its mind after they have been brought to the notice of the Council. The word "complaint" as used in Section 21D does not refer to the complaints made by third parties but also information whether made available by a third person or comes to the knowledge and has been considered by the Institute/Council. The

[18]2011 SCC OnLine Del 4253

> word "complaint" in Section 21D has to be given a broader and a wider meaning to give full effect to the legislative intent behind Section 21D. In common parlance also the word "complaint" means and refers to a pending matter before the prescribed authority authorized to make enquiry into the allegations. The source of information may not be relevant."

47. Learned Senior Counsel in support of his submissions also placed reliance on a decision rendered by a learned Judge of the Court in **Walmart India Pvt. Ltd. vs. Central Vigilance Commission**[19]. In **Walmart**, the Court was called upon to consider the scope of Section 8(1)(d) of the Central Vigilance Commission Act 2003 and the word "complaint" as occurring therein. The question which arose for consideration was whether a newspaper report could be considered as falling within Section 8(1)(d). While dealing with the aforesaid question, the learned Judge in **Walmart** observed as follows: -

> **"39.** Plainly, an authority, which is constituted under an Act cannot by an administrative order expand its jurisdiction as conferred under the Statute. The CVC Act has expressly charged the CVC to make inquiries in a complaint in terms of Section 8(1)(d) of the CVC Act and the CVC cannot expand its jurisdiction to also conduct inquiries on information gathered from various sources.
>
> **40.** It is seen that wherever the Parliament desired to confer suo moto powers on authorities, it has expressly provided for the same. Under the Chartered Accountants Act, 1949, Section 21(1) provides that the Council can initiate inquiry by establishing a Disciplinary Directorate for making investigations *"in respect of any information or complaint received by it"*. Similarly, Section 19(1) of the Competition Act, 2002 (as amended in 2007) specifically provides that the Competition Commission of India can inquire into an alleged anti-competitive agreement or any abuse of dominance position by an enterprise *"either on its own motion or on receipt of any information in such manner"*. Likewise, Section 9 of the Goa Lokayukta Act, 2011 also bestows power on the Lokayukta or UP-Lokayukta to investigate into any allegation against any public functionary *"either suo motu or on a complaint*

[19]2018 SCC OnLine Del 11005

> *made to him"*. The Advocates Act, 1961 also has provisions for conducting *suo motu* inquiry. Section 35 and 36 of the Advocates Act, 1961 specifically provides that the Bar Council of India, *"on receipt of a complaint or otherwise"*, can refer the case of an advocate to its Disciplinary Committee for an alleged misconduct. The Delhi Lokpal and Lokayukta Act, 1995 is also a legislation on point. Section 7 of the Delhi Lokpal and Lokayukta Act, 1995 provides for the Lokayukta or Up-Lokayukta to hold inquiry by utilizing the services of any person/agency *suo motu* into an allegation made against a public functionary.
>
> **43.** In view of the above, the newspaper report cannot be construed as a complaint for the purposes of conducting the inquiry under Section 8(1)(d) of the CVC Act, for two reasons: first of all, it is not a complaint but an information; and second, it also does not allege that any employee as specified under Section 8(2) of the CVC Act has committed an offence under the Prevention of Corruption Act, 1988."

48. Mr. Srinivasan in light of the aforesaid observations submitted that the Act as well as the Rules when holistically read would clearly belie the submissions addressed in this regard on behalf of the petitioners. It was further contended that if the provisions of the Act and the Rules were to be interpreted in the manner suggested by the petitioner and be restricted to the Disciplinary Directorate being empowered to act only upon the receipt of a written complaint or information, it would not only denude it of the regulatory and supervisory role which are assigned to it, but also whittle down the powers that otherwise stands vested on that authority. Mr. Srinivasan submitted that the Institute is statutorily vested with powers to permanently remove the name of errant members and that the maintenance of discipline is a salutary function invested in the Institute and a necessary concomitant to the objective of maintaining public confidence in members of the Institute. According to Mr. Srinivasan, reading down the scope and width of the authority

conferred on the Institute in any other fashion would clearly be deleterious to the primary objective of maintaining discipline and holding members to the standards of professional conduct as embodied under the Act and the Rules.

49. Turning then to the provisions of Rule 7, Mr. Srinivasan submitted that it would, on first principles, be wholly incorrect to read Rule 7 as constricting or cabining the power conferred on the Disciplinary Directorate under Section 21. Learned Senior Counsel submitted that the acceptance of the contentions addressed at the behest of the petitioners would be clearly contrary to the well settled principles of interpretation with delegated legislation being always considered, understood and viewed as being subservient to the provisions of the principal enactment. According to Mr. Srinivasan, Rule 7 therefore cannot be read as trammelling the provision of Section 21. It was then submitted that the use of the phrase "*shall be treated*" as employed in Rule 7 is merely an indication of the author engrafting a legal fiction with respect to information that may be received even though it may not be in accordance with the format of a formal complaint as is envisaged under Rule 3. According to Mr. Srinivasan, Rule 7 thus saves material of facts that may be placed before the Directorate and which may contain evidence of allegations of misconduct against a member or a firm notwithstanding the same not being compliant with the form which is mandated in terms of Rule 3.

50. Mr. Srinivasan submitted all that Rule 7 thus appears to do is to salvage such information that may be received and validate it for the

purposes of consideration under Section 21. It was then submitted that while the subject matter of a complaint has been elaborately prescribed in Rules 3 to 5, information has been deliberately left nebulous in order to subserve the primary objectives of the Institute being empowered to examine all allegations of misconduct and not being constricted by form. It was submitted that Rule 7 simply makes provisions for a situation where even though a complaint may be received in writing, if it be non-compliant with Form-I and the provisions of Rule 3, it would still enable the Institute to treat it as information under Section 21 of the Act. In any case, according to learned Senior Counsel, the expression "information" as occurring in Section 21 cannot be read as confined to information cases that may be conferred recognition or validity by virtue of Rule 7 alone.

51. Turning then to the facts of the case itself Mr. Srinivasan submitted that the assertion of the petitioners that the Institute proceeded against them solely on the basis of some news reports is factually incorrect. Taking the Court through the show cause notice as well as the information on the basis of which the proceedings against the petitioner were formally initiated, it was submitted that the news reports only acted as a trigger for the Directorate to examine the allegations relating to the scam and to evaluate the role discharged by the auditors of PNB. It was pointed out that the letter of 13 March 2018 would clearly establish that after the news reports had come to be published and a response obtained from the petitioners, the Directorate scrutinized the LRR dealing with the quarterly results of PNB and undertook due examination of whether the petitioners had

adhered to the SAs' which applied. It was submitted that the LRR was duly obtained, examined and evaluated on the anvil of the SAs' which apply and it was on the culmination of the aforesaid exercise that a decision to initiate disciplinary proceedings was ultimately taken by the Institute.

52. Learned Senior Counsel laid stress on the fact that despite the auditors having been duly apprised by the PNB of the nature of the scam which had occurred prior to the submission of the LRR, no details in respect thereof were either recorded or noted by the auditors in the report which was ultimately submitted. It was contended that as details of the scam came to light, it transpired that PNB faced the spectre of a gigantic loss of almost Rs. 11,000/- crores. It was submitted that once the petitioners had been apprised of the fact that a FIR had been registered and information provided to the CBI for further investigation, it was incumbent upon them to have made the requisite disclosure in the LRR.

D. GOVERNING PRINCIPLES OF A LIMITED REVIEW

53. Having noticed the rival contentions, the Court proceeds further. It would at the outset be pertinent to take note of the recitals as appearing in the LRR which was drawn and submitted. The LRR was admittedly tendered after the Joint Statutory Auditors had been apprised by PNB of the incident of fraud which had occurred at its Brady House Branch and had exposed the said financial institution to a loss of Rs. 280.70 crores. It would also be pertinent to note that the quantification of loss at that point in time had not been finally determined and was in fact subject to further investigation since

complaints had already been forwarded to CBI and other regulatory institutions including the **Securities and Exchange Board of India**[20] and the Stock Exchanges. By the time the details of the scam broke out in the media, the total loss suffered by PNB was estimated to reach Rs. 11,000 crores. It would be appropriate to take note of the following recitals as appearing in the LRR which was submitted by the Joint Statutory Auditors: -

> "2. We conducted our review in accordance with the Standard on Review Engagement (SRE) 2410, "Review of Interim Financial Information Performed by the Independent Auditor of the Entity", issued by the Institute of Chartered Accountants of India. This standard requires that we plan and perform the review to obtain moderate assurance as to whether the financial statements are free of material misstatement. A review is limited primarily to making inquiries of the Bank personnel and applying analytical and other review procedures to financial data and thus provides less assurance than an audit. A review is substantially less in scope than an audit conducted in accordance with the Standards on Auditing and consequently does not enable us to obtain assurance that we would become aware of all significant matters that might be identified in an audit. We have not performed an audit and accordingly, we do not express an audit opinion.
>
> 4. Based on our review as aforesaid, subject to limitation in scope as mentioned in Para3 above, nothing has come to our attention that causes us to believe that the accompanying statement of unaudited interim financial results together with the notes thereon, prepared in accordance with applicable accounting standards and other recognized accounting practices and policies, has not disclosed the information required to be disclosed in terms of Regulation 33 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 including the manner in which it is to be disclosed, or that it contains any material misstatement or that it has not been prepared in accordance with the relevant prudential norms issued by the Reserve Bank of India in respect of income recognition, asset classification, provisioning and other related matters."

[20] SEBI

54. The LRR and the Review of Interim Financial Information owes its genesis to the **Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015**[21] and the SREs. The subject of Financial Results and Limited Review is governed by Regulation 33. Clause (d) of Regulation 33 specifically deals with the submission of Limited Review or Audit Reports on a quarterly and annual basis. It stipulates that the aforesaid review would only be conducted by an auditor who has subjected itself to a Peer Review Process of the Institute and holds a valid certificate issued by the Peer Review Board of the Institute. The subject of disclosure of events or information is controlled by Regulation 30. Regulation 30(2) prescribes that event specified in Para A of Part A of Schedule III are deemed to be material events in respect of which listed entities are liable to make compulsory disclosures. Disclosures which are governed by guidelines for materiality which may be framed by an entity are covered under Para B of Part A of Schedule III. Part A in Schedule III sets out events which are liable to be disclosed without any application of the guidelines for materiality as specified in Regulation 30 as noticed above and more particularly Clause 4 thereof. The subject of fraud/defaults by Promoter or Key Managerial Personnel is included in Clause 6 under Part A of Schedule III. Disclosures in respect of events which are covered in Part B of Schedule III and thus governed by the policy of materiality which may be framed relates to fraud/defaults by directors or employees of a listed entity other than Key Managerial Personnel.

[21]Regulation 2015

55. The review of interim financial information is governed by SRE 2410 which enunciates the general principles of review as follows: -

> **"General Principles of a Review of Interim Financial Information**
>
> **4. The auditor should comply with the ethical requirements relevant to the audit of the annual financial statements of the entity.** These ethical requirements govern the auditor's professional responsibilities in the following areas: independence, integrity, objectivity, professional competence and due care, confidentiality, professional behavior, and technical standards.
>
> **6. The auditor should plan and perform the review with an attitude of professional skepticism, recognizing that circumstances may exist that cause the interim financial information to require a material adjustment for it to be prepared, in all material respects, in accordance with the applicable financial reporting framework.** An attitude of professional skepticism means that the auditor makes a critical assessment, with a questioning mind, of the validity of evidence obtained and is alert to evidence that contradicts or brings into question the reliability of documents or representations by management of the entity.
>
> **Objective of an Engagement to Review Interim Financial Information**
>
> 7. The objective of an engagement to review interim financial information is to enable the auditor to express a conclusion whether, on the basis of the review, anything has come to the auditor's attention that causes the auditor to believe that the interim financial information is not prepared, in all material respects, in accordance with an applicable financial reporting framework. The auditor makes inquiries, and performs analytical and other review procedures in order to reduce to a moderate level the risk of expressing an inappropriate conclusion when the interim financial information is materially misstated.
>
> 8. The objective of a review of interim financial information differs significantly from that of an audit conducted in accordance with Standards on Auditing (SAs). A review of interim financial information does not provide a basis for expressing an opinion whether the financial information gives a true and fair view, or is presented fairly, in all material respects, in accordance with an applicable financial reporting framework.
>
> 9. A review, in contrast to an audit, is not designed to obtain

> reasonable assurance that the interim financial information is free from material misstatement. A review consists of making inquiries, primarily of persons responsible for financial and accounting matters, and applying analytical and other review procedures. A review may bring significant matters affecting the interim financial information to the auditor's attention, but it does not provide all of the evidence that would be required in an audit."

56. While spelling out the procedure for a review of interim financial information, SRE 2410 in Para 19 provides as under:-

> "**Inquiries, Analytical and Other Review Procedures**
>
> **19. The auditor should make inquiries, primarily of persons responsible for financial and accounting matters, and perform analytical and other review procedures to enable the auditor to conclude whether, on the basis of the procedures performed, anything has come to the auditor's attention that causes the auditor to believe that the interim financial information is not prepared, in all material respects, in accordance with the applicable financial reporting framework**."

57. Paragraphs 26 and 29 deal with the subject of material events and adjustments that may be merited and warrant a disclosure. They are extracted hereunder: -

> "**26. The auditor should inquire whether management has identified all events up to the date of the review report that may require adjustment to or disclosure in the interim financial information.** It is not necessary for the auditor to perform other procedures to identify events occurring after the date of the review report.
>
> **29. When a matter comes to the auditor's attention that leads the auditor to question whether a material adjustment should be made for the interim financial information to be prepared, in all material respects, in accordance with the applicable financial reporting framework, the auditor should make additional inquiries or perform other procedures to enable the auditor to express a conclusion in the review report.** For example, if the auditor's review procedures lead the auditor to question whether a significant sales transaction is recorded in accordance with the applicable financial reporting framework, the

> auditor performs additional procedures sufficient to resolve the auditor's questions, such as discussing the terms of the transaction with senior marketing and accounting personnel, or reading the sales contract."

58. The Policy framed by PNB in respect of Materiality and referable to the 2015 Regulation and more particularly Part B of Schedule III in Para 5A makes the following provisions: -

> **"5A. Para C of Part A of Schedule III of the LODR deals with any other information/event viz. major development that is likely to affect business, e.g.** emergence of new technologies, expiry of patents, any change of accounting policy that may have a significant impact on the accounts, etc brief details thereof and any other information which is exclusively known to the Bank which may be necessary to enable the holders of securities of the Bank to appraise its position and to avoid the establishment of a false market in such securities.
>
> **Criteria**: Any development which may have an impact on the Financials of the Bank to the extent of more than 5% of the operating profit of the previous year shall be treated as material."

59. It is perhaps with reference to Para 5A that PNB appears to have advised the Joint Statutory Auditors of there being no requirement of mentioning or recording the loss suffered by it as a result of the incidents which occurred at its Brady House branch.

60. The proceedings against the petitioner commenced with the issuance of the show cause notice of 21 February 2018 when the Institute for the first time appears to have taken cognizance of news reports which had by then alluded to the fraud which had occurred at the PNB Branch and which by that date was pegged at 1.77 billion U.S. Dollars which roughly translates to Rs. 11,400 crores. It was in terms of this communication that the Institute called upon the petitioners to explain why disciplinary proceedings be not initiated

especially since they were the joint authors of the LRR which was conducted for the quarter ending December 2017. The show cause notice specifically made reference to SA-299. Upon receiving the response from the petitioners, the Prima Facie Opinion came to be drawn by the Disciplinary Directorate on 22 June 2018. The principal grounds which weighed with the Directorate Discipline to hold the petitioners guilty of professional misconduct are noted in Paras 8.4 to 8.6 of the aforesaid order and have already been extracted hereinabove.

E. ICAI'S ESSENTIAL PURPOSE – ACCOUNTANCY FUNCTION AND PUBLIC INTEREST

61. The first fundamental question which arises for consideration is whether the Institute can be recognised to have the authority to initiate disciplinary proceedings suo moto. In order to frame an answer to the aforesaid question which stands posited**,** it would be apposite to briefly notice the position of the Institute under the statutory regimen and the various obligations and duties which stand placed upon it. The origins of the Institute have been elaborately chronicled in the Position Paper. In the Second Council Meeting of the Institute held on 11 August 1951, Sh. C.D. Deshmukh the then Hon'ble Finance Minister in the Union Government in his speech described the essence of the profession of Chartered Accountants as follows:-

> "The practice of accountancy is in the nature of a public service. Apart from the statutory responsibilities to report on the accounts to the shareholders, it is the duty of every member of the Institute to ensure that he fulfils the high ideals set before him amidst all the pressures and temptations of the day. I am glad to know from your address that you are fully alive to your responsibilities. It is only the watchful eyes of the members of your profession which can

> make any measures that Government may take to curb malpractices in trade and business, really effective.
>
> You have referred to the moral standard of the accountancy profession. I welcome your assurance that the deterioration of standards in this profession is certainly not of that aggravated character which may be found elsewhere as a result of the war conditions. I trust you will not misunderstand me if I utter a word of warning against complacency in this respect. It is essential to be ceaselessly vigilant about this, all the more so because of the greatly enlarged sphere of your activities. The Institute of Chartered Accountants should continue to exercise unceasing vigilance in seeing that its members conform to the traditions and conventions of the profession and that the rules framed by them are observed both in the letter and in the spirit. Yours is the privileged task of making membership of the Institute a hall-mark of distinction in professional circles all over the world. Such a position implies unwearied and unceasing effort on your part.
>
> Government are aware of the importance of your profession and have acknowledge it in practical terms whenever possible. As you know, Government propose to ma it obligatory for a businessman who is liable to pay Super-tax to file with the income returns, statements of accounts audited by a Chartered Accountant. Government also propose to amend the law to enable them to appoint any member of the Income-tax Appellate Tribunal - whether Judicial or Accountant - to be the President of the Tribunal To-day, as you have pointed out, only a Judicial Member can be appointed as a President.
>
> Government have also sought to avail of your wisdom and experience in Committees and Commissions whenever they have found it physically possible to do so along with other public bodies which have justifiable claims on Government recognition."

62. The Act came to be passed on 01 May 1949, upon receiving the assent of the Governor General in Council and as is evident from its Preamble seeks to regulate the profession of Chartered Accountants. The Institute under the aforesaid parliamentary enactment was envisaged not only to act as an examining body of future Chartered Accountants but also as a licensing authority and thus regulating the profession as well as its members and firms. The Institute was thus

charged with regulation of all aspects ranging from education, practical training, examination, licensing, continued professional education, peer review, financial report review amongst others. The Institute carries out its functions through various Standing and Non-Standing Committees, all of whom are obliged to ensure that members and firms are held good to the exacting professional standards which stand formulated as also to preserve and protect the interest of all members of the Institute.

63. The Executive Summary of the Position Paper, in the considered opinion of the Court, rightly observes that the Chartered Accountancy profession has a wider and vital role in the process of nation building itself. This aspect assumes significance in the backdrop of every developed economy, businesses and enterprises as well as other stake holders having the right of access to a mature and reliable financial reporting system. The executive summary takes due notice of the accountancy function subserving larger public interests, of promoting an investment climate of trust as also being the source of reliable information and data which may be accessed by all stakeholders. It also takes note of the extended role which accountants today may be called upon to discharge in the sense of not being restricted to the performance of a limited role in aid of the requirements of corporate entities but also making contributions to the Government itself and various other financial regulators.

64. It would be pertinent to observe that the various reports and documents which come to be published under the seal of a member or a firm of the Institute are trusted and accepted starting from a small

common investor to Governments, corporate bodies and regulators situate not just within the country but even outside. It is to subserve the aforesaid purposes and to maintain a high quality of service that various standards have been prescribed by the Institute which members are mandatorily required to scrupulously adhere to. The Court also bears in mind the significant recommendations which were made by the Naresh Chandra Committee to shore up the disciplinary mechanism and which preceded the 2006 amendments which were introduced in the Act. It would be pertinent a note the Statement of Objects and Reasons which accompanied the Chartered Accountants (Amendment) Bill 2005, which reads as follows:-

> "1. The necessity to bring out amendments in the Chartered Accountants Act, 1949 (The CA Act) arose on account of the changes in the economic and corporate environment in the country over the years. These changes include inter alia, the developments in the capital market, their growth and dismantling of the system of economic controls. The economy also witnessed two major securities scams in 1992 and 2001, which has brought out the significance of the role of accounting professionals, in particular those associated with preparation of accounts of companies and audit of the same.
>
> 2. Moreover, changes in the CA Act were necessitated by the need to bring about systematic changes in the Institutions governed by the Act, including disciplinary procedures to deal with cases of professional misconduct; to ensure quality instructions in the related disciplines and to enable institutional growth and professional development of its members.
>
> 3. The proposals to bring out amendments in the Act have been prepared on the basis of experience gained in administration of the Act, the recommendations of the Joint Parliamentary Committee, which enquire into the stock market scams and of other Committees including, the High Level Committee "on Corporate Audit and Governance" setup under the Chairmanship of Shri Naresh Chandra which inter alia, examined the Auditor-

> Company relationship and the Disciplinary mechanism for the auditors.
>
> 4. A Bill namely, The Chartered Accountants (Amendment) Bill, 2003 was introduced in the Rajya Sabha on 23.12.2003. The Bill was thereafter referred to the Parliamentary Standing Committee on Finance whose report was presented to Parliament in February, 2005. Taking into account the recommendations of the Committee, proposal in the Bill were revised and the bill was introduced as a fresh bill."

65. It was on the basis of the recommendations made by the Naresh Chandra Committee that appropriate provisions were thereafter introduced in the Act including the adoption of provisions for an institutionalised disciplinary mechanism, the creation of the office of Disciplinary Directorate, the establishment of the Disciplinary Directorate and the constitution of a Board of Discipline. The aforesaid amendments also led to the establishment of Quality Review Boards and saw the expansion of Chapter 5 in the Act which deals with the subject of misconduct.

F. "INFORMATION" & "COMPLAINT" – SEMANTIC CONNOTATION UNDER SECTION 21

66. The fundamental challenge which stands raised in the instant writ petition turns upon the provisions of Section 21 in the principal Act and the Rules relating to the submission and treatment of complaints and information. Section 21(1) stipulates and provides for the establishment of a Directorate for making investigation in respect of any information or complaint that may be received by it. For the purposes of investigation sub section (4) stipulates that the Director (Discipline) shall follow such procedure as may be prescribed. In terms of Section 21(2), the Director (Discipline) on receipt of any

information or complaint is to firstly record it's prima facie opinion on the question of whether the alleged misconduct stands established. Once the Director Discipline comes to the prima facie conclusion that the allegation of professional or other misconduct stands evidenced, it is obliged to place the matter before the Board of Discipline or the Disciplinary Committee.

67. It becomes pertinent to note that both sub sections (1) and (2) of Section 21 speak of information or complaint. The word "*information"* as occurring therein is clearly amplified by the prefix "*any"*. This clearly appears to be indicative of the intent to treat the word information as being of the widest amplitude. The Court also takes note of the fact that the words "*information"* and "*complaint"* are separated by the disjunctive "*or*". The submissions which were addressed on behalf of the petitioner essentially rest upon the provisions contained in Chapter 2 of the Rules. Rule 3 specifies that a complaint under Section 21 of the Act is to be filed in Form-1. Rule 4 prescribes the fee that must accompany every complaint that may come to be filed before the Directorate. All complaints that may be received by the Directorate are to be duly registered and dated. Upon due scrutiny and if the complaint is found to be otherwise in compliance with the requirements of the Rules, the Disciplinary Directorate proceeds to consider the same and frame its prima facie opinion. The prima facie opinion is thereafter transmitted to the Board or Discipline in terms of Rule 5(7).

68. Rule 7 thereafter deals with the subject of information. As would be evident from a reading of the aforesaid Rule which stands

extracted hereinabove, any written information that may be received by the Directorate and which is not in Form-I as prescribed by Rule 3(1) is statutorily ordained to be treated as information received under Section 21 of the Act and thus liable to be dealt with accordingly. Rule 7(2) then provides that on receipt of the aforesaid information, the sender thereof is to be called upon in the first instance to indicate whether it would like to file a complaint in accordance with Form-I. The aforesaid process appears to be guided by the fact that the Institute perhaps accords priority to complaint cases along with the informant being deprived of the right to be represented during the investigation or hearing of that category of cases. This clearly flows from Clauses (a), (b) and (c) of Rules 7(2).

69. In fact unlike a complaint case and as is manifest from a reading of Rule 7(2)(c), the Institute is also not obliged to apprise the sender of the progress that may have been made with respect to the information tendered. Rules 7(3) in unambiguous terms provides that anonymous information shall not be entertained by the Directorate. Rule 7 deals with a situation where the sender of the information is either an individual, the Union Government, State Government or any other statutory authority.

70. The procedure of investigation of a complaint is governed by Rules 8 and 9. Rule 11 makes the following salient provisions:-

> "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."

71. Rule 12 reads as under:-

> "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 21A of the Act."

72. The Court thus finds that a "complaint" as well as "information" is treated distinctively under the rules. A complaint in terms of Rule 3 must necessarily comply with Form-I. The Rules further prescribed the complaint to be submitted along with the fee fixed by the Institute under its regulations. The Rules further and more particularly in Rule 5(5) stipulate that a complainant may be placed on notice to remove defects which are noticed on scrutiny. In terms thereof, the Directorate is empowered to return the complaint for rectification and resubmission. Rule 5(6) then prescribes that if a complainant fails to rectify all defects within the time allowed under sub-rule 5, the Director shall form the opinion that there is no prima facie case and present the complaint before the Board for its closure.

73. "Information", on the other hand, is any material that may be received by the Institute against a member or a firm in a written form. Rule 7, in fact, proceeds on the premise that the information which has been received in the shape of written content is not in Form-I. Rule

7(2) further obliges the Directorate to apprise the sender whether it would like to file a complaint in Form-I. This procedure, as was noted hereinabove, is placed in sub-rule (2) of Rule 7 so as to place the sender of the information on notice that information cases take much longer than a complaint coupled with the fact that the sender would have neither the right to be represented during investigation nor would he be entitled to be provided any information with respect to the progress made with respect to information received under Rule 7(1). The only category of "information" which in terms of the Rules need not be taken cognisance of is that which may be received by the Institute anonymously.

74. The trial of the complaint is, thereafter, governed by Rule 8. The parity which stands accorded to complaints and information is only with respect to the contents of Rule 3(6), sub-rules 1, 2 and 3 of Rule 5 and sub-rules 1, 2, 3 and 5 of Rule 8 coupled with Rules 9 and 10. Insofar as Rules 3 and 5 are concerned, they are merely procedural and relate to the acknowledgment and registration of complaints and information while Rules 8, 9 and 10 deal with the procedure of investigation and examination of complaints and information that may be received.

75. As would be evident from the aforesaid discussion, the word "complaint" is not defined under the Act. Going by the plain meaning of the two words as well as how lexicons have chosen to define them, the Court finds that the expression "information" has been accorded a far wider meaning than the word "complaint". This position would

clearly emerge from the meaning and scope of the two words as explained in the two seminal works which are noticed hereinbelow.

76. **P. Ramanatha Aiyar's Advanced Law Lexicon, The Encyclopaedic Law Dictionary, 3rd Edition, Volume 1 2005**[22] defines the term "information" in the following terms: -

> "The word 'information' has a wide natural meaning for the purposes of R. 14. A new report which may include a different interpretation of contemporaneous medical records from that previously put forward would be considered as new 'information'. [Current Law June Digest (2005) Page 232, para 109] [(English) General Medical Council Preliminary Proceedings Committee and Professional Misconduct Committee (Procedure) Rules Order of Council, 1988, R. 14]
>
> Facts, data, or instructions in any medium or form. The meaning that a human assigns to data by means of the known conventions used in their representation. In intelligence usage, unevaluated material of every description that may be used in the production of intelligence. (*CyberLaw*)
>
> Information may come from external sources or even from materials already on the record or may be derived from the discovery of new and important matter or fresh facts. The word 'information' will also include true and correct state of the law derived from relevant judicial decisions either of the income-tax authorities or other Courts of law which decide income-tax matters. Whether the ground on which the original assessment is based is held to be erroneous by a superior Court in some other case, that will also amount to a fresh information which comes into existence subsequent to the original assessment. *Kalyanji Mavji & Co. v. CIT, West Bengal-II*, AIR 1976 SC 203. [Income-tax Act (11 of 1922), S. 34(1)(b), (as amended in 1948)]
>
> The term 'information' means something that the mind has acquired. If actual knowledge was absent, it is immaterial how that actual knowledge was absent. When the actual knowledge comes, it would amount to information for the purposes of Section 34 of the Act [*Rajputana Textiles (Agencies) Pvt. Ltd. v. Das Gupta, ITO/EPT*, (1964) 52 ITR 1 (Bom)] [Indian Income-tax Act (11 of 1922), S. 34]

[22]P. Ramanatha Aiyar's Advanced Law Lexicon

The term 'information' means the act or process of informing, communication, or reception, of knowledge. It may be knowledge acquired directly as by observation or study, or derived inferentially, or from communication from others. *Commissioner of Income Tax* v. *Shree Jagan Nath Maheswary*, AIR 1957 Punj 226, 229. [Income-tax Act (11 of 1922), S. 34]

The expression 'information' mean instruction or knowledged derived from an external source concerning facts or particulars, or as to law relating to a matter bearing on the assessment. *Commissioner of Income tax v. A. Raman and Co.*, AIR 1968 SC 49,51.

The term ‘information' means instruction or knowledge concerning facts or particulars, derived from an external source relating to a matter bearing on the assessment. It influences the determination of an issue by the mere circumstance of its relevance. [Sterling Machine Tools v. CIT, (1980) 122 ITR 926 (All)]

The term 'information' as used in Section 147(b) of the Act means instruction or knowledge. The term ‘information’ as used in Section 147(b) of the Act means information as to the law created by a formal source. Any statement by a person or body not competent to create or define the law cannot be regarded as law. [*CIT v. Union Carbide Corporation*, (1994) 206 TTR 402 (Cal). See also *Munna Lal & Sons v. CIT*. (1991) 187 ITR 378 (All) [Income-tax Act (43 of 1961), S. 147(b)] The expression 'information' means the communication or acquisition of knowledge or intelligence. It includes knowledge acquired from investigation, study or instruction. It must be something more than a rumour or gossip or hunch. [*Bawa Abhai Singh v. Deputy CIT*, (2002) 253 ITR 83 (Del)] [Income-tax Act (43 of 1961), S. 147(b)]

The term 'information' as used in Section 147(b) of the Act must mean ‘instruction or knowledge derived from an external source concerning facts or particulars or as to law relating to a matter bearing on the assessment. Mere change of opinion on the part of the Income-tax Officer cannot constitution information for the purpose of said section. [*Kasturbhai Lalbhai v. R.K. Malhotra, ITO*, (1971) 80 ITR (Guj)] [Income-tax Act (43 of 1961), S. 147(b)]

The term 'information’ for the purpose of Section 16(1)(b) of the Act means instructive knowledge concerning a matter bearing on the assessment received from an external source after the completion of the original assessment. It must be derived from a source which has some authenticity and it must be precise and certain and must have relation to the taxable gift which is alleged to

> have escaped assessment. [*Bai Aimani Gustadji Karaka v. GTO*, (1975) 99 ITR 257 (Guj)] [Gift-tax Act (18 of 1958), S. 16(1)(b)]
>
> The term 'information' as used in Section 17(1)(b) of the Act is of the widest amplitude and comprehends of various factors. It may come from external sources or from materials already on record. It may consist of oversights or inadvertent mistakes committed by the officer. It may be a discovered error apparent on the face of record as well. [*CWT v. Arundhati Balkrishna Trust*, (1977) 108 ITR 78 (Guj)] [Wealth-tax Act (27 of 1957). S. 17(1)(b)]
>
> The power of State Government can be exercised under S. 57 when it receives "information" of the various defaults mentioned in the above clauses. The word "information" indicates that the State Government can act on any information received by it. [*Board of Trustees v. State of Uttar Pradesh*, MLJ: YD (1983), p. 198: 1982 All LJ 698]. [Uttar Pradesh State Universities Act (X of 1973). S. 57(i) and (iv)]".

77. As would be evident from the above, 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. The word "inform" has been understood to mean to impart knowledge, knowledge concerning a matter and the power of an authority to act on any information that may be received. The word "information" as used in Section 17(1)(d) of the Wealth Tax Act, 1957 was interpreted to be of the widest amplitude and to include knowledge of any fact that may be derived from either an external source or from material already on record.

78. The **Oxford English Dictionary, Second Edition** defines the word "information" to mean the action of informing a matter, communication of knowledge, news of some fact or occurrence and the action of telling or the fact of being told something. The following

extracts from the aforesaid authoritative work would be of relevance insofar as the issues which arise in the present case are concerned:-

> "**2.** The action of informing (in sense 5 of the verb); communication of the knowledge or 'news' of some fact or occurrence; the action of telling or fact of being told of something.
>
> **3. a.** Knowledge communicated concerning some particular fact, subject, or event; that of which one is apprised or told; intelligence, news. Spec. contrasted with data.
>
> † **b.** with an and pl. An item of information or intelligence; a fact or circumstance of which one is told. In earlier use, An account, relation, narrative (of something). Obs."

As would be manifest from the aforesaid extracts, the word "information" has been understood to include knowledge communicated concerning some particular fact, subject or event, that of which one is apprised. It has also been defined to mean an item of information or of relevance, the fact or circumstances which one is told.

79. A complaint, on other hand, is defined by the **P. Ramanatha Aiyar's Advanced Law Lexicon** to mean an allegation in writing made by a complainant. It has been defined to mean an allegation in respect of a wrong which has been committed or a grievance suffered. The following extracts as appearing in the aforesaid work are reproduced hereinbelow: -

> ""Complaint" means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but it does not include the report of a police-officer. (Cr.P.C., 1973 (2 of 1974), S. 2). See also 17 CPLR 105: 6 SLR 82: 17 IC 64: 13 Cr LJ 752. The essence of the complaint is the statement of facts relied upon as constituting the offence. It is sufficient that the complainant shall state the true facts in his own

language, and it is for the magistrate to apply the law to those facts. 110 IC 108: 1928 Lah 510: 6 CWN 926: 41 Cal 1013.

COMPLAINT is an allegation that a wrong has been done or a grievance suffered. This term is most generally used in law with reference to criminal Courts to describe the mode in which proceedings are to be instituted. The complaint need not be either in writing or on oath, unless required to be so by the particular enactment upon which it is framed.

It is form of legal process which consists of a formal allegation or charge against a party, made or presented to the appropriate Court or officer, as for a wrong done or a crime committed; in the latter case generally under oath.

A "*complaint*" is an allegation that some person has committed an offence and "an offence" is an act or omission made punishable by any law for the time being in force. An application under S. 107, Cr.PC., 1973 (2 of 1974), is not a complaint where there is merely an allegation that a breach of the peace is likely. AIR 1925 Oudh 138.

The action of complaining; an utterance of grievance [Ss. 95 and 499, ill. to 8th excep, I.P.C. (45 of 1860)]; a formal accusation in a Court of law [S. 2(6), Cr.P.C., 1973 (2 of 1974)]; an ailment or disease of the body.

COMPLAINT : ACCUSATION. Both these terms are employed in regard to the conduct of others, but a *complaint* is mostly made in matters that personally affect the complainant; an *accusation* is made of matters in general but especially those of a moral nature. A *complaint* is made for the sake of obtaining redress; an accusation is made for the sake of ascertaining a fact or bringing to punishment. A *complaint* may be frivolous; an *accusation* false. People in subordinate stations should be careful to give no cause for *complaint*, the most guarded conduct will not protect any person from the unjust *accusations* of the malevolent."

80. The **Oxford English Dictionary, Second Edition** defines the word "complaint" as follows: -

"**3.** Outcry against or because of injury; representation of wrong suffered; utterance of grievance.

1374 CHAUCER *Anel*. &*Arc. (title)*, The compleynte of Anelida.. upon Arcyte.. for his Doublenesse. **1393** GOWER *Conf*. 1. 111 Tho was murmur, tho was disdeine, Tho was compleinte on every side. **1597** HOOKER *Eccl. Pol*. v. lxxix. $14 You.. make great

> complaint of the wonderful cruelty we shew towards you. **1667** MILTON *P.L.* x. 131 Whose failing ..I should not expose to blame By my complaint. **1738-9** in *Swift's Lett.* (1768) IV. 223 For some little time past, I have not had the same cause of complaint. **1789** BENTHAM *Princ.* Legisl. xix. $15 It is a standing topic of complaint, that a man knows too little of himself. **1856** FROUDE *Hist. Eng.* (1858) I. i. 35 Complaint was loud enough when complaint was just, under the Somerset protectorate. **1863** GEO. ELIOT *Romola* I. 1. vi.
>
> **4**.(with *a* and *pl.*) An utterance or statement of grievance or injustice suffered.
>
> **b**. *spec.* A statement of injury or grievance laid before a court or judicial authority (esp. and properly a Court of Equity) for purposes of prosecution or of redress; a formal accusation or charge. c. *U.S.* The plaintiff's case in a civil action."

81. As would be evident from the aforesaid, a complaint appears to have been understood to mean and include the providing of information with respect to a grievance of injustice suffered or injury borne by an individual. It is essentially understood to mean an accusation made in respect of the conduct of a particular person and relates to matters that personally affect the complainant. "Information", on the other hand, is commonly understood and defined to mean the deriving of knowledge of a particular fact or event. It includes any knowledge or information that may be derived in respect of a fact or occurrence from an external source.

82. Even under the scheme of the Act and the Rules with which we are concerned, 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. This would also be evident from a perusal of the nature of disclosures which are to be made in

terms of Form-I. Information, on other hand, is in terms of the Rules presumed to be material that may be received by the Institute in writing although not in accordance with the format prescribed in terms of Rule 3. However, the aforesaid is confined to what is prescribed by Rule 7 and which salvages written complaints which may not conform to the norms of Rule 3.

83. However, if the word "information" be correctly understood, and appreciated and as the dictionaries have defined it to be, as the mere communication of knowledge or news of some factual occurrence, it would clearly stand on a pedestal distinct and different from a complaint. Information need not necessarily be or relate to the grievance or injury suffered by a particular individual. It could in that sense include the communication of any particular fact, subject or event to the Institute. It could also and consequently include any information or intelligence which the Institute may itself derive from an external source.

G. "ANY" AS THE OPERATIONAL PREFIX TO INFORMATION

84. The Court further takes into consideration the significance of the prefix "any" to the word information as occurring in Section 21 of the 1949 Act. The use of the word "any" before information in Section 21 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 rigours and formality that may be attached to a written complaint that may be received by the Institute. The expression *"any information"* as used in Section 21 thus appears to

have been consciously employed so as to enable the Institute to make an investigation with respect to professional conduct of its members untrammelled by rigours of form.

85. On an overall consideration of the aforesaid, this Court is of the considered view that the word "information" as appearing in Section 21 cannot be narrowly construed to mean only those facts which may be specifically provided to the Institute. The Act and the Rules have consciously attempted to treat the two separately and distinctively. The phrase "any information" would thus cover within its ambit not only written complaints that may be received, albeit not compliant with Form-I, but also any material or fact that may come to the notice of the Institute pertaining to the professional conduct of a member and which on due examination and evaluation may merit an enquiry being initiated.

86. The Court while arriving at the aforesaid conclusion also bears in mind the significant and pivotal role which the Institute is obliged to discharge while acting as the self-regulating body with respect to the conduct of members and firms. Bearing in mind its primordial obligation to ensure that its members adhere to the strict code of discipline and the high standards of professional conduct which they are liable to maintain, the Court would be doing grave injustice to the plain language of the statute and the evident intent underlying the use of the phrase "any information" in Section 21. In fact, if Section 21 were narrowly construed as suggested by the petitioners, it would clearly undermine the duty and obligation of the Institute to examine cases of professional misconduct and restrict it to being able to initiate

action against a member dependent upon whether it had received written information or complaints. It would clearly result in seriously handicapping the Institute in the discharge of its disciplinary functions. If Section 21 were to be interpreted in the manner as advocated by the petitioners, it would constrict the Institute to being entitled to examine instances of professional misconduct only if it had received a complaint or information in written form. This would clearly hamper and impede the regulatory function that it is obliged to perform under the Act.

87. The Court thus comes to the firm conclusion that the words "information" and "complaint" appear to have been consciously used and placed in Section 21 in order to enable the Institute to proceed against a particular member unfettered by the absence a written complaint being provided to the Institute. If Section 21 were to be interpreted as conferring jurisdiction on the Institute to proceed against a member only upon receipt of a written complaint, it would clearly fetter and impede the larger public function that it is obliged to perform and the statutory duties that stand placed upon it.

H. ICAI AND ITS POWER TO INITIATE PROCEEDINGS "SUO MOTO"

88. That then takes the Court to consider the question whether the Institute could be recognised to proceed suo moto under the provisions of the Act. The principal contention addressed on behalf of the petitioners was that the power to proceed suo moto must necessarily stand conferred by the Act. According to the petitioners in the absence

of a specific conferral of power, the Institute cannot be recognised to have the jurisdiction to move on its own initiative.

89. Though not specifically placed for the consideration of this Court, the written submissions which were tendered on behalf of the petitioners referred to the decisions in **Shrikrishna, Indira Gandhi and Mohinder Singh.** In **Shrikrishna**, the Bombay High Court was dealing with the issue whether Section 28A of the erstwhile Land Acquisition Act, 1894 could be interpreted to include a power to proceed suo moto. While dealing with the aforesaid question, the High Court observed thus: -

> "20. The expression "suo motu" means of its own initiative. The power to initiate must emerge from the language of the provisions. Where the language of the provision is simple, unambiguous and is incapable of various meanings, then the principle of plain interpretation has to be applied. The power to act suo motu should be spelt out from the provisions and it is normally difficult to infer such power, particularly when specific mode to initiate such process is stipulated in the statute itself. Filing of an application, that too within the specified period from the date of award by the Reference Court, is the condition precedent for invocation of the scheme under section 28A of the Act and its intent and purpose cannot be defeated by introducing power to act suo motu and giving notice to all concerned. Thus the second point of law has to be answered in the negative."

90. It becomes pertinent to note that Section 28A of the said act employed the expression "*by written application to the Collector*". It was in the aforesaid light that the High Court in **Shrikrishna** came to the conclusion that since the filling of an application within a specified and stipulated period of time was a condition precedent for the invocation of Section 28A, it could not be understood to encompass or incorporate a power to proceed suo moto. The decision

in **Indira Gandhi** arose out of the provisions of the Commissions of Inquiry Act, 1952. The ultimate conclusion of the Commission having no authority to proceed suo moto turned on the provisions made in that Act.

91. In **Mohinder Singh**, the Jammu and Kashmir High Court was essentially called upon to interpret the provisions of the Jammu and Kashmir Accountability Commission Act, 2002. The High Court noted that the Commission itself had been constituted to conduct investigation and enquiries in respect of complaints. Construing the phrase "*grievances and allegations*" as appearing in the Preamble of the said Act, the High Court held that the language of the statute clearly implied or presupposed that there would be a person aggrieved or a person levelling an allegation. It was in that backdrop that it came to hold that the commission could not initiate a suo moto enquiry.

92. The issue of a suo moto power being exercised by statutory authorities also fell for consideration before this Court in **Praveen Chhabra vs. Real Estate Appellate Tribunal**[23]. In the said decision, the Court was called upon to consider whether the Real Estate Regulatory Appellate Authority could be recognised to have the power to proceed suo moto.While dealing with the aforesaid question this Court observed as follows:-

> "17. In order to appreciate, the challenge which stands raised in the present petition, it would at the outset be relevant to contrast the power and jurisdiction which the Appellate Tribunal and the Authority are conferred with under the provisions of the Act. As is evident from a reading of Sections 43 and 44, it is manifest that the

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Appellate Tribunal has been constituted as a forum whose jurisdiction may be invoked by any person aggrieved by a direction, decision or order made by the Authority or an Adjudicating Officer. Sections 43 and 44 of the Act do not confer, recognize or envisage any original or plenary power or authority being exercised by the Appellate Tribunal. The authority of the Appellate Tribunal stands confined to consideration of challenges that may be laid to orders passed by either the Authority or the Adjudicating Authority. The Act does not vest or confer any authority or jurisdiction upon the Appellate Tribunal to initiate proceedings on its own motion.

18. Turning then to the provisions which deal with the constitution and powers of the Authority, it is manifest that it is obliged to regulate real estate projects, to ensure compliance of obligations placed on promotees, allottees and real estate agents. In terms of Section 35, where a complaint is received by it in respect of any real estate project, it is empowered to call upon the promoter, allottee or real estate agent to furnish information in writing or explain its affairs to the Authority. The powers exercised by the Authority under Section 35 can be set in motion either on a complaint or by the Authority itself acting suo moto. Section 35(2) confers on the Authority the same powers as are vested in a Civil Court under the Civil Procedure Code, 1908 insofar as they pertain to discovery and production of books of account and documents, summoning and enforcing the attendance of persons, issuing commissions for the examination of witnesses or documents and other matters which may be prescribed. Section 36 empowers the Authority to issue interim orders by way of restraint against a promoter, allottee or real estate agent injuncting it from carrying on any act which is complained of or noticed until the conclusion of the enquiry initiated under Section 35. This very provision also empowers the Authority to issue interim orders ex-parte. The Authority in terms of Section 37 is invested with the power to issue directions from time to time to any promoter, allottee or real estate agent and prescribes that all such directions would be binding on parties concerned. Rule 22 enumerates the additional powers which may be exercised by the Authority and is referrable to the provisions contained in Section 35 (2)(iv). Similarly, Rule 29 spells out the additional powers which may be exercised by the Appellate Tribunal and thus amplifies and provides content to the mandate of Section 53(4)(g).

19. On a consideration of the aforesaid provisions as made and incorporated in the Act, it is manifest that the Appellate Authority cannot possibly be recognized as conferred with the power to initiate proceedings suo moto or on its own motion. This is evident from a reading of the provisions engrafted in the statute and which enumerate and circumscribe the jurisdiction of the Appellate Tribunal. The Appellate Tribunal, it must be remembered, is a

> creation of statute. It is not an authority which may be recognised as being vested with inherent powers. Regard must also be had to the fact that the Appellate Tribunal is not part of the hierarchy of traditional judicial institutions which constitute the judicial system of our country. It is an appellate forum whose origin and formation stems from the provisions of the Act. It is in that sense an adjudicatory authority which owes its existence and authority to a special statute. Viewed in that light it is manifest that it can neither assume nor arrogate to itself a power or authority which may otherwise not stand conferred on it by the Act. There is thus an evident and blatant assumption of jurisdiction which otherwise does not stand vested upon the Appellate Tribunal. The Court thus comes to the firm conclusion that the impugned proceedings are clearly ultra vires the Act.
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> 20. The Court further notes that the patent lack of jurisdiction stands further highlighted when one compares the jurisdiction conferred upon the Authority and the Appellate Tribunal. As is clear from a reading of Section 35, the power to draw proceedings suo moto power stands specifically bestowed on the Authority. There is however a conspicuous and evident absence of extension or conferral of similar powers on the Appellate Tribunal. This, in the considered opinion of the Court, is not liable to be construed as legislative silence. It is in fact and to the contrary positively indicative of a conscious and evident legislative intent of not conferring similar powers upon the Appellate Tribunal. The Court thus comes to conclude that there was a patent lack of jurisdiction and the proceedings as drawn by the Appellate Tribunal are liable to be quashed in entirety."

93. It would thus be manifest that the question of whether a particular authority would have the power to proceed of its own motion or initiative would principally have to be evaluated bearing in mind the language of the statute and the nature of the power that may stand conferred upon such a body. From the decisions which have been noticed hereinabove on this question, it is evident that the ultimate conclusion of the respective entities not being empowered to exercise powers suo moto ultimately rested on the language of the statutory provisions which governed the exercise of jurisdiction and the fact that those bodies could have initiated proceedings only upon

the filing of an application or complaint relating to grievances and allegations.

94. In contrast to the above, Section 21 of the Act empowers the Institute to proceed either on the basis of a complaint or on information that may be received. The Court has on due consideration of the relevant provisions, the scheme of the Act and the nature of the duty cast upon the Institute, found that it could also proceed on the basis of cogent information that may be either gathered or may come to light from an external source. The usage of the word information in Section 21 thus clearly places the extent of the power vested on the Institute on a clearly distinct pedestal. It appears to be guided by the intent of the Legislature to enable and empower the Institute to proceed on any material or fact that may either come to its attention or be brought to its notice. Section 21 thus clearly appears to be distinguishable from the various statutory provisions and the scheme of the respective statutes which formed the basis for the various decisions rendered on the subject and which were noticed hereinabove. None of them empowered the authorities to initiate action on the basis of "information". Viewed in the aforesaid backdrop, this Court is of the considered opinion that Section 21 does empower the Institute 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. This since the authority conferred on the Institute relates to both a complaint as well as information.

Information, as has been found by this Court, would extend to any material or fact that may come to the notice of the Institute and from which it may derive knowledge. That material need not necessarily be in the written or be interpreted as being confined to something which an individual may choose to bring to the notice of the Institute. Acceptance of a submission to the contrary would amount to restricting the width and amplitude of the power conferred by Section 21 which enables the Institute to proceed on the basis of "any information".

95. The Court also bears in mind the significant observations which were made by the Division Bench of this Court in **P. Ramakrishna** where while recognizing the intrinsic distinction between a complaint and information, the Court had aptly observed that information would include material that may be made available by a third person or even that which may come to the knowledge of the Institute. The Division Bench clearly held that in case of information, action may be initiated either suo moto or even on the basis of material that may be provided by a third party who may for a variety of reasons be not desirous of filing a formal complaint.

96. On behalf of the petitioners much stress was laid on the proposed Section 21 which is sought to be introduced in terms of the 2022 Amending Act. According to learned counsel, it is in terms of the said proposed amendment that the Directorate would stand clothed with the authority to make investigation suo moto. It was urged that the specific conferral of such a power must axiomatically be construed to mean that no such power stood conferred upon the Institute or

comprised in Section 21. It was in the aforesaid context that learned counsels had argued that the proposed amendment is indicative of the Legislature seeking to supply an obvious omission and to allay all doubts.

97. Mr. Datt, learned counsel for the petitioner had, in this context, also placed reliance on the following passages as appearing in the decision of the Supreme Court in **Ghanashyam Mishra & Sons (P) Ltd. vs. Edelweiss Asset Reconstruction Co. Ltd.**[24]

> "86. In *Zile Singh* v. *State of Haryana* [*Zile Singh* v. *State of Haryana*, (2004) 8 SCC 1], this Court had an occasion to consider the provisions of Section 13-A of the Haryana Municipal Act, 1973 which, prior to amendment, read thus:
>
> "**13-A.** ***Disqualification for membership***.—(1) A person shall be disqualified for being chosen as and for being a member of a municipality—
>
> ***
>
> (*c*) if he has more than two living children:
>
> Provided that a person having more than two children on or *after* the expiry of one year of the commencement of this Act, shall not be deemed to be disqualified."
>
> (emphasis supplied)
>
> 88. This Court while observing, that the amendment was clarificatory in nature, held thus: (*Zile Singh case* [*Zile Singh* v. *State of Haryana*, (2004) 8 SCC 1], SCC pp. 9-12, paras 14-22
>
> "*14. The presumption against retrospective operation is not applicable to declaratory statutes…. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is "to explain" an earlier Act, it would be without object unless construed retrospectively. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally*

[24](2021) 9 SCC 657

intended…. An amending Act may be purely declaratory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect (ibid., pp. 468-69).

15. Though retrospectivity is not to be presumed and rather there is presumption against retrospectivity, according to Craies (*Statute Law*, 7th Edn.), it is open for the legislature to enact laws having retrospective operation. This can be achieved by express enactment or by necessary implication from the language employed. If it is a necessary implication from the language employed that the legislature intended a particular section to have a retrospective operation, the courts will give it such an operation. *In the absence of a retrospective operation having been expressly given, the courts may be called upon to construe the provisions and answer the question whether the legislature had sufficiently expressed that intention giving the statute retrospectivity. Four factors are suggested as relevant: (i) general scope and purview of the statute; (ii) the remedy sought to be applied; (iii) the former state of the law; and (iv) what it was the legislature contemplated*. (p. 388) The rule against retrospectivity does not extend to protect from the effect of a repeal, a privilege which did not amount to accrued right. (p. 392)

16. Where a statute is passed for the purpose of supplying an obvious omission in a former statute or to "explain" a former statute, the subsequent statute has relation back to the time when the prior Act was passed. The rule against retrospectivity is inapplicable to such legislations as are explanatory and declaratory in nature. A classic illustration is the case of *Attorney General* v. *Pougett* [*Attorney General* v. *Pougett*, (1816) 2 Price 381 : 146 ER 130] (Price at p. 392). By a Customs Act of 1873 (53 Geo. 3, c. 33) a duty was imposed upon hides of 9s 4d, but the Act omitted to state that it was to be 9s 4d per cwt., and to remedy this omission another Customs Act (53 Geo. 3, c. 105) was passed later in the same year. Between the passing of these two Acts some hides were exported, and it was contended that they were not liable to pay the duty of 9s 4d per cwt., but Thomson, C.B., in giving judgment for the Attorney General, said: (ER p. 134)

> 'The duty in this instance was, in fact, imposed by the first Act; but the gross mistake of the omission of the weight, for which the sum expressed was to have been payable, occasioned the amendment made by the subsequent Act: but that had reference to the former statute as soon as it passed, and they must be taken together as if they were one and the same Act;' (Price at p. 392)

17. Maxwell states in his work on *Interpretation of Statutes* (12th Edn.) that the rule against retrospective operation is a presumption only, and as such it 'may be overcome, not only by express words in the Act but also by circumstances sufficiently strong to displace it' (p. 225). If the dominant intention of the legislature can be clearly and doubtlessly spelt out, the inhibition contained in the rule against perpetuity becomes of doubtful applicability as the "inhibition of the rule" is a matter of degree which would "*vary secundum materiam*" (p. 226). Sometimes, where the sense of the statute demands it or where there has been an obvious mistake in drafting, a court will be prepared to substitute another word or phrase for that which actually appears in the text of the Act (p. 231).

18. In a recent decision of this Court in *National Agricultural Coop. Mktg. Federation of India Ltd.* v. *Union of India* [*National Agricultural Coop. Mktg. Federation of India Ltd.* v. *Union of India*, (2003) 5 SCC 23] it has been held that there is no fixed formula for the expression of legislative intent to give retrospectivity to an enactment. Every legislation whether prospective or retrospective has to be subjected to the question of legislative competence. The retrospectivity is liable to be decided on a few touchstones such as: (*i*) the words used must expressly provide or clearly imply retrospective operation; (*ii*) the retrospectivity must be reasonable and not excessive or harsh, otherwise it runs the risk of being struck down as unconstitutional; (*iii*) where the legislation is introduced to overcome a judicial decision, the power cannot be used to subvert the decision without removing the statutory basis of the decision. There is no fixed formula for the expression of legislative intent to give retrospectivity to an enactment. A validating clause coupled with a substantive statutory change is only one of the methods to leave actions unsustainable under the unamended statute, undisturbed. Consequently, the absence of a validating clause would not by itself affect

the retrospective operation of the statutory provision, if such retrospectivity is otherwise apparent.

19. The Constitution Bench in *Shyam Sunder* v. *Ram Kumar* [*Shyam Sunder* v. *Ram Kumar*, (2001) 8 SCC 24] has held : (SCC p. 49, para 39)

> '*39*. … Ordinarily when an enactment declares the previous law, it requires to be given retroactive effect. The function of a declaratory statute is to supply an omission or to explain a previous statute and when such an Act is passed, it comes into effect when the previous enactment was passed. The legislative power to enact law includes the power to declare what was the previous law and when such a declaratory Act is passed, invariably it has been held to be retrospective. Mere absence of use of the word "declaration" in an Act explaining what was the law before may not appear to be a declaratory Act but if the court finds an Act as declaratory or explanatory, it has to be construed as retrospective.' (p. 2487).

20. In *Bengal Immunity Co. Ltd.* v. *State of Bihar* [*Bengal Immunity Co. Ltd.* v. *State of Bihar*, (1955) 2 SCR 603 : AIR 1955 SC 661] , *Heydon case* [*Heydon case*, (1584) 3 Co Rep 7a : 76 ER 637] was cited with approval. Their Lordships have said : (*Bengal Immunity case* [*Bengal Immunity Co. Ltd.* v. *State of Bihar*, (1955) 2 SCR 603 : AIR 1955 SC 661] , AIR p. 674, para 22)

> '*22*. It is a sound rule of construction of a statute firmly established in England as far back as 1584 when *Heydon case* [*Heydon case*, (1584) 3 Co Rep 7a : 76 ER 637] was decided that—
>
> "… for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered—
>
> *1st*. What was the common law before the making of the Act.
>
> *2nd*. What was the mischief and defect for which the common law did not provide.
>
> *3rd*. What remedy Parliament hath resolved and appointed to cure the disease of the Commonwealth, and
>
> *4th*. The true reason of the remedy; and then the office of all the Judges is always to make such

> construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and *pro private commodo*, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bono publico*." '

21. In *Allied Motors (P) Ltd.* v. *CIT* [*Allied Motors (P) Ltd.* v. *CIT*, (1997) 3 SCC 472] certain unintended consequences flowed from a provision enacted by Parliament. There was an obvious omission. In order to cure the defect, a proviso was sought to be introduced through an amendment. The Court held that literal construction was liable to be avoided if it defeated the manifest object and purpose of the Act. The rule of reasonable interpretation should apply.

'A proviso which is inserted to remedy unintended consequences and to make the provision workable, a proviso which supplies an obvious omission in the section and is required to be read into the section to give the section a reasonable interpretation, requires to be treated as retrospective in operation so that a reasonable interpretation can be given to the section as a whole.' [*Allied Motors (P) Ltd. case* [*Allied Motors (P) Ltd.* v. *CIT*, (1997) 3 SCC 472] , SCC pp. 479-80, para 13]

22. The State Legislature of Haryana intended to impose a disqualification with effect from 5-4-1995 and that was done. *Any person having more than two living children was disqualified on and from that day for being a member of a municipality. However, while enacting a proviso by way of an exception carving out a fact situation from the operation of the newly introduced disqualification the draftsman's folly caused the creation of trouble. A simplistic reading of the text of the proviso spelled out a consequence which the legislature had never intended and could not have intended. It is true that the Second Amendment does not expressly give the amendment a retrospective operation. The absence of a provision expressly giving a retrospective operation to the legislation is not determinative of its prospectivity or retrospectivity. Intrinsic evidence may be available to show that the amendment was necessarily intended to have retrospective effect and if the Court can unhesitatingly conclude in favour of retrospectivity, the*

> *Court would not hesitate in giving the Act that operation unless prevented from doing so by any mandate contained in law or an established principle of interpretation of statutes*."
>
> (emphasis supplied)
>
> 89. It could thus be seen that what is material is to ascertain the legislative intent. If legislature by an amendment supplies an obvious omission in a former statute or explains a former statute, the subsequent statute has a relation back to the time when the prior Act was passed."

98. Learned counsel had also sought to draw sustenance for the aforesaid submission from the following principles as were laid down by the Supreme Court in **CIT vs. Podar Cement (P) Ltd.**[25]:-

> "53. A Constitution Bench of this Court in *Keshavlal Jethalal Shah v. Mohanlal Bhagwandas* [(1968) 3 SCR 623 : AIR 1968 SC 1336], while considering the nature of amendment to Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act as amended by Gujarat Act 18 of 1965, observed as follows:
>
> > "… The amending clause does not seek to explain any pre-existing legislation which was ambiguous or defective. The power of the High Court to entertain a petition for exercising revisional jurisdiction was before the amendment derived from Section 115, Code of Civil Procedure, and the Legislature has by the Amending Act attempted to explain the meaning of that provision. *An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act*."
> >
> > (emphasis supplied)
>
> 54. From the circumstances narrated above and from the memorandum explaining the Finance Bill, 1987 (supra), it is crystal clear that the amendment was intended to supply an obvious omission or to clear up doubts as to the meaning of the word "owner" in Section 22 of the Act. We do not think that in the light of the clear exposition of the position of a declaratory/clarificatory Act it is necessary to multiply the authorities on this point. We have, therefore, no hesitation to hold that the amendment introduced by the Finance Bill, 1988 was declaratory/clarificatory in nature so far as it relates to Section 27*(iii)*, *(iii-a)* and *(iii-b)*. Consequently, these provisions are retrospective in operation. If so,

[25](1997) 5 SCC 482

> the view taken by the High Courts of Patna, Rajasthan and Calcutta, as noticed above, gets added support and consequently the contrary view taken by the Delhi, Bombay and Andhra Pradesh High Courts is not good law."

99. It must, at the outset, be noted that the provisions of the 2022 Amending Act are yet to be enforced. Section 21 as is sought to be introduced is yet to become a provision existing or enforceable in law. It would however be pertinent to note that the insertion of the word "*suo moto*" in Section 21 in terms of the provisions of the 2022 Amending Act cannot be readily understood or accepted to be the act of the Legislature in supplying an omission or a specific conferral of a power. This since the Court has, de hors the provisions of the 2022 Amending Act, come to the conclusion that the authority to take cognizance of "*any information*" would include the power to proceed suo moto. It becomes pertinent to note that even in **Ghanashyam Mishra** the Supreme Court had observed that an amending statute could be curative or even purely declaratory, intended to clear the meaning of a provision of the principal act and expound on something which is already explicit. In the facts of that case, the Supreme Court came to the conclusion that the amendments had been introduced to cure a particular mischief and was clearly declaratory and clarificatory in nature. This is evident from the ultimate conclusion which stood recorded in paragraph 94 of the Report and reads thus:

> **"94.** We have no hesitation to say that the words "other stakeholders" would squarely cover the Central Government, any State Government or any local authorities. The legislature noticing that on account of obvious omission certain tax authorities were not abiding by the mandate of the I&B Code and continuing with the proceedings, has brought out the 2019 Amendment so as to cure the said mischief. We therefore hold that the 2019 Amendment is

declaratory and clarificatory in nature and therefore retrospective in operation."

100. Similarly, in **Podar Cement**, the Supreme Court ultimately found that the amendments were clarificatory in nature. This is clearly evident from what stands recorded in para 54 which has been extracted hereinabove.

101. While on this issue, it may also be noted that the petitioners had contended that the Institute had never acted suo moto prior to the initiation of proceedings against the petitioners here and that being indicative of their own understanding of the width of the power that stood conferred upon them. It must in this context be noted that the mere fact that a particular power was not exercised in the past cannot be determinative of the question whether that power stands conferred or exists. The answer to the question whether a particular power stands conferred under statute must necessarily be answered on a reading of the statute and on discernment of its scope. The meaning to be conferred upon a statute cannot rest merely on the fact that the power though being found to exist was never invoked earlier. In any case, the respondents disclose and provide details in paragraph 49 of their counter affidavit of a suo moto power having been exercised even in the past. The averments made in the counter affidavit establishes that the Institute had exercised its suo moto powers similarly in relation to the Satyam Computers scam. In fact as the facts taken note of in **Manubhai** would indicate, the Institute had in that particular instance initiated an enquiry based on the report submitted with respect to MNAF's. That report too is liable to be

viewed as an external source of information as distinct from a written complaint or information that may be received by the Institute. While in the aforesaid case, the Institute was also bound by the directions issued by the Supreme Court, in principle, the steps taken by the Institute would be liable to be viewed as being independent of any written complaint or information submitted to it. The report with respect to MNAF's and the contemporaneous material which was noticed by the Supreme Court in its order would clearly constitute material relating to facts of which cognizance was taken by the Institute. The contentions thus advanced in this respect stand negatived.

I. RULE 7 AND ITS IMPORT

102. While closing the discussion on this issue, the Court lastly takes note of the submissions which were addressed founded on the provisions contained in Rule 7. The submission essentially was that the word "information" must draw color and derive meaning from Rule 7. Learned counsels had laid immense stress on the fact that Section 21 while empowering the Directorate to make investigation in respect of any information or complaint was obliged to follow such procedure as may be specified. The argument was that the procedure stands duly specified and stipulated under the rules which stood framed.

103. According to the petitioners, Rule 7 specifically deals with written information that may be received in respect of allegations against a member or a firm. In view of the aforesaid, it was contended that the word "information" as occurring in Section 21 cannot possibly

be interpreted to include any external source or for that matter a news report which may come to the attention of the Institute. The submission in essence was that every information must be a written complaint that may be received by the Institute albeit non-compliant with Form-I as prescribed in Rule 3.

104. The Court finds itself unable to sustain the aforesaid submission for the following reasons. Firstly, and on a fundamental plane, it will be wholly incorrect to either interpret or construe a provision placed in the principal enactment on the basis of what may be contained in a subordinate piece of legislation, as in this case the Rules. A rule cannot possibly be understood or held to be determinative of the scope or content of a provision placed in the parent enactment. Rules, as is well settled, cannot be interpreted in a manner which may curtail the powers that may be vested or be available to be exercised by virtue of the parent enactment. They essentially supplement and are ancillary to the principal provisions contained in the Act. However, they cannot possibly be interpreted in a manner which would either scuttle the parent provision or extract or delete something therefrom. If the Court were to accord a judicial imprimatur to such a submission, it would amount to virtually recognizing a right existing in the delegate to control or even amend the parent provision. The acceptance of such a submission would lead to preposterous results and virtually permit the delegatee to rewrite or even override the legislative wisdom.

105. More fundamentally, this Court is of the considered opinion that Rule 7 merely engrafts a statutory or a legal fiction in respect of written allegations that may be received by the Institute against a

member or a firm. It becomes pertinent to note that ordinarily the Institute may receive information in the shape of a written complaint against a member or a firm. That written complaint would have to necessarily be compliant with the requirements of Rule 3 and thus the in the format prescribed by Form-I. However, Rule 7 takes care of contingencies where even though information may be received by the Institute in writing, it may not be in accord with Form-I as prescribed. It is only to take care of such an eventuality that Rule 7 prescribes that even such written information shall be treated as such and fall within the ambit of Section 21. The usage of the phrase *"shall be treated"* is clear evidence of the introduction of a statutory fiction. However, that cannot possibly be understood as denuding the Institute of the authority to commence an investigation on the basis of information that may be derived from an external source or be restricted only to information that may be submitted before it in writing.

J. INFORMATION AND ITS NUANCES

106. That then takes the Court to consider the argument of the petitioners that the proceedings which were initiated by the Institute cannot be said to be based on "information" as contemplated under the Act. Mr. Nandrajog had contended that as would be evident from the show cause notice which came to be issued on 21 February 2018, the Directorate rested its opinion to commence disciplinary proceedings solely on various news reports which had come to be published in connection with the financial scam which had occurred in PNB.

107. According to learned Senior Counsel a news report is neither evidence nor can it possibly constitute material on the basis of which

action could have been initiated against the petitioners. Mr. Nandrajog highlighted the fact that the news reports themselves neither mentioned the petitioners nor did they carry any allegations against the Joint Statutory Auditors or the LRR which was undertaken by them. Mr. Nandrajog submitted that, under the scheme of the Act, information must necessarily constitute material which prima facie establishes an act of professional or other misconduct committed by a member. According to learned Senior Counsel, a news report which may have referred to financial irregularities which had taken place in the PNB cannot possibly meet the aforesaid requirement.

108. Appearing for the Institute, Mr. Srinivasan, learned Senior Counsel, had argued that the aforesaid submissions are addressed overlooking the fact that the Institute had not commenced proceedings against the petitioners based on news reports alone. According to Mr. Srinivasan, the newspaper reports only constituted the trigger for the initiation of proceedings. It was submitted that on the publication of the news reports, the quarterly results of PNB were duly perused and the LRR also taken into consideration. Mr. Srinivasan pointed out that in terms of the initial show cause notice which had been issued, the anomalies which were noticed by the Directorate were duly conveyed to the petitioners and their comments invited. It was pointed out that ultimately it was the reasons and facts recorded in the letter of 13 March 2018 which was treated as information for the purposes of initiation of action under Section 21 of the 1949 Act.

109. Undoubtedly, the show cause notice refers to an alleged non-compliance "*with the various SAs*" and in particular provisions of SA.

110. The respondents accordingly called upon the petitioners to explain why action be not initiated in terms of Section 21 of the 1949 Act. After taking into consideration the aforesaid reply, the Institute appears to have examined the matter further and perused the LRR of PNB which was submitted by the Joint Statutory Auditors for the quarter ending on 31 December 2017. The aforesaid communication then proceeded to record that surprisingly even though PNB had lodged a complaint to CBI on 29 January 2018 and the LRR issued on 06 February 2018, the latter had failed to report or record the aforesaid incident. It was this which was viewed by the Institute as constituting a serious professional lapse. It was these allegations which were treated as "information" for the purposes of Section 21 of the 1949 Act.

111. From the aforesaid recordal of facts, the Court notes that it would be wholly incorrect to accept the contention that the initiation of the enquiry was based simply on news reports. As has been averred on behalf of the respondents, the news report only brought certain facts relating to a financial scam which had occurred in PNB to the notice of the respondents. They appear to have consequently elicited preliminary comments from the petitioners in that respect. The matter thereafter appears to have been scrutinised in further detail with appropriate information being gathered from PNB and the LRR also being carefully examined. It also becomes pertinent to note the fact that the huge financial fraud had been duly taken cognisance of and details thereof also provided to SEBI prior to the submission of the LRR, was an admitted position insofar as the petitioners are

concerned. This would be evident from their reply to the initial show cause notice itself.

112. The petitioners, along with the material which has been filed in these proceedings, have also placed the minutes of the discussion which appears to have taken place in the presence of officials of PNB and the representatives of the Joint Statutory Auditors. This would appear to indicate that, at the time when the aforesaid discussion took place, the financial fraud had already been unearthed and complaints made to the investigating agencies and information also provided to other statutory regulators. It is in the aforesaid context that the respondents have referred to the various provisions made in SRE 2410 and which according to them place an obligation and a liability upon the Joint Statutory Auditors to make appropriate notes in the review report in respect of all events identified up to the date of its submission. It was also contended that, while conducting the review, SRE 2410 obliged the Joint Statutory Auditors to make requisite enquiries and to perform the review with an attitude of professional scepticism and recognising the existence of circumstances that may warrant a material adjustment being made in the interim financial information.

113. Mr. Srinivasan had laid great stress upon the provisions of SRE 2410 which obliged the Joint Statutory Auditors to undertake the review independently and objectively and the requirement to make "a critical assessment, with a questioning mind, of the validity of evidence obtained". According to the respondent, the LRR could not have been drawn or structured based on the mere *ipse dixit* of the

management of PNB. According to Mr. Srinivasan, if that were to be accepted as being the procedure to be adopted, the very purpose of a limited review would stand defeated.

114. The aforesaid recordal of facts would clearly establish that the action which was initiated and the material which was treated as "information" for the purposes of Section 21 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 here. What appears to have transpired is of the news reports merely acting as a catalyst for the Institute to delve deeper into the massive fraud which had occurred and to examine whether any member had failed to abide by the SAs' which applied. It was the material recorded and encompassed in the letter of 13 March 2018 which would constitute the foundation for testing the argument of the petitioner whether there was "information" which merited further enquiry.

115. Viewed in that light the Court is of the firm opinion that the Institute did have the requisite information as contemplated by Section 21 and which justified the initiation of the enquiry against the petitioners in the facts of the present case. While the Court is not called upon at this stage to return any definitive or final conclusions with respect to the alleged violation of the various SAs' as well as SRE 2410, the material placed on the record would clearly belie the contention of the petitioners that the entire initiation of proceedings was based merely on news reports. The record in fact and to the contrary would appear to indicate that the news reports only triggered

a deeper examination by the Institute 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.

116. While closing the discussion insofar as this issue is concerned, the Court deems it apposite to observe that the petitioners do appear to be correct that a mere news report cannot constitute material which may justify the initiation of an enquiry. A newspaper report, as is well settled, cannot and does not constitute evidence *per se*. A report that may appear in the print media or on a visual news platform, can at best be understood as being an external source from which the Institute may gather or derive knowledge of a particular fact or incident. However, since the initiation of disciplinary action clearly has serious repercussions, the decision to initiate disciplinary action would necessarily have to rest on more cogent and dependable material, data and facts. The initiation of an enquiry would necessarily have to be preceded by due application of mind, evaluation of the veracity of the reports and consideration of whether circumstances warrant the initiation of an enquiry. In the facts of the present case, the Court has come to conclude, for reasons aforenoted, that the said tests stood satisfied.

117. The Court had in the preceding parts of this decision noticed the judgment rendered by a learned Judge of the Gujarat High Court in **Manubhai**. The learned Judge had on a consideration of the Act and the Rules essentially come to the conclusion that Rule 7 mandates information to be in the written form containing allegation or

allegations against a member or a firm which may be received in person or by post or courier. It was based on the aforesaid conclusion that the learned Judge had proceeded to record that the prima facie opinion which formed subject matter of consideration in the said proceedings was clearly not based on any written allegation or allegations against the petitioner. It would be pertinent to recall that in **Manubhai** the prima facie opinion rested on a report pertaining to the operation of MNAFs' in India and the order of the Supreme Court which had been passed in connection therewith. It was in that backdrop that the learned Judge came to hold that the said report would not constitute "information" within the meaning of Rule 7.

118. However and with due respect, this Court finds itself unable to agree with the aforesaid line of reasoning as adopted for reasons which have been recorded in the previous parts of this decision. This Court is of the considered opinion that the conclusions which stand recorded in **Manubhai** are clearly based on an extremely restrictive interpretation of Section 21 of the Act and in any case would amount to recognising Rule 7 as an essay on the scope and ambit of Section 21 of the Act itself. It would essentially amount to according pre-eminence to a subordinate rule and recognise the same as trammelling the scope of Section 21 of the Act. This Court has for reasons aforenoted come to the definitive conclusion that in the absence of the Act and the Rules having specifically defined the words "information" and "complaint", it is the principles of purposive interpretation which must be adopted bearing in mind the fundamental objectives of the disciplinary procedure as constructed under the Act and the role and

duties which the Institute is ordained to discharge. For all the aforesaid reasons, the Court finds itself unable to adopt the line of reasoning which weighed with the learned Judge in **Manubhai**.

119. Insofar as the order passed by a learned Judge of our Court in **N. Sampath Ganesh** is concerned all that needs to be said is that the learned Judge in the aforesaid order had only recorded certain prima facie conclusions. The issue of whether newspaper reports would constitute information was left open for the Committee to examine as a preliminary objection. The order in **N. Sampath Ganesh** cannot, therefore, be read as either conclusively determining the issue which arises or constituting a binding precedent.

120. The Court also finds itself unable to sustain the submission of the petitioners that the aforesaid order would have persuasive value. While interim orders passed by a coordinate Bench of the Court in pending proceedings may have a bearing or relevance on interim directions that may be warranted or be framed in identical situations, they cannot possibly have any bearing on a final decision which the Court is called upon to render upon due contest.

K. CONCLUSIONS

121. In view of the aforesaid discussion, the Court proceeds to record the following conclusions: -

A. The Court finds that a "complaint" as well as "information" is treated distinctively under the rules. A complaint in terms of Rule 3 must necessarily comply with Form-I. The Rules further prescribed the complaint to be submitted along with

the fee fixed by the Institute under its regulations. The Rules further and more particularly in Rule 5(5) stipulate that a complainant may be placed on notice to remove defects which are noticed on scrutiny. In terms thereof, the Directorate is empowered to return the complaint for rectification and resubmission. Rule 5(6) then prescribes that if a complainant fails to rectify all defects within the time allowed under sub-rule 5, the Director shall form the opinion that there is no prima facie case and present the complaint before the Board for its closure.

B. "Information", as per Rule 7, on the other hand, is any material that may be received by the Institute against a member or a firm in a written form. Rule 7, in fact, proceeds on the premise that the information which has been received in the shape of written content is not in Form-I. Rule 7(2) further obliges the Directorate to apprise the sender whether it would like to file a complaint in Form-I.

C. As would be evident from the above, 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. The word "inform" has been understood to mean to impart knowledge, knowledge concerning a matter and the power of an authority to act on any information that may be received. The word "information" as used in Section 17(1)(d) of the Wealth Tax Act, 1957 was interpreted to be

of the widest amplitude and to include knowledge of any fact that may be derived from either an external source or from material already on record.

D. A complaint, on the other hand, would mean and include the providing of information with respect to a grievance of injustice suffered or injury borne by an individual. It is essentially understood to mean an accusation made in respect of the conduct of a particular person and relates to matters that personally affect the complainant. "Information is commonly understood and defined to mean the deriving of knowledge of a particular fact or event. It includes any knowledge or information that may be derived in respect of a fact or occurrence from an external source.

E. Even under the scheme of the Act and the Rules with which we are concerned, 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. This would also be evident from a perusal of the nature of disclosures which are to be made in terms of Form-I.

F. Distinguished from the above, information, is in terms of the Rules presumed to be material that may be received by the Institute in writing although not in accordance with the format prescribed in terms of Rule 3. The aforesaid is confined to what is prescribed by Rule 7 and which salvages

written complaints which may not conform to the norms of Rule 3.

G. However, if the word "information" be correctly understood, and appreciated [and as the dictionaries have defined it to be], as the mere communication of knowledge or news of some factual occurrence, it would clearly stand on a pedestal distinct and different from a complaint. Information need not necessarily be or relate to the grievance or injury suffered by a particular individual. It could in that sense include the communication of any particular fact, subject or event to the Institute. It could also and consequently include any information or intelligence which the Institute may itself derive from an external source.

H. The Court further takes into consideration the significance of the prefix "any" to the word information as occurring in Section 21 of the 1949 Act. The use of the word "any" before information in Section 21 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 rigours and formality that may be attached to a written complaint that may be received by the Institute.

I. The expression *"any information"* as used in Section 21 thus appears to have been consciously employed so as to enable the Institute to make an investigation with respect to professional conduct of its members untrammelled by rigours of form.

J. On an overall consideration of the aforesaid, this Court is of the considered view that the word "information" as appearing in Section 21 cannot be narrowly construed to mean only those facts which may be specifically provided to the Institute. The Act and the Rules have consciously attempted to treat the two separately and distinctively. The phrase "any information" would thus cover within its ambit not only written complaints that may be received, albeit not compliant with Form-I, but also any material or fact that may come to the notice of the Institute pertaining to the professional conduct of a member and which on due examination and evaluation may merit an enquiry being initiated.

K. The Court thus comes to the firm conclusion that the words "information" and "complaint" appear to have been consciously used and placed in Section 21 in order to enable the Institute to proceed against a particular member unfettered by the absence a written complaint being provided to the Institute.

L. If Section 21 were to be interpreted as conferring jurisdiction on the Institute to proceed against a member only upon receipt of a written complaint, it would clearly fetter and impede the larger public function that it is obliged to perform and the statutory duties that stand placed upon it.

M. The Court further takes into consideration the significance of the prefix "any" to the word information as occurring in

Section 21 of the 1949 Act. The use of the word "any" before information in Section 21 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 rigours and formality that may be attached to a written complaint that may be received by the Institute.

N. The expression *"any information"* as used in Section 21 thus appears to have been consciously employed so as to enable the Institute to make an investigation with respect to professional conduct of its members untrammelled by rigours of form.

O. On an overall consideration of the aforesaid, this Court is of the considered view that the word "information" as appearing in Section 21 cannot be narrowly construed to mean only those facts which may be specifically provided to the Institute. The Act and the Rules have consciously attempted to treat the two separately and distinctively. The phrase "any information" would thus cover within its ambit not only written complaints that may be received, albeit not compliant with Form-I, but also any material or fact that may come to the notice of the Institute pertaining to the professional conduct of a member and which on due examination and evaluation may merit an enquiry being initiated.

P. 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. This since the authority conferred on the Institute relates to both a complaint as well as information. Information, as has been found by this Court, would extend to any material or fact that may come to the notice of the Institute and from which it may derive knowledge. That material need not necessarily be in the written form or be interpreted as being confined to something which an individual may choose to bring to the notice of the Institute.

Q. The Court while arriving at the aforesaid conclusion also bears in mind the significant and pivotal role which the Institute is obliged to discharge while acting as the self-regulating body with respect to the conduct of members and firms. Bearing in mind its primordial obligation to ensure that its members adhere to the strict code of discipline and the high standards of professional conduct which they are liable to maintain, the Court would be doing grave injustice to the plain language of the statute and the evident intent underlying the use of the phrase "any information" in Section 21.

R. In fact, if Section 21 were narrowly construed as suggested by the petitioners, it would clearly undermine the duty and obligation of the Institute to examine cases of professional misconduct and restrict it to being able to initiate action against a member dependent upon whether it had received written information or complaints. It would clearly result in

seriously handicapping the Institute in the discharge of its disciplinary functions.

S. The power of an authority to proceed of its own motion or initiative would principally have to be evaluated bearing in mind the language of the statute and the nature of the power that may stand conferred upon such a body. From the decisions which have been noticed hereinabove on this question, it is evident that the ultimate conclusion of the respective entities not being empowered to exercise powers suo moto ultimately rested on the language of the statutory provisions which governed the exercise of jurisdiction and the fact that those bodies could have initiated proceedings only upon the filing of an application or complaint relating to grievances and allegations.

T. Viewed in the aforesaid backdrop, this Court is of the considered opinion that Section 21 does empower the Institute 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. This since the authority conferred on the Institute relates to both a complaint as well as information. Information, as has been found by this Court, would extend to any material or fact that may come to the notice of the Institute and from which it may derive knowledge. That material need not necessarily

be in the written form or be interpreted as being confined to something which an individual may choose to bring to the notice of the Institute. Acceptance of a submission to the contrary would amount to restricting the width and amplitude of the power conferred by Section 21 which enables the Institute to proceed on the basis of "any information".

U. The Court also bears in mind the significant observations which were made by the Division Bench of this Court in **P. Ramakrishna** where while recognizing the intrinsic distinction between a complaint and information, the Court had aptly observed that information would include material that may be made available by a third person or even that which may come to the knowledge of the Institute. The Division Bench clearly held that in case of information, action may be initiated either suo moto or even on the basis of material that may be provided by a third party who may for a variety of reasons be not desirous of filing a formal complaint.

V. Rule 7 cannot control or constrict the ambit of Section 21 of the Act. Firstly, and on a fundamental plane, it will be wholly incorrect to either interpret or construe a provision placed in the principal enactment on the basis of what may be contained in a subordinate piece of legislation, as in this case the Rules. A rule cannot possibly be understood or held to be determinative of the scope or content of a provision

placed in the parent enactment. Rules, as is well settled, cannot be interpreted in a manner which may curtail the powers that may be vested or be available to be exercised by virtue of the parent enactment. They essentially supplement and are ancillary to the principal provisions contained in the Act.

W. Rules cannot possibly be interpreted in a manner which would either scuttle the parent provision or extract or delete something therefrom. If the Court were to accord a judicial imprimatur to such a submission, it would amount to virtually recognizing a right existing in the delegatee to control or even amend the parent provision. The acceptance of such a submission would lead to preposterous results and virtually permit the delegatee to rewrite or even override the legislative wisdom.

X. More fundamentally, this Court is of the considered opinion that Rule 7 merely engrafts a statutory or a legal fiction in respect of written allegations that may be received by the Institute against a member or a firm. It becomes pertinent to note that ordinarily the Institute may receive information in the shape of a written complaint against a member or a firm. That written complaint would have to necessarily be compliant with the requirements of Rule 3 and thus the in the format prescribed by Form-I. However, Rule 7 takes care of contingencies where even though information may be received by the Institute in writing, it may not be in accord with Form-I as prescribed. It is only to take care of such an

eventuality that Rule 7 prescribes that even such written information shall be treated as such and fall within the ambit of Section 21.

Y. The usage of the phrase *"shall be treated"* is clear evidence of the introduction of a statutory fiction. However, that cannot possibly be understood as denuding the Institute of the authority to commence an investigation on the basis of information that may be derived from an external source or be restricted only to information that may be submitted before it in writing.

Z. In the facts of the present case, the Court comes to conclude that the impugned action 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 here. What appears to have transpired is of the news reports merely acting as a catalyst for the Institute to delve deeper into the massive fraud which had occurred and to examine whether any member had failed to abide by the SAs' which applied. It was the material recorded and encompassed in the letter of 13 March 2018 which would constitute the foundation for testing the argument of the petitioner whether there was "information" which merited further enquiry.

AA. Viewed in that light the Court is of the firm opinion that the Institute did have the requisite information as contemplated by Section 21 and which justified the initiation

of the enquiry against the petitioners in the facts of the present case.

BB. While the Court is not called upon at this stage to return any definitive or final conclusions with respect to the alleged violation of the various SAs' as well as SRE 2410, the material placed on the record would clearly belie the contention of the petitioners that the entire initiation of proceedings was based merely on news reports.

CC. The record in fact and to the contrary would appear to indicate that the news reports only triggered a deeper examination by the Institute 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.

DD. A mere news report cannot constitute material which may justify the initiation of an enquiry. A newspaper report, as is well settled, cannot and does not constitute evidence *per se*. A report that may appear in the print media or on a visual news platform, can at best be understood as being an external source from which the Institute may gather or derive knowledge of a particular fact or incident. However, since the initiation of disciplinary action clearly has serious repercussions, the decision to initiate disciplinary action would necessarily have to rest on more cogent and dependable material, data and facts.

EE. The initiation of an enquiry would necessarily have to be preceded by due application of mind, evaluation of the veracity of the reports and consideration of whether circumstances warrant the initiation of an enquiry. In the facts of the present case, the Court has come to conclude, for reasons aforenoted, that the said tests stood satisfied.

122. Accordingly, and for all the aforesaid reasons, the challenge to the proceedings initiated by the Institute fails. The writ petitions shall stand dismissed. The Institute shall consequently be entitled to proceed further in accordance with law. It shall therefore be open to the Institute to give effect to the final orders which have been kept in a sealed cover. The rights of the petitioners to question any final decision that may have been taken is kept open.

123. Though needless to state, it is observed that the Court has not rendered any opinion on the merits of the charges which stood laid against the petitioners. All contentions of respective parties in that respect are kept open.

YASHWANT VARMA, J.

DECEMBER 16, 2022
Neha/SU/bh