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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Reserved on: 22<sup>nd</sup> March, 2024**Date of Pronouncement: 3<sup>rd</sup> July, 2024*

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**W.P.(C) 11944/2021 & CM APPL. 12020/2024****HARINDERJIT SINGH**

..... Petitioner

Through: Mr. Sudhir Makkar, Mr. Saurabh Kripal, Sr. Advs. with Mr. Allwyn Noronha, Mr. Kamal Shankar, Mr. Gautam Verma, Mr. Atul N & Mr. Arjun Narang, Advs. (M: 8800763112)

versus

**DISCIPLINARY COMMITTEE BENCH III  
THE INSTITUTE OF CHARTERED ACCOUNTANTS  
OF INDIA & ANR.**

..... Respondents

Through: Mr. Ramji Srinivasan Sr. Adv. with Ms. Pooja M. Saigal, Mr. Nikhil Sabri, Mr. Nipun Gupta & Ms. Namrata, Advs. (M: 9810137113)

WITH

+

**W.P.(C) 13375/2021 & CM APPL. 42141/2021, 12017/2024****MR ABHISHEK RARA**

..... Petitioner

Through: Mr. Sudhir Makkar, Mr. Saurabh Kripal, Sr. Advs. with Mr. Allwyn Noronha, Mr. Kamal Shankar, Mr. Gautam Verma, Mr. Atul N & Mr. Arjun Narang, Advs.

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WITH



- + **W.P.(C) 13376/2021 & CM APPL. 42143/2021, 12021/2024**  
USHA RAJEEV ..... Petitioner  
Through: Mr. Sudhir Makkar, Mr. Saurabh Kripal, Sr. Advs. with Mr. Allwyn Noronha, Mr. Kamal Shankar, Mr. Gautam Verma, Mr. Atul N & Mr. Arjun Narang, Advs.
- versus  
DISCIPLINARY COMMITTEE BENCH III  
THE INSTITUTE OF CHARTERED ACCOUNTANTS  
OF INDIA & ANR. .... Respondents  
Through: Mr. Ramji Srinivasan Sr. Adv. with Ms. Pooja M. Saigal, Mr. Nikhil Sabri, Mr. Nipun Gupta & Ms. Namrata, Advs. (M: 9810137113)
- WITH  
+ **W.P.(C) 13377/2021 & CM APPL. 42145/2021, 12014/2024**  
RAHUL CHATTOPADHYAY ..... Petitioner  
Through: Mr. Sudhir Makkar, Mr. Saurabh Kripal, Sr. Advs. with Mr. Allwyn Noronha, Mr. Kamal Shankar, Mr. Gautam Verma, Mr. Atul N & Mr. Arjun Narang, Advs.
- versus  
DISCIPLINARY COMMITTEE BENCH III  
THE INSTITUTE OF CHARTERED ACCOUNTANTS  
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Through: Mr. Ramji Srinivasan Sr. Adv. with Ms. Pooja M. Saigal, Mr. Nikhil Sabri, Mr. Nipun Gupta & Ms. Namrata, Advs. (M: 9810137113)
- WITH  
+ **W.P.(C) 13378/2021 & CM APPL. 42147/2021, 12018/2024**  
AMITESH DUTTA ..... Petitioner  
Through: Mr. Sudhir Makkar, Mr. Saurabh Kripal, Sr. Advs. with Mr. Allwyn Noronha, Mr. Kamal Shankar, Mr. Gautam Verma, Mr. Atul N & Mr.



Arjun Narang, Advs.

versus

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Through: Mr. Ramji Srinivasan Sr. Adv. with  
Ms. Pooja M. Saigal, Mr. Nikhil Sabri,  
Mr. Nipun Gupta & Ms. Namrata,  
Advs. (M: 9810137113)

WITH

+ **W.P.(C) 13379/2021 & CM APPL. 42149/2021, 12015/2024**  
RAJAN WADHAWAN .... Petitioner

Through: Mr. Sudhir Makkar, Mr. Saurabh  
Kripal, Sr. Advs. with Mr. Allwyn  
Noronha, Mr. Kamal Shankar, Mr.  
Gautam Verma, Mr. Atul N & Mr.  
Arjun Narang, Advs.

versus

DISCIPLINARY COMMITTEE BENCH III  
THE INSTITUTE OF CHARTERED ACCOUNTANTS  
OF INDIA & ANR. .... Respondent

Through: Mr. Ramji Srinivasan Sr. Adv. with  
Ms. Pooja M. Saigal, Mr. Nikhil Sabri,  
Mr. Nipun Gupta & Ms. Namrata,  
Advs. (M: 9810137113)

WITH

+ **W.P.(C) 13380/2021 & CM APPL. 42151/2021, 12013/2024**  
PRIYANSHU DINESHKUMAR GUNDANA .... Petitioner

Through: Mr. Sudhir Makkar, Mr. Saurabh  
Kripal, Sr. Advs. with Mr. Allwyn  
Noronha, Mr. Kamal Shankar, Mr.  
Gautam Verma, Mr. Atul N & Mr.  
Arjun Narang, Advs.

versus

DISCIPLINARY COMMITTEE BENCH III  
THE INSTITUTE OF CHARTERED ACCOUNTANTS  
OF INDIA & ANR. .... Respondents

Through: Mr. Ramji Srinivasan Sr. Adv. with



Ms. Pooja M. Saigal, Mr. Nikhil Sabri,  
Mr. Nipun Gupta & Ms. Namrata,  
Adv. (M: 9810137113)

WITH

+ **W.P.(C) 13381/2021 & CM APPL. 42153/2021, 12019/2024**  
USHA RAJEEV ..... Petitioner

Through: Mr. Sudhir Makkar, Mr. Saurabh  
Kripal, Sr. Adv. with Mr. Allwyn  
Noronha, Mr. Kamal Shankar, Mr.  
Gautam Verma, Mr. Atul N & Mr.  
Arjun Narang, Adv.

versus

DISCIPLINARY COMMITTEE BENCH III  
THE INSTITUTE OF CHARTERED ACCOUNTANTS  
OF INDIA & ANR. .... Respondents

Through: Mr. Ramji Srinivasan Sr. Adv. with  
Ms. Pooja M. Saigal, Mr. Nikhil Sabri,  
Mr. Nipun Gupta & Ms. Namrata,  
Adv. (M: 9810137113)

AND

+ **W.P.(C) 13382/2021 & CM APPL. 42155/2021, 12016/2024**  
ANURAG KHANDELWAL ..... Petitioner

Through: Mr. Sudhir Makkar, Mr. Saurabh  
Kripal, Sr. Adv. with Mr. Allwyn  
Noronha, Mr. Kamal Shankar, Mr.  
Gautam Verma, Mr. Atul N & Mr.  
Arjun Narang, Adv.

versus

DISCIPLINARY COMMITTEE BENCH III  
THE INSTITUTE OF CHARTERED ACCOUNTANTS  
OF INDIA & ANR. .... Respondents

Through: Mr. Ramji Srinivasan Sr. Adv. with  
Ms. Pooja M. Saigal, Mr. Nikhil Sabri,  
Mr. Nipun Gupta & Ms. Namrata,  
Adv. (M: 9810137113)



**CORAM:  
JUSTICE PRATHIBA M. SINGH**

**JUDGMENT**

**Prathiba M. Singh, J.**

1. This hearing has been held through hybrid mode.

**A. Background:**

2. The present judgement deals with 10 writ petitions filed by various Petitioners against the Institute of Chartered Accountants of India (hereinafter 'ICAI') in furtherance to disciplinary proceedings conducted by ICAI. The 10 writ petitions are disposed of by a common judgement. The broad issue discussed in the present writ petitions are with regard to professional misconduct and code of ethics of Chartered Accountants (hereinafter 'CAs'), emphasizing on the responsibility of CAs as also the Chartered Accountancy firms (hereinafter 'firms') to maintain integrity. The profession of CAs plays a pivotal roles in financial reporting, auditing, and advisory services. Thus, any misconduct on their part/ the firm's part can lead to serious consequences, legal ramifications and losses to clients, apart from larger implications for society as a whole. The ICAI is the regulatory body governing CAs, which defines and addresses professional misconduct through its Code of Ethics and its disciplinary mechanisms. In this judgement, the powers and procedure followed by ICAI is looked into. Considering that there are many writ petitions, the contents of the judgement are divided in the following sections:

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3. Can the Institute of Chartered Accountants of India (ICAI) take action	
against <i>Chartered Accountant firms</i> for professional misconduct under the	
existing provisions of the Chartered Accountants Act, 1949 (hereinafter, ' <i>the</i>	
<i>Act</i> ') or is the ICAI empowered to only take action against one person, who	
is identified by the firm? - This question arises in these petitions. The question	
has wider implications and ramifications as, if the submission of the	
individual Chartered Accountants (hereinafter, ' <i>the CAs</i> ') who are Petitioners	



is accepted, the ICAI would in effect only have the power to take action against the persons identified as ‘*members answerable*’ by the firm itself, and not against the firm as a whole.

4. A total of 10 writ petitions were filed by the partners of the following firms:

- M/s BSR and Associates LLP - Rakesh Dewan
- M/s Price Waterhouse & Co. Chartered Accounts LLP- Harinderjit Singh and Abhishek Rara
- M/s Dalal and Shah LLP - Usha Rajeev and Priyanshu Dineshkumar Gundana
- M/s Price Waterhouse & Co. Chennai, LLP - Rahul Chattopadhyay
- M/s Price Waterhouse & Co. LLP - Rajan Wadhawan
- M/s Price Waterhouse & Co. Bangalore, LLP - Amitesh Dutta
- M/s Price Waterhouse, Kolkata - Usha Rajeev
- M/s Lovelock & Lewes, Kolkata - Anurag Khandelwal

The facts of each of the total 10 writ petitions are summarised below. The case proceedings in the writ petitions are similar and the above-mentioned CAs (the Petitioners) have sought to be released from disciplinary proceedings being conducted by ICAI as they are not the nominated ‘*members concerned*’ in the proceedings for misconduct as per Rule 8 of The Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules 2007 (hereinafter, ‘*the Rules*’). Since the identified persons are referred to as ‘*disclosed member*’ in the petitions, ‘*member answerable*’ in the ICAI proceedings and ‘*member/ members concerned*’ in the Rules, the identified persons by various firms



hereinafter shall be referred to as '*member answerable*'. This judgement considers the Act and the Rules in order to address the issues that arise when allegations of misconduct are raised against Chartered Accountants and Chartered Accountancy firms. The writ petitions raise common questions and hearings have been conducted from time to time.

**Brief facts of the Writ Petitions filed:**

- i. W.P.(C) 6532/2022 titled Rakesh Dewan v. Disciplinary Committee, The Institute of Chartered Accountants of India & Anr.***

5. In this petition, on behalf of the Petitioner, substantial arguments were heard on 21<sup>st</sup> March, 2023 and on 5<sup>th</sup> April, 2023. However, an application was moved for withdrawal of the said petition. Vide order dated 21<sup>st</sup> July, 2023, the writ petition was dismissed as withdrawn in the following terms:

*“ 2. Mr. Sudhir Makkar, Id. Senior Counsel appearing for the Petitioner, upon instructions from Ms. Anindita Roychowdhury, Id. Counsel submits that the Petitioner wishes to withdraw the present writ petition as the Disciplinary Committee of ICAI has already progressed further in its proceedings against the Petitioner.*

*3. Accordingly, the present petition is dismissed as withdrawn with liberty to the Petitioner avail of his remedies in accordance with law. All the pending applications are also disposed of.*

*4. All the contentions of the parties are left open.*

*5. The Disciplinary Committee may take its decision uninfluenced by any observations made by this Court.*

- ii. W.P.(C) 11944/2021 titled Harinderjit Singh v. Disciplinary Committee Bench-III, The Institute of Chartered Accountants of India & Anr.***

6. This Petitioner is a partner at M/s Price Waterhouse and Co. Chartered Accountants LLP (PWC CA LLP) and is stated to be a Chartered Accountant





practicing for more than 32 years when the writ petition was filed in 2021. He is a senior partner in PWC CA LLP. The Petitioner's case is that his firm is also a member of the ICAI since 1998. The firm received a notice at its Kolkata office on 16<sup>th</sup> March, 2018, which was issued in continuation of written communication in 2016. The said communication relied upon the report of Operation of Multi-National Accounting Firms in India. According to the said notice, the Petitioner's firm which is part of a global network of connected entities was found to be using the same email address, domain name, logos, etc. as displayed on the visiting card.

7. According to the ICAI, disclosure of an affiliation with an international entity is contrary to its recommendations of January, 1995. Various documents of the firm were relied upon to allege that the members of the firm had access to common resources, methodology, knowledge and expertise. The stand of the ICAI in its communication was that the conduct of the firm was in violation of Items (2), (5) and (7) of Part I of the First Schedule to the Act and Item (1) of Part II of the Second Schedule to the Act.

8. In addition, in the said notice, the ICAI placed reliance on the orders passed by the Supreme Court in *S. Sukumar v. The Secretary, Institute of Chartered Accounts of India & Ors. [(2018) 14 SCC 360]* in Civil Appeal No. 2422 of 2018 dated 23<sup>rd</sup> February, 2018. In the said judgment, the Supreme Court had made observations relating to the PWC group, which consisted of all the above firms. Each of the firms had multiple partners.

9. According to the Supreme Court's decision in *Sukumar (supra)*, violations under Sections 25 and 29 of the Act were flagged including the manner of sharing of fee by Indian Chartered Accountant firms, which are associated with international group entities. In view thereof, the Supreme



Court concluded that the PWC group of firms have violated the provisions of the Act.

10. Vide the said notice dated 16<sup>th</sup> March, 2018 the ICAI called upon the firm to disclose the names of the members, who are answerable in respect of the allegations. In response to the said notice, the Petitioner sent a letter dated 6<sup>th</sup> April, 2018 seeking 30 days' extension to submit the requisite details. Again on 17<sup>th</sup> April, 2018, a detailed reply was given to the notice and the firm took the position that there is no member, who is answerable. However, the firm nominated a CA- Mr. Neeraj Kumar Gupta as a person who will provide any *clarification* on behalf of the firm. Reliance is placed on the relevant portion of the response and the same is extracted below:

*“In view of the foregoing, since we firmly deny any violation by the Firm of the provisions of the Act, Rules and/or Regulations as alleged in the Notice, there is no member who is answerable for the same. However, without prejudice to these contentions, in response to your requirement and for administrative purposes of communications, we are currently nominating **Mr. Neeraj Kumar Gupta**, membership number 055158 as the person who shall be answering and providing any clarification for these allegations for and on behalf of Firm and who will respond further should he/she wish to. His declaration in this regard is attached herewith. We may nominate such other person as the firm may deem fit from time to time, as the person who shall provide clarification and responses to these allegations. In light of our aforesaid explanations of our practices and procedures, which are founded in best of intentions, we most respectfully submit that you give due credence to the substance of this response and take it on your records. We remain committed to cooperate with you at all stages and should you deem fit, we would like to explain our position further in person at*



*a date and time chosen by your good offices. We reserve our right to supplement this response with additional facts and documents if and when the occasion arises.”*

11. A declaration, on 17<sup>th</sup> April, 2018 was also filed by the nominated member who was answerable to the said notice, i.e., CA- Mr. Neeraj Kumar Gupta, which reads as under:

***“Re: Your notice dated March 16, 2018 (Reference No. PPR/HPC/DD/14/INF/1018)***

*Dear Sir,*

*I, Neeraj Kumar Gupta, membership number 055158 hereby declare that:*

*(i) M/s Price Waterhouse & Co Chartered Accountants LLP [FRN. No.304026E/E300009] has received your notice dated March 16, 2018 {Reference No. PPR/HPC/DD/14/INF/2018} ("Notice"), on March 19, 2018; and*

***(ii) I agree for answering any queries and providing any clarification in relation to the matter underlying the Notice on behalf of M/s Price Waterhouse & Co Chartered Accountants LLP.***

*This is without prejudice to the contentions already advanced by M/s Price Waterhouse & Co Chartered Accountants LLP, which I concur with, that there are no violations, as alleged in the Notice.”*

12. Thereafter, the letter dated 6<sup>th</sup> December, 2018 was issued by the ICAI wherein *prima facie* allegations were made against the Petitioner and a written statement was sought from the Petitioner. In response thereto, the Petitioner on 24<sup>th</sup> December, 2018 stated that he was not the partner or member concerned or nominated person nor did he furnish any declaration under the Proviso of Rule 8(b) of the Rules. Thus, it was the Petitioner’s stand that the notice ought to be withdrawn/dropped.



13. On 3<sup>rd</sup> January, 2019 the ICAI again took a position that there was no basis for making Mr. Neeraj Kumar Gupta as the '*member answerable*' and why the Petitioner was answerable. Hence, a written statement was again sought. However, the Petitioner maintained the position that he deserved to be excluded from the proceedings vide letters dated 30<sup>th</sup> January, 2019 and 29<sup>th</sup> April, 2019.

14. It is noted that Mr. Neeraj Kumar Gupta on 21<sup>st</sup> May, 2018 had adopted the written statement filed by the firm on 17<sup>th</sup> April 2018 as his written statement. However, the ICAI continued to issue notices to the Petitioner and vide letters dated 10<sup>th</sup> May, 2019, and 26<sup>th</sup> September, 2019, stating that the matter is under investigation before the Disciplinary Committee ('DC') and that the Petitioner ought to make his submission before the said Committee. On 26<sup>th</sup> September, 2019, a notice thereafter, was given to firm as also Mr. Neeraj Kumar Gupta.

15. Again, on 10<sup>th</sup> October, 2019, the Petitioner claimed that he deserves to be removed from the proceedings.

16. The DC held its hearing on 14<sup>th</sup> October, 2019. The ICAI continued to send notices to the Petitioner and to Mr. Gupta. The Petitioner, however, is stated to have not participated in the said proceedings at all. The hearings continued before the DC of the ICAI.

17. The Petitioner then filed a discharge application before the DC. Despite filing of the said discharge application, the DC of the ICAI issued another notice on 29<sup>th</sup> November, 2019 informing about the subsequent DC proceedings to be held on 12<sup>th</sup> December, 2019. The proceedings kept continuing in the said matter and the Petitioner's name continued to be a part of the Disciplinary proceedings.



18. The present writ petition then came to be filed on 25<sup>th</sup> October, 2021. The disciplinary proceedings against the Petitioner were stayed vide order dated 26<sup>th</sup> October, 2021.

19. The matter was taken up along with other writ petitions filed by similarly placed partners of the Price Waterhouse group. Submissions were heard from time to time in this matter and the connected matters. The hearing commenced on 5<sup>th</sup> April, 2023 in the main writ petition filed by Mr. Rakesh Dewan being ***W.P.(C) 6532/2022***.

20. Status report was called from the ICAI on 4<sup>th</sup> October, 2023 as to the stage of the proceedings before the DC. On 13<sup>th</sup> November, 2023, the Court clarified that the proceedings ought to be continued before the DC and the final report must be placed before the Court.

21. Final report was then placed before the Court on 4<sup>th</sup> March, 2024. The Petitioner thereafter moved an application ***CM APPL.12020/2024*** in January, 2024 seeking to withdraw the present writ petition.

***iii. W.P.(C) 13375/2021 titled Abhishek Rara v. Disciplinary Committee Bench-III, The Institute of Chartered Accountants of India & Anr.***

22. The Petitioner in the present case is partner with M/s Price Waterhouse Chartered Accountants LLP (firm). The firm received a notice dated 16<sup>th</sup> March, 2018 similar to the one issued in ***W.P.(C) 11944/2021***. Notice was issued to the firm in the Gurgaon address, in response to which the Petitioner replied on 6<sup>th</sup> April, 2018 and sought 30 days' time for submission of the response. Correspondence in this letter was signed by the Petitioner on behalf of the firm. Thereafter, a detailed response was issued on 17<sup>th</sup> April, 2018 on



similar lines as in ***W.P.(C) 11944/2021***.

23. In this case, CA-Mr. Anupam Dhawan was nominated by the firm, as the person to provide ***answers and clarification***. The language of this letter is almost identical to the letter in ***W.P.(C) 11944/2021***. The said Mr. Dhawan gave a declaration that he is agreeable for answering any questions and providing any clarification. The ICAI, however, continued the proceedings against the Petitioner and finally vide letter dated 6<sup>th</sup> December, 2018 agreed with the opinion of the Director (Discipline) that the Petitioner is guilty of professional misconduct. The Petitioner also then filed an application seeking discharge. However, on 9<sup>th</sup> October, 2021, hearing notice was issued directing the Petitioner to appear on 29<sup>th</sup> October, 2021.

24. This case was also listed along with other connected matters on 26<sup>th</sup> November, 2021. The interim order, which was passed on the said date, is as under:

*“13. Till the next date of hearing, there shall be a stay of the disciplinary proceedings initiated against the petitioner.”*

25. The Petitioner in the petition pleads that the said proceeding has been prejudicial to the Petitioner’s professional standing and reputation, hindering him from taking up independent professional assignments.

***iv. W.P.(C) 13376/2021 titled Usha Rajeev v. Disciplinary Committee Bench-III, The Institute of Chartered Accountants of India & Anr.***

26. The Petitioner- Usha Rajeev who is a partner with M/s. Dalal & Shah LLP (firm) through this writ petition has asserted that ICAI has erred in initiating the disciplinary proceeding against her, disregarding her repeated



clarifications that she was not the *disclosed member/ member answerable*, and nor did she furnish any declaration as required by the Rules. This petition also is on similar lines as ***W.P.(C) 11944/2021***.

27. The firm in the present petition received a notice dated 4<sup>th</sup> April, 2018 similar to the one issued in ***W.P.(C) 11944/2021***. Notice was issued to the firm at their Mumbai address, in response to which the Petitioner replied on 26<sup>th</sup> April, 2018 and sought 30 days' time for submission of the response. Correspondence in this letter was signed by the Petitioner on behalf of the firm. Thereafter, a detailed response was issued on 27<sup>th</sup> April, 2018 on similar lines as in ***W.P.(C) 11944/2021***. In this case also, CA -Mr. Neeraj Kumar Gupta was nominated by the firm, as the person who will answer and ***provide clarifications***. Vide letter dated 21<sup>st</sup> May, 2018 said Mr. Gupta gave a declaration that he is agreeable for answering any questions and providing any clarifications.

28. Further in the letter issued by the Petitioner to ICAI, the language of this letter is almost identical to the letter in ***W.P.(C) 11944/2021***. In the said letter it was stated that the continuation of the disciplinary proceeding is violative of law and procedures prescribed under the Act, as ICAI lacked authority/jurisdiction to proceed against her. In the said writ petition it is also contended that the only reason for including the Petitioner in the disciplinary proceeding is her signing letters on behalf of Dalal & Shah LLP, the firm and responding to requests made by disciplinary directorate of the DC. The ICAI, however, continued the proceedings against the Petitioner and finally vide letter dated 6<sup>th</sup> December, 2018 agreed with the opinion of the Director (Discipline) that the Petitioner is guilty of professional misconduct. Amidst the proceedings, the Petitioner also took premature retirement on 31<sup>st</sup> May,



2018, from the firm due to the ongoing issues.

29. The Petitioner also filed an application seeking discharge on 12<sup>th</sup> December, 2018, 30<sup>th</sup> January, 2019 and 29<sup>th</sup> April, 2019. On 10<sup>th</sup> May, 2019, the disciplinary directorate responded to the Petitioner's letter dated 29<sup>th</sup> April, 2019 by stating that the matter is under investigation and the Petitioner must appear before the DC. Further, on 26<sup>th</sup> September, 2019, hearing notice was issued directing the Petitioner to appear on 14<sup>th</sup> October, 2019 before the DC for the disciplinary proceedings. The Petitioner again sent a letter seeking discharge on 10<sup>th</sup> October, 2019 as also on 20<sup>th</sup> November, 2019. However, the ICAI continued with the proceedings.

30. This case was also listed along with connected matters on 26<sup>th</sup> November, 2021. The interim order, which was passed on the said date, is as under:

*“13. Till the next date of hearing, there shall be a stay of disciplinary proceedings initiated against the petitioners. However, it is clarified that the respondents are free to take a decision on the discharge application filed on behalf of the petitioners. It is also clarified that there is no stay in so far as the disciplinary proceedings initiated against the Firm, Price Waterhouse, Chartered Accountants, LLP.”*

31. It is stated by the Petitioner that the ongoing proceeding is prejudicial to the Petitioner's professional standing and reputation, hindering her from taking up independent professional assignments or being appointed as an independent director. The Petitioner, a Chartered Accountant with over 33 years of experience, asserts that the disciplinary proceeding is detrimental and prejudicial, causing hindrance to her professional pursuits and future endeavours.





v. ***W.P.(C) 13377/2021*** titled ***Rahul Chattopadhyay v. Disciplinary Committee Bench-III, The Institute of Chartered Accountants of India & Anr.***

32. The facts in the present writ petition also are on the lines of ***W.P.(C) 11944/2021*** and the other writ petitions as discussed. In the present case the Petitioner- Mr. Rahul Chattopadhyay is also a CA and a partner of Price Waterhouse & Co. (firm) and has contested the disciplinary proceedings against him. On 23<sup>rd</sup> March, 2018, a notice was issued to the Firm by the DC of ICAI, initiating proceedings and requesting disclosure of the member answerable. Initially, on 11<sup>th</sup> April, 2018 the firm, through the Petitioner, sought a 30-day extension to respond, citing the complexity of the request. Subsequently, on 17<sup>th</sup> April, 2018 the firm responded with a detailed reply on the similar lines of reply in ***W.P.(C) 11944/2021*** and the above writs, refuting the allegations and disclosing CA- Mr. Neeraj Kumar Gupta as the designated member to address the accusations. On 15<sup>th</sup> May, 2018, Mr. Gupta issued an affidavit along with written submissions presenting himself as the ‘*member answerable*’.

33. Despite the absence of the Petitioner’s name in the firm’s disclosure and Petitioner’s failure to furnish the requisite declaration, he was included in the disciplinary proceedings and DC proceedings were initiated against him on 6<sup>th</sup> December, 2018. The Petitioner in the present case also made repeated attempts to secure discharge from the proceedings, contesting their legitimacy and his involvement. The Petitioner filed letters on 24<sup>th</sup> December, 2018, 30<sup>th</sup> January, 2019, and 29<sup>th</sup> April, 2019, seeking discharge. Despite these efforts, the proceedings of the DC persisted and the notice was issued to the Petitioner.



On 26<sup>th</sup> September, 2019 further notice was issued by ICAI to Mr. Neeraj Gupta as also the Petitioner informing them about the scheduled hearing of the DC on 15<sup>th</sup> October, 2019. Additional attempts were made on 10<sup>th</sup> October, 2019, and 20<sup>th</sup> November, 2019, reiterating the request for discharge. Nevertheless, the proceedings continued unabated. Further correspondence hearing took place on 14<sup>th</sup> October, 2019 wherein the Petitioner consistently questioned the maintainability of the proceedings against him and reiterated that he was not the member answerable. Despite his objections and applications for discharge, the proceedings persisted. The Petitioner vide emails dated 15<sup>th</sup> November, 2019, 10<sup>th</sup> December, 2019 and through discharge application dated 12<sup>th</sup> December, 2019, sought discharge from the proceedings. However, despite the continued emails, the Petitioner like in other cases was intimated to join proceedings on 21<sup>st</sup> January, 2021 and 29<sup>th</sup> October, 2021.

34. The Petitioner, aggrieved by the continued disciplinary actions despite his protests, initiated the present writ petition. This case was also listed along with connected matters on 26<sup>th</sup> November, 2021 and the interim order of stay of the DC proceedings was also granted to the Petitioner.

*vi. W.P.(C) 13378/2021 titled Amitesh Dutta v. Disciplinary Committee Bench-III, The Institute of Chartered Accountants of India & Anr.*

35. The Petitioner- CA Amitesh Dutta, a Chartered Accountant with over 24 years of experience, is associated with the ICAI institute and is a Partner at Price Waterhouse & Co. Bangalore LLP (firm). The present writ petition challenges the initiation of disciplinary proceedings against the Petitioner by the DC, alleging non-compliance with the provisions of Rules and the Act.



36. The Disciplinary Directorate of ICAI issued a notice on 16<sup>th</sup> March, 2018 to the Firm, seeking naming of a member answerable in respect of the allegations. The Firm responded on 17<sup>th</sup> April, 2018, refuting the allegations, and disclosing a partner, Mr. Neeraj Kumar Gupta, as the '*member answerable*'. The Petitioner, signing on behalf of the Firm, did not file the required declaration under Rule 8(1)(b) of the Investigation Rules. The facts of the present case are similar to all the above petitions. On 15<sup>th</sup> May, 2018, Mr. Neeraj Kumar Gupta issued written submissions on behalf of the firm.

37. Despite the Petitioner not being the member answerable, the DC of ICAI initiated disciplinary proceedings against the Petitioner on 6<sup>th</sup> December, 2018 alongside Mr. Neeraj Kumar Gupta. The Petitioner repeatedly clarified his position and challenged the maintainability of the disciplinary proceeding through letters, emails, representations, and during hearings on various dates. The Petitioner repeatedly sent request for discharge on 24<sup>th</sup> December, 2018, 30<sup>th</sup> January, 2019, 29<sup>th</sup> April, 2019, 10<sup>th</sup> October, 2019, 15<sup>th</sup> November, 2019, 10<sup>th</sup> December, 2019 and 12<sup>th</sup> December, 2019. The Petitioner filed a discharge application before the DC, contesting the proceeding's legitimacy. However, Respondent No. 1 continued the disciplinary proceeding against the Petitioner, as evidenced by letters dated 3<sup>rd</sup> January, 2019, 10<sup>th</sup> May, 2019, 26<sup>th</sup> September, 2019, 29<sup>th</sup> November, 2019, 3<sup>rd</sup> January, 2020, 1<sup>st</sup> January, 2021, and 9<sup>th</sup> October, 2021 directing the Petitioner's participation in hearings and for submission of documents. Aggrieved by the said letters, the Petitioner has filed the present writ petition asserting that the DC of ICAI lacks jurisdiction to proceed against him, as he was neither disclosed as member answerable by the Firm nor satisfied the conditions under Rule 8(1)(b) of the Rules. This case was also listed along



with connected matters on 26<sup>th</sup> November, 2021 and the interim order of stay of the DC proceedings was also granted to the Petitioner.

**vii. W.P.(C) 13379/2021 titled *Rajan Wadhawan v. Disciplinary Committee Bench-III, The Institute of Chartered Accountants of India & Anr.***

38. The Petitioner- Rajan Wadhawan, associated with the ICAI institute and a Partner at Price Waterhouse & Co. LLP (firm) has filed the present writ petition. The Petitioner also challenges the initiation of disciplinary proceedings DC, alleging non-compliance with the provisions of Rules and the Act.

39. The Disciplinary Directorate of ICAI issued a notice on 16<sup>th</sup> March, 2018 to the Firm, seeking disclosure of a member answerable to the allegations. The Firm responded on 17<sup>th</sup> April, 2018, refuting the allegations, and disclosing a partner, CA Dinesh Yashavant Supekar, as the '*member answerable*', who would answer and provide clarifications. The language of the letter is identical to the letter in **W.P.(C) 11944/2021**. The Petitioner, signing on behalf of the Firm, did not file the required declaration under Rule 8(1)(b) of the Rules.

40. Despite the Petitioner not being the disclosed member, DC of ICAI initiated a disciplinary proceeding against the Petitioner on 6<sup>th</sup> December, 2018 alongside Mr. Supekar. The Petitioner sought to clarify his position and challenged the maintainability of the disciplinary proceeding through letters, emails, representations, and during hearings on various dates including emails dated 24<sup>th</sup> December, 2018, 30<sup>th</sup> January, 2019, 29<sup>th</sup> April, 2019, 10<sup>th</sup> October, 2019, 18<sup>th</sup> November, 2019, 10<sup>th</sup> December, 2019 and 12<sup>th</sup> December, 2019. The Petitioner filed a discharge application before the DC, contesting the



proceeding's legitimacy. However, Respondent No. 1 continued the disciplinary proceedings against the Petitioner, as evidenced by letters dated 3<sup>rd</sup> January, 2019, 10<sup>th</sup> May, 2019, 26<sup>th</sup> September, 2019, 29<sup>th</sup> November, 2019, 3<sup>rd</sup> January, 2020, and 1<sup>st</sup> January, 2021, directing the Petitioner's participation in hearings and for submission of documents. Aggrieved by the said letters, the Petitioner has filed the present writ petition asserting that DC of ICAI lacks jurisdiction to proceed against him, as he was neither disclosed as member answerable by the Firm nor satisfied the conditions under Rule 8(1)(b) of the Rules. This case was also listed along with connected matters on 26<sup>th</sup> November, 2021 and the interim order of stay of the DC proceedings was also granted to the Petitioner.

**viii. *W.P.(C) 13380/2021* titled *Priyanshu Dineshkumar Sharma v. Disciplinary Committee Bench-III, The Institute of Chartered Accountants of India & Anr.***

41. The Petitioner- Priyanshu Dinesh Kumar Sharma, a member of the ICAI institute and a Partner at Dalal & Shah (firm) has filed the present writ petition challenging the initiation of a disciplinary proceeding against the Petitioner by DC, alleging non-compliance with the provisions of Rules and the Act.

42. The Disciplinary Directorate of ICAI issued a notice on 5<sup>th</sup> April, 2018 and 19<sup>th</sup> April, 2018 to the Firm, seeking disclosure of a member answerable to the allegations. The Firm responded on 17<sup>th</sup> April, 2018, refuting the allegations, and disclosing a partner, CA Neeraj Kumar Gupta, as the 'member answerable', who will answer and provide clarifications. The language of the letter was identical to the letter in *W.P.(C) 11944/2021*. The Petitioner, signing on behalf of the Firm, did not file the required declaration



under Rule 8(1)(b) of the Rules.

43. Despite the Petitioner not being the disclosed member, the DC of ICAI initiated a disciplinary proceeding against the Petitioner on 6<sup>th</sup> December, 2018 alongside Mr. Gupta. The Petitioner sought to clarify his position and challenged the maintainability of the disciplinary proceeding through letters, emails, representations, and during hearings on various dates including emails dated 24<sup>th</sup> December, 2018, 30<sup>th</sup> January, 2019, 29<sup>th</sup> April, 2019, 10<sup>th</sup> October, 2019, 18<sup>th</sup> November, 2019, 10<sup>th</sup> December, 2019 and 12<sup>th</sup> December, 2019. The Petitioner filed a discharge application before the DC, contesting the proceeding's legitimacy. However, Respondent No. 1 continued the disciplinary proceeding against the Petitioner, as evidenced by letters dated 3<sup>rd</sup> January, 2019, 10<sup>th</sup> May, 2019, 26<sup>th</sup> September, 2019, 29<sup>th</sup> November, 2019, 3<sup>rd</sup> January, 2020, and 1<sup>st</sup> January, 2021, directing the Petitioner's participation in hearings and for submission of documents. Aggrieved by the said letters, the Petitioner has filed the present writ petition asserting that DC of ICAI lacks jurisdiction to proceed against him, as he was neither disclosed as member answerable by the Firm nor satisfied the conditions under Rule 8(1)(b) of the Rules. This case was also listed along with connected matters on 26<sup>th</sup> November, 2021 and the interim order of stay of the DC proceedings was also granted to the Petitioner.

*ix. W.P.(C) 13381/2021 titled Usha Rajeev v. Disciplinary Committee Bench-III, The Institute of Chartered Accountants of India & Anr.*

44. The Petitioner- Usha Rajeev, a member of the ICAI institute and a Partner at Price Waterhouse (firm) has filed the second writ petition, against



the Respondents in relation to the notice sent to the respective firm. The present writ petition also challenges the initiation of a disciplinary proceeding against the Petitioner by DC, alleging non-compliance with the provisions of Rules and the Act. The facts and circumstances of the present writ petition is also similar to the facts in the above mentioned writ petitions.

45. The Disciplinary Directorate of ICAI issued a notice on 16<sup>th</sup> March, 2018 to the Firm, seeking disclosure of a member answerable to the allegations. The Firm responded on 17<sup>th</sup> April, 2018, refuting the allegations and disclosing a partner, CA Neeraj Kumar Gupta, as the ‘member answerable’, who will answer and provide clarifications. The language of the letter is identical to the letter in *W.P.(C) 11944/2021*. The Petitioner, signing on behalf of the Firm, did not file the required declaration under Rule 8(1)(b) of the Rules.

46. Despite the Petitioner not being the disclosed member, DC of ICAI initiated a disciplinary proceeding against the Petitioner on 6<sup>th</sup> December, 2018 alongside Mr. Gupta. The Petitioner sought to clarify her position and challenged the maintainability of the disciplinary proceeding through letters, emails, representations, and during hearings on various dates including emails dated 24<sup>th</sup> December, 2018, 30<sup>th</sup> January, 2019, 29<sup>th</sup> April, 2019, 10<sup>th</sup> October, 2019, 18<sup>th</sup> November, 2019, 10<sup>th</sup> December, 2019 and 12<sup>th</sup> December, 2019. The Petitioner filed a discharge application before the DC, contesting the proceeding’s legitimacy. However, Respondent No. 1 continued the disciplinary proceeding against the Petitioner, as evidenced by letters dated 3<sup>rd</sup> January, 2019, 10<sup>th</sup> May, 2019, 26<sup>th</sup> September, 2019, 29<sup>th</sup> November, 2019, 3<sup>rd</sup> January, 2020, and 1<sup>st</sup> January, 2021, directing the Petitioner’s participation in hearings or submission of documents. Aggrieved by the said



letters, the Petitioner has filed the present writ petition asserting that DC of ICAI lacks jurisdiction to proceed against her, as she was neither disclosed as member answerable by the Firm nor satisfied the conditions under Rule 8(1)(b) of the Rules. This case was also listed along with connected matters on 26<sup>th</sup> November, 2021 and the interim order of stay of the DC proceedings was also granted to the Petitioner.

***x. W.P.(C) 13382/2021 titled Anurag Khandelwal v. Disciplinary Committee Bench-III, The Institute of Chartered Accountants of India & Anr.***

47. The Petitioner- Anurag Khandelwal, associated with ICAI institute and a Partner at Lovelock & Lewes (firm) has filed the present writ petition. The present writ petition challenges the initiation of a disciplinary proceeding against the Petitioner by DC, alleging non-compliance with the provisions of Rules and the Act.

48. The Disciplinary Directorate of ICAI issued a notice on 19<sup>th</sup> March, 2018 and 17<sup>th</sup> May, 2018 to the Firm, seeking disclosure of a member answerable to various allegations. The Firm responded on 4<sup>th</sup> June, 2018, refuting the allegations, and disclosing a partner, CA N.K. Vardarajan, as the 'member answerable', who will answer and provide clarifications. The language of the letter is identical to the letter in *W.P.(C) 11944/2021*. The Petitioner, signing on behalf of the Firm, did not file the required declaration under Rule 8(1)(b) of the Rules.

49. Despite the Petitioner not being the disclosed member, DC of ICAI initiated a disciplinary proceeding against the Petitioner on 6<sup>th</sup> December, 2018 alongside Mr. Vardarajan. The Petitioner repeatedly sought to clarify





his position and challenged the maintainability of the disciplinary proceeding through letters, emails, representations, and during hearings on various dates including emails dated 24<sup>th</sup> December, 2018, 30<sup>th</sup> January, 2019, 29<sup>th</sup> April, 2019, 10<sup>th</sup> October, 2019, 18<sup>th</sup> November, 2019, 10<sup>th</sup> December, 2019 and 12<sup>th</sup> December, 2019. The Petitioner filed a discharge application before the DC, contesting the proceeding's legitimacy. However, Respondent No. 1 continued the disciplinary proceeding against the Petitioner, as evidenced by letters dated 3<sup>rd</sup> January, 2019, 10<sup>th</sup> May, 2019, 26<sup>th</sup> September, 2019, 29<sup>th</sup> November, 2019, 3<sup>rd</sup> January, 2020, and 1<sup>st</sup> January, 2021, directing the Petitioner's participation in hearings or submission of documents. Aggrieved by the said letters, the Petitioner has filed the present writ petition asserting that DC of ICAI lacks jurisdiction to proceed against him, as he was neither disclosed as member answerable by the Firm nor satisfied the conditions under Rule 8(1)(b) of the Rules. This case was also listed along with connected matters on 26<sup>th</sup> November, 2021 and the interim order of stay of the DC proceedings was also granted to the Petitioner.

### **B. Submissions**

50. The hearing in the connected matters commenced on 21<sup>st</sup> March, 2023. Detailed arguments in the matter were presented on 5<sup>th</sup> April, 2023 by Mr. Sudhir Makkar, Id. Sr. Counsel appearing on behalf of the Petitioner, who submitted that as per Rule 8 (1)(b) and Rule (8)(2) of the Rules, once a member answerable has been nominated by the firm and that person has agreed and the person files a declaration to that effect then that person is answerable in respect of the allegations raised in the complaint. Id. Sr Counsel asserted that the complaint ought to be proceeded only against the



said person and not against any other person or firm. Ld. Sr. Counsel relied upon the documents filed in the respective writ petition to buttress the position that Mr. Kaushal Kishore (‘member answerable’ in *W.P. (C) 6532/20233*) had repeatedly filed affidavits and given declarations to the effect that he is the ‘member answerable’. Mr. Makkar submitted that, thereafter, the ICAI accepted the position that Mr. Kaushal Kishore in *W.P. (C) 6532/20233* was the member answerable as was clear from the fact that in all the proceedings which were continued before the DC of the ICAI, Mr. Kaushal Kishore would appear as a member answerable. Further, ld. Sr. Counsel contended that the only basis on which the *prima facie* opinion was rendered by the Director Discipline that the Petitioner was the person responsible/ member answerable, was due to the signing of the letter dated 12<sup>th</sup> April 2018 which was sent as a reply to the notice issued by ICAI. He submitted that the Petitioner of the said writ petition was never a member answerable. He further contended that the only other possibility that Director Discipline would have made the Petitioner responsible was on the basis of signatures on the international agreements entered into by the firm.

51. Further, with respect to the proceedings of the DC, it was submitted by the ld. Sr. counsel, that the proceedings before the Disciplinary Directorate were proceedings in accordance with the Act and Rules. He further submitted that insofar as the Petitioner was concerned, the Petitioner in the main writ petition had filed a discharge application before the Disciplinary Directorate which was not considered and hence the Petitioner was constrained to file a writ petition.

52. With regard to the Act and the Rules, firstly, ld. Sr. Counsel submitted that under the applicable provision *i.e.*, Section 21 of the Act, any allegation



of misconduct can be raised only against a member, defined in the Act as an 'individual'. He referred to 'member' as given in Section 2(b) and Section 2(2) of the Act where it is defined that Chartered Accountant who are registered for practice are members of the institute. He then submitted that under Section 21 of the Act, the allegations may be made even against a firm, however, disciplinary proceedings could only be instituted against a member whose name appears in the rolls of the ICAI.

53. The arguments further continued on 22<sup>nd</sup> March, 2024. Mr. Makkar, ld. Sr. Counsel submitted that DC can only proceed against the member answerable and not against any other person or firm. In order to buttress the argument, that the Petitioners were not taking any advantage of the pendency of the writ petitions or the interim order, Mr. Makkar canvassed that the Bench of the DC itself was changed on two occasions. He stated that in July, 2023 a new Bench was constituted by the ICAI and it was not because of the interim order that there was delay in the proceedings of the DC. Moreover, in terms of the note of submissions, that was handed over in Court, he emphasized that the Act or the Rules do not permit attribution of liability to any member beyond the member answerable. Mr. Makkar highlighted that in the note submitted by the ICAI there was a deliberate omission of reference to the letter dated 17<sup>th</sup> December, 2019, submitted on behalf of all the Petitioners, which explicitly named the accountable member assuming full responsibility *i.e.*, the member answerable. The letter dated 17<sup>th</sup> December, 2019 by way of illustration, signed and given by Mr. Neeraj Kumar Gupta, was placed before the Court to argue that this member had taken the full responsibility. It was further submitted that the allegation that some junior member was being affixed responsibility of the conduct of the firm was not accurate because the



member answerable in all the cases were stated to have more than 20 years' experience.

54. Ld. Sr. Counsel further submitted that for the nomination of the 'member answerable, since there is no specific firm to file a declaration, the member answerable gives a letter in a manner as it is deemed appropriate. There is no prescribed procedure for the same. It is only if a member answerable is not nominated, that Rule 8(2) proviso under the Rules permits the entire firm to be held responsible. If not, as per the ICAI's own understanding, there is only a member answerable, who is responsible. In order to dispel the impression that CAs are not properly regulated, reliance was placed on various provisions of the Companies Act, 2013, Reserve Bank of India Act, 1934 and Prevention of Money Laundering Act, 2002 and the provisions thereunder. Finally, the Court was also informed that in the decision of *S. Sukumar (supra)*, a Committee of Experts was constituted by the Supreme Court and the report of the said Committee and affidavit of the Ministry of Corporate Affairs was filed before the Supreme Court. However, it was submitted that the issue remains still pending therein.

55. Ms. Sehgal, ld. Counsel for the Respondents countered the submissions on behalf of the Petitioners and submitted in the note provided by the ICAI, which was handed over in Court, that there was a specific reference to the letter dated 17<sup>th</sup> December, 2019 and that the member answerable who has taken the responsibility, has been highlighted. However, she submitted that the ICAI's stand is that the same would not absolve the Petitioners in all the writ petitions. Further, she pointed out paragraphs to 46 and 47 of the *S. Sukumar (supra)* judgment, to argue that the ICAI had been directed to complete the enquiry expeditiously, which could not happen due to pendency



of these writ petitions. She also pointed out that the notice initially was to the firm and the stand of the firm initially was that no member was answerable, but it was only for administrative convenience that the person was being nominated for providing clarifications. As per Rule 8(2) of the Rules, it was submitted by Ms. Sehgal, that the member answerable also has to be a person to whom the transaction is also related and the relationship of such person with the transaction has to be disclosed. She emphasized that no such disclosure was made in this case. She also relied upon the *prima facie* opinion in the case of Abhishek Rara dated 2nd July, 2018 in *W.P.(C) 13375/2021* to highlight the manner in which the question as to whether who could become member answerable has been held to be subject matter of further investigation. It is further submitted that two years after the *prima facie* opinion was rendered, the writ petitions were filed and a stay was granted. She further stated that the final report dated 22<sup>nd</sup> January, 2024 submitted by the ICAI to the Court, took cognizance of the earlier stay order dated 26<sup>th</sup> November, 2021 and the order dated 30<sup>th</sup> September, 2023 by which the enquiries were directed to be completed and the report was to be filed.

**C. Summary of the Writ Petitions & Stand of the Petitioners**

56. On the basis of the written pleadings, the written submissions and oral submission, the stand of the Petitioners is that they are individuals, who are partners in the firms. They are not *members answerable* as per Rule 8 of the Rules, who have been identified by the firm. As per the Petitioners, the proceedings under the Act and the Rules for misconduct can only be against the person, who are identified as the '*member answerable*'/ '*members concerned*' and not against the firm or any other member or all other members of the firm.



57. In view of the fact that the ‘*member answerable*’ was identified and named in each of the cases, the proviso to Rule 8(2) of the Rules cannot be invoked. Considering that the declaration was filed only by the ‘*member answerable*’ and no declaration was filed by any other partner (including the Petitioners in the present writ petitions), the disciplinary proceedings against the Petitioners cannot go forward. The judgment in ***Hema Gusain v. Institute of Chartered Accountants of India and Others (2023 SCC OnLine Del 7621)*** was relied upon by the Petitioners in their written submissions. The crux of the case of the Petitioners is that the proceedings, if any, can continue only against the ‘*member answerable*’ and no one else.

58. On behalf of the ICAI, a counter affidavit was filed as per which the report on Operation of Multi-National Accounting Firms (‘MNAFs’) was considered by the Council of the ICAI in 2010, and the same was the basis of the actions initiated against Price Waterhouse group of firms. In January, 2013, the Council had taken a decision to take the requisite legal action. The Secretary, ICAI had forwarded the matter for necessary action to the Disciplinary Directorate. A letter dated 27<sup>th</sup> June, 2016 was sent seeking clarification, which was responded to by the firms. This led to the *prima facie* opinion dated 2<sup>nd</sup> July, 2018 formed by the Director (Discipline). The said *prima facie* opinion was on the basis of various agreements, which were entered into between different entities within the group. The details of the agreements relied upon in the *prima facie* opinion, are as under:

Price Waterhouse Chartered Accountants LLP DC -858/2018			
S.No	Agreements	Date of Agreement	Signatories to the Agreement
1.	Accession Agreement dated 1st October, 1998 between Price Waterhouse Chartered Accountants	1 <sup>st</sup> Oct 1998	CA R.N. Datta



	LLP and PricewaterhouseCoopers International Ltd		
2.	Name License Agreement dated 1st July, 1998 between Price Waterhouse Chartered Accountants LLP and PwC Business Trust	1 <sup>st</sup> July, 1998	CA R.N. Datta
3.	Name License Agreement dated 1st July, 2011 between Price Waterhouse Chartered Accountants LLP and PwC Business Trust	1 <sup>st</sup> July, 2011	CA Prabal Sarkar
4.	Name License Agreement dated 5th May, 2017 between Price Waterhouse Chartered Accountants LLP and PwC Business Trust	5 <sup>th</sup> May, 2017	CA Charan Sevak Gupta
5.	Firm Services Agreement dated 1st July, 1998 between Price Waterhouse Chartered Accountants LLP and PricewaterhouseCoopers Services BV	1 <sup>st</sup> July 1998	CA R.N. Datta
6.	Firm Services Agreement dated 1 July, 2009 between Price Waterhouse Chartered Accountants LLP and PricewaterhouseCoopers Services BV	1 <sup>st</sup> July 2009	CA Pradip Law
7.	Firm Services Agreement dated 1st July, 2011 between Price Waterhouse Chartered Accountants LLP and PricewaterhouseCoopers Services BV	1 <sup>st</sup> July 2011	CA Prabal Sarkar
8.	Grant Agreement dated 28th March, 2012 between Price Waterhouse Chartered Accountants LLP and PricewaterhouseCoopers Services BV	28 <sup>th</sup> March, 2012	CA Charan Sevak Gupta
9.	Addendum dated 27th March, 2015 to Grant Agreement dated 28th March, 2012	27 <sup>th</sup> March, 2015	CA Abhishek Rara

59. The above table refers to agreements entered into by Price Waterhouse Chartered Accountants LLP DC in *W.P. (C) 13375/2021*. Similar agreements



were entered into by the various firms within different groups which are a part of the abovementioned writ petitions. The same are considered, however not extracted herein. The said agreements were considered before rendering the *prima facie* opinion by the DC and accordingly ICAI's stand remains constant.

60. As per ICAI, the '*member answerable*' in each matter were named just as an administrative obligation and they were not to take any responsibility. Thus, the Petitioners were also included to be a part of the proceedings. In view thereof, a detailed report of the DC dated 2<sup>nd</sup> July, 2018 was placed on record. The same has been perused and considered by the Court.

**D. Report of Disciplinary Committee Bench III, dated 2<sup>nd</sup> July 2018**

61. In the *prima facie* opinion, the Director (Discipline) had arrived at the following findings:

- That the members of Price Waterhouse group had access to common resources, methodology, knowledge and expertise including audit methodologies, software and guidance, shared IT platforms, shared branding market materials, and they were also known to be sharing of industry specific knowledge and expertise.
- An international audit methodology to serve domestic and multiple clients were being uniformly adopted by all firms part of the PWC group.
- For the said services, the member firms used to pay 2.5% of the firms' revenue.
- That there was no data furnished to justify the amounts remitted by the members of the firm to the MNC entities, which was stated to be only in respect of the above matters, *i.e.*, for access to common resources.





- That there was no proof provided to justify that the said amount was not linked to the volume of business generated.
- That each of the member entities were working as one cohesive unit with the Multinational entity. This according to the Director (Discipline) was in violation of Item 5 Part I of the First Schedule under the Act.
- The domain name used was identical amongst the firms. The same were displayed on the visiting cards of all the partners and other partners.
- That any member of the ICAI is prohibited from declaring of being in affiliation with any international entity.
- The firms were in violation of Items 2, 5, and 7 of Part I of the First Schedule under the Act.
- That members of one firm could be seconded on other members on short and long terms basis and the terms and conditions were fixed based on negotiations.
- That Price Waterhouse group of firms had a network of audit firms, which shared technology, technical expertise, administrative and support services.
- That articled assistants, who were trained by one member of the ICAI were being allowed to be shared amongst the Price Waterhouse network. This was in violation of Item 1 of Part II of the Second Schedule under the Act.
- The Code of conduct does not allow partnership with an LLP or a company. The code of conduct also prohibits the fee sharing with MNAFs.



- That if there is no reciprocity provided to CAs of Indian domicile in respect of similar professions of foreign country, such persons/ entities cannot practice in India by creating network. This is in violation of Section 29 of the Act.
- That remittances are received from Price Waterhouse entities in India on the ground of investment.
- That the Multi-National Accountancy Firm (MNAFs) like Price Waterhouse groups have got Indian partnership firms registered with Indian CAs but the real beneficiaries are foreign entities.
- That the agreements signed between the entities clearly establish that there are clauses, which would show use of branding, sharing of revenues etc.
- That revised guidelines on networks dated 27<sup>th</sup> September, 2011 require that all constituent members of a network have to comply with ethical standard prescribed by Council, which were not complied with by the firm.
- That the agreements entered into by the entities/ firms show that the same were for gain/ profits and not for better functioning of the affiliates.
- That the use of 'associate of', 'in association with' etc. is prohibited and, thus, the use of the domain name, logo, monogram, hologram etc., of Price Waterhouse is contrary to the provisions of the Act.
- That resources including sharing of staff and also including articled assistants, who cannot be shared as per the Act and the Rules.



- That there was fund movement between MNAFs and the Indian entities.
- The stand of the firms in a similar enquiry by Securities and Exchange Board of India ('SEBI') against Satyam Computer Services, was that the requisite action can only be taken by ICAI.
- The Director (Discipline) *prima facie* held that full disclosure was not made.
- Thus, there is a *prima facie* material to show that the firms were guilty of professional misconduct.

62. The, *prima facie* opinion was rendered in the matter of Price Waterhouse & Co. Chartered Accountants LLP wherein the members answerable were recognised as separate from the writ Petitioners as also those notified as '*members answerable*'.

63. While this *prima facie* opinion being given, the judgment of the Supreme Court in *S. Sukumar(supra)* was also rendered.

64. The initial stand of the firms in the written statements filed in April, 2018, was that there is no member, who is answerable for the same but one person is identified and named for providing clarifications and answering any questions. Thereafter, another declaration was received on 21<sup>st</sup> May, 2018 by the ICAI wherein again it was stated that the certain individual member is identified for providing clarifications and responses and the said member has adopted the written statement filed by the firm.

65. According to the ICAI, it exercised powers under the proviso to Rule 8(2) of the Rules and regarded various Petitioners as '*members answerable*'. However, an interim order dated 26<sup>th</sup> November, 2021 was passed by this Court directing stay of the disciplinary proceedings. Subsequently, ICAI filed



a status report dated 29<sup>th</sup> November, 2021 regarding the status of proceedings in each of the writ petitions. Further stand of the ICAI as per the status report dated 29<sup>th</sup> November, 2021 was as under:

S. No.	Ref. No.	Details of Respondent Firms	Member Answerable (Respondent 1)	Other Respondent/Petitioner (Respondent 2)	Status of matter
1	[PPR/HP C/DD/11/INF/18-DC/857/2 018]	M/s Price Water House, Kolkata (FRN 301112E) in Re:	CA. Neeraj Kumar Gupta (M. No. 055158)	CA. Usha Rajeev (M. No. 087191)	On account of Stay in Proceedings against Respondent 2, the matter has been proceeded against the Respondent No. 1 . During this year the matter was heard on 26th July, 2023, 13th Sept., 2023, 16th Oct., 2023, 3rd Nov., 2023 as well as 20th Nov. , 2023. The matter is listed on 6th Dec, 2023 for hearing final submissions of the Respondent No. 1 in the matter.
2	[PPR/HP C/DD/12/INF/18-DC/858/2 018]	M/s Price Waterhouse Chartered Accountants LLP (FRN 012754N/N 500016) formerly known as M/s. Price Waterhouse (FRN012754N)	CA. Anupam Dhawan (M.No.0844 51)	CA. Abhishek Rara (M.No.077779 )	On account of Stay in Proceedings against Respondent 2, the matter has been proceeded against the Respondent No. 1 . During this year the matter was heard on 26th July, 2023, 13th Sept., 2023, 16th Oct., 2023, 3rd Nov., 2023 as well as 20th Nov., 2023. The matter is



					listed on 6th Dec, 2023 for hearing final submissions of the Respondent No.1 in the matter.
3	[PPR/HP C/DD/13/INF/18-DC/859/18]	M/s Price Waterhouse & Co., Chennai (FRN 050032S)	CA. Neeraj Kumar Gupta (M. No. 055158)	CA. Rahul Chattopadhyay (M. No. 096367)]	On account of Stay in Proceedings against Respondent 2, the matter has been proceeded against the Respondent No. 1 . During this year the matter was heard on 26th July 2023, 13th Sept., 2023, 16th Oct., 2023, 3rd Nov., 2023 as well as 20th Nov., 2023. The matter is listed on 6th Dec, 2023 for hearing final submissions of the Respondent No.1 in the matter.
4	[PPR/HP C/DD/14/INF/18-DC/860/2018]	M/s. Price Waterhouse & Co., Chartered Accountants LLP (FRN304026E/E300009) [Formerly known as M/s Price Waterhouse & Co. (FRN304026E)]	CA. Neeraj Kumar Gupta (M. No. 055158)	CA. Harinderjit Singh (M. No, 086994)	On account of Stay in Proceedings against Respondent 2, the matter has been proceeded against the Respondent No. 1 . During this year the matter was heard on 26th July, 2023, 13th Sept., 2023, 16th Oct., 2023, 3rd Nov., 2023 as well as 20th Nov. , 2023. The matter is listed on 6th Dec, 2023 for hearing final submissions of the Respondent



					No.1 in the matter.
5	[PPR/HP C/DD/15/INF/18-DC/861/2018]	M/s Price Waterhouse & Co. LLP, New Delhi (FRN 016844N/N500015) (formerly known as M/s Price Waterhouse & Co., New Delhi (FRN 016844N))	CA. Dinesh Yashavant Supekar (M. No. 100572)	CA. Rajan Wadhawan (M.No.90172), Gurgaon	On account of Stay in Proceedings against Respondent 2, the matter has been proceeded against the Respondent No. 1 . During this year the matter was heard on 26th July, 2023, 13th Sept., 2023, 16th Oct., 2023, 3rd Nov., 2023 as well as 20th Nov. , 2023. The matter is listed on 6th Dec, 2023 for hearing final submissions of the Respondent No.1 in the matter.
6	[PPR/HP C/DD/16/INF/18-DC/862/2018]	M/s Price Water House, Bangalore LLP (FRN 007567S/S 200012) (formerly known as M/s Price Water House, Bangalore (FRN 007567S))	CA. Neeraj Kumar Gupta (M. No. 055158)	CA. Amitesh Dutta (M. No. 058507)	On account of Stay in Proceedings against Respondent 2, the matter has been proceeded against the Respondent No. 1 . During this year the matter was heard on 26th July, 2023, 13th Sept., 2023, 16th Oct., 2023, 3rd Nov., 2023 as well as 20th Nov. , 2023. The matter is listed on 6th Dec, 2023 for hearing final submissions of the Respondent No.1 in the matter.
7	[PPR/HP C/DD/18/INF/18-DC7864/	M/s Lovelock & Lewes, Kolkata	CA. N K Varadarajan (M. No. 090196)	CA. Anurag Khandelwal (M. No. 078571)	On account of Stay in Proceedings against Respondent 2, the matter has



	2 018]	(FRN 301056E) in Re:			been proceeded against the Respondent No. 1 . During this year the matter was heard on 26th July, 2023, 13th Sept., 2023, 16th Oct., 2023, 3rd Nov., 2023 as well as 20th Nov. , 2023. The matter is listed on 6th Dec, 2023 for hearing final submissions of the Respondent No.1 in the matter.
8	[PPR/HP C/DD/75/ INF/18- DC/865/2 018]	M/s Dalal & Shah Chartered Accountant s LLP (FRN 102020W/ W100040 ) (Formerly known as M/s Dalal & Shah (FRN 102020W) in Re:	CA. Neeraj Kumar Gupta (M. No. 055158)	CA. Priyanshu Dineshkumar Gundana (M. No. 109553)	On account of Stay in Proceedings against Respondent 2, the matter has been proceeded against the Respondent No. 1 . During this year the matter was heard on 26th July, 2023, 13th Sept., 2023, 16th Oct., 2023, 3rd Nov., 2023 as well as 20th Nov. , 2023. The matter is listed on 6th Dec, 2023 for hearing final submissions of the Respondent No.1 in the matter.
9	[PPR/HP C/DD/75/ INF/18- DC/866/2 018]	M/s Dalal & Shah Chartered Accountant s LLP (FRN 102021W/ W100110 ) (Formerly known as	CA. Neeraj Kumar Gupta (M. No. 055158)	CA. Usha Rajeev (M. No. 087191)	On account of Stay in Proceedings against Respondent 2, the matter has been proceeded against the Respondent No. 1 . During this year the matter was heard



		M/s Dalal & Shah (FRN 02021W) in Re:			on 26th July, 2023, 13th Sept., 2023, 16th Oct., 2023, 3rd Nov., 2023 as well as 20th Nov. , 2023. The matter is listed on 6th Dec, 2023 for hearing final submissions of the Respondent No.1 in the matter.
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66. Thereafter, however, pursuant to the order dated 30<sup>th</sup> November, 2023 passed by this Court, ICAI concluded its proceedings and the final findings dated 22<sup>nd</sup> January, 2024 were placed before the Court.

**Summary Report of the Disciplinary Committee Bench III (2023-2024) dated 22<sup>nd</sup> January, 2024**

67. Various allegations, which were gone into in the final report were as under:

- a. **First allegation:** In view of the Respondent firm(s), respective letter(s) stating that, “*PwCIL’s primary activities are to identify broad market opportunities and develop associated strategies, strengthen the network’s internal product, skill, and knowledge networks; promote the PwC brand; and develop and work for the consistent application of common risk and quality standards by member firms, including compliance with independence processes” and “*as a member firm of PwCIL, has access to the common resources, methodologies, knowledge and expertise of PwCIL, and other member firms. Such common resources**





- and methodologies may include, for example, audit methodology, software and guidance, IT platforms and systems, branding, and marketing materials...”, **it has been alleged that the Respondent firm(s) were involved in securing professional business by means which were not open to a member of the Institute/Firm.** Such an act on the part of Respondent firm(s) was alleged to be in violation of Item (5) of Part I of the First Schedule to the Act.
- b. **Second allegation:** It has been alleged that the Respondent firms) and their personnel were using the domain name in their email-ids identical to the name of the multinational entity, PwCIL and the same was also displayed in their visiting cards. It was stated by the firms that usage of such e-mail ids clearly supported their practice of holding out that they were part of the international network, PwCIL. However, ICAI stated that a member of the Institute was prohibited from disclosing his affiliation with any international entity. To support the same, the decision by the Council, at its 172<sup>nd</sup> meeting held in January, 1995 was considered, that while agreeing with the recommendation of the then Committee on Ethical Standards and Unjustified Removal of Auditors, the use of expression/words, “In Association with ...”, “Associates of”, “Correspondents of .....” etc., on the stationery, letter- heads, visiting cards and professional documents of the firm of C.As., was not permissible in view of the provisions of Item 7 of Part I of the



First Schedule to the Act, irrespective of whether the name sought to be used was the name of an Indian firm or a foreign firm. Thus, it has been **alleged that the aforesaid act of the Respondent firm(s) was in contravention of Item 7 of Part I of the First Schedule to the Act.**

- c. **Third allegation:** It has been alleged that the Respondent firms), in their respective letters had mentioned that “through the PricewaterhouseCoopers global Network’s mobility programs, partners and staff of one member firm may be seconded to another member firm on a short or long term basis. The terms and conditions of such secondments are negotiated between the secondee, the member firm which employs the secondee, and the member firm to which the secondee will be seconded”. Further, the Respondent firm(s), also stated that, “all the above Price Waterhouse network of audit firms in India (except one Firm M/s Lovelock & Lewes, FRN 116150W)) share resources like manpower, technology, relevant technical expertise, premises, administrative and support services”. It was also mentioned that articled assistants were assigned to a member, whose obligation was to train them. ICAI stated that as per CA Regulations, the articled assistants were not allowed to be utilised by any member other than a member to whom such assistant was assigned. It was accordingly **alleged that by allowing sharing of articled assistants amongst the Price Waterhouse network firms, the Respondent firm(s) had**



**contravened Regulation 54 of the Chartered Accountants Regulations, 1988 which was a professional misconduct falling within the meaning of Item (1) of Part II of Second Schedule to the Act.**

- d. **Fourth allegation:** It has been alleged that the Respondent firm(s), in their respective letter(s) had confirmed that the member firms of PwCIL had access to the common resources, methodologies, knowledge and expertise of PwCIL and other member firms. Such common resources and methodologies may include, for example, audit methodology, software and guidance, IT platforms and systems, **branding and marketing materials and industry-specific knowledge and expertise, all of which help the firm in adopting international audit practices and methodologies to serve their domestic and multinational clients. For the services so rendered a payment is made by the member firm based on the actual and allowable cost not exceeding 2.5% of the firm's revenue.** It was further stated that in general, as part of agreed cost arrangements, member firms of PwCIL bear the costs of the activities as mentioned above. Under such arrangements, based on the audited financial statement of the said Respondent firm (M/s Price Waterhouse Kolkata), for the year ended 31st March, 2009, the firm had remitted US\$ 689,778.

With respect to details of amounts being paid to Multinational entity, it was stated by the ICAI as under:



- that the firm(s) had not provided break-up/computation and whether the cost includes cost towards marketing, publicity and advertising of the products and services in India as well as abroad and any other cost which was not allowed as per the Chartered Accountants Act, 1949, Regulations framed thereunder and Code of Ethics.
- **that no data was furnished by any of the firm(s) in support of their claim that the money being remitted by them to the multinational entity was in respect of above matters only** and that the same in no way related to the volume of business generated through the efforts of the multinational entity and through use of brand name.

**In view of above, it had been alleged that the said act on the part of the Respondent firm (s) was in violation of Item 2 of Part I of the First Schedule to the Act.**

- e. **Fifth allegation:** In view of the response from one of the Respondent firms i.e., (Price Waterhouse Kolkata) that “*on specific occasion, financial resources and support have been made available to the firm in order to help protect the PricewaterhouseCoopers brand and to support improvements in service quality*”. It was stated that the said firm had received huge financial support from a non-CA entity to protect its brand and to improve service quality and the full details of actual financial assistance was not provided



nor could be ascertained in the absence of supply of information sought by the then HPC Committee. **ICAI alleged that such financial assistance might have implications/impact on the independence of auditors. This act on the part of the said Respondent firm was alleged to be in violation of Item (3) of Part I of the First Schedule to the Act.**

68. On each of the allegations, the conclusion was that the practices being followed by the various firms were based on agreements, arrangements entered into by the said firms with PWCs International Ltd. and its affiliated firms. The firms had identified four Respondents as members answerable, who were held guilty of professional misconduct. In paragraph 4, the said report dated 22<sup>nd</sup> January, 2024 notes as under:

*“Proceedings*

*4. At the outset, it was noted that proceedings in the extant matter(s) were initiated in October 2019 when certain information was called from them. Meantime, the Respondent firm(s) were impressing upon discharge application filed by 2<sup>nd</sup> Respondent in matters against each Respondent firm(s). As there is no provision under CA Rules, 2007 of issuing any interim order but to only issue Findings Report under Rule 18(17) of CA Rules, 2007, CA. Harinderjit Singh, the 2<sup>nd</sup> Respondent of R4 (in W.P. (C) 11944/2021) filed Writ Petition before Hon'ble Delhi High Court on 22<sup>nd</sup> October 2021 challenging the extant disciplinary proceedings initiated against him. The Hon'ble Court vide order dated 26th October 2021 granted stay in the extant disciplinary proceedings qua the petitioner. Thereafter,*



*the 2<sup>nd</sup> Respondent in matters against remaining Respondent firm(s) [R1 to R10 except R4] -CA. Abhishek Rara (in W.P.(C) 13375/2021), CA. Usha Rajeev (in W.P (C) 13376/2021), CA. Rahul Chattopadhyay (in W.P.(C) 13377/2021), CA. Amitesh Dutta (in W.P.(C) 13378/2021), CA. Rajan Wadhawan (in W.P. (C) 13379/2021), CA. Priyanshu Dineshkumar Gundana (in W.P.(C) 13380/2021), CA Usha Rajeev (in W.P (C) 13381/2021) and CA. Anurag Khandelwal (in W.P. (C) 13382/2021) filed Writ Petitions before Hon'ble Delhi High Court on 22nd November 2021 challenging the disciplinary proceedings initiated against them. The Hon'ble Court vide order dated 26th November 2021 observed as under:-*

*“13....., there shall be a stay of disciplinary proceedings initiated against the petitioners. However, it is clarified that the respondents are free to take a decision on the discharge application filed on behalf of the petitioners. **It is also clarified that there is no stay in so far as the disciplinary proceedings initiated against the Firm, Price Waterhouse, Chartered Accountants, LLP.**”*

*Thereafter, the Hon'ble Court vide Order dated 30th November 2023 observed as under:*

*“5. Accordingly, let the proceedings continue before the Respondent No.1 and the final report be placed before this Court by the next date of hearing. It is made clear that the interim order granted in these petitions shall not come in the way of the preparation and submission of the final report to this Court. The said final report qua each of the firms shall be comprehensive and deal with all the issues raised qua the firms and other*



*professionals, if any, of the firms including the Petitioners before this Court.”*

**Thus, the Committee continued its proceedings against the Respondent firm(s) as directed by the Court and proceedings were held only against the member(s) who were identified as member answerable by the Respondent Firm(s) itself i.e. Respondent no. 11 to 14 to arrive at its findings.”**

69. As per the above, it is clear that that in view of the interim orders which were operating in these writ petitions, the proceedings before the DC continued only against Respondent Nos. 11 to 14 in the disciplinary proceedings *i.e.*, CA Neeraj Kumar Gupta, CA Anupam Dhawan, CA Dinesh Yashavant Supekar, CA N.K. Varadarajan and no proceedings were continued against the other Respondents in the disciplinary proceedings. Insofar as the final report placed is concerned, the findings therein have been captured only for the purposes of record and for answering the legal issue that has arisen. The remedies in respect thereof are however left open.

**E. Scheme of the Chartered Accountants Act, 1949**

70. The Act of 1949 declares that it is a statute “to make provisions for the regulation of the profession of the Chartered Accountants. This preamble of the Act is relevant and is set of below:

*“An Act to make provision for the regulation of the [profession of chartered accountants]<sup>2\*</sup>.<sup>1</sup>*

*WHEREAS it is expedient to make provision for the*

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<sup>1</sup> 2\*. Subs. By Act, 15 of 1959, sec.2 for “profession of accountant”(w.e.f. 1-7-1959)”



*regulation of the [profession of chartered accountants] and for that purpose to establish an Institute of Chartered Accountants;.*

71. As can be seen from the above Preamble, the Act of 1949 was for the regulation of the profession of Accountants. However, it was amended to the Chartered Accountants in 1959. The ICAI was also then established. Under the Act, Section 2(1)(b) defines ‘Chartered Accountant’ as under:

**“2. Interpretation.—(1) In this Act, unless there is anything repugnant in the subject or context,—**

*xxx*

**(b) “chartered accountant” means a person who is a member of the Institute”**

72. The ICAI of India has been defined under the Act in Section 2(1)(c), which reads as under:

**“2. Interpretation.—(1) In this Act, unless there is anything repugnant in the subject or context,—**

*xxx*

**(c) “Council” means the Council of the Institute [constituted under section 9];”**

73. The Institute of Chartered Accountants of India is an Institute, which maintains the register of all Chartered Accountants. Only such persons, who are registered with the ICAI, can practice the profession of Chartered Accountancy. Under Sections 2(1) (ca), (eb), (ec), the Act covers and defines the terms ‘firm’, ‘partner’ and ‘partnership’. Further, Section 2(2) of the Act also stipulates as to when a Chartered Accountant is deemed to be in practice either individually or in partnership. As per Section 2(2), the Chartered Accountant, who is a member of the institute, can be in practice either individually or in partnership with other Chartered Accountants or in





partnership with other recognized professionals. Such a Chartered Accountant can offer various services as set out in Section 2(1) sub-clauses (i) to (iv). Explanation is also provided in Section 2(2) to include an associate or fellow of the Institute, who is a salaried employee of another Chartered Accountant or a firm of Chartered Accountants or firm having Chartered Accountants and other professionals. Such persons are termed as articled assistants.

74. Thus, these provisions, which were added in 2012 to the original Act by way of the Amendment Act, 2012 also include, within its scope, not merely persons, who are qualified Chartered Accountants but also those who are articled assistants or under training to become Chartered Accountants or to qualify as Chartered Accountants.

75. The Register of names of Chartered Accountants is maintained under Section 4 of the Act. Fellows and Associates are governed by Section 5 of the Act. All Chartered Accountants, who are members of the Institute have to obtain a certificate of practice and pay the required membership fee. Section 6(3) of the Act provides that the certificate of practice can be cancelled under such circumstances as may be prescribed. The required eligibility criteria are set out in Section 8 read with Section 20 of the Act. Under Section 8(vi), if a person has been removed from the membership of the Institute due to professional or other misconduct, cannot have the name continued on the register. If, however, a person's name is removed for a specified period, the removal shall be applicable only for the said period and upon the expiry, he or she can continue to practice. The profession is regulated by the Council.

76. All misconduct is governed by Chapter V of the Act. In order to deal with misconduct, under Section 21 of the Act, a Disciplinary Directorate is



constituted. The procedure to be followed in the cases of misconduct has also been specified in Section 21 of the Act. There are two types of misconducts under the Act. One is ‘*professional misconduct*’ under the First Schedule or ‘*other misconduct*’ under the Second Schedule. A perusal of the various entries relating to misconduct would show that it regulates Chartered Accountants and the manner in which they conduct themselves either individually or as partners of members of firm. Part II of the First Schedule specifically relates to employees of companies, firms or persons. Under the Second Schedule conduct of a Chartered Accountant as part of a firm is clearly dealt with. Section 21(A) of the Act empowers the Board of Discipline, specifically under Section 21(A)(3), to either reprimand a member or remove a member from the Register for a maximum period of three months or impose fine of maximum amount of Rs.1 lakh. The Disciplinary Committee as defined under Section 21B of the Act, however, has broader powers of reprimanding a member, removing a member permanently or imposing a fine upto Rs. 5 lakhs.

77. Further, Section 22 of the Act makes it clear that the power of the Director (Discipline) under Section 21(1) to enquire into the conduct of the member of the Institute under any other circumstances would not be abridged by the entries in the two Schedules to the Act. Thus, an inquiry into the conduct of any member can be conducted by the Director (Discipline) beyond the specific entries in the two Schedules as well.

78. Under Section 25 of the Act, a company cannot engage in the profession of Chartered Accountancy, although, this read with Section 2(ca) makes it clear that Limited Liability Partnership (‘LLP’) firms and sole proprietary firms are permitted. However, a “company” in this case shall also



include any limited liability partnership firm which has a company as its partner, for the purpose of this Section under the Act. Section 26 of the Act provides that on behalf of any Chartered Accountant in practice or the firm of Chartered Accountants only a member of the Institute can sign a document. Thus, any other correspondence signed for and on behalf of the LLP firm or the proprietorship or the partnership firm, the person signing the document has to be a Chartered Accountant registered with the institute. Any person contravening the said provision is liable to be fined maximum upto Rs. 1 lakh or be punished with imprisonment for a maximum term of one year.

79. Section 29 of the Act requires reciprocity of Accountants practicing in different countries. It is only if Indians, who are members of the Institute, are permitted to become members of the corresponding institute in such countries, that there can be sharing of work.

80. An Amendment Act was introduced in 2022. Under the said Amendment Act, most of the provisions of Chapter V were amended. As per the amendments, in effect, proceedings for misconduct could be held against CA firms as well. In the case of firms, the Board of Discipline can require the member of the firm to file a written statement within 21 days under Section 21(A) of the Act. Further, under the amended Act, the register of members would include a register of firms, and the Institute would have to maintain the same. Various other provisions for looking over the misconduct by the firms have also been incorporated by the 2022 Amendments. Though the Act has been passed, the Court is informed that the same is yet to be notified.

#### **F. Judgments**

81. There are various decisions that have considered the scheme of the Act



as also the aspects related to misconduct. Some of the relevant judgements are discussed below.

***The Council of The Institute of Chartered Accountants of India v. Lokesh Dhawan F.C.A (2007:DHC:1398-DB)***

82. In this decision, Id. Division Bench of this Court considered the recommendation of the Council of ICAI which made reference under Section 21(5) of the Act recommending that Mr. Lokesh Dhawan -CA, who was held guilty of ‘other misconduct’ in terms of the Act be removed from the Register of Members for a period of three months. The allegation was that Mr. Dhawan and Mr. Gulati were appointed as statutory auditors for a bank and had claimed expenses in excess of the permissible limits as stipulated by the RBI and that the firm had canvassed for procuring the computer business of the bank for a sister concern. Another allegation against the CA was that services of an external CA was used, who was neither a partner nor an employee of the firm. The proceedings before the DC continued and finally, a recommendation was issued for removal of the name of the CA for a period of three months. Section 21(5) & (6) of the Act as was then existed are set out below:

*“(5) Where the misconduct in respect of which the Council has found any member of the Institute guilty is misconduct other than any such misconduct as is referred to in sub-section (4), it shall forward the case to the High Court with its recommendations thereon.*

*(6) On receipt of any case under sub-section (4) or sub-section (5), the High Court shall fix a date for the hearing of the case and shall cause notice of the date so fixed to be given to the member of the Institute concerned, the Council and to the Central Government,*



and shall afford such member, the Council and the Central Government an opportunity of being heard, and may thereafter make any of the following orders, namely:—

- (a) direct that the proceedings be filed, or dismiss the complaint, as the case may be;
- (b) reprimand the member;
- (c) remove him from membership of the Institute either permanently or for such period as the High Court thinks fit;
- (d) refer the case to the Council for further inquiry and report.”

83. In this context, the Id. Division Bench held the CA- Mr. Lokesh Dhawan guilty of ‘other misconduct’. Insofar as individual versus collective liability is concerned, since the CA attempted to disown individual liability after the conclusion of the enquiry was, the said contention was also rejected. The Id. Division Bench held that the contention of the CA that the firm should be answerable is meritless. The relevant portion of the judgment is set out below:

“23. As regards the question of the individual liability of Respondent No.1, there is no merit in the contention that it is the firm that should be held answerable. Having answered the charge against the firm, after being authorized in that behalf by the firm, it is not open to Respondent No.1 at this point in time to disown liability even if it was in the capacity of a partner of the firm D&G. The entire correspondence with the ICAI at all times and the pleadings before the ICAI were signed by Respondent No.1 and it is he who participated in the enquiry and made the pleas as already noticed. At the time when D&G wrote to the ICAI informing it that it is Respondent No.1 who would be answerable for the charges, no objection was raised by Respondent No.1. In fact he participated in the enquiry without demur. At



*no stage of the entire enquiry was such an objection raised. This plea of disowning individual liability after the conclusion of the enquiry can only be viewed as an abuse of process aimed at frustrating the entire exercise. Accordingly the objection raised on the ground that the case is one of collective responsibility of the entire firm is without merit and is rejected as such.*

**S. Sukumar v. The Secretary, Institute of Chartered Accounts of India & Ors. [(2018) 14 SCC 360]**

84. The judgment of the Supreme Court in *S. Sukumar (supra)*, which is relied upon heavily by the ICAI analysed the provisions of the Act and the Rules *qua* Price Waterhouse group. The facts and pleadings recorded in the judgment read as under:

*“44. The above resume of facts and pleadings shows the following:*

*44.1. There is a bar under the CA Act to practise as CAs for a company which includes a limited liability common partnership which has company as its partners.*

*44.2. The Code of Conduct for CAs prohibits fee sharing, advertisements but MAFs by using international brands and mixing other services with the services to be provided as part of practice of chartered accountancy violate the said Code of Conduct for which there is no regulatory regime as MAFs do not register themselves with ICAI. Indian firms using similar brand names are registered with ICAI but the real entities being MAFs, ICAI is unable to take requisite action for violation of the Code of Ethics by MAFs. Thus, revisit of existing legal framework may become necessary so as to have an oversight mechanism to regulate MAFs on the touchstone of the Code of Ethics.*

*44.3. Need for amendment of law to separate regulatory regime for auditing services on the pattern of the*



*Sarbanes-Oxley Act enacted in US making a foreign public accounting firm preparing audit reports to be accountable to the public company accounting. Similar oversight body may need to be considered in India.*

*44.4. Section 29 of the CA Act provides that if a specified country, prohibits persons of Indian domicile from becoming members of any institution similar to ICAI or practising the profession of accountancy or subjects them to unfair discrimination in that country, no subject of any such country shall be entitled to become a member of the Institute or practise the profession of accountancy in India.*

*44.5. FDI Policy and the RBI Guidelines framed under the FEMA prohibit the investment by a person outside India to make investment by way of contribution to the capital of a firm or a proprietary concern without permission of RBI.*

*44.6. PwC Services BV Netherlands has made investments in Indian firms. According to the petitioners, the investment is also intended to acquire an audit firm through a circuitous route of giving interest-free loans and further investments are in the form of grants for enhancement of skills. Profit-sharing is in the form of licence fees/network charges. According to the network, the partners are all Indian partners and use of common brand name is only for uniform standard and giving of grants is for maintaining the said standard. There was no investment by an entity outside India. Nor it amounts to profit-sharing by the Indian accountancy firms with an entity outside India.*

*45. It is an undisputed fact that there are remittances from outside India. The same could be termed as investment even though the remittances are claimed to be interest-free loans to partners. The amount could also be for taking over an Indian chartered accountancy firm. Relationship of partnership firms, though having Indian partners, operating under a common brand name from same infrastructure, with foreign entity is not ruled*



out. It is not possible to rule out violation of FDI Policies, FEMA Regulations and the CA Act. Thus, appropriate action may have to be taken in pending proceedings or initiated at appropriate forum.”

85. From the above it is clear that action was directed to be taken in the pending proceedings before the ICAI, which was initiated in 2016. The Court observed in this decision that the ICAI ought to have taken the matter to a logical end, if proper information was being withheld. The observations of the Court are relevant and are set out below:

“46..... The ICAI should have taken the matter to logical end, by drawing adverse inference, if information was withheld by the concerned groups.

47. No doubt, the report of the committee of experts of ICAI dated 29th July, 2011 does not specifically name the MAFs involved, groups A,B,C,D are mentioned. The ICAI ought to constitute an expert panel to update its enquiry. Being an expert body, it should examine the matter further to uphold the law and give a report to concerned authorities for appropriate action. Though the Committee analysed available facts and found that MAFs were involved in violating ethics and law, it took hyper technical view that non availability of complete information and the groups as such were not amenable to its disciplinary jurisdiction in absence of registration. A premier professionals body cannot limit its oversight functions on technicalities and is expected to play proactive role for upholding ethics and values of the profession by going into all connected and incidental issues.

48. Thus, a case is made out for examination not only by ED and further examination by the ICAI but also by the Central Government having regard to the issues of violation of RBI/FDI policies and the CA Act by secret arrangements.

49. It can hardly be disputed that profession of auditing





is of great importance for the economy. Financial statements audited by qualified auditors are acted upon and failures of the auditors have resulted into scandals in the past. **The auditing profession requires proper oversight.** Such oversight mechanism needs to be revisited from time to time. It has been pointed out that post Enron Anderson Scandal, in the year 2000, Sarbanse Oxley Act was enacted in U.S. requiring corporate leaders to personally certify the accuracy of their company's financials. The Act also lays down rules for functioning of audit companies with a view to prevent the corporate analysts from benefitting at the cost of public interest. The audit companies were also prohibited from providing non audit services to companies whose audits were conducted by such auditors. Needless to say that absence of adequate oversight mechanism has the potential of infringing public interest and rule of law which are part of fundamental rights under Articles 14 and 21. **It appears necessary to realise that auditing business is required to be separated from the consultancy business to ensure independence of auditors. The accounting firms could not be left to self regulate themselves.**”

86. The Supreme Court was, however, conscious of the fact that it would be a policy decision as to what extent of globalization needs to be permitted. However, it was held that if there is violation of law, in respect of misconduct, proper action deserves to be taken. One of the concerns expressed by the Supreme Court is that there needs to be a proper oversight mechanism. In this context, the Court observed as under:

“52. **Absence of revisiting and restructuring oversight mechanism as discussed above may have adverse effect on the existing chartered accountancy profession as a whole on the one hand and unchecked auditing bodies can adversely affect the economy of the country on the other. Moreover, companies doing**



**chartered accountancy business will not have personal or individual accountability which is required. Persons who are the face may be insignificant and real owners or beneficiary of prohibited activity may go scot free.**

87. Insofar as the final directions are concerned, the Court observed in *Sukumar (supra)* as under:

“53. Accordingly, we issue the following directions:

53.1. **The Union of India may constitute a three-member Committee of Experts to look into the question whether and to what extent the statutory framework to enforce the letter and spirit of Sections 25 and 29 of the CA Act and the statutory Code of Conduct for the CAs requires revisit so as to appropriately discipline and regulate MAFs.** The Committee may also consider the need for an appropriate legislation on the pattern of the Sarbanes-Oxley Act, 2002 and the Dodd Frank Wall Street Reform and Consumer Protection Act, 2010 in US or any other appropriate mechanism for oversight of profession of the auditors. Question whether on account of conflict of interest of auditors with consultants, the auditors' profession may need an exclusive oversight body may be examined. The Committee may examine the Study Group and the Expert Group Reports referred to above, apart from any other material. It may also consider steps for effective enforcement of the provisions of the FDI Policy and the FEMA Regulations referred to above. **It may identify the remedial measures which may then be considered by appropriate authorities. The Committee may call for suggestions from all concerned.** Such Committee may be constituted within two months. Report of the Committee may be submitted within three months thereafter. The UoI may take further action after due consideration of such report.

53.2. The ED may complete the pending



*investigation within three months;*

*53.3. ICAI may further examine all the related issues at appropriate level as far as possible within three months and take such further steps as may be considered necessary.”*

88. In terms of the decision in *S. Sukumar(supra)*, there were broadly two directions that were issued by the Supreme Court, which are as under:

- (1) Direction to the Government for constitution of a Committee of Experts for regulation of code and conduct of CAs.
- (2) Direction to the ICAI to examine all the related issues within three months and take steps.

89. This judgment then resulted in the notice dated 16<sup>th</sup> March, 2018.

90. The chronology of events that transpired after issuance of notice has already been captured in the initial paras of this judgment, qua each of the Petitioners.

### **G. Findings**

#### **Reference Table of the Petitioners and Member answerable:**

S. No	Writ Petition Number W.P.(C)	Name of the Petitioner	Firm	Disclosed member/ member answerable
1	6532/2022	Rakesh Dewan	M/s BSR and Associates LLP	Mr. Kaushal Kishore
2	11944/2021	Harinderjit Singh	M/s Price Waterhouse & Co. Chartered Accounts LLP	Neeraj Kumar Gupta
3	13375/2021	Abhishek Rara	M/s Price Waterhouse &	Anupam Dhawan



			Co. Chartered Accounts LLP	
4	13376/2021	Usha Rajeev	M/s Dalal and Shah LLP	Neeraj Kumar Gupta
5	13377/2021	Rahul Chattopadhyay	M/s Price Waterhouse & Co.	Neeraj Kumar Gupta
6	13378/2021	Amitesh Dutta	M/s Price Waterhouse & Co. Bangalore LLP	Neeraj Kumar Gupta
7	13379/2021	Rajan Wadhwan		Dinesh Yashwant Supekar
8	13380/2021	Priyanshu Dineshkumar Gundana	M/s Dalal and Shah LLP	Neeraj Kumar Gupta
9	13381/2021	Usha Rajeev	M/s Price Waterhouse Calcut	Neeraj Kumar Gupta
10	13382/2021	Anurag Khandelwal	M/s Lovelock & Lewis	N.K. Varadarajan

91. The chronology of events and circumstances, which are set out above, clearly show that the initiation of action *qua* the firms was pursuant to a report in 2010. Fourteen years have passed, however, there has been no effective action till date. Repeated notices, replies, decision of the Supreme Court in *S. Sukumar (supra)*, and other proceedings before the Supreme Court, have not yet resulted in any concrete action.

92. Insofar as the first direction given by the Supreme Court in *S. Sukumar (supra)* is concerned, the Union of India constituted a Committee - Committee Of Experts On Regulating Audit Firms And The Networks, which recommended amendments to the Act. The report dated 25<sup>th</sup> October, 2018 which provided the requisite recommendations for amendments to the Act



was drafted and compiled by the Committee of Experts constituted in terms of the *S. Sukumar (supra)* judgement. The preface of the said report is set out below:

*“The Secretary Ministry of Corporate Affairs  
Government of India New Delhi 110001*

*Dear Sir,*

*The Committee of Experts to look into the regulating audit firms and the networks presents its report to the government. The findings and recommendations aim to address the issues raised by the Hon’ble Supreme Court in its judgement in S. Sukumar versus The Secretary, Institute of Chartered Accountants of India (February 23, 2018) with a focus to strengthen the legal regime of auditors and promote development of the audit profession in the country”*

Thereafter, amendments were proposed but the said amendments are yet to be notified and have been remained on paper till date.

93. Argument of the Petitioners, thus, continues to be that under the Act as also the Rules, no action can be taken against a firm. Rule 8 of the Rules is relied upon by the Petitioners to argue that once a member answerable or responsible is notified then no action can be taken against the firm as a whole or any other member.

94. A perusal of Rule 8 in the context of the facts of these cases would show that, if the interpretation of the Petitioners is taken to be correct, it would severely limit the power of the Board of Discipline. Rule 8 has been extracted below:



### ***“Chapter III-Procedure of Investigation***

#### ***8. Procedure to be followed by Director on a complaint***

*(1) The Director or an officer or officers authorized by the Director, within sixty days of the receipt of a complaint under rule 3, shall,*

*(a) if the complaint is against an individual member, send particulars of the acts of commission or omission alleged or a copy of the complaint, as the case may be, to that member at his professional address;*

*(b) if the complaint is against a firm, send particulars of the acts of commission or omission alleged or a copy of the complaint, as the case may be, to the firm at the address of its head office, as entered last in the Register of Offices and Firms maintained by the Institute, with a notice calling upon the firm to disclose the name or names of the member or members concerned and to send particulars of acts of commission or omission or a copy of the complaint, as the case may be, to such members:*

***Provided*** that while disclosing the name or names of the member or members, the firm shall also send a declaration signed or, as the case may be, jointly signed by the member or members concerned to the effect that he or she or they shall be responsible for answering the complaint and that the particulars of acts of commission or omission or the copy of the complaint sent to the firm by the Director had been duly received by him, her or them.

***Explanation*** - *A notice to the firm shall be deemed to be a notice to all the members who are partners or employees of that firm as on the date of registration of the complaint.*

*(2) A member whose name is disclosed by the firm shall be responsible for answering the complaint, **provided such a member was associated, either as partner or employee, with the firm, against which the complaint***



**has been filed, at the time of occurrence of the alleged misconduct:**

**Provided that if no member, whether erstwhile or present, of the firm, own responsibility for the allegation or allegations made against the firm, then the firm as a whole shall be responsible for answering the allegation or allegations and, as such, all the members who were partners or employees of that firm, as on the date of occurrence of the alleged misconduct, shall be responsible for answering the allegation or allegations as contained in the complaint.**

(3) A member who has been informed of the complaint filed against him (hereinafter referred to as the respondent) shall, within 21 days of the service of a copy of the complaint, or within such additional time, not exceeding thirty days, as may be allowed by the Director, forward to the Director, a written statement in his defence.

(4) On receipt of the written statement, if any, the Director may send a copy thereof to the complainant and the complainant shall, within 21 days of the service of a copy of the written statement, or within such additional time, not exceeding thirty days, as may be allowed by the Director, forward to the Director, his rejoinder on the written statement.

(5) On perusal of the complaint, the respondent's written statement, if any, and rejoinder of the complainant, if any, the Director may call for such additional particulars or documents connected therewith either from the complainant or the respondent or any third party or parties, as he may consider appropriate:

**Provided that if no reply is sent by the respondent within the time allowed under sub-rule (3) or by the complainant within the time allowed under sub-rule (4), the Director shall presume that the respondent or the**



*complainant, as the case may be, have nothing further to state and take further action as provided under this Chapter.”*

95. In the present case, the firms themselves are registered with the ICAI as is clear from the submissions made in the writ petitions. Section 21A and Section 21B of the Act empowers the ICAI’s Disciplinary Committee, if it is of the opinion that the member is guilty of professional or other misconduct, to reprimand a member, remove the name of the member, or even impose fine. In fact, Rule 8 of the 2007 Rules makes it clear that the notice of complaint can be given to the firm setting out the acts of omission and commission at the address of the firm. The firm has the option of sending a declaration as to the persons responsible/ member answerable for answering the complaint.

96. The explanation makes it clear that the notice to the firm is the notice to all the members, who are the partners or employees of the firm on the date of registration of the complaint. The firm can disclose the name of a person who shall be responsible for answering the complaint **“provided such a member was associated with the firm either as a partner or employee at the time of the alleged misconduct.”** The proviso to Rule 8 (2) makes it clear that if no member owns responsibility in respect of the allegations, then the firm as a whole shall be responsible.

97. Sections 21A and 21B of the Act read with Rule 8 of the Rules makes it clear that the ICAI is fully empowered to take action against a firm and issue notices even to a firm.

98. There are different kinds of misconducts that can be alleged against a firm. Misconduct can be individual centric or firm centric. If the misconduct is against a particular individual, then obviously that individual would be





responsible for answering and for taking responsibility. A classic case of this nature is the case of ***Hema Gosain v. Institute of Chartered Accountants of India and Others (2023 SCC OnLine Del 7621)*** where the particular member of the firm had conducted an audit and complaint was received in respect of the specific audit. In the said case, by the time the notice was issued to the firm, the said auditor, *i.e.*, the member had passed away. In this context the ld. Single Judge held as under.

*“11. A perusal of the above rules shows that that Rule 8 provides for the procedure to be followed by the Director on receiving a complaint. Under Rule 8(1)(b) of the Rules, Director of the Institute has to send a copy of the complaint to the firm calling upon the firm to disclose the name or names of the member or members concerned. In terms of the said Rules, on receiving the complaint of the Petitioner the Respondent No. 1/ICAI vide letter dated 17.08.2020 called upon Respondent No. 2 firm to disclose the name of the member answerable to the complaint and Respondent No. 2 by its letter dated 27.08.2020 informed Respondent No. 1/ICAI that the Audit in question was carried by CA Vijay Kumar Lalla who passed away on 18.11.2017. In terms of Rule 8(2) a member whose name is disclosed by the firm shall be responsible for answering the complaint. Name of CA Vijay Kumar Lalla was disclosed by the Respondent No. 2/Firm. CA Vijay Kumar Lalla was associated as a partner with the Respondent No. 2/Firm at the time of occurrence of the alleged misconduct. It is not the case of the Petitioner that no one has owned the responsibility for the allegations made against the firm and therefore, in absence of such responsibility the disciplinary proceedings can be initiated against Chartered Accountant firm. In the present case, the Respondent No. 2/Firm has disclosed the name of CA Vijay Kumar Lalla, who conducted the Audit of Respondent No. 3/IIC.*



The complaint was filed by the Petitioner after three years of the report of Audit and by the time the said CA Vijay Kumar Lalla had passed away. It is well settled that disciplinary proceedings cannot continue after the death of the concerned person. In Durgawati Dubey v. State of UP, 2018 SCC OnLine All 1827, a co-ordinate Bench of the Allahabad High Court has held as under:

*“12. Apart from that I have also seen the judgments of this Court as well as other High Courts occupying the field. In the case of Smt. Rajeshwari Devi v. State of U.P., 2011 (2) ADJ 643 decided on 07.01.2011, the Court has held that as soon so as a person dies, he breaks all his connection with the worldly affairs, therefore, no disciplinary proceeding can be initiated against him.....”*

*(emphasis supplied)*

*12. In view of the above, it cannot be said that the Respondent No. 2/Firm has whittled away from its responsibility and the Respondent No. 1/ICAI is at fault for closing the complaint of the Petitioner. Therefore, this Court is of the opinion that the decision of Respondent No. 1/ICAI in closing the complaint of the Petitioner does not require any interference by this Court.*

*13. Accordingly, the Writ Petition is dismissed. Pending applications, if any, also stands dismissed”*

99. Thus, in a case where there is any complaint or allegation in respect of a single incident or an act of a member, the firm can designate that particular person, who was associated with the said act, which is alleged to be misconduct. The position would however not be the same, say, in a case where the allegations are in respect of arrangements entered into by firms with other



international counterparts, spanning over decades and multiple agreements. A single individual cannot be pinned down in such situations to be responsible for answering the complaint as ‘member answerable’. The firm as a whole has to be held responsible if found culpable, in such circumstances, failing which the Act would be rendered toothless.

100. The discussion in the judgment of the Supreme Court in *S. Sukumar (supra)*, is wide and far ranging. It includes issues relating to international agreements, brand licensing, revenue sharing etc. The *prima facie* opinion given by the Directorate (Discipline) would show that the agreements date back to 1998 until 2015 as set out in paragraph 58 above. In some of the agreements, the Petitioners herein are signatories and in some agreements, the signatories have been redacted by the firm.

101. Under Rule 8(2) of the Rules the pre-condition for a member answerable, who can be held responsible, is that such a member has to be associated with the alleged misconduct. The letters repeatedly written by the firm as also the Petitioners and the identified persons, who have given declarations as members answerable clearly do not inspire confidence. This court is of the opinion that one individual can be made a scape goat for such wide-ranging allegations of misconduct against multiple groups/entities or firms forming a part of the PWC group, even if such an individual is willingly volunteering to absolve the firm and everyone else responsible.

102. The narrow interpretation being given by the Petitioners of Rule 8(2) of the Rules goes against the spirit of the Act itself and the powers vested in the ICAI cannot be diluted and thwarted by such an interpretation of Rule 8. The language of Rule 8 (2) proviso has to be read in a manner so as to not defeat the purpose of the Act and to ensure that the entire enquiry into the



misconduct is not made a mockery. If the ICAI's DC is of the opinion that a member is incorrectly owning responsibility for allegations, which are wide ranging, the ICAI is fully empowered to hold the firm as a whole as being responsible. Any mischief that is sought to be created by the proviso can be cured through statutory interpretation and the intention of the legislature, as captured in both the Acts of 1949 as also in the amendment Act of 2022, cannot be set at naught. Statement of Objections and Reasons, 2022 read as under:

*“ 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”*

103. Thus, there is a recognized need for enhancing and strengthening the disciplinary mechanisms against firms and enhancing accountability and transparency by firms of CAs. Though the amendment Act of 2022 has not been notified yet, the current/extant Act and Rules cannot be read in a manner, which is contrary to the spirit of vested powers with the ICAI for taking action against firms or individuals, who are its members.

104. Obviously if the ICAI feels that one member cannot be held responsible



in respect of allegations against the firm, it is fully empowered to proceed against the firm as a whole. The interim order dated 26<sup>th</sup> November, 2021 makes it clear that the ICAI can take action and proceed against the firm. Thus, the narrow interpretation canvassed, of Rule 8(2) of the Rules, by the Petitioners is rejected.

105. The ICAI clearly did not proceed against the Petitioners due to the interim orders that were operating in these petitions. The final recommendations record categorically that the ICAI did not proceed against the Petitioners due to the said interim orders.

106. Thus, insofar as the Petitioners or firms as a whole is concerned, the findings dated 22<sup>nd</sup> January, 2024 would not be final. The conclusion of the ICAI is clear to the effect that there has been misconduct. The findings also show that there are various factors, which have led to the DC arriving at conclusion that there has been misconduct by the firms. Under Sections 21A and 21B of the Act as also read with Rule 8 of the Rules, the DC is free to proceed against the firm as a whole or its individual members as it deems appropriate, who shall be held responsible for answering the allegations.

#### **H. Conclusions & Directions:**

107. The profession of Chartered Accountancy is one which forms an important and critical part of the economy of a country. CAs are like gatekeepers of the financial system, who can stop any misdemeanour in accounting by conducting proper audits and continuous supervision of their clients. CAs can also properly advise both on proper maintenance of accounts as also management and planning. Any omission or laxity in discharge of duties could lead to large scale losses and financial frauds. CAs owe a responsibility not just to their clients but also to ensure, in the process of



rendering their services, that there is compliance of law. The said profession also owes a duty to the country as also to the economy as a whole. Thus, regulation of the profession of CAs by establishment of the Regulatory body like the ICAI is an important feature of the said profession itself.

108. Proper mechanism for the purpose of ensuring that there is no misconduct is essential to preserve the robustness and the integrity of the profession. If firms are permitted to only pin down one single individual in respect of alleged misconduct spanning over decades, the entire purpose of the Act and the Rules would be completely defeated.

109. There is an imminent need, therefore, for -

- (a) Strengthening the ICAI by expeditiously notifying the amendments passed by the Amendment Act of 2022.
- (b) Undertaking a consultation in order to clearly set out as the framework in which multinational accounting firms, whose presence is also necessary in India, can operate. Such firms also contribute in bringing global best practices to India with immense opportunities for youngsters. They also render services to Indian businesses even at a global scale. Thus, the provisions relating to licensing agreements, brand usage etc., also need to be looked into.

110. Insofar as the Petitioners are concerned, they had initially filed applications for withdrawal of the petitions. The Court had, on 21<sup>st</sup> March, 2024, given the Petitioners an option of withdrawing the petitions and appearing before the DC to proceed in accordance with law. However, the clear stand that the Petitioners took was that since final findings have been rendered, the Petitioners could no longer be held culpable in any manner and no enquiry can be held against them. Thus, the Petitioners finally expressed



to withdraw the applications for withdrawal of the writ petitions on 22<sup>nd</sup> March, 2024. In view of the same, the said applications *i.e.*, ***CM Appl. 12020/2024*** in ***W.P.(C) 11944/2021***, ***CM Appl.12017/2024*** in ***W.P.(C) 13375/2021***, ***CM Appl.12021/2024*** in ***W.P.(C) 13376/2021***, ***CM Appl.12014/2024*** in ***W.P.(C) 13377/2021***, ***CM Appl.12018/2024*** in ***W.P.(C) 13378/2021***, ***CM Appl.12015/2024*** in ***W.P.(C) 13379/2021***, ***CM Appl.12013/2024*** in ***W.P.(C) 13380/2021***, ***CM Appl.12019/2024*** in ***W.P.(C) 13381/2021*** and ***CM Appl.12016/2024*** in ***W.P.(C) 13382/2021*** are dismissed as withdrawn.

111. The Court has today interpreted Rule 8 of the Rules and has held that when the DC is of the opinion that any one individual cannot be saddled with the responsibility, considering the nature of the allegations, the Disciplinary Committee can proceed against the firm as whole.

112. In view of this interpretation, this Court is of the opinion that the writ petitions are themselves not tenable and hence the stay orders also do not deserve to be continued. The Petitioners would be liable to participate, if they so choose to do, give their reply on merits to the notice issued by the DC and insofar as the Petitioners or firms are concerned, the ICAI would be fully empowered to proceed in accordance with law.

113. Accordingly, the Petitioners including their firms are given an opportunity to file a reply to the notices issued by ICAI and a date of hearing be fixed for their appearance. The Petitioners and their firms are free to file their written statements within eight weeks before the DC. The DC shall, after giving a hearing to the Petitioners and their firms, shall proceed further with the enquiry against the firms and the Petitioners, in accordance with law.

114. Copy of this judgment be sent to the Secretary, Ministry of Corporate





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Affairs, Government of India for appropriate action in terms of paragraph 109 above.

115. Writ petitions are dismissed with costs of Rs.1 lakh each to be paid to Delhi High Court Bar Clerk Association. The details of the said account is as under:

***A/c Name: Delhi High Court Bar Clerk Association***

***A/c No.: 15530100006282***

***A/c Type: Savings Bank Account***

***IFSC: UCBA0001553***

116. All pending applications are also disposed of accordingly.

**PRATHIBA M. SINGH  
JUDGE**

**JULY 03, 2024**

*dk/bh*

