BEFORE THE APPELLATE AUTHORITY
(Constituted under the Chartered Accountants Act, 1949)

APPEAL NO. 14/ICAI/2019
IN THE MATTER OF:

Neville Nadir Mistry **....Appellant**

Versus

Board of Discipline (Institute of Chartered Accountants of India)
....Respondent No. 1

Pushpatraj S. Shah of P. Raj & Co **....Respondent No. 2**

CORAM

Hon'ble Mr. Justice S.P. Garg	Chairperson
Hon'ble Mr. Praveen Garg	Member
Hon'ble Mr. Anand Mohan Bajaj	Member
Hon'ble Mr. Pankaj Tyagee	Member

PRESENT:
For the Appellant:
None

For the Respondents:
Mr. Amit Sharma, Advocate on behalf Respondent No. 1.

None for Respondent No. 2.

ORDER

Date: 26.02.2020

1. The matter was reserved for orders on 7th February, 2020.

2. Vide e-mail dated 21st February, 2020 the parties were informed regarding the date of pronouncement of the order.

3. The order pronounced by separate order.

4. A copy of the order be given to the parties.

Sd/-
Justice S. P. Garg
Chairperson

Sd/-
Praveen Garg
Member

Sd/-
Anand Mohan Bajaj
Member

Sd/-
Pankaj Tyagee
Member

26/2/2020
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Hon'ble Mr. Justice S.P. Garg	Chairperson
Hon'ble Mr. Praveen Garg	Member
Hon'ble Mr. Anand Mohan Bajaj	Member
Hon'ble Mr. Pankaj Tyagee	Member

PRESENT:
For the Appellant: Mr. Neville Nadir Mistry, Appellant in person.

For the Respondents: Mr. Amit Sharma, Advocate along-with Mr. S.V. Krishna Mohan, Chief Legal Advisor, Legal Department and Ms. Aruna Sarma, Senior Executive Officer, Disciplinary Directorate on behalf of Respondent No. 1.

None for Respondent No. 2.

Order reserved on: 7th February, 2020

ORDER

Date: 26.02.2020

1. Present appeal has been preferred by Neville Nadir Mistry (hereinafter referred to as "the Appellant") to challenge the legality and correctness of Order dated 28.06.2018 of the Board of Discipline of the Institute of Chartered Accountants of India whereby the complaint filed by him was dismissed.

2. Vide Order dated 12th December, 2019, notice of the appeal was issued to the Respondents. The Institute was directed to file its response to the appeal as well as the allegations leveled by the complainant. The Institute, however, did not file any response.

3. We have heard the Appellant in person and the learned Counsel for the Institute and have examined the file.

4. On perusal of the file, it reveals that complaint against Respondent No. 2 was filed by the Appellant on 26th March, 2018 before the Institute. The Institute

referred the complaint for enquiry to the Disciplinary Authority on 28th June, 2018. The Board of Discipline dismissed it under Rule 12 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

5. In the appeal, the Appellant alleged that he was not given any opportunity of being heard as the complaint filed by him was dismissed ex-parte under Rule 12. The Minutes of the Meeting dated 28th June, 2018 were provided to him on 26th June, 2019 and were backdated. He had sent an e-mail on 16th July, 2018 seeking status of the complaint filed by him. A prompt reply was given on 27th July, 2018 stating "the complaint is under consideration of the appropriate committee". Again on 19th October, 2018 when he enquired about the status of the complaint, the reply of the Institute dated 26th October, 2018 was that it was "under consideration of the appropriate authority". His e-mails dated 19th March, 2019, 20th March, 2019 and 4th June, 2019 went unanswered.

6. The only argument submitted by the Institute was that the present appeal filed by the complainant was not maintainable and is liable to be rejected.

7. It is a matter of record that the Board of Discipline in its 97th meeting held on 28th June, 2018 dismissed the complaint of the Appellant under Rule 12. The said Order has not been challenged by the Institute. Only the Appellant who was a complainant has come in appeal to challenge the legality and correctness of the said Order. The law is very clear on this aspect. The complainant has not been given any right to prefer any appeal under Section 22G of the Chartered Accountants Act, 1949. The Section 22G reads as under:

"22G: - Appeal to Authority:-

1) *Any member of the Institute aggrieved by any order of the Board of Discipline or the Disciplinary Committee imposing on him any of the penalties referred to in sub-section (3) of Section 21A and sub-section (3) of Section 21B, may within ninety days from the date on which the order is communicated to him, prefer an appeal to the Authority;*

Provided *that the Director (Discipline) may also appeal against the decision of the Board of Discipline or the Disciplinary Committee to the Authority, if so authorized by the Council, within ninety days;*

Provided further *that the Authority may entertain any such appeal after the expiry of the said period of ninety days, if it is satisfied that there was sufficient cause for not* *filing the appeal in time.*

2) *The Authority may, after calling for the records of any case, revise any order made by the Board of Discipline or the Disciplinary Committee under sub-section (3) of Section 21A and sub-section (3) of Section 21B and may-*

a) *confirm, modify or set aside the order;*
b) *impose any penalty or set aside, reduce, or enhance the penalty imposed by the order;*
c) *remit the case to the Board of Discipline or Disciplinary Committee for such further enquiry as the Authority considers proper in the circumstances of case; or*
d) *pass such other order as the Authority thinks fit:*

Provided that the Authority shall give an opportunity of being heard to the parties concerned before passing any order."

8. Apparently, only a member of the Institute can file an appeal before the Appellate Authority if he is aggrieved by any order as provided under Section 21 A(3) or Section 21B(3) of the Chartered Accountants Act, 1949. During the course of arguments, the complainant conceded that under the Act, the complainant has no right to challenge the order of the Board of Discipline in appeal.

9. The Appellate Authority has already dealt with and decided the similar complaints in the past holding that an Appeal filed by any other person than the aggrieved member is not maintainable, in the following appeals :-

    i. A.N. Kulkarni Vs. May & Company and Ajit Ji Pemdse, Order dated 24th September, 2011
    ii. Savitri Devi Kabra Vs. N L Maheshwari, Order dated 24th September, 2011
    iii. Amresh Kumar Vashisth Vs. ICAI & Others, Order dated 28th January, 2012
    iv. B L N Phani Kumar Vs. ICAI & RBI , Order dated 17th July, 2012
    v. Dr. G. Sucharitha Vs. ICAI , Order dated 30th January, 2016
    vi. A.N. Iyer Vs. ICAI, Order dated 1st March, 2016
    vii. Umed Raj Singhvi Vs. ICAI and CA K Ramachandra Murthy, Order dated 27th June, 2016
    viii. Bipin Arora Vs. ICAI & Others, Order dated 17th April, 2017
    ix. Subhashchandra R. Pal Vs. ICAI & Others, Order dated 25th August, 2017
    x. Shankar Pirmal Yadav Vs. CA. Tejprakash Dangi & Others, Order dated 23rd April, 2018
    xi. Hasmukhlal Rangildas Ghael vs. ICAI & Others, Order dated 23rd April, 2018

10. Observations of the Hon'ble High Court of Delhi in W.P. (C) 8071/2019 in "Wholesale Trading Services Private Limited vs The Institute of Chartered Accountants of India and Others" decided on 01.08.2019 are relevant to note:

> *"27. It is also relevant to note that the proceedings before the Disciplinary Committee/Board of Discipline are in nature of Disciplinary proceedings to ensure that members of ICAI maintain professional standards and do not conduct*

themselves in a manner which brings disrepute to the profession of Chartered Accountancy. The disciplinary proceeding is principally between ICAI and its members. A complainant merely acts as a relater party that provides information relating to any misconduct on the part of a Chartered Accountant. Although a complainant has a right to be participates in the proceedings; disciplinary proceedings cannot be viewed as a private dispute between the complainant and the Chartered Accountant. It is also true that in most cases, the complainant may also have suffered on account of professional or other misconduct on the part of a Chartered Accountant; however, that does not change the nature of the disciplinary proceedings.

28. The conduct of ICAI's member (a Chartered Accountant) is to be evaluated by the concerned authorities of ICAI. The object is to ensure that its members measure up to the standards as set by ICAI for continuing as its member. As stated earlier, the matter is, essentially, between ICAI and its members. This is also the rationale for not providing any appellate remedy to the complainant against the decision of the concerned authorities in terms of Section 22G of the Act. This right is only available to an aggrieved Member of ICAI".

11. In view of above, we are of the firm view that the Appeal preferred by the Appellant is not maintainable and is dismissed. Copy of the order be given to the parties.

Sd/-
Justice S. P. Garg
Chairperson

Sd/-
Praveen Garg
Member

Sd/-
Anand Mohan Bajaj
Member

Sd/-
Pankaj Tyagee
Member

26/2/2020
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