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

% *Date of Decision: 11th November, 2021*

+ LPA 208/2021

WHOLESALE TRADING SERVICES P LTD Appellant
Through: Mr. R. Subramanian, Advocate.

versus

THE INSTITUTE OF CHARTERED
ACCOUNTANTS OF INDIA Respondent
Through: Mr. Dayan Krishnan, Senior Advocate
with Ms. Archana Sahadeva, Advocate for R-3.
Mr. S. Ganesh, Senior Advocate with Mr. Mahesh
Agarwal, Mr. Karan Luthra, Ms. Aarushi Tikku &
Mr. Shravan Niranjana, Advocates for applicant in
CM Nos. 31909-31910/2021.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

D.N. PATEL, CHIEF JUSTICE(ORAL)

CM APPL. 31910/2021& 31766/2021(Exemption)

Allowed, subject to all just exceptions.

Applications stand disposed of.

CM APPL. 31909/2021(Intervention)

Present application has been preferred by M/s Hasham Investment and Trading Company Private Limited, seeking intervention in the present Appeal.

For the reason stated in application, the same is hereby allowed and intervener is permitted to argue and assist the Court.

Application is disposed of.

LPA 208/2021 & CM APPL. 29368/2021(Clarification of order dated 02.08.2021), **31765/2021**(Addl. Doc.)

1. Being aggrieved and feeling dissatisfied with the judgment and order dated **13.05.2021**, passed by the learned Single Judge in **W.P.(C) 376/2021**, present Letters Patent Appeal has been preferred by the Appellant. Writ petition was filed by the Appellant, impugning order dated **16.12.2020**, passed by the Institute of Chartered Accountants of India (hereinafter referred to as 'ICAI'), whereby the complaint preferred by the Appellant against Respondent No. 3, a Chartered Accountant, was dismissed. Appellant herein was the Petitioner in the writ petition and the Chartered Accountant against whom the complaint was filed was Respondent No.3 and has been impleaded in the present appeal as Respondent No.3. For the sake of convenience, parties are hereinafter referred to by their litigating status before this Court.

Factual Matrix

i. A petition for merger was filed before the High Court of Karnataka by three Companies viz. a) M/s Napean Trading and Investment Company Private Limited; b) M/s Regal Trading and Investment Company Private Limited; and c) M/s. Vidhya Trading and Investment Company Private Limited. The three Companies were to be amalgamated into the fourth Company, namely, M/s Hasham Investment and Trading Company Private Limited.

- ii. High Court of Karnataka appointed Respondent No.3/Chartered Accountant for verification of the books and other documents of the three Transferor Companies and to submit his report.
- iii. Report was submitted by Respondent No.3 on 25.11.2014 before the Karnataka High Court and was thus a part of the judicial record in Company Petitions bearing Nos.182-185/2014.
- iv. The Karnataka High Court after taking cognizance of the Report and deliberating thereon, sanctioned the Scheme of merger *vide* order dated 26.03.2015.
- v. A complaint was filed by the Appellant before the ICAI on 24.10.2016, alleging professional misconduct against Respondent No.3, appointed by the Karnataka High Court, for verification of the documents, etc.
- vi. Complaint was dismissed by the Disciplinary Committee of ICAI on 16.12.2020 and the said order was challenged before the learned Single Judge of this Court, in a writ petition being W.P.(C) 376/2021. The writ petition was dismissed and from the said order, the present appeal emanates.
- vii. Separately, a Recall application was filed by an entity called 'India Awake for Transparency' before the Karnataka High Court seeking recall of the order 26.03.2015, by which the Scheme of merger was sanctioned.
- viii. Recall application was dismissed by the learned Single Judge of the Karnataka High Court on 17.03.2021 holding therein that since the Applicant was not a party to the main petition, it had no *locus standi* to file a review application.
- ix. An appeal was preferred against the order of the learned Single Judge

before the Division Bench of the Karnataka High Court being OSA No.1/2021, which was dismissed *vide* judgment dated 22.04.2021.

x. Special Leave Petition against the judgment of the Division Bench being SLP (Civil) No. 17185/2021 is stated to have been filed by the Appellant, as stated by counsel for the Appellant during the hearing, but is not listed so far.

xi. Writ petition preferred by the Appellant being W.P.(C) 376/2021 challenging the order dated 16.12.2020 passed by the ICAI, dismissing the complaint filed by the Appellant against Respondent No.3, was dismissed by the learned Single Judge *vide* judgment dated 13.05.2021 imposing costs of Rs.50,000/- on the Appellant. It is this judgment which is impugned before this Court in the present appeal.

Arguments canvassed by counsel for the Appellant

xii. It is submitted by learned counsel appearing on behalf of the Appellant that the ICAI has erroneously dismissed the complaint of the Appellant and the learned Single Judge has erred in upholding the order in as much as it is the Disciplinary Committee of the ICAI which has the original jurisdiction to take cognizance of a professional misconduct of a Chartered Accountant. Learned Single Judge could not have relied on the judgments of the Karnataka High Court as the proceedings before the Karnataka High Court, relating to recall of merger, were wholly unrelated to the complaint of professional misconduct by Respondent No.3, filed before the ICAI.

xiii. Learned Single Judge failed to appreciate that there is no restriction on who can file a complaint under the Chartered Accountants Act, 1949 and

the Rules framed thereunder and therefore, the question of *locus* of the Appellant in filing the complaint before ICAI did not even arise. Direction of the learned Single Judge requiring the Appellant to file an affidavit indicating his connection with the Companies, in respect of which the audit was conducted by Respondent No.3, was unsustainable in law. In case there is a professional misconduct by a Chartered Accountant, the complaint can be filed by any person and it is not necessary that the complainant should be a shareholder of a Company, for which the audit has been conducted by the concerned Chartered Accountant. The Appellant therefore had the *locus standi* to file a complaint against Respondent No.3 and the complaint ought to have been investigated and enquired into by the ICAI and disciplinary action should have been initiated.

xiv. Learned Single Judge has erroneously linked the Company 'India Awake for Transparency' with the present Appellant, whereas, both are separate legal entities and the commonality of the advocate representing the two Companies cannot have any bearing on the merits of the present case. Learned Single Judge failed to appreciate that the Appellant had valid authorisation to file a complaint against Respondent No.3. The impugned order before the learned Single Judge therefore deserved to be set aside and mere non-deposit of costs imposed by the various Courts could not be a ground, either to dismiss the writ petition or for a further direction by the learned Single Judge to the Registry that no petition filed by the Appellant shall be listed, till the Appellant deposited the costs.

xv. Learned Single Judge failed to appreciate that the mere fact that the Report rendered by Respondent No.3 was before the Karnataka High Court

was not enough to oust the Appellant and decline to entertain the complaint. Once the Appellant had levelled serious allegations of offences relating to professional misconduct, it ought to have been adjudicated as it is a well settled law that in matters of professional misconduct, even *suo moto* action can be taken by the Disciplinary Committee. Appellant found serious fraud in the audits certified by Respondent No.3, inasmuch as records of the three Companies revealed that there were various egregious transactions entered into by the three Transferor Companies between the period 2009-2014. The Companies and the Partnership Firms in which they had stake had jointly settled a Private Trust under the name Azim Premji Trust. The accounts of the Companies and its wholly owned Subsidiaries reveal that the assets of the three Companies have been misused in the said five year period, for the benefit of the Director, to the extent of tens of thousands of crores of assets being gifted to a private Trust. Despite this, a false certificate had been given by Respondent No.3, in order to suppress the misuse and misappropriation.

Arguments canvassed by Learned Senior Counsel for Respondent No. 3-Chartered Accountant

xvi. Mr. Dayan Krishnan, learned Senior Counsel submits that no error has been committed by the learned Single Judge while passing the impugned judgment dated 13.05.2021 and upholding the order dated 16.12.2020 passed by the ICAI, whereby the complaint of the Appellant was dismissed.

xvi. Respondent No.3 was appointed by the Karnataka High Court in the Company Petitions, wherein Scheme of Merger of the three Companies into M/s. Hasham Investment and Trading Company Private Limited, was sanctioned. Respondent No.3 was appointed to verify the books and papers

of the three Transferor Companies and the report was given by Respondent No. 3 on 25.11.2014, which became a part of the judicial record of the Karnataka High Court. The report was duly considered by the Court and thereafter, the Scheme of Merger was sanctioned. Once the report has been accepted by the Karnataka High Court, it was not open to the ICAI to reopen and reconsider the report and initiate any proceedings against Respondent No.3 and thus, the complaint filed by the Appellant was rightly dismissed.

xvii. Supporting the order of ICAI, it is further submitted that the allegations made in the complaint were more or less the same as those averred in the Recall application filed by India Awake for Transparency before the Karnataka High Court and the Recall application was dismissed *vide* a detailed order dated 17.03.2021 by the Court, after due deliberation. Against the order of dismissal of the recall application, India Awake for Transparency filed an appeal being OSA No.1/2021 before the Division Bench of the Karnataka High Court, which too was dismissed on 22.04.2021. Placing reliance on various paragraphs of the said judgment, more particularly, paragraph 23 onwards, it is submitted that once the report has passed the test of judicial scrutiny, there was no reason why the ICAI should have again adjudicated the allegations, which were more or less similar to the ones in the recall application. In fact, there was nothing further remaining to be enquired by ICAI after the judgments of the Karnataka High Court.

xviii. It is emphasized and highlighted that the Appellant is a chronic litigant and has no other work but to file petitions and/or other litigations and target a particular Company. Not less than three dozen litigations have

been initiated by the Appellant and India Awake for Transparency, in which Mr. R. Subramanian is a common link. In fact, several proceedings including criminal cases are pending against Mr. R. Subramanian and in some matters, costs have been imposed and barring one case, in all the others, even the costs have not been deposited. Even in one case where the cost was paid, it was only because this Court had directed the arrest of one of the Directors in case of non-payment of costs.

Arguments canvassed by Learned Senior Counsel for the Intervener

xix. Mr. S.Ganesh, learned Senior Advocate appearing on behalf of the intervener, submits that a Scheme of amalgamation was filed before the Karnataka High Court for amalgamation of three Transferor Companies into M/s. Hasham Investment and Trading Company Pvt. Ltd., which is a Non-Banking Finance Company and a part of the closely held Group of Private Companies promoted by Sh. Azim Hasham Premji. Respondent No.3 was appointed by the Karnataka High Court for looking into the books and papers of the three Transferor Companies and to submit his report. After the report was rendered by the Chartered Accountant, the same was placed before the Court. Report was deliberated upon and after the same was duly considered, the Scheme of Merger was sanctioned by the Court. A recall application was filed by India Awake for Transparency, but the same was dismissed and the appeal before the Division Bench also met the same fate.

xx. The complaint filed by the Appellant before Respondents No.1 and 2 related to allegations that the report filed by Respondent No.3 before the Karnataka High Court was incorrect and the Appellant also sought disciplinary action against Respondent No.3. Respondents No.1 and 2

rightly dismissed the complaint, noting that once the appointment of Respondent No.3 was made under orders of the Karnataka High Court and the report was considered by the Court, only the said High Court could pass any order on the same and the Committee had no jurisdiction to take cognizance of the same. Thus, no error has been committed by the ICAI while dismissing the complaint and accordingly, the impugned judgment passed by the learned Single Judge upholding the said order, suffers from no infirmity.

xxi. Appellant or for that matter Mr. R.Subramanian have no connection whatsoever either with Hasham Investment and Trading Company Pvt. Ltd. or the other three entities which have merged with it, by virtue of the Scheme of Amalgamation sanctioned by the Karnataka High Court *vide* order dated 26.03.2015. Further, Mr. Subramanian and the Appellant are neither creditors nor shareholders in the Applicant Company, which is an undisputed fact. The action of filing the complaint is malafide and motivated to interfere in the affairs of the Applicant Company by filing complaints against the Chartered Accountant and thereby also indirectly seeking to question the order of the Karnataka High Court, approving the Merger Scheme.

xxii. Two such writ petitions being W.P.(C) Nos. 8071/2019 and 8081/2019 were dismissed by two separate orders 01.08.2019 by a learned Single Judge of this Court with costs. Attention of the Court is drawn to paragraphs 11 and 12 of the order passed in W.P.(C) No. 8081/2019, wherein the Court took notice of the observations in the decision rendered in W.P.(C) No.8071/2019, that the use of a Corporate facade by the Petitioner

therein through its Directors or Promoters for pursuing complaints against various Chartered Accountants, unconnected with his business, could not be countenanced. A Letters Patent Appeal being LPA 586/2019 was preferred against the said order and the appeal was dismissed by the Division Bench of this Court *vide* judgement dated 11.09.2019. Applying the same principle, the present Appellant has nothing to do with the aforesaid four Companies and thus has no locus whatsoever to file the complaint. Moreover, there was neither a Resolution of the Company nor any authorization in favour of the Appellant for filing the complaint. It is also highlighted that the Appellant herein was the Petitioner even in the above two writ petitions and the four Companies herein against whom allegations were levelled in the complaint were amongst the seven Companies therein. Thus, the judgments of Karnataka High Court would apply with equal vigour to the present case.

xxiii. Mr. R. Subramanian promoted a Company by the name of Subiksha Trading Service Ltd. and entered into certain business dealings with the Applicant, wherein the Applicant invested around Rs. 240 crores and extended a loan of Rs. 40 crores. Subiksha defaulted on payment of debts owed to the Applicant Company, as a consequence of which the Applicant resorted to remedies for recovery of money and also filed complaints under Section 138 of the Negotiable Instruments Act, 1881 for dishonour of cheques worth Rs.39.32 Crores. As a matter of vendetta, Mr. Subramanian has been filing cases against the Applicant Company, its Associate Companies, Directors, etc. as a matter of harassment and coercion. Cases have been filed in various Forums across the Country in different names, either in the name of Appellant or through India Awake for Transparency,

which is a Company controlled by Mr. Subramanian. In the last five years, more than 36 cases have been filed and most of them have been dismissed with exemplary costs. In fact, the Karnataka High Court while dismissing a petition under Section 482 Cr.P.C. seeking quashing of a complaint under Section 138 of Negotiable Instruments Act, has observed that the petition was a clear abuse of process of the Court and the proceedings instituted were frivolous and vexatious, deserving to be curbed with an iron hand and the Petitioner required to be mulcted with exemplary costs.

Reasons and Analysis

2. We have heard the learned counsel appearing on behalf of the Appellant as well as learned Senior Counsels appearing on behalf of Respondent No.3 and the Intervener, respectively. We have also examined the impugned judgment as well as perused the judgments of the Karnataka High Court, along with the other documents, placed on record by the respective parties.

3. The undisputed facts are that the Appellant filed a complaint before the ICAI against Respondent No.3, who being a Chartered Accountant was appointed by the Karnataka High Court, in Company Petitions alluded to above, for the purpose of verification of the books and papers of three Transferor Companies, pending the Scheme of Amalgamation with the fourth Company. Report was rendered by Respondent No.3 and was placed before the Karnataka High Court. It was considered by the Court and thereafter, the Scheme of Amalgamation was sanctioned *vide* order dated 26.03.2015.

4. Complaint was dismissed by the Disciplinary Committee of ICAI on

16.12.2020, primarily on the ground that the report was considered by the Karnataka High Court and it was only that Court which could take a view on the same and that the Disciplinary Committee had no jurisdiction to take cognizance on the same report. The order was challenged by the Appellant herein before the learned Single Judge but the writ petition was dismissed with costs of Rs.50,000/-. Aggrieved by the judgment, Appellant approached this Court by way of the present appeal.

5. In our considered view, this appeal deserves to be dismissed for the following reasons :-

- I. Respondent No. 3 was appointed by the Karnataka High Court *vide* order dated 04.09.2014 in Company Petitions, preferred with respect to amalgamation of three Companies, viz. -
 - (a) M/s Napean Trading and Investment Company Private Limited;
 - (b) M/s Regal Trading and Investment Company Private Limited and
 - (c) M/s Vidya Trading and Investment Company Private Limited into M/s Hasham Investment and Trading Company Private Limited and a detailed report was furnished by Respondent No.3 on 25.11.2014, before the learned Single Judge of Karnataka High Court.
- II. The report was thus a part of the judicial proceedings before the said Court and it was duly considered and deliberated upon by the Karnataka High Court. The Court sanctioned the Scheme of Amalgamation *vide* judgment dated 26.03.2015 and it is

apparent that the Court found no fault with or falsity in the report.

- III. Once the report passed the threshold of judicial scrutiny, there was no reason why the Disciplinary Committee of ICAI should have adjudicated the correctness or otherwise of the Report. In fact, the Disciplinary Committee rightly refrained from interfering in the report by observing that it had no jurisdiction to even delve into the report, once it had received approval from the Karnataka High Court. Hence, no error was committed by ICAI in dismissing the complaint filed by the Appellant. For ready reference, relevant paras of the order passed by the Disciplinary Committee of ICAI are as under:-

“5. The Committee further noted that the Respondent conducted the audit on behalf of the Respondent firm whereby he, on verification of records, gave his opinion in the reports to the official liquidator. Thus, the Committee viewed that the appointment of the Respondent was made under the Orders of the Hon’ble High Court of Karnataka and that the reports prepared by him were placed before and considered by the Hon’ble High Court of Karnataka. Accordingly, the Committee was of the view that the said report of the auditor was the property of the Hon’ble High Court of Karnataka which alone could pass any order on the same. It also noticed that the matter was sub judice and the Committee had no jurisdiction to take cognizance of the same. It is only the Hon’ble High Court of Karnataka which can take a view on the Report of the Respondent. The Committee can take any action in the matter

only if an order to this effect is passed by the Hon'ble High Court of Karnataka and its continuing with an inquiry in the present complaint would not be appropriate. Accordingly, the extant complaint was dismissed by the Committee.

Conclusion:

6. Thus, the Committee dismissed the extant Complaint. However, the Complainant has right to file case before the Disciplinary mechanism of the Institute with the copy of Order of the Hon'ble High Court of Karnataka.”

- IV. It needs to be highlighted that the order of the Karnataka High Court sanctioning the Amalgamation Scheme was sought to be recalled by India Awake for Transparency, however, the recall application, being in the nature of a review petition, was dismissed *vide* order dated 17.03.2021. Relevant paragraphs of the order are as under:-

“(h) Merely because the applicant has made allegations of fraud and collusion, it cannot be said that applicant has locus standi to invoke inherent powers of this Court to recall the impugned order; in order words, even to seek recall of the impugned order by invoking inherent powers of this Court by alleging fraud, it is absolutely imperative and incumbent that the applicant is an aggrieved person having locus standi to file the application and in the absence thereof, the present application is not maintainable.

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(m) The conduct of the applicant in repeatedly filing applications, petitions, complaints appeals etc., before various forums including this Court including a public interest petition in W.P.3635/2020 (PIL) which was also withdrawn unconditionally by the applicant on 01.10.2020 as well as the orders passed by this Court in W.P.13838/2020 dated 08.01.2021 W.P.No. 11482/2020 dated 18.01.2021 and W.P.No.172/2021 dated 12.02.2021, all filed by the applicant which were dismissed with costs is sufficient to establish that the applicant is not entitled to any relief in the present application also; in fact, in the aforesaid W.P.No.172/2021 dated 12.02.2021, while dismissing the petition after noticing the conduct of the applicant, and imposing exemplary costs of Rs. 10 lakhs on the applicant, this Court held as under:

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27. Thus, there remains no doubt that petitioner is indulging in forum shopping on the very same cause of action. As held in *Udyami*, this amounts to criminal contempt as the core issue in all these writ petitions is one and the same.

28. In the result, this writ petition is not only devoid of merits, but an absolute abuse of process of law. Though Petitioner was forewarned, he chose to argue this writ petition as a stand-alone petition, wasting the valuable time of this Court to deal with such frivolous cases. Therefore, imposition of punitive cost is necessary.

29. In view of the above, the preliminary objection raised by Shri S. Ganesh and Shri C.V. Nagesh are sustained and this writ petition is **dismissed** with cost of Rs. 10,00,000 (Rupees Ten lakhs) payable by petitioner to the Registrar General, High Court of Karnataka, Bengaluru within four weeks from today.

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(n) A perusal of the aforesaid orders passed by this Court clearly indicates that the applicant is guilty of abuse of process of law and his conduct disentitles him from any relief in the present petition also. In fact, as noticed by this Court in the earlier orders, the claim of the applicant has been rejected not only by the Ministry of Corporate Affairs but also by the Reserve bank of India. Under these Circumstances also, I am of the considered opinion that the present application is not maintainable and the same is liable to be dismissed.”

- V. The order was unsuccessfully challenged before the Division Bench of the Karnataka High Court and the appeal was dismissed by a detailed judgment dated 22.04.2021. Although Mr. Subramanian informed the Court during the course of hearing that against the order of the Division Bench, a Special Leave Petition has been filed, but it was also conceded that it is yet to be listed. Thus, the order of the Division Bench holds the field at present. For ready reference paragraphs 23, 24, 25, 26 and 27 of the Division Bench of Karnataka High Court

judgment dated 22.04.2021 passed in Original Side Appeal No. 1/20121 are extracted as under:-

“23. We find considerable force in the submission of learned Senior counsel inasmuch as when a company is seeking to file an appeal for a proceeding, then the Board of Directors of the company has to authorise a person who would verify the pleadings or file the proceeding on behalf of the Company as it authorised signatory at the risk in toto. In the instant case, it is not known as to how a “Volunteer” of the appellant-company could have volunteered to verify the pleadings by the verifying affidavit and file this appeal. The status of this volunteer Sri. P. Sadanand vis-a-vis the Company is not known whether he is a shareholder, director or an employee of the company. At any rate, there can be no authorisation for him to volunteer to file this appeal. On this ground also, we find that the appeal filed by the appellant is not in accordance with the legal procedural requirement and hence cannot be entertained.

24. Despite the above circumstances, we have considered the order of learned Single Judge in light of the submission made by the learned counsel for the appellant and learned senior counsel for respondent No.1 and we find that the learned single judge was justified in dismissing the application filed in Company Application No.185/2016 seeking recall of the order dated 26.03.2015, by which, the scheme of the amalgamation of the three companies with respondent No.1 was sanctioned in Company Petition No.182/2014 as the appellant had no locus standi to file such an application hence, we find no

merit in this appeal and the appeal is hence liable to be dismissed.

25. Before parting with this judgment, we would like to remind ourselves that in recent years there has emerged a trend of filing speculative litigation before various courts of law, not just in the Court of first instance, but also in the High Court. It is the duty of the Courts to ensure that such speculative litigation is weeded out at the first instances rather than allowing it to be festered and thereby coming in the way of genuine litigants seeking justice in their cases. We find that this is one stark instance of speculative litigation being filed not just by this appeal, but repeatedly over the years has been started, filing of litigation has been firstly, before the Court Hon'ble of the Chief Justice in the form of a public interest litigation and thereafter in separate writ petitions on the same cause of action after withdrawing unconditionally the public interest litigation and not being successful in those cases and not being able to get over the order passed by the learned Company Judge of this Court sanctioning the amalgamation of the three companies with respondent No.1 this is without having any locus standi to do so.

26. In the circumstances, we **dismiss** the appeal as being without merit. However, we refrain from imposing any cost.

27. But, having regard to the checkered history with regard to this controversy, we refrain the appellant herein, India Awake for Transparency, from filing any proceeding with regard amalgamation of the three companies with

respondent No.1 herein in future before any court or authority or forum. We are constrained to pass such an order having regard to the loss of precious public time of this court and other courts by raking up such a controversy by the appellant company, without having any locus standi to do so. The same is an instance of gross abuse of the process of law as well as of this court.”

(emphasis supplied)

- VI. A bare reading of the aforesaid observations of the Division Bench, leads to an inevitable conclusion that the Appellant had no *locus standi* to file a complaint against Respondent No. 3. Moreover, the three Transferor Companies which have already merged into Hasham Investment and Trading Private Ltd. a 4th Company have 100% shareholding by the Azim Premji Group. The Transferee Company, i.e. M/s Hasham Investment and Trading Private Limited, does not have any public shareholding and also has 100% shareholding by the Azim Premji Group. Therefore, a stranger can have nothing to do with the Company, least of all to make allegations of fraud or professional misconduct against a Chartered Accountant.
- VII. We also find merit in the argument of learned Senior Counsel for the intervener and Respondent No.3 that the grounds urged in the complaint before the ICAI were more or less similar to the one raised by India Awake for Transparency in the recall application before the Karnataka High Court. Mr. R. Subramanian, Advocate was the lawyer for the Petitioner in the

recall application and beyond a doubt was conscious of the similarity/overlap of the grounds. Having been unsuccessful in a challenge before the Karnataka High Court, a calculated chance was taken before this Court, to re-agitate the same issue *albeit* through another Company, i.e. the present Appellant. This, in our view, is certainly an abuse of the process of law by the Appellant and deserves to be condemned. For ready reference ground (h) of the Recall application is extracted hereunder :-

“h. The Transferor companies have misled and misrepresented factors to the Official Liquidator and Chartered Accountant appointed by the OL, who submitted reports dated 25.11.2014 to the OL in respect of each of the 3 Transferors. Para 6.5 of the said report in respect of each of the 3 Transferor companies records that the Transferor companies had held out to OL that they being unable to comply with the direction of the RBI in respect of not being partners of partnership firms, they were propounding the scheme for amalgamation to correct the position. It is submitted that the scheme will in no manner modify the position of non compliance as the merged entity would continue as a partner in the partnership firms and as such the impugned violations set out as being sought to be remedied would only continue as is. The accounts for the year ended 31.3.2015 of the Transferee after merger reveals that it continues to be a partner in the 3 partnership firms despite operating as a NBFC.”

VIII. Holistically seen, the report rendered by Respondent No.3 has been tested and has passed the muster of judicial scrutiny

several times, both by the learned Single Judge and the Division Bench and neither of the Courts found anything wrong with the same. If the report had anything objectionable or was false and contrary to the record of the Company or overlooked any fraudulent transactions, as alleged by the Appellant, surely, the Karnataka High Court would have taken cognizance of the same and it would not have been accepted. In this view, the Disciplinary Committee of ICAI had, in our view, treaded on the right path by dismissing the complaint. The learned Single Judge has rightly observed that no infirmity could be found in the view taken by the Disciplinary Committee and it was only the Karnataka High Court which could take a view on the report submitted by Respondent No.3.

- IX. We are also in agreement with the learned Single Judge that the Appellant cannot be permitted to start parallel proceedings to challenge the sanction of merger by the Karnataka High Court as also the fact that neither the Appellant nor Mr. Subramanian have any connection or nexus to the parties to the Scheme of Merger. That being the position, Appellant has no connection or *locus* to file the complaint and the observations and findings of the learned Single Judge cannot be faulted with.
- X. Much has been argued by learned Senior Counsel appearing on behalf of Respondent No.3 as well as by learned Senior Counsel appearing on behalf of the Intervener that the present litigation is only a continuation of the earlier litigation filed by

the Appellant and/or India Awake for Transparency, with a view to victimize the intervener Company/its Associate Companies and its Directors, etc., out of sheer vendetta. Since the present appeal is only concerned with the impugned judgment, which is triggered by dismissal of a complaint by the Appellant herein, we do not wish to enter into the controversy of the earlier litigation, except to the extent mentioned above wherein we have noted the judgments of the Karnataka High Court dealing with the report rendered by Respondent No.3.

- XI. We may, however, note that the Appellant has repeatedly defaulted in complying with the orders of various Courts by not depositing the costs imposed. The learned Single Judge has taken note of an order of the Division Bench dated 01.03.2021 wherein a list of cases was enumerated along with the costs imposed by the Courts, which were unpaid, except in LPA 89/2021, where the costs was deposited after this Court passed an order of arrest of one of the Directors of the Appellant. Reference to the table is only to reflect upon the conduct of the Appellant, who defies the orders of this Court with impunity. For ready reference, the table is as under:-

Sl. No.	Case Details	Date of Order	Bench	Costs
1.	Wholesale Trading Services Pvt. Ltd. v. UOI WP(C)	07.07.2017	Division bench of the Hon'ble Delhi High Court	<u>Rs.10,000/-</u> Imposed as costs on the Appellant

	5602/2017			
2.	Wholesale Trading Services Pvt. Ltd. v. UOI; WP(C) 10536/2017	04.12.2017	Hon'ble Delhi High Court	<u>Rs.10,000/-</u> Payable to Delhi High Court Legal Services Committee within a period of three weeks, imposed on the Appellant
3.	Wholesale Trading Services Pvt. Ltd. v. ICAI & Ors; WP(C) 8071/2019	04.12.2017	Hon'ble Delhi High Court	<u>Rs.1,00,000/-</u> Payable to Delhi High Court Legal Services Committee within a period of two weeks, imposed on the Appellant
4.	Wholesale Trading Services Pvt. Ltd. v. ICAI & Ors; WP(C) 8081/2019	01.08.2019	Hon'ble Delhi High Court	<u>Rs.1,00,000/-</u> payable to Delhi High Court Legal Services Committee within a period of two weeks, imposed on the Appellant. This order

				<i>has been sustained by the Hon'ble Division Bench of this Hon'ble Court</i>
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6. In view of the cumulative effect of the aforesaid facts and reasons and judicial pronouncements, we find that no error has been committed by learned Single Judge while deciding W.P. (C) No. 376/2021 and we are in complete agreement with the observations, reasoning and findings rendered in the impugned judgment.

7. There is no merit in the appeal and the same is accordingly dismissed along with all pending applications with costs of Rs.50,000/- to be deposited by the Appellant with the Delhi State Legal Service Authority within eight weeks from today. The aforesaid amount shall be utilized for the programme 'Access to Justice'.

8. A copy of this order be sent forthwith to the Member Secretary, Delhi State Legal Services Authority, Patiala House Courts, New Delhi.

9. The Appeal shall be listed on 07.01.2022, only for the limited purpose of reporting compliance with respect to deposit of costs.

CHIEF JUSTICE

JYOTI SINGH, J

NOVEMBER 11, 2021/v/sn/rk

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