

EXTERNAL AUTHORITY FOR DISCIPLINARY ACTION AGAINST AUDITORS

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1. BACKGROUND:

At present the Council of the Institute of Chartered Accountants of India (ICAI) has power to ensure that its members maintain discipline while discharging their professional and other duties. Sections 21, 21A to 21D of the Chartered Accounts Act (CA Act) provide for mechanism for conducting Disciplinary proceedings and for awarding punishment to erring members of ICAI. Sections 22, 22A to 22G of CA Act provide for filing appeals before the Appellate Authority appointed under section 22. The First schedule to the CA Act gives a list of Professional Misconduct by members in their dealings with other members of ICAI or with the Institute. The Second Schedule to the Act gives a list of Professional Misconduct by members in practice in their dealings with their clients. Section 132 of the Companies Act, 2013 (Act), which has now come into force provides for constitution of “National Financial Reporting Authority” (NFRA). By a Notification dated 21.03.2018 the Central Government has notified the constitution of NFRA. Under Section 132 of the Act, NFRA is authorized to recommend to the Central Government to notify Accounting and Auditing Standards as well as to take disciplinary action against Auditors of some specified companies and bodies corporate. This action can be taken against the Firms of Auditors as well as against partners of the Firm. Thus an External Authority is now set up to take disciplinary action against Auditors of specified entities. The existing powers of the council of ICAI to take disciplinary action against such Auditors is now taken away and entrusted to NFRA. However, ICAI will continue to have powers regarding disciplinary matters in cases of Auditors of entities other than specified entities.

The National Reporting Authority Rules, 2018, have been notified on 13th November, 2018. These Rules have come into force on 14th November, 2018. Significant changes have been made by section 132 of the Companies Act, 2013 and the above Rules in the matter of disciplinary action against Auditors. In this article some of the important provisions relating to disciplinary action that can be taken against Auditors of specified entities by NFRA are discussed.

2. CONSTITUTION OF NFRA:

(i) Section 132(3) of the Act provides that NFRA shall consist of a Chairperson, who shall be a person of eminence and having expertise in accountancy, auditing, finance or law and such other members, not exceeding 15, consisting of part time and full time members as may be prescribed.

(ii) NFRA (Manner of Appointment and other Terms and Conditions of Service of Chairperson and Members) Rules, 2018 notified on 21.03.2018 provide for various matters relating to appointment, service conditions of Members of NFRA and other matters. According to these Rules the Central Government has to appoint a Chairperson, 3 Full Time Members and Nine Part time Members of NFRA. The Rules provide for their qualifications, service conditions and other matters.

3. **THE POWERS OF NFRA:**

The powers which NFRA can exercise are listed in section 132(4) as under:-

(i) Power to investigate, either on its own or on a reference made by the Central Government, in case of such class of bodies corporate or persons, as may be prescribed, into the matters of professional or other misconduct committed by a Chartered Accountant or a Firm of Chartered Accountants. Once NFRA initiate this investigation, ICAI or any other Body will have no authority to initiate or continue any proceedings in such matters of misconduct.

(ii) NFRA shall have the same powers as vested in a Civil Court under Code of Civil Procedure, 1908. In other words, it can issue summons, enforce attendance, inspect books and other records, examine witness etc.

(iii) If any professional or other misconduct is proved, NFRA can impose penalty as under.

- In the case of an individual CA, minimum penalty of Rs.1 Lakh which may extend to 5 times of the fees received by the individual.
- In the case of a C.A. Firm, minimum penalty of ₹ 5 Lakhs which may extend to 10times the fees received by the Firm.
- NFRA can debar any Chartered Accountant or a CA Firm from practice for a minimum period of six months or for such higher period not exceeding 10 years.

(iv) Any person / firm aggrieved by any order of NFRA can file appeal before the National Company Law Appellate Tribunal. This appeal can be made in such manner and on payment of such fees as may be prescribed.

(v) The above provisions of section 132 will override any provisions contained in any other statute. This will mean that the council of ICAI will not be able to exercise its powers relating to disciplinary action against auditors of specified entities. Even powers to formulate accounting and auditing standards, ensure quality of audit etc., are now vested in NFRA. To this extent the autonomy conferred on ICAI under the C.A Act, 1949, is partially taken away.

(vi) By a Notification dated 13th November, 2018, the Central Government has issued the "National Financial Reporting Authority Rules, 2018 (NFRA Rules). These Rules specify the class of companies and bodies corporate governed by NFRA for taking disciplinary action against Auditors of these entities, functions and duties of NFRA and other related matters. The provisions of these Rules are discussed below.

4. **CLASS OF ENTITIES GOVERNED BY NFRA – (RULE 3):**

(i) Rule 3 of NFRA Rules gives power to NFRA to (a) monitor and enforce compliance with the Accounting and Auditing Standards, (b) Oversee the quality of Service of the Auditor u/s 132 (2) and (c) Undertake investigation u/s 132 (4) of Auditors of the following class of Companies and Bodies Corporate. (Specified Entities).

(a) All Companies which are listed on Stock Exchanges in India or outside India.

(b) Unlisted Public Companies having (i) paid up capital of Rs.500 Cr. or more, (ii). Turnover of Rs.1000 Cr., or more or (iii) Aggregate outstanding Loans, Debentures and Deposits of Rs.500 Cr. or more as at 31st March of the immediately preceding Financial Year.

(c) Insurance Companies, Banking Companies, Companies engaged in Generation or Supply of Electricity and Companies Governed by any Special Act or Bodies Corporate incorporated by any Act in accordance with the provisions of Section 1(4)(b) to (f) of the Act.

(d) Any Body Corporate or Company or person or any class of Bodies Corporate or Companies or persons, on reference made to NFRA by the Central Government in Public Interest. It may be noted that Section 3 of the Limited Liability Partnership Act, 2008 provides that a LLP registered under that Act is a Body Corporate. **Therefore, it appears that Auditors of any LLP, irrespective of its capital, turnover or borrowings will now be governed by the NFRA Rules if such a case is referred to NFRA by the Government. Apparently, this does not appear to be the intention of these Rules. We will have to await for some clarification from the Central Government in respect of this matter.**

(e) A Body Corporate incorporated or registered outside India which is a Subsidiary or Associate Company of an Indian Company or a Body Corporate referred to in (a) to (e) above, if the income or net worth of such subsidiary or Associate Company exceeds 20% of the consolidated income or net worth of such Indian Company or Body Corporate referred to in (a) to (e) above.

(ii) Auditors of the above companies and bodies corporate have to file a Return in the prescribed Form with NFRA on or before 30th April of every year under Rule 5.

(iii) A Company or a Body Corporate, other than a Company Governed under this Rule, shall continue to be governed by NFRA for a period of 3 years after it ceases to be listed or its paid up capital, turnover, or aggregate borrowing falls below the Limits states in (i) (b) above.

5. **REPORTING OF AUDITORS APPOINTMENT :**

The above Rule provides for reporting about Auditors' particulars by a Body Corporate as under:

(i) Every existing Body Corporate, other than a Company Governed by this Rule, has to inform NFRA, within 30 days (i.e. on or before 14th December, 2018), particulars of Auditor holding office on 14th November, 2018 in Form NFRA-1.

(ii) Every Body Corporate, other than a Company governed by this Rule shall, within 15 days of the appointment of its Auditor under Section 139(1), inform NFRA about the particulars of its Auditor in Form NFRA-1.

(iii) Every Body Corporate incorporated or registered outside India (as referred to in Para 4(i) (e) above) has also to file the particulars of its Auditors in Form NFRA -1 within the above time limit.

It may be noted that if the NFRA Rules apply to a LLP, irrespective of its capital, turnover or borrowings, all small and big LLPs will have to file particulars of their existing Auditors on or before 14.12.2018 in Form NFRA-1. This is going to be a difficult task for a LLP. Similarly, a foreign Body Corporate to which Rule 3 is applicable will have to file Form NFRA-1 within the above time limit. The above Rule states that particulars of Auditors appointed under section 139(1) of the Act are to be given. It may be noted that section 139(1) refers to appointment of Auditors of Companies registered under the Companies Act, 2013. It does not refer to appointment of Auditors by a Body Corporate. Further, Form NFRA-1 requires the Body Corporate to State whether the Auditor's appointment is within the limit of 20 Audits provided in section

141(3)(g) of the Act. This limit applies to 20 Audits of Companies and not to Bodies Corporate. To this extent, compliance with the reporting requirements of Rule 3(3) will become difficult. It is difficult to understand why such onerous duty is cast on all Bodies Corporate including LLP and Foreign Bodies Corporate. Further, the time limit of one month from the publication of Rules is too short as most of the bodies corporate may not be aware of this requirement. It is not understood as to what public interest is going to be served by bringing the Auditors of all LLPs under NFRA when Auditors of all Private Companies and most of the Public Unlisted Companies are kept outside the preview of NFRA.

6. **FUNCTIONS AND DUTIES OF NFRA (RULE 4):**

Section 132 (2) of the Act read with Rule 4 of NFRA Rules Provides for functions and duties of NFRA as under:

- (i) NFRA shall protect the public interest and interest of Investors, Creditors and other associated with Companies and bodies Corporate, listed Para 4(i) (a) to (f) above, by establishing high quality standards of accounting and auditing.
- (ii) NFRA will exercise effective oversight of accounting functions performed by the above companies and bodies corporate and auditing functions performed by the Auditors of above entities.
- (iii) Maintain particulars of Auditors appointed by the above companies and bodies corporate.
- (iv) Recommend Accounting Standards and Auditing Standards for approval by the Central Government. For this purpose NFRA shall receive from ICAI recommendations for modification of existing accounting and auditing standards or for issue of new standards before making recommendations to the Central Government.
- (v) Monitor and enforce compliance with the Accounting and Auditing Standards notified by the Central Government.
- (vi) Oversee the quality of service of Auditors associated with ensuring compliance with the above standards and suggest measures for improvement in the quality of service.
- (vii) Promote awareness in relation to the compliance of the Accounting and Auditing standards. For this purpose it may co-operate with National and International Organizations of Independent Audit Regulators to establish and oversee adherence to these standards.

(viii) Perform such other functions and duties as may be necessary or incidental to the above functions and duties.

(ix) Discharge such functions as may be entrusted by the Central Government by Notification.

7. **MONITORING AND ENFORCING COMPLIANCE WITH ACCOUNTING STANDARD (RULE 7):**

For discharging this function, NFRA has the following powers

(i) It may review the Financial Statements of the above specified entities and may issue a notice to such Entity or its Auditor to provide further information or explanation. It may also call for production of the relevant documents for inspection.

(ii) It may require personal presence of the officers of the Entity or its Auditor for seeking additional information or explanation.

(iii) It shall publish its findings relating to non-compliance by any such entity on its website or in such other manner as it considers fit.

(iv) If, in a particular case, NFRA finds that any Accounting Standard is not followed, it can decide on the further course of investigation.

8. **MONITORING AND ENFORCING COMPLIANCE WITH AUDITING STANDARDS (RULE 8):**

For discharging the above function, NFRA has the following powers relating to the Auditors of the specified entities.

(i) To review the working papers of Auditors, including the Audit Plan and Other Audit Documents as well as any communication relating to the Audit.

(ii) To evaluate the sufficiency of the quality control system of the Auditor and the manner of documentation of the system by the Auditor.

(iii) To perform such other testing of the audit, supervisory and quality control procedures of the Auditor as may be considered necessary or appropriate.

(iv) It may require the Auditor to report on its governance practices and internal processes designed to promote audit quality, protect its reputation and reduce risks, including risk of failure of the Auditor. It may take such action on this report as may be necessary.

(v) NFRA can require the Auditor to appear before it personally and obtain from him additional information or explanation in connection with the conduct of the Audit.

(vi) NFRA shall publish its findings relating to non-compliance with the Auditing Standards on its website or in such manner as it considers fit. In respect of proprietary or confidential information, such publication will not be made but the same may be reported to the Central Government.

(vii) In a case where NFRA finds that any law or professional or other standard has been violated by the Auditor, it may decide to conduct further investigation and take action against the Auditor.

9. **OVERSEEING THE QUALITY OF SERVICE BY THE AUDITOR (RULE 9):**

(i) On the basis of the review made by NFRA, as stated above, it can direct the Auditor to take measures for improvement of audit quality. This may include suggestions to change the audit process, quality control and audit reports. It may also specify a detailed plan with time limits.

(ii) It shall be the duty of the Auditor to make the required improvements and send a report to NFRA explaining as to how he has complied with the directions of NFRA.

(iii) NFRA shall monitor the improvements made by the Auditor and take such further action, depending on the progress made by the Auditor, as it thinks fit.

(iv) NFRA may refer, with regard to overseeing the quality of Auditors of the specified entities, to the Quality Review Board (QRB) of ICAI and call for report or information in respect of such Auditors from QRB as it may deem appropriate.

10. **INVESTIGATION ABOUT PROFESSIONAL OR OTHER MISCONDUCT (RULE 10):**

(i) NFRA has power to investigate in the following circumstances.

(a) Where any reference is received from the Central Government for investigation into any matter of professional or other misconduct under Section 132(4) as stated in Para 3 above.

(b) Where NFRA decides to undertake investigation into any matter on the basis of its compliance or oversight activities.

(c) Where NFRA decides to undertake investigation Suo motu in any matter of professional or other misconduct by the Auditor of the specified entities

(ii) If during the investigation, NFRA finds that any of the specified entities has not complied with the Act or the Rules or which involves fraud amounting to ₹ one Crore or more, it shall report its finding to the Central Government.

(iii) On or after 14th November, 2018, the action in respect of cases of professional or other misconduct against the Auditors of specified entities shall be initiated by NFRA only. No other Institute or Body can initiate such action against the Auditor. Further, no other Institute or Body shall initiate or continue any proceedings in such cases where NFRA has initiated an investigation as stated above. This will mean that if any case against the Auditor of a specified entity is pending before ICAI on 14.11.2018, the same will have to be transferred to NFRA if NFRA decides to investigate in the same matter.

(iv) The action in respect of cases of professional or other misconduct against Auditors of companies and other entities (other than the specified entities) shall continue to be investigated by ICAI as provided in the CA Act.

(v) For the above purpose Explanation below Section 132(4) provides that the expression "Professional or other Misconduct" shall have the same meaning as assigned to it under section 22 of the Chartered Accountants Act. Therefore, NFRA will have to decide such cases of misconduct as provided in section 22 and the First and Second Schedules of the C.A. Act.

(vi) It may be noted that Rule 10 provides that NFRA shall initiate investigation against the Auditors of specified entities u/s 132(4) on a reference being made by the Central Government. There is no provision for investigation by NFRA on the basis of a complaint by a Shareholder, Creditor or any other person who has a grievance against Auditors of the specified entities. It is, therefore, presumed that such complaints by shareholders, Creditors etc., will have to be investigated by ICAI under its Disciplinary Jurisdiction.

11. **DISCIPLINARY PROCEEDINGS (RULES 11 AND 12):**

The procedure for conducting Disciplinary Proceedings by NFRA against Auditors of specified entities is given in Rule 11 and 12. Briefly stated this procedure is as under:-

(i). NFRA can start disciplinary proceedings against Auditors of specified entities on the basis of (a) a reference received from the Central Government, (b) finding of its Monitoring, enforcement or oversight activities or (c) material otherwise available on record. If NFRA believes that sufficient cause exists to take action against the Auditors under section 132(4), it

shall refer the matter to its concerned Division dealing with Disciplinary matters. This Division will then issue show-cause notice to the Auditors.

(ii) Rule 11(2) and 11(3) specifies the various matters which will be stated in the show-cause notice. Copies of documents relied upon by NFRA and extracts of relevant portions from the Report of the Investigation and other records are to be enclosed with the show-cause notice. The procedure for service of Show-cause notice is given in Rule 11(4).

(iii) Rule 11(5) states that the concerned Division shall dispose of the Show-cause notice within 90 days of the assignment through a summary procedure as may be specified by NFRA. The concerned Division will pass a reasoned order in adherence to the principles of natural justice. For this purpose, where necessary or appropriate, opportunity of being heard in person will be given. The concerned Division will also take into consideration the submissions made by the Auditors and the relevant facts and circumstances and material on record before passing the order. There is no clarity whether the hearing will be given by a Bench of the members of NFRA and whether the above order will be passed by such Bench. Again, it is not clear as to how many members of NFRA will constitute such Bench.

(iv) The above order passed by the concerned Division of NFRA shall specify that (a) No further action is to be taken against the Auditors, (b) Caution the Auditors or (c) punishment by levy of penalty and/or debarring the Auditors from practice is awarded as specified in section 132(4). Such Penalty may be as stated in Para 3(iii) above. The above order shall not become effective for a period of 30 days from the date of issue or for such other period as the order may specify for the reasons given in the order.

v) The above order has to be served on the Auditors and copies of the order have to be sent by NFRA to (a) the Central Government, (b) ICAI, (c) C & AG (if the case relates to Auditors of a Government Company), (d) SEBI (If the case relates to Auditors of a listed Company), (a) RBI (if the case relates to Auditors of a Bank or NBFC), (b) IRDA (if the case relates to Auditors of an Insurance Company), (g) Concerned regulator in a foreign country (if the case relates to a Non-Resident Auditor). Further this order is to be published on the Website of NFRA.

(vi) If the above order imposes a monetary penalty on the Auditors the same is to be deposited within 30 days of the date of the order. If appeal is filed against the above order by the Auditor, he has to deposit 10% of the amount of the penalty with the Appellate Tribunal. If within 30 days of the above order the Auditor does not pay the penalty nor file appeal against the order, NFRA, without prejudice to any other action, inform the Company / Body Corporate of which he was the Auditor. Upon receipt of such intimation the Company / Body Corporate shall

remove such auditor in default and appoint any other Auditor in accordance with the provisions of the Act.

(vii) If the order imposes a penalty on the Auditor or debars the Auditor from practice, NFRA will send copies of such order to all Companies / Bodies Corporate in which the Auditor is functioning as Auditor. On receipt of such information, all such Companies / Bodies Corporate shall remove that Auditor from his position as Auditor and appoint another Auditor in accordance with the provisions of the Act.

(viii) In all the above cases where the order of NFRA is stayed or where penalty is to be paid the time limit of 30 days is from the date of the order. Since the time given under section 421 for filing appeal to the Appellate Tribunal is 45 days from the date of service of the order, Rule 11 and 12 should have given time to the Auditor of 45 days for payment of penalty from the date of service of the order of NFRA. Further, as stated in (vi) and (vii) above Rule 12 provides for intimation to be given to the specified companies or bodies corporate about the order of NFRA awarding punishment by way penalty or debarring the Auditor from practice so that he is removed from his office as auditor in that company / body corporate. In the interest of justice, such intimation should not be given by NFRA if the appeal filed by the Auditor before judicial authorities is pending. Again, it may so happen that the action is taken by NFRA for professional or other misconduct by an Individual who is one of the partners of a Firm of Chartered Accountants. In such a case if the penalty is levied in the case of that Individual or he is debarred from practice, the Firm of chartered Accounts which is the Auditor of the Company / body corporate should not be removed from its office as Auditor of that company / body corporate. The provision in Rule 12 to remove the Auditor from his position as Auditor of a company / body corporate in a case where only penalty is levied by NFRA is very harsh and need to be modified.

12. **OTHER MATTERS:**

(i) Rule 13 provides that if any company or any officer of the company or an Auditor or any other person contravenes any of the provisions of these Rules, such company, its officer, Auditor or other person in default shall be punishable under the provisions of Section 450 of the Act. This section provides for levy of Fine on the defaulting company, officer, Auditor or other person of an amount upto ₹10,000/- and in case of continuing default, of a further Fine which may extend to ₹1,000/- per day when the default continues.

(ii) Rules 14 to 19 provide for various matters such as (a) Role of the Chairperson and full-time members of NFRA, (b) Constitution of advisory committees, study groups, task force, (c) measures to be taken for the promotion of awareness and significance of Accounting and

Auditing Standards, Auditor's Responsibilities, Audit Quality and such other matters through education, training, seminars, workshops, conferences, publicity etc., (d) maintenance of confidentiality and security of information, (e) avoidance of conflict of interest and (f) association with International Associations and securing International Assistance.

13. **To Sum Up**

(i) NFRA is established as an External Authority for taking Disciplinary Action against Auditors by Section 132 of the Companies Act, 2013. There was some resistance by the CA profession and, therefore, this section was not brought into force when the Companies Act, 2013 came into force on 1.4.2014. Section 132(3) and (11) was brought into force on 21.03.2018. Section 132(1) and (12) came into force on 01.10.2018 and Section 132(2), (4), (5), (10) (13) (14) and (15) came into force on 24.10.2018. Subsections (6) to (9) were deleted w.e.f. 9.2.2018.

(ii) The justification for creating such External Authority (NFRA) is given by the Committee of Experts, appointed by the Ministry of Corporate Affairs, in their Report dated 25.10.2018. In this Report they have stated as under:

"In the aftermath of Enron, the U.S enacted the Sarbanes Oxley Act, 2002. The Supreme Court in its judgment dated February 23, 2018 has referred to this statute to examine the need of an oversight mechanism for the audit profession. This law inter alia provided for the setting up of the Public Company Accounting Oversight Board (PCAOB) as an independent audit regulator to oversee the audits of public companies. Similarly, U.K., also has a two-tier structure, where the Financial Reporting Council (FRC) is the independent regulator for the audit profession.

In the Indian context, the Satyam incident has been a wake-up call for policy-makers. Pursuant to the global trend of shift from Self-Regulatory Organization (SRO) model to an independent regulatory model for audit profession, the Companies Act, 2013 provided for the setting up of the National Financial Report Authority (NFRA).

However, the continued opposition to the establishment of NFRA has delayed the implementation of this critical reform. Consequently, although Companies Act, 2013 was enacted in August 2013, the section establishing NFRA was notified only on March 21, 2018 along with the NFRA Chairperson and Members Appointment Rules, 2018. Once, NFRA becomes fully operational, it will be adequately equipped to handle the contemporary challenges in relation to auditors, audit firms and networks operating in India."

(iii) Reading the provisions of Section 132 of the Act and the above NFRA Rules framed by the Central Government, it is evident that the autonomy of ICAI to issue Accounting and Auditing Standards and taking disciplinary action in cases of erring members is now curtailed. The function of ICAI will be restricted to only recommending changes in the existing Accounting and Auditing Standards or Suggesting new Standards. Whether to issue such Standards or not or in which form they should be issued will be decided by NFRA and the Central Government. Even the function of monitoring, enforcing, compliance, overseeing quality of service rendered by CA profession, suggesting measures for improvement in quality of professional service, promoting awareness in relation to the compliance of Accounting and Auditing Standards which was hitherto in the domain of ICAI has been transferred to NFRA. Disciplinary jurisdiction which was hitherto within the domain of ICAI has now been curtailed because NFRA is now entrusted with the task of taking disciplinary action against the Auditors of all listed companies, large unlisted Public Companies, Banks, Insurance Companies Electricity Companies and Bodies Corporate. These provisions will reduce the importance of ICAI as it is now left with the task of giving education to students of CA Courses, conducting examinations and awarding membership and Certificate of Practice to those who have passed the examinations. Even the measures to be taken for the promotion of awareness and significance of Accounting and Auditing Standards, Auditors Responsibilities, Audit Quality and such other matters through education, training, Seminars, Workshops, Conferences and Publicity which were in the exclusive domain of ICAI, its Regional Councils and Branches will now come under the domain of NFRA under Rule 16.

(iv) From the above analysis of the provisions of section 132 of the Act and NFRA Rules it is evident that Auditors of the specified companies and bodies corporate will have to be more vigilant while rendering their professional services to these entities. Some questions of interpretations will arise during the course of implementation of these Rules. Therefore, it is necessary that a strong representation is made for modification of these Rules in respect of the following matters.

(a) In Rule 3 it should be clarified that the expression "Body Corporate" shall not include LLP. In fact no public interest is involved in the case of a LLP and, therefore, Auditor of LLP should not be brought within the supervision of NFRA.

b) In Rule 3(2) it is provided that every existing body corporate should file Form NFRA-1 giving details of its Auditors within 30 days of publication of these Rules. This time limit is too short and it should be extended upto 90 days from the date of publication of the Rules (i.e. upto 14.02.2019)

(c) In Rule 10 it is necessary to clarify that the Investigation by NFRA about the misconduct of the Auditors of any specified entity shall be only in respect of their conduct

relating to statutory audit of the entity. In this Rule the expression used is “Professional or Other Misconduct” which is very wide. It includes conduct of an Auditor in his personal life as well his conduct while rendering professional services other than the Audit Service.

(d) In Rule 10 it is stated the NFRA will start investigation against the Auditor of specified entities on a reference being made by the Central Government or on its own on the basis of the available records. It is essential that this Rule should provide that any shareholder of a specified company or its creditor or any other person can approach NFRA if there is a complaint against the Auditor of a specified entity.

(e) In Rules 11 and 12, for the reasons stated in Para 11 (viii) above, the period of 30 days should be increased to 45 days. Further, information about the order passed by NFRA should not be given to specified entities if the Auditor has filed appeal against the order of NFRA and the judicial proceedings are pending.

(f) As stated in Para 11(viii) above, if the order passed by NFRA is against the conduct of an Individual who is a Partner of the Audit Firm and no punishment is awarded to the Firm, the disqualification as auditor of the specified entity should not extend to the Firm.

(g) Rule 11 deals with Disciplinary proceedings to be followed by NFRA or making inquiry against the Auditor of a specified entity. There is no clarity as to who will give hearing to such Auditor. It is necessary to clarify that such hearing will be given by a Bench of Two or Three Members of NFRA. It is also necessary to clarify that any Authorized person or Advocate will be allowed to assist such Auditor at the time of hearing.

(v) Establishment of NFRA with such wide powers is a new experiment in India. As these provisions will have retroactive application, in as much as, matters relating to earlier years may also be referred to NFRA, let us hope that NFRA takes into consideration the limitations within which the Auditors have to discharge their Audit function and adopts a sympathetic view while dealing with the disciplinary cases against such Auditors.