



Hon'ble High Court of Delhi in the case of **CA Unnikrishnan Menon v National Financial Reporting Authority (NFRA) and Another** has recently stayed the ongoing legal proceeding initiated under the Companies Act against a Chartered Accountant (CA) accused of professional misconduct. The petitioner was served a show cause notice under Section 132(4)(c) of the Companies Act by the respondents. The petitioner contested this action in court, contending that, according to the National Financial Reporting Authority Rules, 2018, NFRA is authorized to issue show cause notices exclusively to auditors of companies under investigation.

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

+ W.P.(C) 15614/2023 & CM APPL. 62569/2023

CA UNNIKISHNAN MENON.....Petitioner

Through: Mr. Sanjeev Puri, Sr. Advocate with
Mr. Ajay Bahl, Mr. Vinati Kastia, Mr.
Aditya Jalan and Mr. Raghav Seth,
Advocates.

versus

NATIONAL FINANCIAL REPORTING AUTHORITY AND
ANOTHER Respondents

Through: Mr. Zoheb Hossain, Advocate for
NFRA.
Mr. Asheesh Jain, CGSC with Ms. M.
Theepa, GP, Mr. Gaurav Kumar, Ms.
Ria Khanna, Advocates

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD



ORDER

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12.01.2024

1. The Petitioner, who has approached this Court challenging a show cause notice issued by Respondent No.1 under Section 132(4)(c) of the Companies Act for irregularities in deduction claimed under Section 80 JJAA of the Income Tax Act to M/s Quess Corp Limited (QUESS).
2. The submission of learned Senior Counsel for the Petitioner is that Section 132(4) of the Companies Act gives the power to Respondent No.1 to investigate for such class of bodies corporate or persons in such manner as is prescribed into matters of professional or other misconduct by any firm or firm of Chartered Accountants registered with the Act. He states that Rules



have been framed prescribing the body corporate or persons who can be investigated under Section 132(4) of the Companies Act which are called as a National Financial Reporting Authority Rules, 2018 (in short, ‘*the 2018 Rules*’). Rule 3 of the 2018 Rules prescribes the class of companies or body corporate governed by the Authority. Rule 3 of the 2018 Rules reads as under:-

“3. Classes of companies and bodies corporate governed by the Authority.— (1) The Authority shall have power to monitor and enforce compliance with accounting standards and auditing standards, oversee the quality of service under sub-section (2) of section 132 or undertake investigation under sub-section (4) of such section of the auditors of the following class of companies and bodies corporate, namely:-

(a) companies whose securities are listed on any stock exchange in India or outside India;

(b) unlisted public companies having paid-up capital of not less than rupees five hundred crores or having annual turnover of not less than rupees one thousand crores or having, in aggregate, outstanding loans, debentures and deposits of not less than rupees five hundred crores as on the 31st March of immediately preceding financial year;

(c) insurance companies, banking companies, companies engaged in the generation or supply of electricity, companies governed by any special Act for the time being in force or bodies corporate incorporated by an Act in accordance with clauses (b), (c), (d), (e) and (f) of sub-section (4) of section 1 of the Act;

(d) any body corporate or company or person, or any class of bodies corporate or companies or persons, on



a reference made to the Authority by the Central Government in public interest; and

(e) a body corporate incorporated or registered outside India, which is a subsidiary or associate company of any company or body corporate incorporated or registered in India as referred to in clauses (a) to (d), if the income or networth of such subsidiary or associate company exceeds twenty per cent of the consolidated income or consolidated networth of such company or the body corporate, as the case may be, referred to in clauses (a) to (d).

(2) Every existing body corporate other than a company governed by these rules, shall inform the Authority within thirty days of the commencement of these rules, in Form NFRA-1, the particulars of the auditor as on the date of commencement of these rules.

*(3) Every body corporate, other than a company as defined in clause (20) of section 2, formed in India and governed under this rule shall, within fifteen days of appointment of an auditor under sub-section (1) of section 139, inform the Authority in Form NFRA-1, the particulars of the **auditor** appointed by such body corporate:*

Provided that a body corporate governed under clause (e) of sub-rule (1) shall provide details of appointment of its auditor in Form NFRA-1.

(4) A company or a body corporate other than a company governed under this rule shall continue to be governed by the Authority for a period of three years after it ceases to be listed or its paid-up capital or turnover or aggregate of loans, debentures and deposits falls below the limit stated therein. ”

(emphasis supplied)



3. He, therefore, states that show cause notice can only be issued to an Auditor of the Company which is under investigation. He states that neither the Petitioner nor the firm of which the Petitioner is Member, is the Auditor for QUESS, which is the company under investigation, and, therefore, the show cause notice could not have been issued to the Petitioner. Attention is also drawn to Rule 4(1) of the 2018 Rules, which also indicates that the investigation can be done only for an Auditor of the company under investigation.
4. Issue notice.
5. Learned Counsels for the Respondents, accept notice. The service of notice, is, therefore, complete.
6. Let replies be filed within four weeks from today.
7. Since the learned Senior Counsel for the Petitioner has made out a *prima facie* case, the further proceedings in the show cause notice shall remain stayed till the next date of hearing.
8. List on 07.05.2024.

SUBRAMONIUM PRASAD, J

JANUARY 12, 2024

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