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The Institute of Chartered Accountants of India V/S National Financial Reporting Authority

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ABSTRACT

In India traditionally accounting and audit related standards are regulated by The Institute of Chartered Accountants of India (ICAI). The ICAI was established to set a code of conduct that needs to be followed by all the professional accounting practitioners including auditing firms. ICAI working as an autonomous institution under Government of India, but Government has set up another regulatory body calledNational Financial Reporting Authority (NFRA)over ICAI for recommendations to the Central Government on formulating high-quality accounting standards and auditing polices, which mandatorily adapt by companies or auditors. NFRA is given complete power to regulate &control audit practices. Howeverone can observe that there are two equivalent organisation operating with the same objective which may create more bureaucratic hurdles in the system.

Keywords-- Institute of Charted Accountants (ICAI), National Financial Reporting Authority (NFRA), Central Government

I. INTRODUCTION

The Institute of Chartered Accountants of India is the accounting body which regulates the Chartered Accountants in India. ICAI was set-up by the act of parliament. It was formed as a body under Chartered Accountants Act, 1949 to regulate the professionalism of auditors in India. Every member of ICAI should follow the professional standards and code of ethics published by ICAI, any violation of professional standards and code of ethics, results in disciplinary action against the member of ICAI. The disciplinary board of ICAI was enforced to take stringent action against its members who were found guilty of professional misconduct, under the Chartered Accountants Act, 1949. It is the compulsory duty of the Disciplinary Directorate of the ICAI to keep an eye on any of the alleged irregularities committed by its members across the nation. This helps to lay a solid foundation of creditability to the auditors who would be the future members of ICAI. There is a prescribed procedure to investigate the misconduct by any auditors and it is notified by the Central Government under provisions of Sec. 21(4) of Chartered Accountants Act of 1949. It had all the powers to act against any misconduct or fraudulent work done by any of its members.

II. PUBLIC CONFIDENCE ON ICAI

In India responsibility of maintaining the quality of auditing is with ICAI, but ICAI may stood as a passive entity without taking strict actions against its fellow members. The Disciplinary Board of ICAI had taken up 1,972 cases against its members. Out of these cases only the auditors who were related to the matter of Satyam Computer scam were permanently removed. And out of the remaining 1,971 cases, in only 14 of the cases penalties of minimum 1 year or more than 1 year has been imposed on the auditors of these cases. In rest of the cases, there were no action taken by ICAI or only strict warnings were given to the auditors (Vashisht Amresh, 2018).Due to this public confidence on ICAI affected badly.

III. NATIONAL FINANCIAL REPORTING AUTHORITY

In India after Satyam computer scam standing committee on finance proposed need for independent audit regulatory body as a National Financial Reporting Authority (NFRA). Since ICAI failed to take strict action against professional misconduct of auditors Indian parliament gave approval for setup a new independent body to oversee accounting and audit profession. Rules and regulation relating to NFRA were finalised by Ministry of Corporate Affairs in order to avoid the overlapping between ICAI and NFRA. Government of India passed the Companies act 2013 with the inclusion of National Financial Reporting Authority in section 132.

Even after passing of Companies act 2013 which included provision for National Financial Reporting Authority government had to delay the notification relating to rules and regulation of NFRA due to strong opposition by ICAI. ICAI argued that there is already a world class accounting regulatory body in the form of ICAI. So, it said there is no need another regulatory body NFRA. But Ministry of Corporate Affairs constantly favoured implementation of all the rules of section 32 of Companies act 2013. They argued

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that many countries in the world which has regulatory body like NFRA succeed in fraudulent activities in auditing.

Supreme Court of India (S. Sukumar v/s The Secretary, Institute of Chartered Accountants of India, 2018) gave the judgement in favour of formation of NFRA and ordered the Government of India to form a committee to see the audit system in India in 2018. Ministry of Corporate Affairs formed the said committee and then committee submitted the report in October 2018. After the submission of the report, in November 2018 the Ministry of Corporate Affairs laid down the rules, regulations, duties and power of NFRA. NFRA will consist of a Chairperson (a person having high proficiency in accounting, finance, law and auditing) and the Chairperson shall be appointed by the Government of India for a period of 3 years or till the incumbent attain the age of 65 years whichever is earlier and it shall include fifteen members as full time and part time members. The Comptroller and Auditor General (C&AG) will audit the accounts of NFRA annually and submit the audit report to the central government. Additionally, NFRA need to prepare its annual report and report need to be certified by C&AG and forwarded to the Central Government. The Central Government will present the annual report and audit report in the house of parliament for discussion.

NFRA will assist and suggest the Government of India, regarding the Accounting and Auditing policies and standards that the companies need to adopt and follow. If there is need for any update or change in the policies will be recommended by the NFRA to the Government of India. NFRA also monitor how the accounting and auditing standards are enforced and followed by the companies across the nation. It will oversee whether professionalism is maintained by the auditors and suggests improvements that are needed in uplifting the quality of service in the audit profession. This was the main objective of ICAI, before the formation of NFRA.

Now, the NFRA regulating the quality of accounting and auditing standards that needs to be followed by auditors. The NFRA have the power to monitor and enforce compliance to Accounting and Auditing standards, look after quality of service under sub-section(2) or undertake investigation under sub-section(4) section 132 of the Companies Act 2013. NFRA has jurisdictions over companies whose shares are listed un stock exchange in India or outside India; certain unlisted public companies; companies that are governed by other regulators; companies whose shares are listed in any stock exchanges in India or outside India; any unlisted public companies having paid up capital not less than five hundred crores or annual turnover of not less than one thousand crores orhaving aggregate outstanding loans, debentures and deposits of not less than rupees five hundred crores as on the 31st March of immediately preceding financial year; companies having outstanding loans, debentures & deposits of not less than five hundred crores as of march 31 of its preceding financial year; all insurance & banking companies and the companies which are engaged in generation of electricity; & the companies which are governed by any special statute or corporate bodies that are formed by any statutory provisions of the act will be regulated by NFRA. However, the NFRA do not include the unlisted private companies. Any unlisted private companies irrespective of the net worth, turnover etc. are excluded. The jurisdiction of NFRA is excluded in the case of private company looks very odd and is unnatural.

NFRA is given the responsibility of Audit Quality Review (AQR). The main objective of the AQR is to access the quality control system of the audit firm and the extent to which the quality control system has been complied with the auditing standards. NFRA has the authority to ask auditors to report on its governance practices and internal processes established to promote Audit Quality. The officers and experts appointed by NFRA to maintain and enforce the audit standard and quality in industries will have sufficient expertise and knowledge in conducting audit of relevant industries.

Now, because of implementation of NFRA, India gains the eligibility for International Forum of Independent Audit Regulators (IFIAR), which was previously refused. The two main criteria for membership of IFIAR are regulator must be independent of audit profession and engaged in audit regulatory function in the public interest. IFIAR eligibility proves that we follow and abide with the international standard of commencement of business. Member ship to the IFIAR increases the confidence of the foreign investors.

The power given to NFRA is outstanding. It has the power to investigate the professional misconduct of the auditors. The law states that, if NFRA starts investigating on any case, no other institution has the power to continue or initiate any proceeding against the same case. This reduces the power of ICAI, to act against the professional wrongdoing of its members. Before the formation of NFRA, ICAI had the right to take any action against the professional misconduct of its auditors.

There are too many regulatory bodies which govern the audit governance of the listed and unlisted companies in India. The major governing bodies are NFRA, ICAI, MCA and SEBI. Out of these NFRA and ICAI are established for the same objective. NFRA is established to protect the interest of creditors, investors, and other parties who are directly or indirectly associated with organization. As per companies act 2013, NFRA should direct the auditors in improving the quality of Audit. This duty is done by ICAI, before the formation of NFRA.

Both in ICAI and NFRA work under frame work of Chartered Accountants act, 1949. Both function with same objectives and goal. So, there is a high chance of overlapping of interests. NFRA is just the duplicate of ICAI as it has the same goals as ICAI. And before the

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formation of NFRA, ICAI was performing all these duties and responsibilities. But after the formation of NFRA, even ICAI will be overseen by NFRA.

Until now, NFRA have published only one report on financial health of IL&FS and order issued against 3 auditors of IL&FS. On the other hand ICAI is one of the oldest accounting and auditing institution in the world. It is also a founding member of some of reputed international auditing and accounting institution like International Federation of Accounts (IFAC), Confederation of Asian and Pacific Accounts (CAPA) and South Asian Federation of Accounts (SAFA). ICAI has more experience in handling cases related to financial frauds than NFRA. Before the formation of NFRA, many such cases were handled by ICAI including Satyam case.

IV. CONCLUSION

As an independent audit regulator NFRA is expected to enhance investors' confidence and bring transparency and accountability in auditing profession. But as of now impact of NFRA is not visible even after many years of establishment, only few numbers of reports are submitted by NFRA. In India there is already many regulatory institutions established for regulating corporate entities, by establishing NFRA government created one more regulatory body and which makes the structure complex and multi-layer. It also goes against government'sidea of improving the ease of doing business. Instead of creating NFRA to bring transparency and gain investors trust Government could have created separate independent regulatory body under the surveillance of ICAI so that autonomy of ICAI would have retained.

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