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(2023) 12 SEBI CK 0010

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 625 Of 2023

Chaturvedi & Shah LLP APPELLANT

Vs

Securities And Exchange Board Of India RESPONDENT

Date of Decision : 04-12-2023

Acts Referred:

Securities And Exchange Board Of India (Prohibition Of Fraudulent And. Unfair Trade Practices Relating To Securities Market) Regulations, 2003 — Regulation 3, 3(b), 3(c), 3(d), 4, 4(1), 4(2)(f), 4(2)(k), 4(2)(r), 11

Securities And Exchange Board Of India Act, 1992 — Section 11, 11(1), 11(4), 11B, 12, 12A, 12A(a), 12A(b), 12A(c), 15HA

Citation : (2023) 12 SEBI CK 0010

Hon'ble Judges : Tarun Agarwala, Presiding Officer;Meera Swarup, Technical Member

Bench : Division Bench

Advocate : Vikram Nankani, Nikhil Kumar, Mustafa Doctor, Mihir Mody, Arnav Misra, K. Ashar

Final Decision : Allowed

Judgement

Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the order dated April 20, 2023 passed by the Adjudicating Officer (‘AO’ for short) of the Securities and Exchange Board of India (‘SEBI’ for short) imposing a penalty of Rs. 5 lakh for violation of Section 12A(a), (b) and (c) of the SEBI Act, 1992 read with Regulations 3(b), (c) and (d), 4(1) and 4(2)(f) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market), Regulations, 2003 (‘PFUTP Regulations’ for short).

2. The appellant is a leading firm of Chartered Accountants consisting of 14 partners and 250 accountants, article assistants and others. The appellant was appointed as the joint statutory auditor of CG Power and Industrial Solutions Ltd. (hereinafter referred as ‘the Company’) along with M/s. Sharp & Tannan for the

financial year 2016-17. As a result of division of work between the appellant and M/s. Sharp & Tannan, the appellant was responsible for auditing the corporate accounts of the Company. A joint audit report was prepared and filed for the financial year 2016-17. Subsequently, for the financial year 2017-18 the statutory auditor M/s. Sharp & Tannan was relieved as joint statutory auditor on account of mandatory rotation under the Companies Act and therefore the appellant became the sole statutory auditor for the financial year 2017-18. While carrying out review of the accounts of the Company as per the accounting standards prescribed by the Institute of Chartered Accountants of India ('ICAI' for short), the appellant received a letter from the Company on April 26, 2018 indicating that they were in the process of appointing another auditor as their sole statutory auditor. On this basis, the appellant resigned as the statutory auditor with immediate effect vide their letter dated April 27, 2018.

3. The Company made a corporate announcement on August 20, 2019 disclosing the outcome of the board meeting dated August 19, 2019 indicating that the liabilities of the company and the CG Group as a whole as well as advances to related and unrelated parties of the company and the group might have been potentially understated substantially.

4. Based on the above disclosure made by the Company SEBI sought certain information and, in response, the Company submitted a preliminary investigation report prepared by M/s. Vaish Associates indicating the following:-

(a) Reg: Nashik Property

(i) In May 2016, CG Power had entered into an assignment agreement with Blue Garden Estate Private Limited (hereinafter referred to as 'Blue Garden') for assignment of its lease rights in a property located in Nashik, which was originally taken by it on leasehold basis from Maharashtra Industries Development Corporation ('MIDC').

(ii) For the purpose of payment of consideration towards assignment of the said leasehold rights by CG Power to it in the Nashik Property, Blue Garden took a loan of Rs. 200 crores from Aditya Birla Finance Limited (hereinafter referred to as 'ABFL'). The said loan was guaranteed by one Avantha Holdings (hereinafter referred to as 'Avantha') (the holding company of CG Power) on behalf of CG Power and the Nashik Property was furnished as a 'collateral security' for securing the loan so taken by Blue Garden by way of right of creation of mortgage.

(iii) The amount of loan so taken was immediately paid by Blue Garden to CG Power as an advance on which CG Power was liable to pay interest at the rate of 15 percent per annum. In turn, CG Power advanced an amount of Rs. 145 crores to Avantha and Rs. 53 crores to one Action Global Private Limited (hereinafter referred to as 'Action'), without any provision of interest;

(b) Reg: Kanjurmarg Property

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(i) In February 2017, CG Power entered into an MOU with Blue Garden for sale of a Kanjurmarg Property owned by it for a consideration of Rs. 498 crores inter alia with a condition that out of the total consideration, an amount of Rs. 189 crore shall be paid by Blue Garden in advance;

(ii) Blue Garden took a loan of Rs. 190 crores from ABFL and immediately paid the same as an advance to CG Power towards part payment of the consideration for purchase of Kanjurmarg Property in terms of the MOU. In turn, CG Power advanced an amount of Rs. 192 crores to Action without charging interest;

(c) In both above transactions, the advance received by CG Power from Blue Garden and immediate transfer of the same to Action and / or Avantha, was not reflected by CG Power in its financial statements, reason being that the liability (i.e. the advance received from Blue Garden) was netted off against the asset (i.e., the advances given to Avantha and / or Action).

5. Upon an examination of this investigating report SEBI passed an ad interim order dated September 17, 2019 restraining the promoters and directors of the Company from accessing the securities market as well as from being associated with any intermediaries registered with SEBI or any listed entity. The said interim order was subsequently confirmed on March 11, 2020.

6. In the meanwhile, the Company furnished certain documents to SEBI and one such document was a photo copy of hand written note dated January 16, 2018 purportedly written by Mr. V.R. Venkatesh who was then CFO of the Company. In this hand written note it was alleged that the clean-up of the books of the Company was proposed to be carried out pursuant to a discussion with M/s. Gagan Chaturvedi. Subsequently the Bombay Stock Exchange appointed MSA Probe Consulting Private Limited for conducting a forensic audit of the books of the accounts of the Company. MSA Probe Consulting Private Limited submitted a forensic audit report on March 18, 2020 and did not come to any definite conclusion as regards the role of the appellant in the unauthorized transactions of the Company but recommended that the role of the appellant needs further investigation.

7. Based on the said report, SEBI initiated an investigation to examine the role of the appellant with regard to the unauthorized transaction of the Company. The investigation report alleged that on the basis of the hand written note the appellant had facilitated the scheme of cleaning up of the books of the Company and therefore recommended initiation of adjudication proceedings. Accordingly, adjudication proceedings were initiated against the appellant under Section 15HA of the SEBI Act and an AO was appointed to inquire and adjudge the violation alleged to have committed by the appellant. The show cause notice alleged that the appellant had acted against the fiduciary capacity and instead of working in the interest of the shareholders of the company the appellant facilitated the scheme of cleaning up the books of account of the Company despite being aware of the irregularities and misstatements in the financial statements of the

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Company and consequently it was alleged that the appellant had violated the provisions of Section 12A of SEBI Act read with Regulation 3 and 4 of the PFUTP Regulations.

8. The AO after considering the material evidence on record and replies given by the appellant found that during the audit period 2016-17 the transactions relating to Nashik property and Kanjurmarg Property involved a receipt of Rs. 390 crore by the Company from Blue Garden and an advance of Rs. 245 crore and Rs. 145 crore was given by the Company to Action Global Private Limtied ('Action' for short) and Avantha Holdings Ltd. ('Avantha' for short) which were not reflected. The AO further found that the aforesaid transactions were undertaken without any agreement between the Company, Blue Garden and Action. Further, the advance received against sale of properties from Blue Garden to the extent of Rs. 388 crore was adjusted against the amount transferred as loans to Action and Avantha through journal entries. The AO in spite of finding that the appellant was unaware of the transactions made by the Company with Blue Garden and Action held that the appellant being a statutory auditor was aware that the Company had advanced a sum of Rs. 28 crore to Blue Garden and had also perused the balance confirmation given by Blue Garden and therefore the appellant had examined the said transaction but did not examine the irregularities that was brought out in the audit report and therefore the appellant had facilitated the Company to make such entries in the books of accounts and hence the appellant was aware of the transaction relating to Nashik Property and Kanjurmarg Property.

9. The AO came to the conclusion that the appellant being the statutory auditor despite being aware of the irregularities certified the financial statements of the Company as true and fair which therefore shows the appellant's direct involvement on such misstatements of the Company. The AO, thus, held that the appellant had acted against the fiduciary capacity and instead of working in the interest of the shareholders of the Company had facilitated the scheme of cleaning up the books of accounts of the Company despite being aware of irregularities and misstatements in the financial statements of the Company.

10. We have heard Shri Vikram Nankani, the learned senior counsel with Shri Nikhil Kumar Rungta, the learned counsel for the appellant and Shri Mustafa Doctor, the learned senior counsel with Shri Mihir Mody and Shri Arnav Misra, the learned counsel for the respondent.

11. In our opinion the findings given by the AO is based on a wrong appreciation of the facts and the findings are based on presumptions, surmises and conjectures which cannot be sustained.

12. A categorical statement was made that the transaction entered by the Company with Blue Garden and Action was not in the knowledge of the appellant. The AO itself finds that the transactions relating to Nashik Property and Kanjurmarg Property involving receipt of Rs. 398 crore by the Company from

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Blue Garden and advancing Rs. 245 crore and Rs. 145 crore by the Company to Action and Avantha was undertaken without any agreement. Since there was no documented evidence the question of the appellant finding out the alleged transaction and the irregularities therefore did not arise. It must be kept in mind that the appellant was the statutory auditor and was auditing the books which were reflected in the books of accounts through the documents and was not a forensic auditor.

13. The fact that the appellant had categorically stated that they were unaware of the aforesaid transaction was not disbelieved and the fact that there was no written agreement of these transactions lends credence to the assertion made by the appellant that they were unaware of the transactions.

14. We find that the documented evidence in the books was that the Company had advanced a sum of Rs. 28 crore to Blue Garden during the financial year 2016-17. The appellant sought an explanation from the Company. The Company informed the appellant that the payments were made towards supply of consultancy services on the basis of an agreement and that an agreement dated March 27, 2017 entered between the Company and Blue Garden for providing consultancy services was also placed before the appellant. In furtherance of this transaction, the appellant also sought balance confirmation from Blue Garden as on March 31, 2017 which was also provided. Based on these documents there was no reason for the appellant to suspect the non-genuineness of the advance of Rs. 28 crore by the Company to Blue Garden for consultancy services.

15. The fact that the balance confirmation was signed by a person who was not authorized is immaterial since there is no dispute with the figures given in the balance confirmation which matched with the books of accounts of the Company. Thus, merely by considering the advance payment made by the Company to Blue Garden towards Rs. 28 crore and considering the balance confirmation given by Blue Garden does not mean nor does it prove that the appellant became aware of the transactions relating to Nashik Property and Kanjurmarg Property involving receipt of Rs. 390 crore by the Company from Blue Garden nor does it prove that the Company had advanced Rs. 245 crore and Rs. 145 crore by the Company to Action and Avantha.

16. We are of the opinion that since the receipt of funds through the transactions of sale of Nashik Property and Kanjurmarg Property was not known to the appellant as there was no written documentation nor was the advances given by the Company was known as there was no written documents the finding that the appellant must have been aware of the transaction is purely based on surmises and conjectures. Consequently, the finding that being aware of these transactions the appellant having not examined these transactions and the irregularities that was brought out in the audit report cannot lead to any finding that the appellant had facilitated the Company to make such entries in the books of accounts. In our opinion such finding is patently based on figment of imagination and cannot be sustained.

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17. The AO considered the hand written note which was vehemently denied by the appellant. The AO in paragraph 42 of the impugned order has given a categorical findings that no concrete conclusion can be drawn against the appellant on the basis of hand written note dated January 16, 2018.

18. The core issue before us is whether the appellant as a statutory auditor of the Company could be penalized under Section 12A(a), (b) and (c) of the SEBI Act, 1992 read with Regulations 3(b), (c) and (d), 4(1) and 4(2)(f), (k) and (r) of the PFUTP Regulations.

19. In our view, the scope of inquiry by SEBI is very limited and is confined only to the charge of conspiracy of involvement of the appellant in the fraud, if any, and to take consequential action if there is connivance or conspiracy with the appellant and its directors. Only then, SEBI could take action under the SEBI Act and the PFUTP Regulations otherwise it is not open to SEBI to inquire into any charge of professional negligence of the auditor since the audit firm is not dealing directly in securities.

20. The scope and jurisdiction of SEBI to conduct an inquiry against a Chartered Accountant or a Chartered Accountant Firm was considered by the Bombay High Court in Price Waterhouse & Co. & Another vs. SEBI 2010 SCC OnLine Bom 1197. The question raised was whether SEBI has the power to issue a show cause notice to the Charted Accountants in connection with the work which they have undertaken for a listed company in a matter of maintaining accounts and balance sheets. It was urged that SEBI had no jurisdiction to proceed against the Chartered Accountants who are members of the C.A. Institute and therefore SEBI lacked inherent jurisdiction to inquire into the conduct of the C.A.s who are professionals. The Bombay High Court held as under:-

"32. So far as the question as to whether the SEBI has jurisdiction to issue such show cause notices to the petitioners are concerned, we have already pointed out various provisions contained in the SEBI Act and the Regulations. Section 11 (1) of the SEBI Act, which we have incorporated earlier, provides that it is the duty of the Board to protect the interests of investors in securities and to promote the development and to regulate the securities market by such measures as it thinks fit. It is true, as argued by the learned counsel for the petitioners, that while exercising powers under the Act, it is not open to the SEBI to encroach upon the powers vested with the Institute under the CA Act. However, it is required to be examined as to whether in substance by initiating the proceedings under the SEBI Act, the SEBI is trying to overreach or encroach upon the powers conferred under the CA Act. In this connection, it is required to be noted that the SEBI has powers under the Act and the Regulation to take remedial measures in connection with safeguarding the interest of investors and regulate the securities market. Under Section 11 of the SEBI Act, the SEBI has power to prohibit fraudulent and unfair trade practices relating to securities market. Under Section 11 (4) of the SEBI Act, the SEBI is entitled to pass appropriate orders in the interest of investors or securities market and is entitled

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to take measures as prescribed in the said Section. Under Section 11 B, powers have been conferred on the SEBI to give appropriate directions even to any person or class of persons referred to in Section 12 or associated with the securities market. The powers available to the SEBI under the Act are to be exercised in the interest of investors and interest of securities market. In order to safeguard the interest of investors or interest of securities market, SEBI is entitled to take all ancillary steps and measures to see that the interest of the investors is protected. Looking to the provisions of the SEBI Act and the Regulations framed thereunder, in our view, it cannot be said that in a given case if there is material against any Chartered Accountant to the effect that he was instrumental in preparing false and fabricated accounts, the SEBI has absolutely no power to take any remedial or preventive measures in such a case. It cannot be said that the SEBI cannot give appropriate directions in safeguarding the interest of the investors of a listed Company. Whether such directions and orders are required to be issued or not is a matter of inquiry. In our view, the jurisdiction of SEBI would also depend upon the evidence which is available during such inquiry. It is true, as argued by the learned counsel for the petitioners, that the SEBI cannot regulate the profession of Chartered Accountants. This proposition cannot be disputed in any manner. It is required to be noted that by taking remedial and preventive measures in the interest of investors and for regulating the securities market, if any steps are taken by the SEBI, it can never be said that it is regulating the profession of the Chartered Accountants. So far as listed Companies are concerned, the SEBI has all the powers under the Act and the Regulations to take all remedial and protective measures to safeguard the interest of investors and securities market. So far as the role of Auditors is concerned, it is a very important role under the Companies Act. As posited in Section 227 of the Companies Act, every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the Company, whether kept at the head office of the company or elsewhere, and shall be entitled to require from the officers of the Company such information and explanations as the auditor may think necessary for the performance of his duties. The auditors in the Company are functioning as statutory auditors. They have been appointed by the shareholders by majority. They owe a duty to the shareholders and are required to give a correct picture of the financial affairs of the Company. It is not uncommon nowadays that for financial gains even small investors are investing money in the share market. Mr. Ravi Kadam has rightly pointed out that there are cases where even retired persons are investing their retiral dues in the purchase of shares and ultimately if such a person is defrauded, he will be totally ruined and may be put in a situation where his life savings are wiped out. With a view to safeguard the interests of such investors, in our view, it is the duty of the SEBI to see that maximum care is required to be taken to protect the interest of such investors so that they may not be subjected to any fraud or cheating in the matter of their investments in the securities market. Normally, an investor invests his money by considering the financial health of the Company and in order to find out the

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same, one will naturally would bank upon the accounts and balance-sheets of the Company. If it is unearthed during inquiry before SEBI that a particular Chartered Accountant in connivance and in collusion with the Officers/Directors of the Company has concocted false accounts, in our view, there is no reason as to why to protect the interests of investors and regulate the securities market, such a person cannot be prevented from dealing with the auditing of such a public listed Company. In our view, the SEBI has got inherent powers to take all ancillary steps to safeguard the interest of investors and securities market. The powers conferred under various provisions of the Act are wide enough to cover such an eventuality and it cannot be given any restrictive meaning as suggested by the learned counsel for the petitioners. It is the statutory duty of the SEBI to see that the interests of the investors are protected and remedial and preventive measures are required to be taken in this behalf. It is required to be noted that in the instant case the inquiry is still pending and ultimately the decision is required to be taken by SEBI on the basis of available evidence on record. However, in order to determine the jurisdiction of SEBI, the contents of the show cause notice which is the first step of initiating proceedings are required to be seen. Reading the contents of the show cause notices and the relevant statutory provisions, it cannot be said that the SEBI has no jurisdiction at all to enquire into the affairs of the petitioners in so far as it relate to Satyam. In the case of Government contracts, the Government is entitled to blacklist a particular tenderer with a view to see that such a tenderer is not allowed to participate in the future tenders the same is done by following appropriate procedure in that behalf. In our view, it cannot be said that the show cause notices issued by SEBI are, on the face of it, not sustainable on the ground that the SEBI has no jurisdiction to enter into the affairs of the petitioners or that it lacks jurisdiction to go into such questions."

21. The Bombay High Court held that it was not open to SEBI to encroach upon the powers vested with the Institute under the CA Act and if there was any material against the Chartered Accountant to the effect that he was instrumental in preparing false and fabricated accounts then SEBI has powers to take remedial or preventive measures under the SEBI Act. The Bombay High Court held that the jurisdiction of SEBI would also depend upon the evidence which is available during such inquiry and if it is found that a particular Chartered Accountant has concocted false accounts in connivance and in collusion with the Officers / Directors of the Company then SEBI could take action.

22. The Bombay High Court held that in view of the various provisions contained in the SEBI Act and Regulations it is the duty of the Board to protect the interest of investors in securities and to promote the development and to regulate the securities marked by such measures as it thinks fit. The Bombay High Court held that while exercising the powers under the SEBI Act, it was not open to SEBI to encroach upon the powers vested with the Institute under the Chartered Accountant Act, 1949. However, in a given case, if there was material against the Chartered Accountant to the effect that he was instrumental in preparing false

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and fabricated accounts in connivance, then SEBI was entitled to pass appropriate orders under section 11(4) of the SEBI Act in the interest of the investors or securities market and was entitled to take measures as prescribed in the said section. Further, appropriate directions could be given under section 11-B.

23. The Bombay High Court further held that if on conclusion of enquiry if no evidence was available regarding fabrication and falsification of accounts, then SEBI cannot give any direction in any manner. The Bombay High Court held that SEBI has jurisdiction to inquire into and investigate the matter in connection with manipulating and fabricating the books of account and balance sheet of the company. If it finds that the Chartered Accountant had no intention and knowledge to fabricate and fudge the books of account and there was only some omission without any mens rea or connivance with anyone then on such evidence SEBI cannot give any further directions.

24. The aforesaid decision of the Bombay High Court in Price Waterhouse & Co. & Another vs. SEBI was also considered by this Tribunal in Price Waterhouse & Co. in Appeal No. 06 of 2018 decided on 09.09.2019. This Tribunal in paragraph 13 held:-

“13…The Bombay High Court, however, set out the scope and extent of SEBI?s power under Section 11 and 11B of SEBI Act read with Regulation 11 of the PFUTP Regulations to act against Chartered Accountants and the circumstances under which SEBI could issue direction to Chartered Accountants acting in their professional capacity. The Bombay High Court emphatically held that the jurisdiction of SEBI in the present case would depend upon the evidence which is available during the investigation and that if there was only some omission without any mens rea or connivance with anyone, in any manner, then SEBI could not issue any further direction.”

25. In paragraph 27 this Tribunal held as under:-

“27. The findings of the Bombay High Court setting out the scope and extent of SEBI?s power to act against CAs and the circumstances under which SEBI could issue directions to CA acting in their professional capacity can thus be culled out as under:-

(i) On the basis of the allegation in the show cause notice, SEBI can investigate and enquire into the conduct of the CA and the CA firms in order to find out whether the books of accounts and balance sheet have been manipulated and/or fabricated.

(ii) The manipulation of the books of accounts and balance sheet by the CA and the CA firms was done with their knowledge and intent.

(iii) If during investigation and enquiry, if any evidence is brought on record to show that the auditors had connived and were in collusion with B. Ramalinga Raju and had fabricated the books of accounts of balance sheet, then SEBI can

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proceed in the matter and take appropriate steps against CA by preventing the CA from auditing the books of accounts of such listed Companies.

(iv) SEBI can take into consideration the accounting standards provided under the CA Act to see whether a CA has violated any norms but upon conclusion of enquiry, if no evidence is available regarding fabrication, fabrication or fudging the books of accounts etc. then SEBI cannot issue any direction.

(v) SEBI would adjudicate whether other Price Waterhouse firms had any role to play and if it is found that there was some omission on their part without any mens rea or connivance with anyone, then on such evidence SEBI cannot issue any further direction."

26. In Price Waterhouse Co. Vs. SEBI in appeal no. 6 of 2018 decided on 09.09.2019, this Tribunal while considering the role of the appellant as a firm of the C.A.s and after considering the judgment of the Bombay High Court (supra) found that the scope of the enquiry was only restricted to the charge of conspiracy and involvement in the fraud and not to any charge of professional negligence since the C.A. / C.A. firm were not dealing directly in the securities. This Tribunal held that in absence of inducement, fraud was not proved nor there was connivance or collusion by the C.A.s and therefore, the provision of section 12 (A) of SEBI Act and Regulation 3 & 4 of PFUTP Regulations are not applicable. This Tribunal held that gross negligence or recklessness in adhering to the accounting norms in the course of auditing can only point out to the professional negligence which would amount to a misconduct to be taken up only by ICAI.

27. Once an investigation or a finding in the inquiry comes that the appellant was not involved in the fudging of the books of accounts and that there was no collusion or connivance by the appellant as a statutory auditor with any employee, promoter or director of the Company then the matter has to be dropped and SEBI could not proceed any further. The scope of inquiry was only restricted to the charge of conspiracy and involvement in the fraud and not to any charge of professional negligence since the chartered accountant or chartered accountant firm were not dealing directly in the securities.

28. Considering the aforesaid the show cause notice only alleged that the appellant had facilitated the scheme of cleaning up of the books of accounts of the Company.

29. There is no finding of the appellant's direct involvement in the cleaning up of the books of accounts or in the fudging of the books of accounts of the Company. There is also no finding of the appellant's collusion or connivance with any director, promoter or employee of the Company and consequently the appellant cannot be charged under Section 12A of the SEBI Act read with Regulation 3 and 4 of the PFUTP Regulations.

30. Similar view was held by this Tribunal in V C G & Co. & Anr. vs SEBI, Appeal no. 496 of 2020 decided on October 12, 2022, Jayant V. Kolapkar & Co. vs SEBI,

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Appeal no. 613 of 2021 decided on November 2, 2022 and Doshi Chatterjee Bagri & Co. LLP & Ors. vs SEBI & Ors., Appeal no. 799 of 2023 decided on October 30, 2023.

31. While conducting the statutory audit of a company, one of the objectives of an auditor is to identify and assess the risks of material misstatement, whether due to fraud or error, at the financial statement and assertion levels. For this purpose, the relevant standard is the Standard of Auditing ('SA') 315 titled ? identifying and Assessing the Risk of Material Misstatement Through Understanding the entity and its Environment?. As per the said standard, identification of risk of material misstatement is a matter of professional judgement.

32. In the context of SA-315 pertaining to identifying and assessing the risks of material misstatements in financial assessment, it is pertinent to bear in mind that any audit is subject to inherent limitations and that owing to such inherent limitations of an audit, there is an unavoidable risk that some material misstatement of the financial statements may not be detected even though the audit is properly planned and performed in accordance with the SA's which was also stated by the appellant in the engagement letters executed with CG Power. Further, the risk of not detecting a misstatement resulting from fraud is higher than the risk of not detecting a misstatement resulting from an error. Similarly, the risk of not detecting a material misstatement resulting from management fraud is greater than that resulting from an employee fraud.

33. The standard of accountancy framed by the ICAI makes a distinction between a statutory auditor and a forensic auditor. We may state here that the role of a statutory auditor is not to function like a forensic auditor. Any statutory audit unlike an internal or forensic audit is inherently carried out on a test check / sampling basis which in the instant case had been done by the appellant. As part of the audit process the appellant had duly carried out the exercise of identifying and assessing the risk of material misstatements in the financial statements in accordance with SA 315.

34. Accordingly, in its professional judgement and after exercising reasonable professional skepticism, ledger accounts with zero balance in the advance to suppliers / advance from customer account were not identified as those which were subject to risk of material misstatement since zero balances would not have impacted the financial statements and therefore, were not considered for further audit procedures. Conversely, those accounts which had a closing balance in advance to suppliers / advance from customer account were considered for further audit procedures such as obtaining balance confirmation, verification of underlying service agreements and supply contracts etc. Further, any statutory audit, unlike an internal or a forensic audit, is inherently carried out on a test-check / sampling basis, which was done by the appellant in the case of CG Power also.

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35. We are of the view that if the appellant had not carried out the statutory audit as per the accounting standards framed by the ICAI and in the event the appellant could not have resigned without filing the complete audit report or had failed to consider the netting of amount transferred as loans to Action and Avantha then it was open for SEBI to refer to the ICAI to take disciplinary action against the appellant for violation of the accounting standards. SEBI's role was limited and confined to the conspiracy charge against the appellant with regard to fudging of the accounts of the Company.

36. In view of the aforesaid, the impugned order cannot be sustained and is quashed. The appeal is allowed. In the circumstances of the case, parties shall bear their own costs.

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