

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP No. 4365/140(5)/MB/2018

15. It is amply clear that family members of the statutory auditor of R1 are shareholders of R2 company, and R1 has issued Audit certificate of the company, even without examining any Books of Account of the R-2 Company, which is clear cut violation of the statutory provision of Section 141(3)(d) of the Companies Act, 2013.
16. By our order dated 3.1.2019, we passed an interim order which is as under;
- (a) that the Respondent No. 1 shall immediately cease to function as statutory auditor of Respondent No. 2 Company.
 - (b) Permit the Petitioner to appoint an independent Auditor for the Respondent No 2 Company to replace Respondent No 1, regarding the first proviso to Section 140(5) of the Companies Act, 2013 read with Explanation I to it.

We further a directed R1 and R2 to file para-wise reply/counter affidavit within 15 days from the date of the order, but R1 and R2 did not file any para-wise reply.

The Contents of the affidavit in reply submitted by R1 Shri Mukesh Maneklal Choksi is given below:

"That I am accepting the order passed by the Hon'ble National Company Law Tribunal.

That I have signed the Audit Reports of Zen Shaving Ltd in good faith and I have followed the procedures which previous Auditors have followed.

The office bearers of the company are not available and therefore I could not receive any information from them."

17. Auditor has given the affidavit that he has signed the Audit Report of Zen Shaving Ltd in good faith and have followed the procedures which previous Auditors have followed. He has certified that he has given the certificate after examining the accounts of Zen Shaving Ltd, but he has admitted that he has followed the procedure, which the previous auditors were

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following. Though Auditor was to file the para wise detailed reply, regarding the allegations levied against him, by Union of India. But he intentionally avoided filing any para-wise reply. The explanation submitted by the Auditor shows that even without examining books of accounts, he has submitted the Audit Report and certified the Profit & Loss Account Statement and Balance Sheet of the company i.e. Zen Shaving Ltd. It is also clear from the statement made by the Auditor, R1, before the Enquiry Officer that he knows the duties and responsibilities of the Auditor and he is aware that he was his duty-bound to check the accounts, statutory registers, papers, etc., but the records essential for audit purpose was not produced before him. He has further stated that it was informed to him that no activity is being carried out by the company and profit and loss account and the balance sheet was produced before him. He has certified the Balance Sheet and Profit and loss account for the F.Y. 2014-15 and 2015-16. He has been informed that the company has not done any activity during this period. He has further stated that he has not audited the books of accounts of the company and has signed the auditor's report of the company for the relevant period. He has also accepted that he has not called any books of accounts and statutory registers from the company for the audit purpose and they were with Mr Arvind Goyal Babulal, Director of the Company and he is not aware where he is keeping them. He has also accepted this fact that he is also aware of the fact that there was no internal audit system in the company. He has accepted that he has submitted his consent letter dated 12.3.2014 for being appointed as statutory auditor of the company. The Statutory Auditor R1 has also accepted that he doesn't have any working papers for auditing the accounts of the company for the F.Y. 2014-15 and 2015-16 whereas as per ICAI Guideline, he is supposed to maintain the working papers for at least five years. The Respondent No 1, Statutory Auditor has admitted in his **statement that he has not audited the Books of Account of the Company and has only signed Auditor**

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Report of the Company for the relevant period. It shows that the Statutory Auditor has given a false certificate that he audited the Books of Account of the company for the relevant period.

18. The Auditor of the company R1 Mr Mukesh Choksi has not contradicted the finding of the Inspection Report. No counter affidavit has been filed against the said findings. There is no denial of the allegations levied against the Auditor. In reply to the above allegations, the Statutory Auditor has stated that he has signed the auditor report of Zen Shaving Ltd in good faith and has followed the procedures which the previous Auditor has followed. The reply of R -1, Statutory Auditor is a sham and against the statutory duties of Auditor given under Sec 143 of the Companies Act. The Statutory Auditor can't escape from his liability by saying that he has followed the practice, which was being adopted by the previous auditor.
19. On the basis of admission of Auditor R1, Mr Mukesh Maneklal Choksi, it is clear that R1 Statutory Auditor has acted fraudulently and colluded with the Directors of the company in relation to the affairs of the company and he has misused his position as Statutory Auditor of the company and certified the Profit & Loss Account and Balance Sheet of the company even without examining the account books, statutory registers, papers etc., which were essential for audit purposes. It is also clear from his statement that documents were never produced before him, but he certified the Balance Sheet and Profit and loss Account, without even auditing the books of accounts of the company. He has also given the false certificate that he has audited the financial statement of Zen Shaving Ltd, which comprises of Balance Sheet as on 31.3.2015, the statement for profit/loss for the Financial year ending 2015 and summary of significant accounting policies and other Explanatory Information.
20. The explanation submitted by Auditor clearly shows that he has submitted the Audit Report without even auditing the accounts.

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Such activities of R1 are in clear cut violation of duties of Auditor prescribed U/S 143 of the Companies Act.

21. It appears that the Statutory Auditor R-1 in collusion with the Directors of the R-2 company has made the Audit Certificate as a **tradeable commodity**, which can't be permitted at any cost. It is relevant to mention following observation regarding the role of Statutory Auditor of a company by the Hon'ble Bombay High Court in Price Waterhouse and Co. and Ors. Vs Securities and Exchange Board of India and Ors., 2010 SCC OnLine Bom 1197 :

"It is however required to be noted that normally an investor would like to invest his money in the shares of a Company on the basis of reflection of Company's financial health as disclosed in the balance-sheet of the Company and he may consider that it is safe to invest money in a particular company, if the balance-sheets have been certified by reputed Chartered Accountants, and it reflects that the financial position of the Company is sound. An investor is likely to be guided by the audited balance-sheet of the Company and would presume that the facts incorporated in the balance-sheet are true and correct. Considering the said aspect, even though the petitioners may not have direct association in the share market activities, yet the statutory duty regarding auditing the accounts of the Company and preparation of balance-sheets may have a direct bearing in connection with the interest of the investors and the stability of the securities market."

22. In the present times when the national economy is highly dependent upon the profitability and credibility of commercial institutions, the role of Statutory Auditors is becoming a very important tool of keeping a check and preventing re-occurrence of scams like Satyam. This Tribunal while exercising its power under the Insolvency and Bankruptcy Code, 2016 and the Companies Act, 2013 have on several occasions to make crucial decisions in important matters relating to Amalgamations and Merger, Oppression and Mismanagement, Voluntary Liquidation, Insolvency petitions, etc. and has to rely upon the reports of the Independent Auditors. Thus, it is not only the Company or the

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Board of Directors or promoters of a company, but the investors, both current and prospective, Securities Market, the Courts/Tribunals often rely upon the reports of independent Auditors. The role of Statutory Auditor is vital, and auditor owes a fiduciary duty towards Nation. It is necessary to take stern action against the person who has tried to diminish the credibility of the Auditor's profession.

23. The Conduct of the Respondent no. 1, who happens to be a senior member of the ICAI, amounts to gross violation of his professional misconduct and has challenged the credibility of the whole Profession. The Respondent no. 1 has brought disrepute to the Institute of Chartered Accountants of India and the profession itself. We hope the ICAI will take necessary action against Respondent No. 1 for his professional misconduct.
24. On the above basis, it is clear that the R-1 Mr Mukesh Maneklal Choksi colluded with the Director of R-2 company and has given a false Audit certificate relating to the Profit & Loss Account and Balance Sheet of the R-2 company, without even examining and verifying the books of accounts, The Statutory Auditor has not given any plausible explanation for such irresponsible fraudulent activities. Thus the charges levelled against the R-1 Mr Mukesh Maneklal Choksi have been found correct therefore petition deserves to be allowed.

ORDER

Since Mr Mukesh Maneklal Choksi, Statutory Auditor of Respondent No. 2 Company, colluded with the Chairman/Director of R-2 company has given a false Audit certificate relating to the Profit & Loss Account and Balance Sheet of the R-2 company, without even examining and verifying the books of accounts. The Statutory Auditor has not given any plausible explanation for such irresponsible fraudulent behaviour.

Therefore under 2nd Proviso to Section 140(5) of the Companies Act, 2013, R1, **Mr Mukesh Maneklal Choksi shall not be eligible**

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to be appointed as an Auditor of any company for a period of 5 years from the date of passing this order, and the auditor shall also be liable for action under Section 447 of the Companies Act, 2013.

Further by exercising powers under section 147(3)(i) of the Companies Act 2013, we also direct the Statutory Auditor Mr Mukesh M. Choksi to refund the remuneration received by him, during the period he acted as Auditor, back to the Company.

25. It is directed that a copy of this order be sent to National Financial Reporting Authority and ICAI to take proper action as they may deem fit.
26. The above order is in addition to our earlier order which we have passed on 3.1.2019 which is as under:
- (a) that the Respondent No. 1 shall immediately cease to function as statutory auditor of Respondent No. 2 Company.
 - (b) Permit the Petitioner to appoint an independent auditor for the Respondent No 2 Company to replace Respondent No 1.

Sd/-

RAVIKUMAR DURAISAMY
Member (Technical)

6th February, 2019

Sd/-

V.P. SINGH
Member (Judicial)