

**भारत सरकार / Government of India**  
**राष्ट्रीय वित्तीय रिपोर्टिंग प्राधिकरण / National Financial Reporting Authority**

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. 7<sup>th</sup> Floor, Hindustan Times House,  
Kasturba Gandhi Marg, New Delhi

Order No. 29/2023

Date: 21.08.2023

**ORDER**

**In the matter of M/s K. Pandeya & Co. and CA Manjeet Kumar Verma under Section 132(4) of the Companies Act 2013 read with Rule 11(6) of National Financial Reporting Authority 2018**

1. This Order disposes of the Show Cause Notice ('SCN' hereafter) no. NF-23/12/2022 dated 30th September 2022, issued to M/s K. Pandeya & Co. ('Firm hereafter') and CA Manjeet Kumar Verma (ICAI Membership No. 075926), partner of M/s K. Pandeya & Co. (ICAI Firm registration no. 000135C), Jharkhand, (both are collectively called as 'Auditors' hereafter), who is a member of the Institute of Chartered Accountants of India ('ICAI' hereafter) and was the Engagement Partner ('EP' hereafter) for the statutory audit of Burnpur Cement Limited, West Bengal ('BCL' or 'the company' hereafter) for the Financial Year ('FY' hereafter) 2018-19.
2. This Order is divided into the following sections:
  - A. Executive Summary
  - B. Introduction & Background
  - C. Lapses in the audit
  - D. Specific Lapses of the Audit Firm
  - E. Article of Charges of Professional Misconduct by the Auditors
  - F. Additional Articles of Charges of Professional Misconduct specific to the Audit Firm
  - G. Penalty & Sanctions

**A. EXECUTIVE SUMMARY**

3. NFRA initiated action under section 132 (4) of Companies Act 2013 ('CA-2013' or 'Act' hereafter) against the Auditors of Burnpur Cement Limited, West Bengal, for professional or other misconduct in relation to statutory audit for FY 2018-19, pursuant to information received from Securities and Exchange Board of India ('SEBI' hereafter). The SEBI vide letter dated 11.03.2022, shared information pertaining to non-reporting of contingent liability arising out of the Income Tax ('IT' hereafter) Department order dated 31.12.2018, which identified additional income of ₹ 63.11 crores and imposed additional tax (including interest) of ₹ 17.53 crores. SEBI letter pointed to the failure of Auditors to report in the Companies Auditors' Report Order 2016 ('CARO 2016' hereafter) about the liability arising out of this additional income tax.
4. This Order finds that the Auditors failed to meet the relevant requirements of the Standards on Auditing ('SA' hereafter) in respect of several significant areas, reflecting a serious lack of professional competence to perform audit of a Public Interest Entity (PIE). In the areas of the audit identified in this Order, the Auditors were grossly negligent and failed to apply professional skepticism and due diligence sufficiently and adequately to challenge the management assertions.
5. The Auditors did not perform sufficient and appropriate audit of the going concern basis despite the fact the BCL had reported<sup>1</sup> loss of ₹ 12.67 crores for the year ended 31.03.2019 and an accumulated loss of ₹ 115.64 crores, which had resulted in erosion of its net worth to (-) ₹ 13.07

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<sup>1</sup> As per Financial Statements on page no 70 72 of Annual Report of the BCL for the FY 2018-19

crores; was highly debt ridden i.e., its Total Debt was 83.19% of its Total Assets; was defaulting in payment of debts amounting ₹ 234.15 crores;<sup>2</sup> and had a negative working capital i.e. (-) ₹ 241.46 crores. The Auditors merely included the going concern matter in the Emphasis of Matter ('EOM' hereafter) without questioning the appropriateness of going concern assumptions by the BCL management and without analysing whether a modified audit opinion was warranted.

6. The Financial Statements of BCL for FY 2018-19 were materially misstated due to failure of BCL to recognise provision or disclose contingent liability of ₹ 17.53 crore arising out of Income Tax Dispute and to recognise interest cost on Borrowings classified as Non-Performing Assets (NPAs), which resulted in understatement of interest cost and current liabilities by ₹ 15.66 crores and understatement of the reported loss of ₹ 12.67 crores by at least ₹ 15.66 crores, i.e., 123.6% of the reported loss. The Auditors failed to carry out appropriate audit procedures to identify such lapses.
7. The Auditors failed to point out the misstatements in the Property, Plant and Equipment<sup>3</sup> (PPE) of the company which were 84% of the total assets. As the net worth of BCL had been eroded and it had defaulted in payment of its loans from financial institutions, the PPE were the major assets available with the lenders and other stakeholders of BCL for recovery of their dues and warranted proper presentation of their valuation in the balance sheet after consideration of impairment in accordance with the applicable provisions of Ind AS 36<sup>4</sup>.
8. While the standards lay significant emphasis on the Engagement Quality Review Process and appointment of EQCR, the Auditors failed to perform their obligation under Standard on Quality Control ('SQC 1' hereafter), that the Auditors shall determine that an Engagement Quality Control Reviewer ('EQCR' hereafter) was appointed for the audits of listed entities. The Auditors also made an effort to hide such failures, as they provided false information and thereby misled NFRA regarding such appointment.
9. The Auditors failed in applying sufficient appropriate audit procedure and professional skepticism in identifying and reporting of material misstatements in the financial statements. The Auditors were grossly negligent in the conduct of the audit, which led to erroneous reporting and portraying a misleading picture of the company to the investors and stakeholders.
10. Based on the investigation and proceedings under section 132 (4) of the Companies Act and after giving the Auditors adequate opportunity to present their case, we find the Audit Firm and the Engagement Partner guilty of professional misconduct and impose through this Order, the following monetary penalties, and sanctions, which will take effect after 30 days from issuance of this Order:

**M/s K. Pandeya & Co., the Audit Firm** - Monetary penalty of **Rupees Twenty-Five Lakhs** upon the Audit firm, M/s K. Pandeya & Co.

**CA Manjeet Kumar Verma, the Engagement Partner**

- i. Monetary penalty of **Rupees Five Lakhs** upon CA Manjeet Kumar;
- ii. CA Manjeet Kumar Verma is debarred for **Five Years** from being appointed as an auditor or internal auditor or from undertaking any audit in respect of financial statements or internal audit of the functions and activities of any company or body corporate.

## **B. INTRODUCTION & BACKGROUND**

11. The National Financial Reporting Authority ('NFRA' hereafter) is a statutory authority set up under section 132 of the Companies Act 2013 to monitor implementation and enforce compliance

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<sup>2</sup> As per Annexure 3 of the Independent Auditor's Report on page no 69 of Annual Report of BCL for FY 2018 19

<sup>3</sup> As per Financial Statements on page no 70 of Annual Report of the BCL for the FY 2018 19

<sup>4</sup> Ind AS 36 "Impairment of Assets"

of the auditing and accounting standards and to oversee the quality of service of the professions associated with ensuring compliance with such standards. NFRA has the powers of a civil court and is empowered under section 132 (4) of the Act to investigate the prescribed classes of companies and impose penalty for professional or other misconduct of the individual members or firms of chartered accountants.

12. The statutory auditors, both individual and firm of chartered accountants, are appointed by the members of company under section 139 of the Act. The statutory auditors, including the Engagement Partners and the Engagement team that conduct the audit are bound by the duties and responsibilities prescribed in the Act, the rules made thereunder, the Standards on Auditing, including the Standards on Quality Control and the Code of Ethics, the violation of which constitutes professional misconduct, and is punishable with penalty prescribed under section 132 (4) (c) of the Act.
13. The Bumpur Cement Limited (BCL)<sup>5</sup> was engaged in the business of Cement Manufacturing and was listed on Bombay Stock Exchange ('BSE' hereafter) and National Stock Exchange ('NSE' hereafter) and therefore falls under NFRA's domain<sup>6</sup>. BCL was required to prepare its Financial Statements ('FS' hereafter) for the FY 2018-19 in accordance with Indian Accounting Standards ('Ind AS' hereafter), as notified by Ministry of Corporate Affairs.
14. NFRA took up investigation under Section 132 (4) of the Companies Act, 2013 after receipt of a letter dated 11.03.2022 from SEBI, which pointed out non-reporting by BCL of contingent liability arising out of the IT Department order dated 31.12.2018. The IT order identified additional income of ₹ 63.11 crores and imposed additional tax (including interest) of ₹17.53 crores. The SEBI letter also conveyed the failure of the Auditors in reporting in the CARO 2016 report about the dispute regarding levy of this additional income tax.
15. Vide letter dated 29.03.2022, the Audit File for the FY 2018-19 along with other information, was called from the Auditors, giving 30 days' time for submission of the required documents. The Auditors submitted the Audit File on 28.04.2022. As part of the investigation, a questionnaire dated 19.07.2022 was also sent to the Auditors and their response was received on 17.08.2022.
16. On examination of the Audit File, it was observed that despite *prima facie* violations of the SAs and the relevant requirements of CA-2013, and a qualified report issued by the previous auditor for the FY 2017-18 primarily on account of correctness of Trade Receivables and its provisions and write-off, non-recognition of Interest Cost on the borrowings classified as Non-Performing Assets (NPAs), incorrect valuation of old and obsolete inventory and improper recognition of Deferred Tax Assets (DTA), the present Auditors failed to test these items on which previous auditor had qualified the report and issued an unmodified audit opinion<sup>7</sup> in the Independent Auditor's Report stating that the "... *financial statements give the information required by the Act in the manner so required and give a true and fair view in conformity with the accounting principles generally accepted in India.....*".
17. Accordingly, NFRA proceeded to take action under sub-section (4) of section 132 of the Act, and a Show Cause Notice (SCN) was issued to the Audit Firm M/s K. Pandeya & Co. and the Engagement Partner (EP) CA Manjit Kumar Verma (collectively referred to as Auditors in this Order) on 30.09.2022 asking them to show cause by 30.10.2022 why action should not be taken for professional misconduct in respect of their performance as the Statutory Auditors of BCL for the FY 2018-19, detailed as follows:

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<sup>5</sup> BCL's CIN is L27104WB1986PLC040831

<sup>6</sup> Vide Rule 3(1)(a) of National Financial Reporting Authority Rules, 2018.

<sup>7</sup> As per the Opinion para of the Independent Auditor's Report on page no 60 of the Annual Report of BCL for the FY 2018 19

- a. failure to disclose a material fact known to them, which is not disclosed in a financial statement, but disclosure of which is necessary in making such financial statement, where they are concerned with that financial statement in a professional capacity;
  - b. failure to report a material misstatement known to them to appear in a financial statement with which the Auditors are concerned in a professional capacity;
  - c. failure to exercise due diligence, and being grossly negligent in the conduct of professional duties;
  - d. failure to obtain sufficient information which is necessary for expression of an opinion, or its exceptions are sufficiently material to negate the expression of an opinion; and
  - e. failure to invite attention to any material departure from the generally accepted procedures of audit applicable to the circumstances.
18. The Auditors requested vide letter dated 27.10.2022 for an extension of 15 days and the same was granted till 15.11.2022. The Auditors replied on 12.11.2022 to the SCN and refuted all the charges and did not ask for the personal hearing offered to them.
  19. We have perused all the material on record including the written responses of the Auditors. The major lapses include non-recognition of interest cost on borrowings classified as Non-Performing Assets (NPAs), non-recognition of provision for liability / disclosure of contingent liability arising out of Income Tax dispute and non-reporting of the same under CARO 2016, non-assessment of going concern basis, non-evaluation / verification of Property, Plant and Equipment (PPE), non-assessment of risk of material misstatement in balances of Trade Receivables, non-appointment of EQCR and improper planning of audit. These have been discussed in Part 'C' of this Order. Part 'D' deals with the specific lapses of the Audit Firm.

### Part C

#### **C.1 Failure to report non-recognition of Interest Cost on Borrowings classified as Non-Performing Assets (NPAs)**

20. The Auditors were charged with failure to report non-recognition of Interest Cost on Borrowings classified as Non-Performing Assets (NPA).

It was observed<sup>8</sup> that BCL had availed of credit facilities from Central Bank of India (CBI), State Bank of India (SBI) and United Bank of India (UBI). There were defaults in payment of interest and principal amounts pertaining to the credit taken by the Company from these banks. Total borrowings of BCL classified as NPAs as per Auditor's report under CARO 2016 were ₹ 234.15 crores. BCL did not recognize interest cost and disclosed in the notes to accounts vide note 34<sup>9</sup> as follows: *"The company has not provided for interest on loan taken from banks to the extent same have remain unpaid as the accounts have been classified as NPA by the lenders and the management is in final stage of settlement of the liability. Interest, if any, will be recorded in the books when it will be crystallized after settlement/agreement with lenders"*. Further, note 35 disclosed that there were ongoing negotiations between BCL and UV Asset Reconstruction Company for settlement of debts and once BCL could finalize its negotiations and crystallize the debt, it would make the provision of interest cost.

21. The SCN stated that the above referred accounting treatment followed by BCL was not in conformity with Para 3.3.1 and para 4.2.1 read with para B5.4.1 of Ind AS 109<sup>10</sup>. As per Para 3.3.1 *"an entity shall remove a financial liability (or a part of financial liability) from its balance sheet when, and only when, it is extinguished, i.e., when the obligation specified in the contract*

<sup>8</sup> As per Annexure 3 of the Auditor's Report on page no 69 of Annual Report of BCL for FY 2018-19

<sup>9</sup> As per Note no 34 of the notes to accounts on page no 115 of Annual Report of BCL for FY 2018 19

<sup>10</sup> Ind AS 109 "Financial Instruments".

*is discharged or cancelled or expired.”* The SCN noted that credits from the banks were **neither discharged nor cancelled** by the respective lenders. Therefore, the mere fact that negotiations with UV Asset Reconstruction Company for settling its loan obligations were underway, did not discharge BCL of its liability of the interest cost on the borrowings classified as NPA.

22. The SCN noted that even by conservative estimate, the interest cost on the borrowings classified as NPA in FY 2018-19 (₹ 234.15 crore) would be ₹ 15.66 crores, against which merely ₹ 0.002 crores were recognized by BCL, which is a “Misstatement” as per Para 13(i) of SA 200<sup>11</sup>. The potential impact of this misstatement was: -

- understatement of interest cost and current liabilities by ₹ 15.66 crores.
- understatement of reported loss of ₹ 12.67 crores as disclosed by the company for FY 2018-19 by at least ₹ 15.66 crores, i.e., 123.6% of reported loss.

23. In response to the SCN, the auditor replied as follows –

*“We had made reporting about NPAs. It was clearly mentioned that loans and borrowings of Company had become NPAs.*

*In notes to accounts it was mentioned that: -*

*“The Company had not provided for accrued interest on loans taken from bank in its books of company is under process of arriving at a settlement for repayment of these dues. Accordingly, interest will be provided only when the liability crystallizes.”*

*When any loan is declared as NPA we don't recognize interest on it. Management did not agree to charge interest as loans had become NPA. Banks from which loan was taken had not charged any interest from company during that period. Negotiation was going on with bank for settlement of loan and waiver of interest, so interest could not be charged. As a general accounting practice, we don't charge interest when any loan becomes NPA. Same principle was applied by us in accounting of BCL also. No interest was charged by the lending banks for the said date hence there was no obligation on company to pay interest, hence no material misstatement was there.”*

24. On the Auditors' reply, we observe the following:

- a) The contention of the Auditors that since no interest was being charged by the bank, there was no obligation on the BCL to recognize interest cost, is not correct. The Auditors are completely wrong in their assumption that lending bank did not charge interest on the borrowings classified as NPAs. The banks do discontinue, in their accounts, the recognition of interest income on the assets classified as NPAs based on the prudential norms of the RBI. However, RBI guidelines also require the banks to maintain a Memorandum Record of accrued interest on the NPAs clearly reflecting the fact that the bank has not legally released the borrower from their contractual liability to pay interest on their borrowings from the bank. The outstanding balance of customer will include the interest charged by bank on such borrowings along with some penal interest (according to the contract between customer and bank). This accounting treatment by the lending bank cannot be a premise for the borrower to stop accruing the interest liability in their books of accounts. The borrower will continue to be covered by the provisions of Ind AS 109 in relation to discharge of a liability, as mentioned in paragraph 21 of this Order.
- b) We do not find any merit in the argument advanced by the Auditors. BCL was required to account for the interest cost on the borrowings classified as NPAs according to the provisions of Ind AS 109, which mandate recognizing interest cost on the borrowing availed by the Company (Para 4.2.1) and accounting for the same, till such financial liability is extinguished (Para 3.3.1). The understanding and the contention of the Auditors in support of accounting policy of BCL to not to recognize interest cost on the borrowing classified as NPAs is

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<sup>11</sup> SA 200 “Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Standards on Auditing”

completely flawed and against the requirements of Ind AS 109.

- c) We note that in the Independent Auditor's Report on the financial statements of BCL for the FY 2017-18, the previous auditor had issued a qualified opinion on the basis, among others, of non-recognition of interest cost on the borrowings classified as NPAs. The Auditors, in complete disregard of the previous audit opinion, certified the true and fair view of the accounts, while the BCL continued to adopt the same policy on the basis of which the accounts for FY 2017-18 had been qualified by the previous auditor. The flawed accounting treatment by BCL resulted in understatement of liability and reported loss for the FY 2018-19 by ₹ 15.66 crores. The Auditors were required to report this material misstatement in their audit report, which they failed to do. Therefore, the charge against the Auditors of failing to report non-recognition of interest cost on borrowings is established.

## **C.2 Failure to report effect of Income Tax order in the Financial Statements of the company**

25. The Auditors were charged with failure to perform audit procedures to analyse and point out non-reporting of the effect of Income Tax Assessment Order in the form of provision for liability or disclosure of the contingent liability.

As per the information received from SEBI, the IT department had issued an assessment order ('ITAO' hereafter) dated 31.12.2018 against BCL, identifying additional undisclosed income of ₹ 63.11 crores pertaining to FYs 2010-11 to 2016-17, on which additional income tax (including interest) of ₹17.53 crores was levied. The company was required to make provision for such liability or had to disclose it as contingent liability, which it failed to do. The Auditors also failed to challenge that such accounting treatment by the management was in violation of Para 14 of Ind AS 37 and Para 28 of Ind AS 37 –

- I. As per Para 14 of Ind AS 37<sup>12</sup>:

*A provision shall be recognised when:*

- a. An entity has a present obligation (legal or constructive) as a result of a past event;*
- b. It is probable that an outflow of resources embodying economic benefits will be required to settle the obligation; and*
- c. A reliable estimate can be made of the amount of the obligation.*

*If these conditions are not met, no provision shall be recognised.*

- II. Further, as per para 28 of Ind AS 37, if the possibility of an outflow of resource embodying economic benefit is remote, then the entity shall disclose the same as Contingent Liability.

The Show Cause Notice alleged the Auditors were required to assess the effect of the IT order, but the audit file did not have a copy of the IT Assessment Order, or a copy of the appeal filed, or any stay of the demand or any working by the auditor in this regard. The audit file showed no evidence of evaluation by the Auditors of adherence by BCL to the applicable provisions of Ind AS 37.

As per Para 10 of SA 580<sup>13</sup> and Para 12 of SA 501<sup>14</sup>, the Auditor were required to take written representation from the management that all the transactions had been recorded and reflected in the Financial Statements and had to reach an understanding regarding disputed dues, the amount involved and the forum where the disputes were pending; and carry out necessary procedures to verify the information provided by the management. However, the audit file did not have any documentation in this regard.

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<sup>12</sup> Indian Accounting Standard 37 "Provisions, Contingent Liabilities and Contingent Assets"

<sup>13</sup> SA 580 "Written Representations"

<sup>14</sup> SA 501 "Audit Evidence-Specific Consideration for Selected Items"

The SCN also alleged that the Auditors made a false declaration under Clause 7b of CARO 2016 report that no dispute under income tax was pending on the part of the company. The Auditors reported in *Annexure-A to the Statutory Auditors' Report- CARO (page no. 63 of the Annual Report 18-19)* that, ".....On the basis of the information and explanation given to us during the course of our audit, we report that:..... 7 (b) Dues of income tax or sales tax or service tax or duty of customs or duty of excise or value added tax have been deposited on time there is no dispute is pending on the part of company.....".

26. The Auditors stated in their reply dated 12.11.2022 that they had written a letter to the management dated 29.04.2019, asking about details of all contingent liabilities and the user credentials of Income tax and other such online portals. In response, BCL had replied on 30.04.2019 that the user credentials could not be provided due to some medical emergency.

The Auditors stated that they were unaware of any ITAO (ITAO) and also submitted that ".... The management also failed to provide us with necessary information on contingent liability. We relied on all papers and documents present at that time in office. The examination of the documents and other material on record didn't have any indication of existence of liability. So as on that date reporting was done seeing the documents and scenario present at that time. We were totally unaware of any such liability existing on that date....."

The Auditors claimed that they first came to know about the contingent liability vide the SEBI letter, and since they were unaware of the ITAO, Ind AS 37 was not to be invoked and that nothing was concealed while reporting under CARO 2016.

27. In this regard, we observe the following:

- a) In his reply dated 13.02.2022 to SEBI in this connection, the EP didn't mention about being unaware about the ITAO or about non-availability of user credentials or denial of information by the management of BCL. His reply is reproduced below:

*"Although there was an Assessment order passed by the DCIT, Income Tax Department in the matter of Burnpur cements Limited, as per the management, the said order was passed without appreciating the explanations and details filed by the Assessee company. The company had already filed an appeal with the Commissioner of Income Tax (Appeals) against the said order and also for a stay of demand. As per IND As 37, the 2nd criteria i.e., "it is probable that an outflow of resources embodying economic benefits will be required to settle the obligation" for Recognising a Provision has not been met. Therefore, the requirement of making a Provision for the Tax and Interest levied in the Assessment order did not arise".*

The EP's reply to SEBI clearly shows that the Auditors were fully aware of the said ITAO. Therefore, the contention of the Auditors that since they were not aware of ITAO & the dispute related to the same, they did not conceal any information under CARO 2016, cannot be accepted.

- b) The contention of the Auditors that they tried to obtain the required information about contingent liabilities vide their letter dated 29.04.2019 to the management, and that the BCL had denied them access to information vide their reply dated 30.04.2019, is not evidenced from the audit file and therefore the same is deemed as an afterthought.
- c) Even if the contention of the Auditors is accepted, then on denial of user credentials by the BCL, we note that the Auditors did not make any further attempts to get the information after the initial request. In matters of non-availability of information from the management during the audit, the Auditors were required to deal with the situation as per Para 11 of SA 705<sup>15</sup>, according to which if after acceptance of the audit, the management imposes limitation on the scope of the audit, which can result in auditor qualifying or disclaiming the audit opinion, then

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<sup>15</sup> SA 705 "Modifications to the Opinion in the Independent Auditor's Report".

the auditor is required to request the management to remove such limitation. As per Para 12 of SA 705, if the management refuses to remove such limitations, then the auditor is required to communicate the same to Those Charged with Governance ('TCWG' hereafter) and must determine whether it is possible to perform alternate audit procedures to obtain sufficient appropriate audit evidence.

On perusal of the audit file, we neither found any communication with TCWG nor any determination of adoption of alternative audit procedures to mitigate the risk arising due to the said limitation posed by the management. In light of Para 11 - 13 of SA 705, as the limitations remained, the Auditors could not issue unmodified opinion in the Independent Auditor's Report, as they did.

28. It is evident from the preceding discussion that the Auditors were aware about the ITAO and, therefore, they were required to ensure that its impact was reflected as a provision for the liability or as disclosure of the contingent liability, which they failed to do. Accordingly, we hold the Auditors responsible for the charge pertaining to their failure to report non-recognition of provision for liability or failure to report non-disclosure of contingent liability on account of additional income tax.

### **C.3 Non-assessment of going concern assumption**

29. The Auditors were charged with non-evaluation of the appropriateness of the going concern assumption in preparation of financial statements by the BCL. The SCN noted that BCL had prepared the financial statements of 2018-19 on going concern basis, despite presence of the following adverse factors,<sup>16</sup> indicating material uncertainty about the entity's ability to continue as going concern in foreseeable future:

- a. BCL reported loss of ₹ 12.67 crores for the year ended 31.03.2019 and had accumulated loss of ₹ 115.64 crores, which resulted in erosion of its net worth to (-) ₹ 13.07 crores.
- b. BCL had a negative working capital of (-) ₹ 241.46 crores.
- c. BCL was highly debt ridden i.e., its Total Debt was 83.19% of its Total Assets.
- d. BCL was defaulting in payment of debts amounting to ₹ 234.15 crores.

The SCN stated that in view of Para 6 and 12 of SA 570<sup>17</sup>, the Auditors were required to obtain a representation from the management of BCL and other evidence in support of the use of going concern basis and had to evaluate the same to conclude if any material uncertainty existed. However, the SCN noted that the audit file neither contained any representation from the management on the use of going concern basis, nor did it have any working by the Auditors regarding testing of appropriateness of such basis.

30. Responding to the above charge, the Auditors replied that –
- a) They had obtained written confirmation from management, where BCL had clearly mentioned that it was a going concern. The Auditors had concluded that BCL was a going concern after taking into account all the facts like regularity in payment of salary, payment to its creditors, trading estimates and cash flow forecast.
  - b) The UV Asset reconstruction company had taken over the loan of Central Bank of India, vide letter dated 08.04.2019, and BCL had an off-take agreement with Ultratech limited, whereby 100 % production of BCL was sold to Ultratech. Accordingly, there was no reason to believe that BCL was not a going concern.
  - c) They had obtained sufficient appropriate audit evidence regarding the appropriateness of management's use of going concern basis, and there was no uncertainty about the entity's

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<sup>16</sup> As per Financial Statements of BCL for the FY 2018-19,

<sup>17</sup> SA 570 "Going Concern"



ability to continue as a going concern.

31. We have examined the reply of the Auditors and find that the management representation attached with the reply to the SCN was not part of the Audit File. Also, the management representation submitted was not on the letterhead of the BCL, whereas all the representations originally part of the Audit File were on the letterhead of the company. Therefore, such representation is deemed an afterthought and cannot be accepted. The contention of the Auditors that they had considered the off-take agreement with Ultratech, the taking over of the loan of Central Bank of India by UV Asset Reconstruction Company and had carried out analysis of trading estimates & future cash flow, cannot be established, as these are not part of the Audit File.
32. The Auditors incorporated<sup>18</sup> an Emphasis of Matter on the going concern basis, however, we did not find any working paper in support of inclusion of such EoM. According to SA 706<sup>19</sup>, an EoM can be included by an auditor if he has obtained sufficient appropriate audit evidence that the matter is not materially misstated in the financial statements. Therefore, it was incumbent on the Auditors to evaluate the matter accordingly, especially in view of the qualified opinion given by the previous auditor and several other factors (as mentioned in Para 29 above), that raised a question mark on the going concern assumption. The Auditors, based on their own independent evaluation, were required to determine if they needed to modify their opinion. We find that the Auditors failed to do this and issued an unmodified opinion.
33. Such lapses have been viewed seriously by international regulators as well. For example, Public Company Accounting Oversight Board<sup>20</sup> ('PCAOB' hereafter), the US Regulator, charged Bravos & Associates CPA's ("Firm") and Thomas W. Bravos, CPA ("Bravos") for its failure in in connection with audit of UAHC for FYE June 30, 2013, where Bravos authorized issuance of the Firm's unqualified audit report, which included going concern explanatory language regarding those financial statements. However, Respondents did not have a reasonable basis for making these statements and issuing their audit report". For misconduct including this and others, PCAOB censured the firm by revoking its registration and imposed a civil monetary penalty of \$ 10000 on the firm. Bravos was barred from being an associated person of a registered public accounting firm.

#### **C.4 Non-evaluation / verification of Property, Plant and Equipment (PPE)**

34. The Auditors were charged with non-evaluation for impairment of PPE that constituted 84% of the total assets and failure in respect of physical verification of the same.

According to the SCN, BCL's internal audit report<sup>21</sup> dated 08.05.2019, which was a part of the Audit File, had reported that the management did not carry out any physical verification of Fixed Assets, but the Auditors had reported<sup>22</sup> on 17.05.2019 that the management had carried out physical verification of PPE. There was a clear contradiction between the internal audit report and the statutory audit report. In accordance with Para 15 of SA 200, which requires the auditor to apply professional skepticism, read with Para A1-A22 of SA 200, the Auditor was required to be alert to the audit evidence that contradicted the other audit evidence obtained.

35. The Auditors replied that the majority of the fixed assets held by company were part of the factory located at Patratu; they had verified the factory which was in working condition with full-fledged production and that physical verification was done by the management itself and, therefore,

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<sup>18</sup> As per Point no 1 of Emphasis of Matter para of the Independent Auditor's Report on page no 60 the Annual Report of BCL for the FY 2018-19.

<sup>19</sup> SA 706 "Emphasis of Matter Paragraphs and Other Matter Paragraphs in the Independent Auditor's Report"

<sup>20</sup> PCAOB release No. 105 2015 028 dated 23.07.2015.

<sup>21</sup> As per point no 13 of the page no 243-244 of the Internal Audit Report of the Audit File submitted.

<sup>22</sup> As per point no 1b of Annexure A to the Independent Auditor's Report on page no 63 of the Annual Report of BCL for FY 2018-19.

refuted the findings of the internal audit report. As per their assessment, valuation of the PPE was more than the value recorded in the books.

36. We observe that the internal audit report was a part of the audit file and therefore, as per Para 11 of SA 500<sup>23</sup>, any inconsistency in the findings of the internal audit report vis-à-vis the findings of the Auditors had to be resolved and the Auditors had to determine what modifications or additions to audit procedures were necessary to resolve the matter, and had to consider the effect of the matter, if any, on other aspects of the audit. However, we did not find any working paper that conclusively records that physical verification of PPE was carried out by the management and concluding that the internal audit report was not reliable.

The Auditor's submission that as per their assessment, valuation of the PPE was more than the above value recorded in the books of accounts, is not supported by documentation in the audit file containing assessment of the value of PPE and their impairment testing as per applicable provisions of Ind AS 36.

As per Para 12 (f) of Ind AS 36, an entity needs to consider the following indication for testing of the impairment of assets:

*“Significant changes with an adverse effect on the entity have taken place during the period, or are expected to take place in the near future, in the extent to which, or manner in which, an asset is used or is expected to be used. These changes include the asset becoming idle, plans to discontinue or restructure the operation to which an asset belongs, plans to dispose of an asset before the previously expected date, and reassessing the useful life of an asset as finite rather than infinite.”*

It is observed that the conditions that prevailed during FY 2018-19 at BCL were of consistent losses, erosion of the net worth and default in the payment of loans taken from financial institutions. Such conditions qualify for the stipulations of Para 12(f) of Ind AS 36 and, therefore, the Auditors were duty bound to evaluate if there was need for impairment of assets; however, no evaluation was carried out by the Auditors in this regard. Therefore, we hold the Auditors responsible for not ensuring the testing of impairment of PPE, and the resultant non-reporting of misstatement in the financial statements, as the PPE accounted for 84% of the total assets.

37. Such lapses have been viewed seriously by international regulators as well. For example, PCAOB<sup>24</sup>, the US Regulator, charged Chisholm, Bierwolf, Nilson & Morrill, LLC (the "Firm" or "CBNM") and Todd D. Chisholm, CPA ("Chisholm") (collectively, "Respondents") for their failure in the audit of Hendrx's 2006 Financial Statements and noted that "Hendrx's 2006 financial statements disclose goodwill in the amount of \$31,854,137, representing 74% of total assets. Goodwill had to be tested for impairment at least annually, and more frequently if events occur or circumstances change that would, more likely than not, reduce the fair value below its carrying amount. Chisholm and the Firm failed to perform sufficient audit procedures to determine whether management had appropriately tested goodwill for impairment.". For misconduct including this and others, PCAOB revoked the Firm's registration and Chisholm (Engagement Partner) was barred from being an associated person of a registered public accounting firm.

#### **C.5 Non-assessment of risk of material misstatement in balances of Trade Receivables**

38. The Auditors were charged with failure to assess the risk of material misstatement related to balances of trade receivables. The following factors indicated significant risk of material misstatement in the balances of trade receivables of BCL for the FY 2018-19 -

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<sup>23</sup> SA 500 "Audit Evidence"

<sup>24</sup> PCAOB release No. 105-2011-003 dated 08.04.2011.

- a. The ITAO, as referred to in Para 25 of this Order, had pointed out unreported additional income of ₹ 63.11 crores, which indicated that there was a high risk of material misstatement in revenue recognition. As there is a direct link between revenue recognition and balances of Trade Receivables, the professional skepticism warranted the Auditors to ascertain the correctness of the amounts of Trade Receivables reported by the company.
  - b. The previous auditor in his Independent Auditor's Report for 2017-18 had qualified<sup>25</sup> the audit report due to inability to comment upon the correctness of Trade Receivables. The opening balance of Trade Receivables for FY 2017-18 (₹ 34.39 crores<sup>26</sup>) had reduced significantly to ₹ 1.13 crore on the closing date i.e., 31.03.2018, mainly by making provision for doubtful debts and write-offs of the bad debts.
39. In light of the above, the SCN charged that the Auditors were required to assess the risk of material misstatement in the balances of trade receivables as per SA 315<sup>27</sup> and perform procedures as per Para 5 and 6 of SA 330<sup>28</sup> in response to the assessed risk by verifying the amounts of Trade Receivables including by independent external confirmation as per Para 3 of SA 505<sup>29</sup>, but no such documentation was found in the audit file.
40. The SCN also stated that the Auditors had earlier replied on 17.08.2022 that most of the produce was sold to Ultratech and its ledger was reconciled on regular basis, therefore no external confirmation was obtained. But on perusal of the audit file, no such reconciliation was found.

Regarding verification of opening balances, the SCN stated that the Auditors' statement that the opening balances were carried forward from previous year and as ...no adverse comment was made by the previous auditor, external confirmation for the same was not done, ignored the fact that the previous auditor had qualified the audit report due to inability to comment upon the correctness of Trade Receivables.

41. Responding to the above charge, the Auditors replied that –

The additional income identified by income tax department in the ITAO was not related to debtors of the company and such income was also not known to them on that date. Audit of debtors was done properly keeping in mind earlier write-offs. External confirmation was not taken as all the sales was made to Ultratech, the ledger of which was thoroughly checked to satisfaction, and they did not consider it necessary to attach its copy in the working file. The Auditors added that after discussion with the management, they came to know that majority of the remaining balances were opening balances. Since the earlier auditor had qualified the report for 2017-18 and as all the bad and doubtful debts had already been written-off, so he reached the conclusion that the remaining balances were all good and hence no adverse remarks were made in the report.

42. The contention of the Auditors that additional income identified by income tax department in the ITAO was not known to them cannot be accepted as explained earlier in para 27 of this Order. The submission of the Auditors that the sales were made to a single party i.e., Ultratech whose ledger was thoroughly checked cannot be evidenced from the audit file. There had to be some audit documentation of the procedure adopted for checking the correctness of revenue in respect of sales to Ultratech, the major or the sole buyer, but the Auditors failed to do so. The contention of the Auditors that all the sales were made to a single party and therefore external confirmation was not done, cannot be accepted as there is no such exception available under para 3 of SA 505.

<sup>25</sup> As per Point No 1 of Basis for Qualified Opinion of the Independent Auditor's Report on page no 68 of Annual Report of the BCL for the FY 2017 18.

<sup>26</sup> As per Balance Sheet figures of 2017 18 and 2018-19 of BCL for FY 2018-19.

<sup>27</sup> SA315 "Identifying and Assessing the Risk of Material Misstatement Through Understanding the Entity and Its Environment"

<sup>28</sup> SA 330 "The Auditor's Response to Assessed Risk"

<sup>29</sup> SA 505" External Confirmations"

We also observe that the Auditors have given contradictory replies. Their submission that they had considered the qualification on trade receivables from the previous financial year's audit report is in contradiction of their reply dated 17.08.2022 that since the previous auditor had not made any adverse comments on the balances of trade receivables, they did not verify the opening balances.

Para 5 of SA 510<sup>30</sup> states that "*The auditor shall read the most recent financial statements, if any, and the predecessor auditor's report thereon, if any, for information relevant to opening balances, including disclosures*".

Para 7 of SA 510 states that "*If the auditor obtains audit evidence that the opening balances contain misstatements that could materially affect the current period's financial statements, the auditor shall perform such additional audit procedures as are appropriate in the circumstances to determine the effect on the current period's financial statements.....*".

FY 2018-19 was the first audit year for the Auditors and accordingly, they were required to consider the most recent FS, i.e., of FY 2017-18 and the predecessor auditor's report thereon for information regarding opening balances.

In the instant case, since the previous auditor had qualified the debtor balances, the Auditors in FY 2018-19 were required to perform additional audit procedures as required by SA 510 for evaluating the effect of debtors in the current year's FS. The audit file contains no such working.

43. We conclude, based on the above, that the Auditors failed in assessment of risk of material misstatement in balances of trade receivables.

#### **C.6 Non-appointment of Engagement Quality Control Reviewer (EQCR)**

44. The SCN charged the Auditors for not determining if an EQCR had been appointed for the audit of BCL, it being a listed entity. The SCN noted that para 19(a) of SA 220<sup>31</sup> stipulates that *for audits of financial statements of listed entities....an engagement quality control review is required, the engagement partner shall determine that an engagement quality control reviewer has been appointed....*

Para 60 of SQC1 stipulates that *the firm should establish policies and procedures requiring, for appropriate engagements, an engagement quality control review that provides an objective evaluation of the significant judgments made by the engagement team and the conclusions reached in formulating the report. Such policies and procedures should require an engagement quality control review for all audits of financial statements of listed entities.....*

The SCN stated that as per the combined reading of Para 60 of SQC1 and Para 19(a) of SA 220, the Audit Firm, and the EP jointly, had to ensure the appointment of EQCR partner for the audit of BCL.

45. The Auditors replied that: *We appointed an EQCR for statutory audit of BCL for FY 2018-19. CA Shiv Raj (Membership No. 435562) was assigned by us for this purpose. He reviewed the Financial Statements and the Auditor's Report, and no adverse comments were made by the EQCR.*

46. SA 220 and SQC1 lay significant emphasis on the appointment of EQCR, the work to be done by EQCR and documentation to be carried out by the EQCR.

Vide para 7(b) of SA 220, engagement quality control review is defined as "*process designed to provide an objective evaluation, before the report is issued, of the significant judgments the engagement team made and the conclusions they reached in formulating the report*".

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<sup>30</sup> SA 510 "Initial Audit Engagements - Opening Balances"

<sup>31</sup> SA 220 "Quality Control for an Audit of Financial Statements"

Para 64 of SQC1 casts a duty upon the EQCR partner to review important working papers relating to the significant judgments that the engagement team made and the conclusions they reached.

Para 66 of SQC1 requires that the engagement quality control reviewer conducts the review in a timely manner at appropriate stages during the engagement so that significant matters may be promptly resolved to the reviewer's satisfaction before the report is issued.

Paras 68-72 of SQC1 prescribe the criteria for the eligibility of engagement quality control reviewers and lay down the guidelines for ensuring his independence and objectivity for the assigned work of quality control in the engagement.

For the listed entities, the SA 220 [Para 19(a)] makes it mandatory to ensure appoint an EQCR.

47. In the backdrop of the above requirements of the statutes, we observe that when an e-mail dated 13.01.2023 was sent by NFRA to CA Shiv Raj to confirm his appointment as EQCR, CA Shiv Raj, vide his email dated 19.01.2023, denied the same and stated that he was neither appointed nor worked as an EQCR partner for the statutory audit of BCL for the FY 2018-19. He stated that he had worked for M/s K. Pandeya & Co. as an employee and was associated with the statutory audit of BCL for FY 2018-19 in the capacity of an employee only. His reply in verbatim is as follows –

*"I have worked in K. Pandeya & Co. as an employee during the period starting from April 2018 to August 2022. I have seen the work of Statutory Audit of Burnpur Cement Limited for the FY 2018-19 as an employee of K. Pandeya & Co and not as an EQCR.*

*As I have seen the work of Statutory Audit of Burnpur Cement Limited as an employee, I do not have any appointment letter for being appointed as EQCR of BCL.....*

*I have not worked as an Audit Engagement Partner or Member for the audits of Financial Statements of listed entities during my career as a Qualified Chartered Accountant."*

From the statement of CA Shiv Raj, it is established that the submissions made by the Auditors in this regard are false. Subsection 111 of Part 1 of Code of Ethics 2009 (12<sup>th</sup> Edition) issued by ICAI states that *the principle of integrity imposes an obligation on all professional accountants to be straightforward and honest in professional and employment relationships. Integrity also implies fair dealing and maintaining an impartial attitude and truthfulness.* In the present case, the Auditors were not truthful in their submissions and have tried to mislead NFRA. This is unprofessional and unethical and is in contravention of the principles of Integrity as per of the Code of Ethics issued by ICAI.

48. Non-appointment of EQCR has been viewed seriously by international regulators as well. For example, the PCAOB<sup>32</sup>, the US Regulator, charged public accounting firm Stein & Company, LLP (Audit Firm) for its failure in connection with audit of Health Talk Live, Inc. ("Health Talk") and noted that the "The Firm improperly issued that audit report without obtaining an engagement quality review and concurring approval of issuance and thus violated Auditing Standard No. 7, Engagement Quality Review ("AS 7)". For this misconduct, PCAOB censured the Firm and imposed a civil money penalty of \$5000.
49. In another case, the PCAOB<sup>33</sup> charged Labrozzi & Co., P.A. (the "Firm") for its repeated failure to cooperate with a Board investigation and comply with PCAOB rules and standards and noted that the noncooperation with a Board investigation also includes knowingly making any false material declaration or making or using any other information, including any book, paper, document, record, recording, or other material, knowing the same to contain any false material declaration. In the referred case, the respondent failed to cooperate with a Board investigation by submitting audit documentation to the Division that they know to contain false declarations. For

<sup>32</sup> PCAOB release No. 105 2015 040 dated 03.12.2015.

<sup>33</sup> PCAOB release no 105 2014-001 dated 13.02.2014.

this misconduct, including others, PCAOB censured the Firm and revoked its registration permanently. Further, Douglas A. Labrozzi, CPA, the Engagement Partner, was barred from associating with any registered public accounting firm.

#### **C.7 Non-planning of Audit**

50. The Auditors were charged with:

- (a) failure to perform the procedures as required by Para 6 of SA 210<sup>34</sup>, which deals with ensuring the existence of pre-conditions for an audit;
- (b) non-compliance of the procedures relating to the acceptance of the audit of BCL as required by Para 12 of SA 220, which requires an auditor to obtain information before accepting an engagement with the new client, to ensure:
  - Integrity of the principal owners, key managers of the entity.
  - Competence of the engagement team to perform the audit engagement including time and resources.
  - Compliance of ethical requirement by the firm and the engagement team
- (c) non-compliance with Para 11 of SA 315, according to which the Auditors were required to understand the nature of the business of BCL by gaining understanding of relevant industry, applicable regulatory structure etc. at macro level and gaining an understanding of nature of the entity, its operations, its ownership, its governance & capital structure, and applicable financial reporting framework etc. at the entity level.

51. The Auditors replied that they had accepted the audit of BCL after discussion among the team members and after analysing the work involved. For this, an initial audit engagement letter, containing all the preconditions was prepared on 14.08.2018 and it was acknowledged by BCL. A copy of this letter has been attached along with the reply to the SCN. They further added that vide letter dated 21.08.2018, they had sought any objection regarding their proposed appointment from the previous auditor (CA Shekhar Sharad), but no such objection was received. After being completely satisfied, the audit was accepted. They also reportedly visited the factory of BCL and the place where all the books of accounts were kept (factory site) and had a walk through the data flow, production flow, system flow and only thereafter, the audit was accepted.

The Auditors stated that after being appointed as Auditors of BCL, a thorough examination of all books of accounts was done. They observed that all sales were made to a single party namely Ultratech cement Ltd. and major purchases of raw material were also from a single supplier. The Auditors stated that considering that there was only one debtor and one creditor, they constituted a team comprising CA Gaurav Vijay, Aayush Kejriwal and other required staff for conduct of audit, and in their opinion the team constituted was sufficient to carry out the assignment in a span of about 8 to 9 months.

52. The Auditors stated that a detailed audit plan was prepared by CA Manjeet Kumar Verma, Managing Partner of the Firm, and implemented by the team; the Audit Plan was reportedly checked by CA Gaurav Vijay and Aayush Kejriwal; that both the audit team members had left the audit firm in July 2020, and some documents were left unreturned by CA Gaurav Vijay at that time. Such documents were enclosed by the auditor along with the reply to the SCN.

The Auditors further submitted that all the requirements to check purchase, sales, bank accounts and stock etc. were fully met and there was no negligence in this regard; that they had reviewed the off-take agreement with Ultratech Cement Ltd. and that all the sales were made in accordance with off-take agreement; and that the audit papers were prepared regularly but a copy of the same had not been kept, since there was no requirement to keep and maintain every working paper.

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<sup>34</sup> SA 210 "Agreeing the Terms of Audit Engagements"

53. We have examined the replies submitted by the Auditors for non-compliance with the provisions of SA 210 & 220 and note that:

- a) Para 6 of SA 210 provides for pre-conditions of audit and Para 10 of SA 210 requires that the agreed terms of the audit engagement shall be recorded in an audit engagement letter. The Auditors submitted that this requirement was fulfilled as they had obtained the engagement letter dated 14.08.2018.

However, we observe that the letter dated 14.08.2018, submitted along with the reply to the SCN, was not part of the audit file submitted to NFRA. When NFRA had asked the Auditors earlier about the Audit Engagement Letter, vide questionnaire dated 19.07.2022, the Auditors did not mention about the letter dated 14.08.2018, but referred to the appointment letter<sup>35</sup> issued by BCL on 27.07.2018 as engagement letter. Para 10 of SA 210 lays significant emphasis on the audit engagement letter, as it is a written agreement about the agreed terms of the audit engagement between the company and the auditor. Para 8 of SA 230<sup>36</sup> read with Para A6 and A7 prescribes for the documentation of such engagement letter to evidence that there was a fulfillment of such agreement. Since the letter dated 14.08.2018 was not part of the audit file, it cannot be accepted at this stage.

It is important to understand why an auditor is required to obtain an audit engagement letter containing the pre-conditions of audit. Para A10 of SA 210 states that an audit is conducted on the premise that management has acknowledged and understands that it has the responsibilities as set out in paragraph 6 of SA 210, which requires that the auditor's role does not involve taking responsibility for the preparation of the financial statements or for the entity's related internal control, and that the auditor has a reasonable expectation of obtaining the information necessary for the audit in so far as management is able to provide or procure it. The premise is fundamental to the conduct of an independent audit. To avoid misunderstanding, agreement is required to be reached with the management that it acknowledges and understands that it has such responsibilities and the same is reflected in the audit engagement letter. As discussed above, the absence of audit engagement letter from the audit file clearly shows the Auditors' failure to ensure the required agreement with the management of BCL to undertake the audit.

- b) We did not find any document in the audit file which establishes the contention of the Auditors that the procedure for entering into audit engagement as required by Para 12 of SA 220 was performed, except for the communication made with the previous auditor.

The independence of the audit team and audit firm is fundamental for an audit engagement. As per Section 141(3)(d) of the Companies Act 2013, there is a legal requirement to ensure the independence of the statutory auditors of a company, which includes restrictions on holding any security or interest in the company or its subsidiary or of its holding or associate companies or a subsidiary of such holding company. Failure in compliance with such requirements shall lead to the auditor not being eligible for appointment as an auditor of a company. However, in the present case, the Auditors failed to ensure such fundamental requirement of independence.

- c) As per Para 14 of SA 220, the auditor was required to be satisfied that the engagement team collectively had appropriate capabilities and competence to perform the audit engagement in accordance with professional standards and regulatory and legal requirements. On perusal of the audit file, we did not find any audit document specifying the composition of the engagement team and analysis of their competencies and suitability to the extant audit. This clearly establishes that the firm accepted the audit engagement only for commercial consideration, overlooking the quality of work, as established in subsequent paragraphs of

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<sup>35</sup> Page no 1 of the File no 1 of the Audit File submitted.

<sup>36</sup> SA 230 "Audit Documentation"

this Order, in violation of Para 11 of SQC1.

- d) The audit file did not have any audit documentation regarding the composition of the audit team. It is only when NFRA asked about the engagement team, that the Auditors submitted that the audit team comprising CA Gaurav Vijay, Aayush Kejriwal and other staff had been formed. The name Gaurav is mentioned in the work paper "Audit Programme"<sup>37</sup> in the audit file but a different "Audit Programme" was submitted to us along with the reply to the SCN, wherein CA Gaurav Vijay has been reported as part of the team, but his signature is completely different from the signature of Mr. Gaurav found in the original audit file. Both the audit programmes are completely different, and even the dates mentioned in the programmes are different. Further, the audit programme in the audit file does not bear the seal of the Audit Firm, while the new audit programme bears the seal. This indicates tampering with the Audit File and therefore the reply cannot be accepted.
  - e) Tampering with the audit work papers is a serious matter and casts a shadow on the integrity of the audit work. Such acts have been viewed seriously by the international regulators. For example, PCAOB<sup>38</sup>, the US Regulator, penalized Peter C. O'Toole, CPA, ("O'Toole" or "Respondent") stating that the "Respondent repeatedly violated both Rule 4006, Duty to Cooperate with Inspectors, and Auditing Standard No. 3 ("AS3"), Audit Documentation. Respondent improperly created, added, and backdated a working paper in advance of the Board's inspection of the Audit. Respondent, and others supervised and authorized by him, provided misleading documents and information to the Board, in violation of Rule 4006". PCAOB barred "O'Toole" from being an associated person of a registered public accounting firm and imposed a civil money penalty of \$50,000 against him.
54. On the charge pertaining to non-compliance with the provisions of SA 315 in failing to understand the entity and its environment:
- a) We did not find any audit documentation in compliance to SA 315 regarding gaining understanding of the entity, which precedes the preparation of audit plan and audit programme.
  - b) The Auditors have referred to unreturned documents by CA Gaurav Vijay, which clearly establishes that the Auditors failed to compile the audit file within 60 days of conduct of audit<sup>39</sup>, as per the requirement of SQC 1 read with Para 14 of SA 230. We note that the Auditors had filed an affidavit dated 28.04.2022 that the submitted audit file was complete in all aspects and nothing was concealed. The Auditors had clearly made a wrong averment through the said affidavit.
  - c) The statement of the Auditors "*that audit papers were prepared regularly but there is no requirement to keep and maintain each and every working paper*", is in contravention of the provisions of para 8 of SA 230 that the auditor shall prepare audit documentation that is sufficient to enable an experienced auditor, having no previous connection with the audit, to understand the procedures performed.
  - d) Such lapses have been viewed seriously by international regulators as well. For example, PCAOB<sup>40</sup>, the US Audit Regulator, charged L.L. Bradford & Company, LLC (the "Firm") in connection with audit of WebXU Inc.'s ("WebXU") for the year ended December 31, 2011 for failure to properly assess the risks of material misstatement, failure to properly identify significant risks and failure to properly establish an overall strategy for the audit and develop an audit plan. For this misconduct, including others, PCAOB censured the Firm, revoked its registration permanently and imposed a civil money penalty of \$12,500 upon the Firm.

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<sup>37</sup> Page no 205 237 of File no 10 of the Audit File submitted.

<sup>38</sup> PCAOB release No. 105 2011 005 dated 01.08.2011.

<sup>39</sup> As per Para 14 read with Para A21 of SA 230 and Para 75 of SQC 1

<sup>40</sup> PCAOB release No. 105 2015 41 dated 03.12.2015.



#### **D. SPECIFIC LAPSES OF THE AUDIT FIRM**

55. In addition to the lapses mentioned in the foregoing paragraphs of this Order, the Audit Firm was charged in the SCN specifically for the failure to fulfill its duties prescribed under section 143 of Companies Act, along with failure to adhere to the requirements of SQC 1.
56. The powers and duties of the statutory auditors have been prescribed u/s 143 of the Act. The duties include making their report to the members of the company after taking into account the provisions of the Act, the accounting and auditing standards (subsection 2); stating in his report and expressing opinion on matters listed in subsection 3; stating the reasons, if any of the matters required to be included in the audit report under this section is answered in the negative or with a qualification (subsection 4); complying with the auditing standards (subsection 9); and reporting to the Central Government matters which he believes involve the offence of fraud (subsection 12). M/s K. Pandeya & Co. was the appointed Statutory Auditor of BCL and accordingly, it was responsible for all the lapses in the conduct of the audit, including the lapses of the EP.
57. Paragraph 2 of SA 220 stipulates that Quality control systems, policies and procedures are the responsibility of the audit firm. Under SQC1, the firm has an obligation to establish and maintain a system of quality control to provide it with reasonable assurance that:
- a) The firm and its personnel comply with professional standards and regulatory and legal requirements; and
  - b) The reports issued by the firm or engagement partners are appropriate in the circumstances.
58. Para 5 of SQC 1 makes it applicable to all the firms. SQC1 establishes standards and provides guidance regarding a firm's responsibilities for its system of quality control for audits and reviews of historical financial information, and for other assurance and related service engagements.
- However, from the perusal of the Audit File and replies received from the auditor, no Audit Documentation regarding SQC 1, Quality control systems, policies and procedures is found.
59. In its reply to SCN, the audit firm has not responded to the above charges and therefore we conclude that the audit firm has nothing to say in its defence of the systemic lapses in ensuring quality control in the audit. Accordingly, we conclude that the Audit Firm failed to establish and maintain a system of quality control and ensure compliance with the Standards on Auditing and Section 143 of the Act and was therefore grossly negligent in the conduct of its professional duties and in observance of due diligence in conducting the audit of BCL for FY 2018-19.

#### **E. ARTICLE OF CHARGE OF PROFESSIONAL MISCONDUCT BY THE AUDITORS**

60. As discussed in the foregoing paragraphs, the Auditors have made a series of serious departures from the Standards and the Law, in their conduct of the audit of BCL for the FY 2018-19. Based on the above discussion, it is proved that the auditor issued unmodified opinion on the Financial Statements without any basis. The poor quality of audit, tampering of audit files, the cover up in terms of submission of additional documents that did not exist in the Audit File, incomplete documentation, and attempt to mislead through false and evasive replies further compound the professional misconduct of the auditors. Based on the foregoing discussions and analysis, we conclude that the Auditors have committed Professional Misconduct as defined under section 132 (4) of the Companies Act 2013 in terms of Section 22 of the Chartered Accountant Act 1949 (CA Act) as amended from time to time, and as detailed below:
- i. The Auditors committed professional misconduct in terms of by Section 132 (4) of the Companies Act, read with Section 22 and clause 5 of Part I of the Second Schedule of the Chartered Accountants Act 1949 (as amended from time to time), which states that an auditor is guilty of professional misconduct when he "*fails to disclose a material fact known to him*

*which is not disclosed in a financial statement, but disclosure of which is necessary in making such financial statement where he is concerned with that financial statement in a professional capacity".*

This charge is proved as the Auditors failed to disclose in their report the material non-compliances by the Company in the area of recognition of interest cost on the borrowing classified as NPAs, accounting treatment addressing the effect of ITAO and assessment of Going Concern, as explained in paras 20 to 33 above.

- ii. The Auditors committed professional misconduct as defined by Section 132 (4) of the Companies Act, read with Section 22 and clause 6 of Part I of the Second Schedule of the Chartered Accountants Act 1949 (as amended from time to time), which states that an auditor is guilty of professional misconduct when he *"fails to report a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity"*.

This charge is proved as Auditors failed to disclose in the audit report the material misstatement in the area of recognition of interest cost on the borrowing classified as NPAs, accounting treatment addressing the effect of ITAO and assessment of Going Concern, as explained in paras 20 to 33 above.

- iii. The Auditor committed professional misconduct as defined by Section 132 (4) of the Companies Act, read with Section 22 and clause 7 of Part I of the Second Schedule of the Chartered Accountants Act 1949 (as amended from time to time), which states that an auditor is guilty of professional misconduct when he *"does not exercise due diligence or is grossly negligent in the conduct of his professional duties"*.

This charge is proved as the Auditors failed to conduct the audit in accordance with the SAs and applicable regulations as well as due to their failure to report the material misstatements and non-compliances of the Company in its financial statements, as explained in the paras 20 to 54 above.

- iv. The Auditors committed professional misconduct in terms of by Section 132 (4) of the Companies Act, read with Section 22 and clause 8 of Part I of the Second Schedule of the Chartered Accountants Act 1949 (as amended from time to time), which states that an auditor is guilty of professional misconduct when he *"fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion"*.

This charge is proved as the Auditors failed to conduct the audit in accordance with the SAs and applicable regulations as well as due to their failure to report the material misstatements and non-compliances of the Company in the financial statements, as explained in the paras 20 to 43 and paras 50-54 above.

- v. The Auditors committed professional misconduct as defined by Section 132 (4) of the Companies Act, read with Section 22 and clause 9 of Part I of the Second Schedule of the Chartered Accountants Act 1949 (as amended from time to time), which states that an auditor is guilty of professional misconduct when he *"fails to invite attention to any material departure from the generally accepted procedure of audit applicable to the circumstances"*.

This charge is proved since the Auditors failed to conduct the audit in accordance with the SAs (as explained in paras 20 to 54 above), but falsely reported in their audit report that the audit was conducted as per SAs.

Therefore, we conclude that the charges of professional misconduct enumerated in the SCN dated 30.09.2022 stand proved based on our analysis of the evidence in the Audit File, the Audit Report issued by auditor, the submissions made by auditor, the annual report of BCL for the FY 2018-19 and other materials available on record.

**F. ADDITIONAL ARTICLES OF CHARGES OF PROFESSIONAL MISCONDUCT SPECIFIC TO THE AUDIT FIRM**

61. In addition to above, the Audit Firm has committed Professional Misconduct as defined in Section 132 (4) of the Act read with section 22 of the CA Act, as amended from time to time, by failing to exercise due diligence and being grossly negligent in the conduct of professional duties in respect of matters explained at Section D above and thus, violated SAs and SQC 1.
62. Therefore, we conclude that all the charges of professional misconduct in the SCN stand proved based on the evidence in the Audit File, the Audit Reports issued by the EP on behalf of the Firm, the submissions made by the Auditors and the Financial Statements of BCL for the FY 2018-19.

**G. PENALTY AND SANCTIONS**

63. It is the duty of an auditor to conduct the audit with professional skepticism and due diligence and report his opinion in an unbiased manner. Statutory audits provide useful information to the stakeholders and public, based on which they make their decisions on their investments or do transactions with the public interest entity<sup>41</sup>.
64. Without a credible audit, Investors, Creditors and other users of Financial Statements would be handicapped. The entire corporate governance system would fail and result in a breakdown in trust and confidence of investors and the public at large if the auditors do not perform their job with professional skepticism and due diligence and adhere to the standards.
65. Section 132(4) of the Companies Act, 2013 provides for penalties in a case where professional misconduct is proved. The seriousness with which proved cases of professional misconduct are viewed, is evident from the fact that a minimum punishment is laid down by the law.
66. As we have explained in this Order, substantial deficiencies in Audit, abdication of responsibility and inappropriate conclusions on the part of M/s K. Pandeya & Co. (Audit Firm) and CA Manjeet Kumar Verma (EP) establish their professional misconduct. The Auditors chose to place blind reliance on the assertions of the management without applying professional skepticism to the assessment of impact of ITAO, accounting of interest cost on borrowings classified as NPAs and assumption of Going Concern basis for the preparation of Financial Statements and failed in discharging their statutory duty to protect public interest by exercising professional skepticism and questioning the management's decisions leading to material misstatement in the Financial Statements.
67. Section 132(4) (c) of the Companies Act 2013 provides that National Financial Reporting Authority shall, where professional or other misconduct is proved, have the power to make order for
- A) imposing penalty of (I) not less than one lakh rupees, but which may extend to five times of the fees received, in case of individuals; and (II) not less than ten lakh rupees, but which may extend to ten times of the fees received, in case of firms;
- (B) debarring the member or the firm from (I) being appointed as an auditor or internal auditor or undertaking any audit in respect of financial statements or internal audit of the functions and activities of any company or body corporate; or (II) performing any valuation as provided under section 247, for a minimum period of six months or such higher period not exceeding ten years as may be determined by the National Financial Reporting Authority.
68. As per the information furnished by M/s K. Pandeya & Co. vide email dated 01.05.2023, the statutory audit fees of BCL for the FY 2018-19 was ₹ [REDACTED]. The total professional fees

<sup>41</sup> Public interest entity as defined in Rule 3 of NFRA Rules 2018

received by M/s K. Pandeya & Co. for the FY 2018-19 was ₹ [REDACTED] out of which CA Manjeet Kumar Verma had [REDACTED] share.

As per the details of the audited capital account of CA Manjeet Kumar Verma for the year ended 31.03.2019, he received net profit and other remuneration amounting ₹ [REDACTED] from M/s K. Pandeya & Co.

69. Considering the proved professional misconduct and keeping in mind the nature of violations, principles of proportionality and deterrence against future professional misconduct, we, in exercise of powers under Section 132(4)(c) of the Companies Act, 2013, hereby order:

**M/s K. Pandeya & Co., the Audit Firm** - Monetary penalty of Rupees Twenty-Five Lakhs upon the Audit firm, M/s K. Pandeya & Co.

**CA Manjeet Kumar Verma, the Engagement Partner**

- i. Monetary penalty of Rupees Five Lakhs upon CA Manjeet Kumar;
  - ii. CA Manjeet Kumar Verma is debarred for Five Years from being appointed as an auditor or internal auditor or from undertaking any audit in respect of financial statements or internal audit of the functions and activities of any company or body corporate.
70. This Order will become effective after 30 days from the date of issue of this Order.

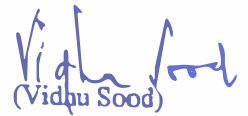
Sd/-  
(Dr Ajay Bhushan Prasad Pandey)  
Chairperson

Sd/-  
(Praveen Kumar Tiwari)  
Full-Time Member

Sd/-  
(Smita Jhingran)  
Full-Time Member

Authorised for issue by the National Financial Reporting Authority,

Date: 21.08.2023  
Place: New Delhi

  
(Vidhu Sood)

Secretary  
सचिव / Secretary  
राष्ट्रीय वित्तीय रिपोर्टिंग प्राधिकरण  
National Financial Reporting Authority  
नई दिल्ली / New Delhi

To,

- |   |   |
|---|---|
| 1. मेसर्स के पांडेय एंड कंपनी,<br>चार्टर्ड अकाउंटेंट,<br>आईसीएआई फर्म पंजीकरण संख्या: 000135C<br>102, सहदेव एन्क्लेव, रातूरोड के पास,<br>टेलिफोन एक्सचेंज और सरकारी कार्टर,<br>रांची-834001, झारखंड | 2. सीए मनजीत कुमार वर्मा, (M.N. 075926)<br>मेसर्स के पांडेय एंड कंपनी,<br>चार्टर्ड अकाउंटेंट,<br>आईसीएआई फर्म पंजीकरण संख्या: 000135C<br>102, सहदेव एन्क्लेव, रातूरोड के पास,<br>टेलिफोन एक्सचेंज और सरकारी कार्टर,<br>रांची-834001. झारखंड |
|---|---|

Copy To: -

- (i) Secretary, Ministry of Corporate Affairs, Government of India, New Delhi.
- (ii) Securities and Exchange Board of India, Mumbai.
- (iii) Secretary, Institute of Chartered Accountants of India, New Delhi.
- (iv) Burnpur Cement Limited
- (v) IT-Team, NFRA for uploading the order on the website of NFRA.