

भारत सरकार / Government of India

राष्ट्रीय वित्तीय रिपोर्टिंग प्राधिकरण / National Financial Reporting Authority

**7th – 8th Floor, Hindustan Times House,
Kasturba Gandhi Marg, New Delhi**

File No. NF- 28/2023

Dated: 18th Aug, 2023

Order

In the matter of M/s Sundaresha & Associates, CA C. Ramesh, and CA Chaitanya G. Deshpande u/s 132 (4) (c) of the Companies Act, 2013.

- 1 This order disposes of the Show Cause Notice ('SCN' hereafter) no. NF- 23/14/2022 dated 22.11.2022 issued to M/s Sundaresha & Associates, Chartered Accountants, Firm No: 008012S ('Firm' hereafter), an audit firm registered with the Institute of Chartered Accountants of India ('ICAI' hereafter), CA Megha Sundaresha Andani, ICAI Membership no. 228608 ('Megha' hereafter), CA C. Ramesh ICAI Membership No-022268 ('Ramesh' hereafter) and CA Chaitanya G. Deshpande ICAI Membership No- 230802 ('Chaitanya' hereafter), who are members of ICAI and were members of Engagement Team for the statutory audit of Tanglin Developments Ltd ('TDL' hereafter) for the Financial Year ('FY' hereafter) 2019-20. (All are collectively called as the Auditors).
- 2 This Order is divided into the following sections:
 - A. Executive Summary
 - B. Introduction & Background
 - C. Major lapses in the Audit
 - D. Other non-compliances with Laws and Standards
 - E. Omission and Commission by the Audit Firm
 - F. Points of Law raised by the Auditors.
 - G. Finding on the Articles of Charges of Professional Misconduct by the Auditors
 - H. Finding on the Additional Articles of Charges of Professional Misconduct by the Audit Firm
 - I. Penalty & Sanctions

A. EXECUTIVE SUMMARY

- 3 Pursuant to Securities and Exchange Board of India ('SEBI' hereafter) sharing in April 2022 its investigation regarding diversion of funds worth Rs 3,535 crores from seven subsidiary companies of Coffee Day Enterprises Limited ('CDEL' hereafter), a listed company, to Mysore Amalgamated Coffee Estate Limited ('MACEL' hereafter), an entity owned and controlled by the promoters of CDEL, NFRA initiated investigations into the professional conduct of the statutory auditors of Tanglin Developments Limited under Section 132(4) of the Companies Act 2013 ('Act' hereafter). Tanglin Developments Ltd is a subsidiary of

CDEL. A Show Cause Notice was issued to M/s Sundaresha & Associates, CA Megha Sundaresha Andani, CA C. Ramesh and CA Chaitanya G. Deshpande.

- 4 Post suicide by Mr. V.G. Sidhartha ('VGS' hereafter) group Chairman (July 2019), CDEL appointed Mr. Ashok Kumar Malhotra, retired Deputy Inspector General of Central Bureau of Investigation and Agastya Legal LLP to investigate inter alia the books of accounts of CDEL and its subsidiaries. In response to the show cause notice issued to them, the Auditors submitted that they had access to this investigation report, which detailed the movement of funds from subsidiaries of CDEL to MACEL and the use of pre signed blank cheques for such purpose. The Auditors had given a Disclaimer of Opinion in the Independent Auditor's Report on the basis of inability to obtain sufficient appropriate audit evidence regarding recoverability of Rs 607.80 crores from MACEL; inability to comment on the recoverability or the provision there of Rs 100 crores land advance receivables from Mr. Kiran Hegde; and valuation of investment property not being in accordance with relevant Ind AS.
- 5 NFRA's investigations inter alia revealed that the TDL's Auditors for the FY 2019-20 failed to meet the relevant requirements of the Standards on Auditing ('SA' hereafter) and provisions of the Companies Act 2013 and also demonstrated a serious lapse and absence of due diligence on the part of the Auditors. The Auditors failed to exercise professional judgement & skepticism during audit of TDL where borrowings of Rs 2027.46 crores, was used in fraudulent diversion of funds to MACEL worth Rs 2073.23 crores through its Group entities, given without any business rationale or agreement and the money ultimately moved to promoters entity MACEL. The Auditors failed to exercise professional judgement & skepticism during audit of fraudulent diversion of funds in the name of land advances – (a) Rs 275 crores to mother of VGS (Chairman of Holding company CDEL) and (b) Rs 100 crores to a Director of TRRDPL (a subsidiary), which was provided for write off in the same year. Thus, total material and pervasive misstatements amounted to Rs 4475.69 crores, which the Auditors did not identify and report in their Independent Auditor's Report. The Auditors failed to report that Internal Financial Control over Financial Reporting was completely absent in TDL despite large scale evergreening of loans through structured circulation of funds among group companies and use of pre-signed blank cheques for diversion and circulation of funds. They failed to evaluate their potential conflict of interest and failed to maintain their independence from TDL by having audit and non-audit relationships with a large number of Coffee Day Group companies and the promoters' family members.. They also made an attempt to mislead NFRA by adding more documents to as well as altering the documents in their audit file which amounted to tampering with the Audit File.
- 6 Based on investigation and proceedings under section 132 (4) of the Companies Act 2013 and after giving the Auditors opportunity to present their case, NFRA found the Audit Firm and its partners who performed the audit as Engagement Partners, guilty of professional misconduct and imposes through this Order the following monetary penalties and sanctions with effect from a period of 30 days from issuance of this Order:
 - a) Monetary penalty of Rs One crore only upon M/s Sundaresha & Associates. In addition, this Firm is debarred for a period of four 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. This debarment period will run concurrently along with debarment ordered by the Order no. NF-23/14/2022 dated 26.04.2023 in case of TDL for FY 2018-19 and Order no. NF-23/14/2022 dated 30.05.2023 in case of GVIL for FY 2019-20.

- b) Monetary penalty of Rs Five Lakhs only upon CA C. Ramesh. In addition, he is debarred for a period of 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. This debarment period will run concurrently along with debarment ordered by the Order no. NF-23/14/2022 dated 26.04.2023 in case of TDL for FY 2018-19 and Order no. NF-23/14/2022 dated 30.05.2023 in case of GVIL for FY 2019-20.
- c) Monetary penalty of Rs Five Lakhs only upon CA CA Chaitanya G. Deshpande. In addition, he is debarred for a period of 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. This debarment period will run concurrently along with debarment ordered by the Order no. NF-23/14/2022 dated 30.05.2023 in case of GVIL for FY 2019-20.
- d) Proceedings initiated against CA Megha Sundaresha Andani are dropped.

B. INTRODUCTION & BACKGROUND

- 7 National Financial Reporting Authority ('NFRA' hereafter) is a statutory authority set up under section 132 of the Companies Act 2013 ('Act' hereafter) to monitor implementation and enforce compliance of the auditing and accounting standards and to oversee the quality of service of the professions associated with ensuring compliance with such standards. NFRA is empowered under section 132 (4) of the Act to investigate for the prescribed classes of companies¹, the professional or other misconduct and impose penalty for proven professional or other misconduct of the individual Chartered Accountants or firms of Chartered Accountants.
- 8 The Statutory Auditors, whether individuals Chartered Accountants or firm of Chartered Accountants, are appointed by the members of companies as per the provision of section 139 of the Act. The Statutory Auditors, including the Engagement Partners ('EPs' hereafter) 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 ('SA' hereafter), including the Standards on Quality Control ('SQC' hereafter) and the Code of Ethics, the

¹ As defined in Rule 3 of the NFRA Rules 2018.

violation of which constitutes professional or other misconduct, and is punishable with penalty prescribed under section 132 (4) (c) of the Act.

- 9 NFRA started action under section 132(4) of the Act, on receipt of information from SEBI vide Letters dated 01.04.2022 & 29.04.2022 sharing its investigation regarding diversion of funds worth Rs 3535 crores (as on 31-07-2019) from seven subsidiary companies of Coffee Day Enterprises Limited ('CDEL' hereafter), a listed company, to Mysore Amalgamated Coffee Estate Limited ('MACEL' hereafter), an entity owned and controlled by the promoters of CDEL, Tanglin Developments Ltd is one of the group companies of CDEL which was used as a conduit for routing and diversion of funds by the CDEL and its promoters.
- 10 Late V. G. Siddhartha ('VGS' hereafter) was Chairman & Managing Director of CDEL till 29.07.2019. VGS and his family reportedly owned around 10,000 acres of coffee estates through various entities owned by VGS and operated and managed by MACEL, whose 91.75% shares were held by Late S.V. Gangaiah Hegde, father of VGS.
- 11 As per the investigations made by the SEBI, the outstanding balance payable by MACEL to subsidiary companies of CDEL was Rs. 842 crores as on 31 March 2019, which had increased sharply to Rs. 3,535 crores on 31 July 2019, detailed as under in Table-1:

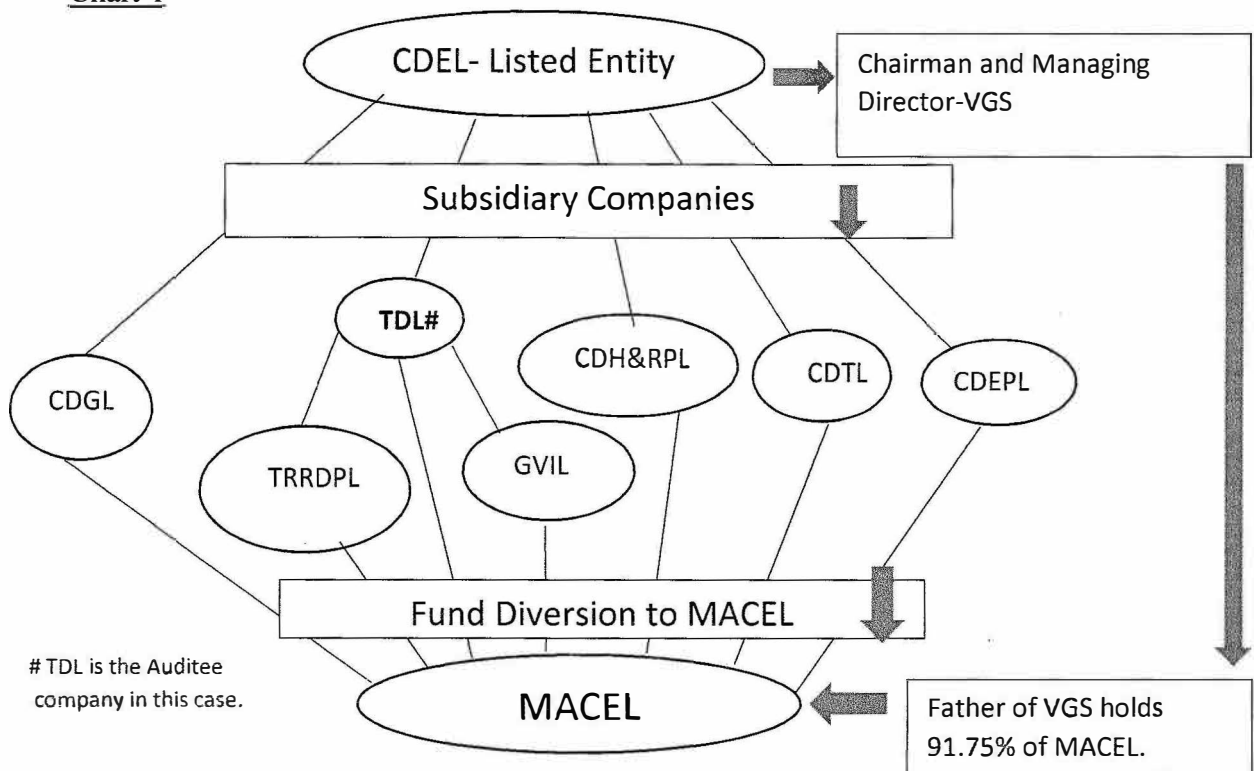
Table-1

(Rs in crores)

Sr. No	Names of the Subsidiary Companies of CDEL from which funds diverted to MACEL	Outstanding balance as on	
		March 31, 2019	July 31, 2019
1	Coffee Day Global Ltd (CDGL)	65	1,112
2	Tanglin Retail Reality Developments Pvt Ltd (TRRDPL)	789	1,050
3	Tanglin Developments Ltd (TDL)	-12	620
4	Giri Vidhyuth (India) Ltd. (GVIL)	-	370
5	Coffee Day Hotels and Resorts Pvt Ltd (CDH&RPL)	-	155
6	Coffee Day Trading Ltd (CDTL)	-	125
7	Coffee Day Econ Pvt Ltd (CDEPL)	-	103
Total		842	3,535

- 12 The linkage of the entities described in Table-1 is depicted in the Chart -1 given below:

Chart-1



- 13 As per the Financial Statements ('FS' hereafter) of MACEL, Rs 3,535 crore was further transferred from MACEL to the personal accounts of VGS, his relatives and entities controlled by him and/or his family members, whose outstanding balances payable to MACEL were Rs 3,401.66 crores as on 31-03-2020. On examination of FS of MACEL, it transpired that MACEL did not have any business transactions with the 6 of the 7 subsidiary companies (the 7th company being CDGL). MACEL was used as a conduit to transfer funds from CDEL's subsidiaries to the personal accounts of VGS, his relatives and entities controlled by him and/or his family members, as loans and advances that were never returned to MACEL/CDEL.
- 14 The modus operandi of the alleged diversion of funds discovered by the SEBI during its investigation was that "VGS used to ask the Authorized Signatories to sign a bunch of cheques which were kept in his possession and used them as and when required". Such pre signed blank cheques of bank accounts of various Coffee Day Group companies were used for the diversion of funds.
- 15 TDL is a subsidiary company of Coffee Day Enterprises Limited. It is engaged in setting up a fully integrated Information Technology Park and campuses for software development in Bangalore and Mangalore. TDL had three subsidiaries i.e., Giri Vidhyuth India Limited, Tanglin Retail Reality Developments Private Limited and Way2Wealth Securities Private Limited. TDL opted not to prepare consolidated financial statements in accordance with the exemption available as per para 4(a) of IND AS 110 'Consolidated Financial Statements' and prepared separate financial statements. TDL did not have any business relations with MACEL, a related party of TDL. Although an unlisted Public Company, TDL had borrowing/deposit of Rs 2254.46 crores as on 31.03.2019, and thus falls under the jurisdiction of NFRA in terms of Rule 3 of NFRA Rules 2018, which includes unlisted Public Companies having paid-up

capital of not less than rupees five hundred crores or having annual turnover of not less than rupees one thousand crores or having, in aggregate, outstanding loans, debentures and deposits of not less than rupees five hundred crores as on the 31st March of immediately preceding financial year.

- 16** M/s Sundaresha & Associates was the statutory auditor of TDL for Financial Year 2019-20. The Audit plan mentions that CA C. Ramesh was signing partner, who signed Financial Statements & Independent Auditor's Report and CA Chaitanya G. Deshpande was Engagement Partner (EP).
- 17** NFRA suo motu initiated proceedings under section 132(4) of the Act and the Audit File of TDL for Financial Year 2019-20 was called for. Based on an examination of the Audit File and other materials on record, NFRA issued a Show Cause Notice ('SCN' hereafter) dated 22.11.2022 under section 132(4), to the Auditors charging them for the following professional misconduct:
- 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 the Statutory Auditors 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 Statutory 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 sought extension of time by 45 days for submitting response to SCN, which was allowed. After availing extension of time, the firm vide letter dated 01.02.2023 submitted reply to SCN. Ramesh vide letter dated 04.02.2023 and Chaitanya vide letter dated 03.02.2023 intimated that reply of the Firm may be treated as their reply and they did not submit separate replies. In the interest of natural justice, opportunity of personal hearing was also given to the Auditors on 17.03.2023 at 11:00 AM / 2:30 PM. However, both the Firm and the CA C. Ramesh withdrew their requests for personal hearing vide letters dated 28.02.2023. CA Chaitanya G. Deshpande, vide letter dated 08-03-2023, expressed his inability to attend the personal hearing and requested NFRA to decide the case based on his written submissions. Accordingly, this Order is based on examination of the facts of the matter, charges in the SCN, written replies of the Auditors and other materials available on record.
- 19** Since CA Megha Sundaresha Andani was EP for the audit of FS of TDL for FY 2019-20, an SCN was issued to her but in reply she informed that she was not a part of the Engagement

team. It was clarified by TDL that they had inadvertently mentioned her name and that CA C Ramesh was the EP. Accordingly, proceedings initiated against CA Megha Sundaresha Andani are hereby dropped.

General submissions by the Auditors

- 20 The Auditors have stated that they had provided a 'Disclaimer of Opinion' on the Financial Statements and also in respect of Internal Financial Control over Financial Reporting. They further stated that facts available with them today after various investigations were not available with them at the time of conclusion of the audit, except for the investigation report of Mr. Ashok Kumar Malhotra and Agasthya Legal LLP.
- 21 We have considered this submission. Before going on to the Disclaimer of Opinion and the Standards, we note that the death of VGS in July 2019 and the subsequent investigation report were in the knowledge of the Auditors at the time of Audit, so the stand taken about ignorance of facts does not hold. The chapter "Basis of Disclaimer of Opinion" in the Independent Auditor's Report issued by the Auditors on 21.11.2020 on standalone financial statements states:

"1. We draw attention to Note No.45 of the Ind AS financial statements which describe the details in respect of amounts due from M/s. Mysore Amalgamated Coffee Estates Limited (MACEL) to the extent of Rs.60,780 Lakhs. As explained to us the company is in the process of recovery of the dues from related parties and taken necessary action as stated in the said notes. In the absence of any conclusive evidence demonstrated by the company for recoverability of the same, we are unable to comment on the recoverability, requirement or otherwise of provision on those receivables and consequential impact on these financial statements.

2. We draw attention to Note No.13 of the Ind AS financial statements which describe the details in respect of amounts due from Mr. Kiran Hegde to the extent of Rs.10,000 Lakhs. As explained to us the company is in the process of recovery of the dues from parties. In the absence of any conclusive evidence demonstrated by the company for recoverability of the same, we are unable to comment on the recoverability or the provision there off on those receivables and consequential impact on these financial statements.

3. As stated in note number 4 (iv) of the Ind AS Financial Statements, the Company has valued its investment property as per Guidance Value as notified by the Government of Karnataka and which is not in accordance with relevant Ind AS".

In respect of compliance with accounting standards, they reported that *"We are unable to comment whether the financial statements comply with the Accounting Standards specified under Section 133 of the Act, because of the matters described in the Basis for Disclaimer of Opinion section above"*.

In the "Basis of Disclaimer of Opinion" section in their audit report on Internal Financial Control over Financial Reporting, they reported that *"Due to the possible effects of the matters*

described in the Basis for Disclaimer of Opinion paragraph in our main audit report, we are unable to obtain sufficient appropriate audit evidence to provide a basis for our opinion on whether the Company had adequate internal financial controls over financial reporting with reference to these Ind AS financial statements as at March 31, 2020 and whether such internal financial controls were operating effectively. Accordingly, we do not express an opinion on Internal Financial Controls Over Financial Reporting with reference to these Standalone Ind AS financial statements”.

- 22 At this stage, the provisions of para 27 of SA 705 are important to note. These provide that the Auditor is required to report all matters having material effect on the financial statements. The relevant para states that *“Even if the auditor has expressed an adverse opinion or disclaimed an opinion on the financial statements, the auditor shall describe in the basis for opinion section the reasons for any other matters of which the auditor is aware that would have required a modification to the opinion, and the effects thereof”*. Its explanatory material at para A24 further explains: *“An adverse opinion or a disclaimer of opinion relating to a specific matter described within the Basis for Opinion section does not justify the omission of a description of other identified matters that would have otherwise required a modification of the auditor’s opinion. In such cases, the disclosure of such other matters of which the auditor is aware may be relevant to users of the financial statements”*. Thus it is clear that in case an Auditor gives a Disclaimer of Opinion for one matter, it does not mean that the Auditor is free of the responsibility of reporting other material deficiencies/ misstatements in the financial statements. It is important that the Auditors report all material misstatements so that the impact of all misstatements on the financial statements is known and the users of financial statements are not under the misleading impression that the financial statements carry only the reported misstatements. Therefore the submission of the Auditors is not accepted. The SCN has detailed the charges for matters which were not reported by the Auditors in the Independent Auditor’s Report.
- 23 The Auditors have submitted that Standards on Auditing (SAs) are a guidance to an Auditor to act professionally while arriving at an opinion and have referred to para 5, A47 and A52 of SA 200². We notice that the legal mandate to adhere to the Standards is clearly laid down in section 143(9) & 143(10) of the Act³. The fundamental principles of SAs are contained in the Requirements section of the SAs and are represented by the use of word **“shall”**. Further, section 143(9) of the Act also provides that *“every auditor shall comply with the auditing standard”*. (Emphasis supplied). Thus, there is no scope for deviation from the SAs.
- 24 The Auditors have also mentioned that a complete investigation report of SEBI has not been provided to them. In this regard, the relevant extracts of the SEBI report that were relied upon in the SCN, have been provided to the Auditors and thus there is no merit in this objection.

² SA 200- “Overall objectives of the Independent Auditor and the conduct of an audit in accordance with Standards on Auditing”.

³ Section 143(9) of the Act provides that every auditor shall comply with the auditing standard. Further proviso to section 143(10) of the Act provides that until any auditing standards are notified, any standard or standards of auditing specified by the Institute of Chartered Accountants of India shall be deemed to be the auditing standards.

- 25 The Auditors have further submitted that they have inadvertently missed certain evidences with respect to their Audit File as they were not aware about NFRA's expectations in relation to verification of Audit File and have submitted 8 additional documents (total 84 pages) for consideration. This issue is dealt in Chapter -III of Section C.

C. MAJOR LAPSES IN THE AUDIT

After considering the general issues raised by the Auditors in their reply, we now move on to the major lapses found in their Audit for which they were charged. The SCN charged the Auditors for following lapses:

- I. Failure to detect fraudulent diversion of funds of Rs 2,448.23 crores and evergreening of loans through structured circular transactions of funds.
- II. Continuation of the Audit engagement disregarding Independence requirements
- III. Tampering of the Audit File and related lapses - SA 230 'Audit Documentations'
- IV. Lapse in audit of the sale of 'Global Village Undertaking' at a net consideration of Rs 721 crores.

These charges are discussed in the following paragraphs.

I. Failure to detect fraudulent diversion of funds of Rs 2,448.23 crores and evergreening of loans through structured circular transactions of funds

- 26 The Auditors were charged with non-compliance⁴ with section 143 (1) (b), section 143 (3) (i), section 143 (12) of the Act, the Companies (Auditors Report) Order 2016 (CARO), SA 200,

⁴ **Section 143(1)(b)** – “Every auditor of a company shall have a right of access at all times to the books of account and vouchers of the company, whether kept at the registered office of the company or at any other place and shall be entitled to require from the officers of the company such information and explanation as he may consider necessary for the performance of his duties as auditor and amongst other matters inquire into the following matters, namely: — (b) whether transactions of the company which are represented merely by book entries are prejudicial to the interests of the company;”

Section 143(3)(i) – “the Auditor's report shall also state whether the company has adequate internal financial controls with reference to financial statements in place and the operating effectiveness of such controls;”

Section 143(12) – “Notwithstanding anything contained in this section, if an auditor of a company in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud involving such amount or amounts as may be prescribed, is being or has been committed in the company by its officers or employees, the auditor shall report the matter to the Central Government within such time and in such manner as may be prescribed:

Provided that in case of a fraud involving lesser than the specified amount, the auditor shall report the matter to the audit committee constituted under section 177 or to the Board in other cases within such time and in such manner as may be prescribed:

Provided further that the companies, whose auditors have reported frauds under this sub-section to the audit committee or the Board but not reported to the Central Government, shall disclose the details about such frauds in the Board's report in such manner as may be prescribed.”

Para 3 (x) of CARO – The auditor's report on the accounts of a company to which this Order applies shall include a statement on the following matters, namely “whether any fraud by the company or any fraud on the Company by its officers or employees has been noticed or reported during the year; If yes, the nature and the amount involved is to be indicated”.

Para 16 of SA 200 provides that ‘The auditor shall exercise professional judgment in planning and performing an audit of Financial Statements’. **Para 13 (k) of SA 200** defines Professional Judgement as ‘The application of relevant training, knowledge and experience, within the context provided by auditing, accounting and ethical standards, in making informed decisions about the courses of action that are appropriate in the circumstances of the audit engagement’.

SA 240, SA 250, SA 315, SA 330, and SA 500 as they did not report suspected fraudulent diversion of Rs 2,448.23 crores to MACEL, an entity owned by father of VGS, and others group entities detailed below. The Auditors were also charged with failure to detect evergreening of loans through structured circular transactions of funds. They were further charged for not questioning the land advances given to related parties and infracting the provisions of Prevention of Money Laundering Act 2002 (PMLA). Finally, they were also charged with not complying with section 143 (3) (i) of the Act in reporting this diversion in their report on Internal Financial Control over Financial Reporting (IFCR). While there was a disclaimer relating to the ICFR but not on the particular aspects of diversion of funds. Each of these charges is dealt with as follows.

- 27 As detailed in the SCN, TDL had outstanding loans totaling Rs 2073.23 crore to its Group entities, which were given without any business rationale or agreement., A sum of Rs. 783.51 crores was given by TDL directly to MACEL, of which Rs 164.02 crores were returned during the year and 607.81 crores was outstanding as on 31.03.2020 (after adjusting opening balance). A sum of Rs 1124.50 crore was given to another group entity viz TRRDPL and Rs 954.26 crores was outstanding as on 31.03.2020. TRRDPL had in turn advanced Rs 1050.31 crores to MACEL. TDL also had an outstanding of Rs 511.16 crore as on 31.03.2020, from its subsidiary GVIL, which in turn had advanced Rs 370 crore to MACEL and Rs 105 crores to SICAL Logistics Ltd (SICAL - a subsidiary of TRRDPL). All these loans and advances were made to facilitate diversion of funds through structured transactions.

27.1 Responding to the charge of diversion of funds of Rs 2073.23 crores, the Auditors have relied on the fact that the shareholders of TDL had accepted a proposal of the Board of TDL dated 21.01.2019 and given blanket approval during the company's AGM on 23.01.2019, by a special resolution permitting TDL to lend/invest upto Rs 10000 crores to group companies and others. The Auditors responded that the transactions were in conformity

Professional skepticism is defined at **para 13(i) of SA 200** as – ‘An attitude that includes a questioning mind, being alert to conditions which may indicate possible misstatement due to error or fraud, and a critical assessment of audit evidence’. Para 15 of SA 200 provides that ‘The auditor shall plan and perform an audit with professional skepticism recognising that circumstances may exist that cause the financial statements to be materially misstated’.

SA 240 prescribes auditor's responsibilities relating to fraud in audit of financial statements. Para 10 of SA 240 provides that the objectives of auditor are to identify and assess the risk of material misstatement in the FS due to fraud, obtain audit evidence and respond to identified or suspected risk. Para 12 of SA 240 requires the auditor to maintain professional skepticism recognizing the possibility of existence of material misstatement due to fraud. Para 32 (c) of SA 240 further requires auditor to evaluate the business rationale (or lack thereof) of the significant transactions that are outside the normal course of business or otherwise appear unusual and evaluate whether such transactions may have been entered into to engage in fraudulent financial reporting or to conceal misappropriation of funds.

Para 13 & 14 of SA 250 prescribes Auditor's responsibilities regarding compliance with the provisions of those laws and regulations generally recognised to have a direct effect on the determination of material amounts and disclosures in the financial statements and other laws and regulations that may have a material effect on the financial statements.

As per para 5 of SA 315, Auditor is required to perform risk assessment procedures to provide a basis for the identification and assessment of Risks of Material Misstatement (ROMM) at the financial statements and assertion levels. **As per para 25 of SA 315**, Auditor is required to identify & assess the ROMM at financial statements level and assertion level for classes of transactions, account balances and disclosures.

As per para 5 of SA 330, Auditor is required to respond to the identified ROMM. **As per para 19 of SA 330**, Auditor is required to consider whether external confirmation procedures were to be performed as substantive audit procedure.

As per para 6 of SA 500 ‘Audit Evidence’, Auditor is required to design and perform audit procedures that are appropriate in the circumstances for the purpose of obtaining Sufficient Appropriate Audit Evidence (SAAE).

with section 180 and section 186 of the Act. They further replied that there was no business relation between TDL and MACEL. They also relied on section 185 (3) (c) of the Act by virtue of which, no approval was required for advancing money to a wholly owned subsidiary like TRRDPL. The money advanced to the subsidiary viz GVIL and TRRDPL was for furthering their business. Lastly, they relied on the fact that related party disclosures had been made in the audited accounts of the company.

27.2 Analyzing the responses of the Auditors on the issue of diversion of funds, we find that the specific resolution referred to did give blanket approval of lending Rs 10000 crores. But every transaction thereafter under the aegis of this approval had to be backed by approval of the Board, which had not been done. Hence, shareholders' approval alone cannot cover up for all the subsequent transactions. As the Auditors, it was their duty to look into the transactions, question the management on the same and finally report the lapse in their Audit Report. None of this was done. Thus, the advance of Rs 783 crores to MACEL, a company owned by the promoter group, was given without necessary approvals, without business purpose and without any agreement.

27.3 As per the Auditors reply, the advance of Rs 954.26 crore given to TRRDPL was within the blanket approval received from the shareholders to lend to group companies and was a part of the exercise to secure the release of pledged Mindtree shares owned by the promoter group for eventual sale to L&T. We have in above para detailed why the argument of blanket approval by shareholders of TDL does not hold. Coming to the argument that 954.26 crores was advanced to secure the release of Mindtree shares, we have to take a closer look at the facts enumerated in the Auditor's reply. They state that the various entities of Coffee Day group held 20% shares of Mindtree. These shares were pledged to numerous third parties. The group decided to sell these shares to L&T. In order to unpledge these shares, a loan was raised from Standard Chartered Bank, which pooled the shares after paying off the third parties. Subsequently, the sale proceeds from L&T were received into the Standard Chartered Bank account and the shares released in favor of L&T. The quantum of this share transaction was Rs 3000 crores approximately. The sum of Rs 1124.50 crore advanced to TRRDPL which was further advanced to MACEL was a part of this exercise of getting the shares unpledged and finally selling them off to L&T. The Auditors gave this detailed response in course of the current proceedings but their audit file does not evidence any analysis of this matter, does not look at the business rationale of this transaction or see why funds of a PIE were utilized to further promoter interest. The Auditors did also not check whether the sum advanced to MACEL was received back after the sale of Mindtree shares. Being the Auditors of TDL, GVIL and TRRDPL, the Auditors and its related Firm were aware of this movement of funds from TDL, GVIL and TRRDPL to MACEL. Absence of business relationship, Board approval and agreement with borrowers were clear sign of ulterior motive of promoters to fraudulently divert funds. The fraudulent diversion of funds was apparent; however, the Auditors chose to remain silent and failed to report the same as required under the Act and auditing standards.

27.4 In the case of diversion of Rs 511.16 crore to GVIL, the Auditors replied that sums had been advanced in earlier years, to further the business of GVIL, which is a subsidiary. It

is seen that GVIL has no business and so the money advanced to GVIL was actually for facilitating structured circulation of funds within the group which is discussed subsequently.

27.5 At this point, we feel that it would not be out of place to mention that M/s Sundaresha & Associates, the audit firm for TDL, was also the Auditor of GVIL and their related firm M/s ASRMP & Co was the Auditor of TRRDPL. In the case of TDL, GVIL and TRRDPL, the Auditors issued a Disclaimer of Opinion regarding recoverability of monies due from MACEL. However, a similar disclaimer was not issued in case of money advanced from TDL to GVIL. As mentioned in the preceding paras, the money advanced by TDL to GVIL was again advanced by GVIL to MACEL and SICAL. It was surprising how the Auditor chose not to issue a Disclaimer relating to the recoverability of TDL's advance to GVIL which was finally given to MACEL. Responding to the same, the Auditors did not comment on the advance given to MACEL but stated that GVIL had made an investment and an advance to SICAL, a group company, which had a positive networth and hence they did not give a disclaimer as regard to money advanced by TDL to GVIL. This reply of the Auditors is not borne out of the audit file as there is no audit procedure in the Audit File to evaluate the money advanced to GVIL which had finally been transferred to MACEL, from whom recoverability was doubtful as the money had already been transferred to the promoters controlled entities. It is not understood as to how the advances to SICAL will finance the recoverability from MACEL. Similar arguments has been made in relation to advances to TRRDPL which finally reached MACEL. A prudent auditor has to evaluate each transaction on its own merit and cannot overlook one non-recoverable advance because its clients have investment elsewhere. The reply of the Auditors shows their total lack of understanding when it comes to evaluating the advances and provisioning for the same.

28 In addition to diversion of monies in the form of loans and advances detailed in the preceding para, the Auditors were also charged for not addressing suspected diversion of Rs 375 crores in the form of land advances given to two related parties. A sum of Rs 100 crores was advanced for land to Mr. Kiran Hegde, director of a subsidiary, TRRDPL. Another land advance given in earlier years for Rs 275 crores was to Smt. Vasanthi Hegde, mother of VGS. The Auditors had given the Disclaimer of Opinion in the matter of land advances given to Kiran Hegde but are silent about advance standing in the name of Smt. Vasanthi Hegde. From the work paper⁵ in the audit file, which is a trial balance, it is seen that the provision for doubtful advance (given to Vasanthi Hegde) was made but the same was not reflected in the Financial Statements. In response to this question, the Auditors have mentioned that necessary amends were made in the audit tracker file after accepting the company's assessment about the recoverability of money from Smt. Vasanthi Hegde, thus no provision was made for the same. . The Audit tracker file merely states, "*Land advance of Rs.275 Crores for Mumbai property is continued as part of TDL*". This does not in anyway justify the role of the Auditor, which requires questioning as to why there was a deviation from the Trial Balance. There is no evaluation as to why such huge advance was still appearing and why the land had not been transferred in the name of TDL. Non-registration of land even after two and half years of releasing the advance was a good reason to do in-depth analysis, exercising professional skepticism and asking questions to TCWG/Management.

⁵ Trial Balance available in Audit work paper 'Related Party Transactions working'.

28.1 We notice that non-registration of land in TDL’s name, absence of any plan in TDL to utilize that land for business purpose and TDL’s initial thinking to make provision for doubtful advance were good reasons to apply professional skepticism to the possibility that Rs 275 crores were fraudulently diverted to promoter’s family members. The Auditors failed to report on such fraudulent diversion of funds. Further, the Auditors could not give satisfactory reply with reference to their failure to perform basic audit procedure of agreeing the financial statements with trial balance in respect of provision of doubtful advance of Rs 275 crores given to Mrs. Vasanthi Hegde. They have simply mentioned that TDL reassessed and reversed the provision and that ledger copies are available with TDL. However, there is no evidence in the Audit File about reassessment and reversal of provision for doubtful advance of Rs 275 crores. We treat their reply to this charge as an afterthought attempt to coverup audit deficiencies.

28.2 The Auditors had given a Disclaimer of Opinion for failure to obtain audit evidence regarding the recoverability of land advance from Kiran Hegde. Even in this case, it is seen that the Auditors have not performed any audit procedures, not questioned the management, not evaluated this transaction of Rs 100 crores given during the year and also written off during the same year. This is clearly a case of fraudulent diversion which remained unquestioned by the Auditors who resorted to covering it up with a Disclaimer without any inquiry.

29 In view of analysis at para 27 and 28 above, the charges regarding violation with section 143 (1) (b), section 143(3)(i), of the Act, SA 200, SA 240, SA 250, SA 315, SA 330, and SA 500 are proved.

30 While on the diversion of monies to various entities within the group, be it in the nature of loans & advances, land advances or investments, the purpose of such diversion cannot be overlooked. A look at the bank statement shows that all these monies were fraudulently diverted to MACEL to facilitate the latter’s structured rotation of funds within the group and evergreening of loans which has not been disputed by the Auditors.

30.1 To appreciate the fraudulent and structured rotation of funds, it is necessary to have a closer look at the Bank Reconciliation Statement (BRS) available in Audit File of TDL for FY 2018-19, detailed in Table-2 below:

Table-2 Bank Reconciliation Statement of TDL Rs in crores

Date (date of instrument and accounting)	Party Name	Voucher type	Bank Date (Date of realisation of money)	Debit	Credit
31-03-2019	MACEL	Receipt	03-05-2019	40.00	
31-03-2019	MACEL	Receipt	03-05-2019	40.00	
31-03-2019	MACEL	Receipt	03-05-2019	40.00	
31-03-2019	MACEL	Receipt	03-05-2019	4.00	
31-03-2019	TRRDPL	Payment	03-05-2019		40.00
31-03-2019	TRRDPL	Payment	03-05-2019		40.00

31-03-2019	TRRDPL	Payment	03-05-2019		40.00
31-03-2019	TRRDPL	Payment	03-05-2019		4.00
				124.00	124.00

From the above it can be seen that, money is received from MACEL and given to TRRDPL, a subsidiary of TDL on the same day. The table no- 3 shows the same transactions in the bank account of MACEL. A combined reading of Table-2 & 3 shows that on 03.05.2019 MACEL paid Rs 40 crores to TDL, which paid this money to TRRDPL, which paid this money to MACEL, which paid this money to TDL and so on.

30.2 Circulation of funds is also visible from banks statement of MACEL, as detailed in Table-3 below:

Table-3 Bank Statement of MACEL

Rs in crores

Date	Particulars	Cheque no	Payment	Receipt	Balance
03-May-19	TDL	963770	40.00		00.11
03-May-19	TRRDPL	892227		40.00	40.11
03-May-19	TDL	963772	40.00		00.11
03-May-19	TRRDPL	892226		40.00	40.11
03-May-19	TDL	963773	4.00		36.11
03-May-19	TRRDPL	892235		4.00	40.11
03-May-19	TDL	963771	40.00		00.11
03-May-19	TRRDPL	892228		40.00	40.11

30.3 Similar fraudulent rotation of funds among related parties were observed in the bank statement of MACEL, a glimpse of which is depicted in Table-4 :

Table - 4 Bank Statement OF MACEL

Rs in crores

Date	Cheque no	Party name	Debit	Credit	Balance
10-04-2019		CDGL		85.00	85.02
10-04-2019		CDGL		5.00	90.02
10-04-2019	467643	TDL	90.00		0.02
10-04-2019		GVIL		90.00	90.02
10-04-2019	467653	GVIL	50.00		40.02
10-04-2019		GVIL		50.00	90.02
10-04-2019	467641	TDL	90.00		0.02
10-04-2019		GVIL		90.00	90.02
10-04-2019	467642	TDL	90.00		0.02
10-04-2019		GVIL		90.00	90.02
10-04-2019	467645	TRRDPL	90.00		0.02
10-04-2019		TDL		90.00	90.02
10-04-2019	467644	TDL	80.00		10.02
10-04-2019		GVIL		80.00	90.02

30.4 It can be observed from Table-4 that on 10.04.2019 MACEL got Rs 90 crores from CDGL, which started a series of sham payments on the same day in a circular manner. The fund was circulated among MACEL, TDL, GVIL & TRRDPL, such as Rs 90 crores was paid by MACEL to TDL, which then paid Rs 90 crores to GVIL, which then paid Rs 90 crores to MACEL, which then paid Rs 50 crores to GVIL, which then paid Rs 50 crores to MACEL, which then paid Rs 90 crores to TDL, which then paid Rs 90 crores to GVIL, which then paid Rs 90 crores to MACEL, which then paid Rs 90 crores to TDL, which then paid Rs 90 crores to GVIL, which then paid Rs 90 to MACEL, which then paid Rs 90 crores to TRRDPL, thereafter Rs 90 crores was paid by TDL to MACEL, which then paid Rs 80 crores to TDL, and so on....This could also be observed by the Auditors from the bank statements of TDL also.

30.5 The Audit Firm had audited GVIL (a subsidiary company of TDL) whereas CDGL & TRRDPL (also subsidiary companies of TDL) were audited by M/s ASRMP & Co. a related audit firm of the Auditors. As explained in this Order later while dealing with the charge relating to independence, both audit firms i.e., M/s Sundaresha & Associates and M/s ASRMP & Co., were in fact operating as a single unit. Therefore, circulation of funds could easily be detected by the Auditors, had the audit been performed with professional skepticism. We do not agree with the submission of the Auditors that a statutory auditor is not required to delve into the source of funds, especially when circulation of funds was clearly visible from the bank statements and required due diligence and professional skepticism. Accordingly, we conclude that the Auditors failed to report fraudulent diversion of funds to MACEL and evergreening of loans through structuring circulation of funds.

31 As pointed out in para 27 above, TDL had, in total, advanced a sum of Rs 2073.23 crores to MACEL directly and through its subsidiaries. It is also seen that TDL had borrowed Rs 2027.46 crores from related parties and advanced a total of Rs 2207.12 crores to related parties. The Auditors were charged for not verifying the terms and conditions of borrowings as per the borrowing agreement. Responding to this charge, the Auditors again relied on the blanket approval of the shareholders for transacting upto Rs 10000 crores with related parties. As discussed in para 27 above, this reply of the Auditors does not hold as subsequent approvals by the Board were not taken.

31.1 We note that related party borrowings had increased significantly from Rs 721.85 crores to Rs 2027.46 crores during the year. Simultaneously the related party lending had also increased significantly from Rs 614.05 crores to Rs 2207.12 crores during FY 2019-20, which ultimately had gone to MACEL, an entity owned by the promoters.

31.2 Responding to the SCN, the Auditors stated that TDL had borrowings from Financial Institutions, which were liquidated, and there was an increase in the borrowing from related parties to finance the liquidation of loans from financial institutions. On perusal of accounts, we find that this reply of the Auditors is incorrect. After the death of VGS, TDL's investment in Special Economic Zone (SEZ) viz Global Village Undertaking was sold and the liabilities of the financial institutions were taken over by the purchaser. Thus, the borrowings from financial institutions were liquidated through the sale of SEZ and not from the funds raised through related parties..

31.3 We note that funds were borrowed for the ulterior motive of diversion to promoter controlled entity without approvals and any agreement. These were indications of fraudulent intention of the promoters, which required the Auditors to perform the audit with professional skepticism and as per the auditing standards and the Act. We find in the instant case that the Auditors did not perform any such procedures and thus failed to comply with auditing standards and the Act.

32 The Auditors had the statutory duty to report this fraud to the Central Government under section 143(12) of the Act, which they did not comply. On the contrary, the Auditors reported in para (x) of CARO that *“According to the information and explanations given to us, and on the basis of test checks carried out in accordance with the generally accepted auditing procedure, no material fraud on or by the company has been noticed or reported during the course of our audit.”* This is a violation of section 143(12) of the Act and CARO.

33 As mentioned in para 26 above, the Auditors were charged with failure to report infraction of Prevention of Money Laundering Act 2002 (PMLA⁶) resulting in non-compliance with SA 250. The Auditor’s stand is that RPTs has been correctly classified, and sources of funds were identified. As such the provisions of PMLA and those of section 420 of IPC were not attracted and there was no non-compliance with SA 250.

33.1 At this stage, it is important to look again at the quantum of funds (Rs 2403.12 crores) diverted to promoters through banking channels:

- a) Rs 607.81 crores had been directly diverted by TDL to promoter’s company MACEL;
- b) Rs 370 crores was diverted to MACEL through its subsidiary company GVIL;
- c) Rs 1050.31 crores was diverted to MACEL through another subsidiary company TRRDPL;
- d) Rs 275 crores was diverted by TDL to Mrs. Vasanthi Hegde (mother of Group chairman VGS); and
- e) Rs 100 crores was diverted by TDL to Mr. Kiran Hegde (director of TRRDPL).

The fact that transfers were made through banking channels by itself does not provide immunity from the PMLA, as claimed by the Auditors.

33.2 From the above, we see that a total of Rs 2403.12 crores was diverted from TDL and its subsidiaries to MACEL, Promoters and other private persons. Diversion of funds and structured circulation of money (as already discussed) by a subsidiary of a listed company for the benefit of promoter owned entities are ample proof of cheating and dishonesty, which are predicate offences for money laundering. The Auditors were bound to report this violation of

⁶ As per section 3 of PMLA act 2002, ‘Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering’. ‘Proceeds of Crime’, as defined at section 2 (u) of PMLA Act, means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence. List of schedule offences in Part A of the schedule under PMLA Act 2002, covers section 420 of Indian Penal Code i.e. ‘Cheating and dishonestly inducing delivery of property’.

PMLA, absent which, we conclude that the Auditors have failed to comply with the provisions of SA 250.

- 34** The Auditors were charged with non-compliance of section 143(3)(i) of the Act in not reporting this diversion in their report on Internal Financial Control over the Financial Reporting (IFCR). While issuing the disclaimer on IFCR, the Auditors pointed out the shortcoming in the Internal Financial Control (IFC) in light of disclaimer about the non-recoverability of funds from MACEL, non-recoverability of advances given to Kiran Hegde and valuation of investment property. This disclaimer was silent on the aspect of diversion of funds. It may be recalled that VGS committed suicide in July 2019 and the investigation thereafter clearly brought out the modus of the diversion of funds through usage of pre signed blank cheques of various entities of the group. This in itself indicated the absence of IFC in the group entities. Despite this, the audit report issued by the Auditors in November 2020 was silent on this aspect of absence of IFC.

34.1 The Auditors response to this charge primarily rests on the argument that the audit of FY 2019-20 was not the first year of audit, they had verified bank reconciliation statements, they were not the forensic auditors, and that the investigations by Mr. Ashok Kumar Malhotra and Agastya legal LLP were sufficient to indicate lapses in internal controls. They also stated that signing of cheques, circulation and fraudulent diversion of funds cannot be detected from regular audit procedures and requires extensive forensic procedures at the group level to detect the same.

34.2 It may be noted that an Auditor is required to review the Internal Financial Control every year as there is possibility of changes in the control processes. From the replies, we find that the Auditors have tried to justify this failure by relying on other audit procedures done by them. Use of pre signed cheques for diversion of funds and circulation of funds are enough evidence of complete absence of internal control and internal financial control in TDL. Further, we could not find any evidence in the Audit File about performance of any test of control in this regard.

34.3 The Auditors accepted that they had access to investigation report issued by Mr. Ashok Kumar Malhotra and Agastya legal LLP (Investigation report). We also note that being auditors of TDL, GVIL and TRRDPL, they also had access to banks statements of these group companies. The movement of funds, pre-signing of blank cheques and understatement of loan balances on reporting date have been reported in the investigation report. Despite having access to all this information, the Auditors did not report this weakness in IFC in their report on IFCR. This shows that Auditors have deliberately hidden such weakness in IFC from users of the Financial Statements, resulting in violation of section 143(3)(i) of the Act.

- 35** The Auditors were charged with non-Compliances with SA 550 (Related Parties) & SA 505 (External Confirmations), as they failed to perform appropriate audit procedures to identify the risk of material misstatements associated with related party relationships and transactions. Further, the Auditors were charged with failure to obtain balance confirmations from related parties. The Auditors have denied the charge stating that they have disclaimed the Financial Statements of TDL as a whole. They stated that they had verified completeness of related party list; obtained management representation; mapped nature of relationships in first year

of audit; tracked related party transactions (RPT); checked authorisation of RPT and reported the RPT outside the normal course of business in the audit report and obtained balance confirmations. They also attached copies of balance confirmations obtained from related parties. Having considered the reply, it is noted that the reply is not supported by the evidence in the Audit File except that the Auditors had verified the arithmetical accuracy of the related party transactions. Balance confirmations submitted along with reply to SCN cannot be accepted as discussed in section C-III of this Order. Further, fraudulent diversion of funds to related parties & circulation of funds among related parties (as already discussed in this section) shows gross failure of the Auditors in identification of Risk of Material Misstatements associated with related party transactions. We find that the Auditors did not comply with SA 550 and SA 505.

36 In similar cases of diversion of funds and failures to perform audit procedures and exercise professional skepticism in related party transactions and internal control over financial reporting, PCAOB (Public Company Accounting Oversight Board- US Audit regulator) have penalised the auditors in following cases.

36.1 The PCAOB⁷ in matters of diversion of funds to related parties on the pretext of purchase of material, observed that *“The transactions—between one of the Issuer’s wholly-owned Chinese subsidiaries (“Subsidiary”) and a Chinese purchasing agent (“Agent”)—involved the Subsidiary’s transfers of loan proceeds to the Agent as prepayments to buy equipment and materials that the Agent never delivered. The loans were obtained from Chinese lenders for the purpose of making these purchases. While the Agent returned a portion of the prepayments—some in unusual same-day, round-trip transfers—it did not return most of them”* *“By failing to adequately respond to the known fraud risks, Marcum’s engagement team breached its duty to perform the Audits with the due professional care and professional skepticism required by PCAOB standards. The team also failed to adequately understand the business rationale (or the lack thereof) for the significant unusual transactions and failed to obtain sufficient appropriate audit evidence to support Marcum’s opinion on the Issuer’s financial statements”*. For this misconduct, PCAOB censured Audit firm Marcum LLP (“Marcum”); imposed a civil money penalty of \$250,000 on Marcum; prohibiting Marcum from audit works for a period of three years. PCAOB also imposed a penalty of \$25,000 on the Engagement partner John E. Klenner besides barring him from being an associated person of a registered public accounting firm.

36.2 Similarly, failures to perform audit procedures and exercise professional skepticism in related party transactions and internal control over financial reporting have invited serious action by audit regulators in other jurisdictions too. For example, in case of Cheryl L. Gore, CPA and Stanley R. Langston, CPA, PCAOB⁸ had observed that *“Gore failed to obtain sufficient appropriate audit evidence and to perform sufficient procedures concerning whether Issuer A’s financial statements accurately disclosed its related party transactions”* *“Gore failed to exercise due professional care, including professional*

⁷ PCAOB Release No. 105-2020-012 and PCAOB Release No. 105-2020-013 both dated 24.09.2020.

⁸ PCAOB Release No. 105-2021-020 dated 14.12.2021.

skepticism, and failed to obtain sufficient appropriate audit evidence in connection with Issuer A's identification, accounting, and disclosure of related party relationships and transactions... .. Gore failed to perform any of these procedures during the 2016 Audit””.
This case resulted in debarment and imposition of monetary penalty on the auditors.

II. Continuation of Audit engagement disregarding Independence requirements

37 The Auditors were charged with non-compliance with requirements relating to independence of auditors as per SQC 1, SA 200 and SA 220. Before proceeding with the charge, a look at these provisions would be relevant. SQC 1 establishes standards and provides guidance regarding a firm's system of quality control for audit. SQC 1 requires an Audit Firm to establish policies and procedures designed to provide it with reasonable assurance that the firm and its personnel are subject to independence requirements (including experts contracted by the firm and network firm personnel), and maintain such independence where required by the Code of Ethics. SA 200 requires an auditor to comply with relevant ethical requirements, including those pertaining to independence, relating to audit engagements of financial statements. SA 220 requires the Auditor to form a conclusion on compliance with independence requirements that apply to the audit engagement.

37.1 The Auditors have three related audit firms. These three audit firms have provided a large number of audit and non-audit services to the Coffee Day Group (CCD Group) and promoters and the founding partner of the Audit firm was associated with the group for a long time. This has created self-interest and familiarity threat. It was also seen that the total billing for services rendered to the CCD group had increased from 31% of total fee earned in FY 2018-19 to 41.68% of total fee earned in FY 2019-20, which was in excess of the threshold of 40% given in the Code of Ethics. The SCN charged the Auditors of not having evaluated their independence from TDL before continuing with this audit engagement and thus were not in conformity with the requirements on Independence as per SQC 1, SA 200 and SA 220. The interrelationship of these three audit firms is depicted in Table-5 below.

Table-5

Particulars	M/s Sundaresha & Co (Proprietorship)	M/s Sundaresha & Associates	M/s ASRMP & Co
Year incorporation	1978	1997	2018
Name of Partners and share of profit in the firm	A S Sundaresha (100%)	Megha Sundaresha Andani [#] (72%), C Ramesh (9%), C Pradeepa Chandra (9%), Chaitanya G Deshpande (5%), Harsha V. R (5%).	A. S. Sundaresha (87%), Ram Laxminarayan Prakash (7%), U. A. Madhusudan (6%)
Address	Professional Court, 1 st floor, no.27/7, 15 th Cross, 3 rd Block, Jayanagar, Bengaluru		
# Megha Sundaresha Andani is a daughter of CA A. S. Sundaresha			

37.2 The Auditors have denied the charge stating that M/s Sundaresha & Co., a Proprietary concern of CA A. S. Sundaresha was established in 1978: M/s Sundaresha & Associates, a partnership firm, was formed in 1997: and M/s ASRMP & Co., also a partnership firm, was formed in 2018. CA A. S. Sundaresha, founder of M/s Sundaresha & Associates retired from this firm in 2017, and his daughter CA Megha Sundaresh, was one of the partners of M/s Sundaresha & Associates. The Auditors claim that these are functionally separate independent entities. They also stated that none of the partners of the Firm is partner of other two firms, therefore the 40% fees limit was not breached as each firm be treated independently. Regarding sharing the same address, they contended that they have a separate section for their Firm, for which rent was being paid.

37.3 The Auditor's response states that they have complied with independence requirements and that their firm & partners do not have any financial interest in any of the CCD group companies, that they did not quote lower fees to obtain new engagements, that they did not have close business relationship with CCD group, no confidential information stored in their server was used for any personal gain, no partner or their family members are directors or officers in the CCD group companies, CCD group directors and officers did not have significant influence over their engagement, the audit team was regularly rotated, and that they ensured that total fees from auditee did not exceed prescribed limits.

37.4 It is important to understand the inter-relationship of these three audit firms. As per information obtained from the audit firms, CA A. S. Sundaresha has sole proprietorship firm, namely M/s Sundaresh & Co. He was also the promoter and founder of M/s Sundaresha & Associates, a partnership firm in practice since 10.11.1997, but he had retired from this firm w.e.f. 31.03.2017. After his retirement, his daughter CA Megha Sundaresh Andani is one of the five partners of this Audit Firm with 72% share in the profit of this firm. Thereafter, CA A. S. Sundaresha established another partnership firm namely, M/s ASRMP & Co. w.e.f. 01.04.2018, which was appointed as the statutory auditor of CDGL from FY 2018-19. CA A. S. Sundaresha had 81% share in the profit of M/s ASRMP & Co., which had four partners. His share in profit increased to 87% after the retirement of one partner. All these firms operate from the same office address.

37.5 From the information obtained from CDGL, we note that CA Pradeepa Chandra C. (Partner of M/s Sundaresha & Associates) worked at M/s ASRMP & Co, Statutory Auditor of CDGL, and gave presentation on behalf of M/s ASRMP & Co. in the Audit Committee Meeting ('ACM' hereafter) of CDGL held on 07.02.2019 and 24.05.2019. These presentations related to review of quarterly results of CDGL by the Auditor, scope of engagement, audit approach, observations of the Auditor on the Statutory Audit of the annual financial statements for FY 2018-19 and applicability of Ind AS 116 for FY 2019-20. A perusal of the Audit File shows that the presentations given by CA Pradeepa Chandra C. to the Audit Committee of CDGL on 24.05.2019 were authored by CA Megha Sundaresha Andani, partner of M/s Sundaresha & Associates. This clearly shows the sharing of resources between these two audit firms and their interrelationship.

37.6 The inter- relationship among the three firms is corroborated by another fact that CA Pradeepa Chandra C. (Partner of M/s Sundaresha & Associates) was involved in the statutory audit of CDGL for FY 2019-20 and was named as external reviewer in the Audit

File. Further, CA Pradeepa Chandra C. and CA Chaitanya G. Deshpande (both Partners of M/s Sundaresha & Associates) were also involved in the statutory audit of CDGL for FY 2018-19 and were named as external reviewers in the Audit File of CDGL for 2018-19. The totality of facts, the sharing of human resources and sharing of office address all indicate their close inter-relationship and lack of independence. In view of the interrelationship among these three audit firms, the 40% fees limit is to be assessed for three audit firms as a whole.

37.7 It is equally important to understand the relationship of these audit firms with Coffee Day Group and its promoters. M/s Sundaresha & Associates and M/s ASRMP & Co. were statutory auditors of inter alia six Coffee Day Group companies (except CDH&RPL- as per serial no-5 in Table-1). These companies were involved in the diversion of Rs 3,380 crores i.e., 95.62% of total diverted amount of Rs 3,535 crores. Further, during the Financial Year 2019-20, M/s Sundaresha & Associates provided audit and non-audit services to 28 Coffee Day group entities, M/s Sundaresh & Co. provided audit and non-audit services to 27 Coffee Day entities including promoter's family members and M/s ASRMP & Co. provided audit and non-audit services to three Coffee Day Group companies. The relationship of three related audit firms with Coffee Day Group indicates the creation of self-interest and familiarity threat. This indicates that M/s Sundaresha & Associates continued with the audit engagement of TDL for FY 2019-20 despite the serious conflict of interest in light of the facts noted above. Further, these three related audit firms received fees from CCD group which constituted 41.68% of their total fees and was in excess of the threshold allowed under the Code of Ethics.

37.8 The replies of the Auditors regarding steps taken to reduce the self-interest threat are general in nature without detailing the specific steps taken to reduce such threats. The Audit file too does not evidence any audit procedure having been done in this regard despite the three audit firms having audit and non-audit relationships with a large number of Coffee Day Group entities including promoters. The facts detailed above and the response of the Auditors show that they failed to exercise due professional care and did not perform sufficient appropriate procedures to evaluate their independence from Coffee Day Group and its promoters before continuance of audit engagement of TDL for FY 2019-20. A similar finding was recorded by us in para no. 33 of our Order dated 26.04.2023 regarding statutory audit of TDL for FY 2018-19, when we found that M/s Sundaresha & Associates had accepted the audit assignment by disregarding and grossly violating the principles of Independence mentioned in the Standards on Auditing. In light of the facts stated above, it is clear that the Auditors have violated the provisions of SQC 1, SA 200 and SA220.

38 In cases relating to violation of independence requirements, PCAOB has penalized audit firms and their partners⁹.

38.1 In Marcum Bernstein & Pinchuk LLP case, PCAOB observed "*an accountant is not independent of an audit client if, at any point during the audit and professional engagement period, the accountant is not, or a reasonable investor with knowledge of all relevant facts and circumstances would conclude that the accountant is not, capable of exercising objective and impartial judgment on all issues encompassed within the*

⁹ PCAOB Release No. 105-2016-016 dated 18.05.2016 and PCAOB Release No. 105-2019-022, PCAOB Release No. 105-2019-023 both dated 10.09.2019.

accountant's engagement."..... ".....Marcum BP failed to implement, effectively apply, and appropriately monitor quality control policies and procedures sufficient to provide reasonable assurance concerning the Firm's independence". In this case, PCAOB censured audit firm, imposed monetary penalty and required audit firm to undertake a review of its policies, procedures, staffing, and training with respect to auditor independence.

38.2 Similarly, in AWC (CPA) Limited, WONG Chi Wai, CPA, and WONG Fei Cheung, CPA, PCAOB observed *"As the engagement partner, Albert Wong was responsible for AWC's compliance with independence requirements. Although Albert Wong knew at the time of the Kandi 2012 Audit that Mui had accepted a Power-of-Attorney from Kandi in order to handle the New York State agency matter, he failed to evaluate whether Mui's activities on Kandi's behalf constituted prohibited non-audit services that would impair Mui's independence, as well as AWC's and its associated persons. Albert Wong took, or omitted to take, actions during the Kandi 2012 Audit, that he knew, or was reckless in not knowing, would directly and substantially contribute to the Firm's violation of independence requirements, in contravention of PCAOB Rule 350".* For misconducts including independence violations, PCAOB censured the audit firm & partner, revoked the audit firm's registration & barred partner from being an associated person of a registered public accounting firm, and imposed a civil money penalty on the audit firm and the partner.

III. Tampering of Audit File and related lapses - SA 230 'Audit Documentations'

- 39** The Auditors were charged with tampering with the Audit File to mislead NFRA and present an unreliable Audit File before NFRA. Audit workings have been done in editable Excel files without any security feature to prevent alteration of audit documentation. The Audit File has 15 Excel files and all of these were modified between 26.07.2022, the date NFRA asked for Audit File, and 10.08.2022, the date when the Audit File was submitted to NFRA. Further, three Excel files namely 'closing memorandum', 'audit tracker' and 'related party transactions' were created on 06-08-2022, 10.08.2022 and 10.08.2022 respectively, indicating that the information in these files was created after date when NFRA asked the Auditors to submit Audit File. Such modifications and additions in the Audit File are not permissible as per SA 230. Further, as per SQC-1, SA 200 and SA 220, the Audit Firm and the engagement team are required to adhere to ethical principles like integrity & professional behavior. The Audit File is required to be assembled within 60 days of the signing of the audit report, which in this case was 21.11.2020. Accordingly, the Audit File was required to be assembled by 20.01.2021. Thereafter, any modification in the Audit File is not permissible as per para 16 of SA 230. Analysis of the Audit File indicates that modifications were made in the Audit File after 26.07.2022, the date (NFRA asked for the Audit File), making the Audit File unreliable.
- 40** Further, as per SA 230, the Auditors were required to prepare audit documentation that is sufficient to enable an experienced auditor, having no previous connection with the audit, to understand: (a) The nature, timing, and extent of the audit procedures performed to comply with the SAs and applicable legal and regulatory requirements; (b) The results of the audit procedures performed, and the audit evidence obtained; and (c) Significant matters arising

during the audit, the conclusions reached thereon, and significant professional judgments made in reaching those conclusions. As per SA 230 the Auditors were required to document in the Audit File, inter alia, the record of name of person & date of performing audit procedures, name of person performing review, date & extent of review and discussion of significant matters with management & Those Charged With Governance (TCWG) etc. From examination of the Audit File, an experienced auditor cannot understand features stated in para 8 of SA 230 as name of the engagement team member & date of performing audit procedures are not mentioned in any of the audit work paper, and name of the team member who reviewed the audit work and extent of review are not mentioned any of the audit work paper. Accordingly, the Auditors were charged with non-compliance with SA 200, SA 220, SA 230 and Standard on Quality Control-1.

40.1 While denying this charge, the Auditors have replied that maintenance of editable Excel file is not prohibited in SA 230 and modification of audit file is allowed as per para 16 of SA 230. They further stated that they have only formatted those files to make it pleasant to view & easy referencing and workings maintained in loose sheets were compiled in digital format after receipt of NFRA notice. They further stated that cosmetic changes have been made for better presentation and that the contents of the Audit File have not been changed.

40.2 SA 230, allows modification in the audit file, after the assembly period, only to clarify any existing audit documentation arising from comments received during monitoring inspections performed by internal or external parties (para A24 of SA 230). The Auditor is required to document the specific reasons for making the changes, along with details of when and by whom the changes were made and by whom they were reviewed. (para 16 of SA 230). On examination of the Audit File, we could not find any recorded reason or document justifying the modification as required under para 16 of SA 230. The reply of the Auditors that the content was not modified and that new work papers were created for better presentation does not hold as once modifications are made in Excel files, it is impossible to find out what was modified. Further, creation of new Excel file from the workings in loose sheets itself is a proof of tampering of audit documentation. We note that a large number of audit documents were modified and at least three new audit work papers were created after NFRA called the Audit File for examination.

41 Along with reply to SCN, the Auditors have also submitted eight additional work papers (84 pages) for consideration and stated that they have inadvertently missed certain evidence as they were not aware about NFRA's expectations in relation to verification of Audit File. SA 230 emphasizes the importance of timely preparation of audit documentation and its archival within a reasonable time after the issuance of the audit report. We highlight below some of the paras of the Standard:-

a) Paragraph 7 of SA 230: The auditor shall prepare audit documentation on a timely basis. The explanatory material to the Standard at Para A1, inter alia, states that Documentation prepared after the audit work has been performed is likely to be less accurate than documentation prepared at the time such work is performed.

- b) Paragraph 8 of SA 230: The auditor shall prepare audit documentation that is sufficient to enable an experienced auditor, having no previous connection with the audit, to understand:
 - (a) The nature, timing, and extent of the audit procedures performed to comply with the SAs and applicable legal and regulatory requirements;
 - (b) The results of the audit procedures performed, and the audit evidence obtained;
 - and (c) Significant matters arising during the audit, the conclusions reached thereon, and significant professional judgments made in reaching those conclusions.
- c) Paragraph 9 of SA 230: In documenting the nature, timing and extent of audit procedures performed, the auditor shall record:
 - (a) The identifying characteristics of the specific items or matters tested;
 - (b) Who performed the audit work and the date such work was completed;
 - and (c) Who reviewed the audit work performed and the date and extent of such review.
- d) Paragraph 14 of SA 230: The auditor shall assemble the audit documentation in an Audit File and complete the administrative process of assembling the final Audit File on a timely basis after the date of the auditor's report.
- e) Paragraph 16 of SA 230: In circumstances where the auditor finds it necessary to modify existing audit documentation or add new audit documentation after the assembly of the final audit file has been completed, the auditor shall, regardless of the nature of the modifications or additions, document :
 - (a) The specific reasons for making them;
 - and (b) When and by whom they were made and reviewed.
- f) The explanatory material to the Standard at Para A21 states that SQC 1 requires firms to establish policies and procedures for the timely completion of the assembly of audit files. An appropriate time limit within which to complete the assembly of the final Audit File is ordinarily not more than 60 days after the date of the auditor's report.
- g) The explanatory material to the Standard at Para A22 states that the completion of the assembly of the final Audit File after the date of the auditor's report is an administrative process that does not involve the performance of new audit procedures or the drawing of new conclusions.

42 Internationally too, Regulatory Authorities do not accept any form of alteration, backdating of work papers/reviews, substitution or addition of the new work papers, placing blank audit papers so as to perform audit procedures (commonly referred to as Audit File Tampering) subsequent to issuance of audit report or the assembly of final Audit File by the Auditors , as this would leave scope for large scale production of additional documents as an afterthought upon commencement of disciplinary proceedings.

42.1 In the Matter of KPMG Assurance and Consulting Services LLP and Sagar Pravin Lakhani (Engagement Partner) relating to tampering of audit file, PCAOB (Public Company Accounting Oversight Board – Audit Regulator of United States of America), observed that *“PCAOB standards require that [a]udit documentation must contain sufficient information to enable an experienced auditor, having no previous connection with the engagement . . . [t]o determine who performed the work and the date such work was completed as well as the person who reviewed the work and the date of such review”*.... *“PCAOB standards further require an auditor to archive a complete and final set of audit documentation as of a date not*

more than 45 days after the report release date (i.e., the documentation completion date). Any documentation added after the documentation completion date must indicate the date the information was added, the name of the person who prepared the additional documentation, and the reason for adding it.” ... “Accordingly, KPMG India violated QC § 20 and QC § 30 by failing to implement, communicate, and monitor adequate policies and procedures to provide the Firm with reasonable assurance that its personnel complied with PCAOB audit documentation standards—including standards concerning documentation of the date audit work was completed, of the date audit work was reviewed, and of any changes to the work papers after the documentation completion date”. For this misconduct, a civil money penalty in the amount of \$1,000,000 was imposed on KPMG Assurance and Consulting Services LLP, and a civil money penalty in the amount of \$75,000 was imposed on Sagar Pravin Lakhani besides suspending Lakhani from being an associated person of a registered public accounting firm for a period of one year, censuring both and requiring KPMG India to undertake and certify the completion of certain improvements to its system of quality control.

42.2 In another similar case of Deloitte Canada relating to tampering of audit file, PCAOB observed that *“PCAOB standards require auditors to prepare audit documentation that accurately reflects when audit work was completed and reviewed. ----- In November 2016, the Firm updated its work paper system and removed Firm personnel’s ability to manually select sign-off dates. Under the new system, when an auditor entered a sign-off, the current date was automatically generated. At the time the Firm adopted its new system, personnel from the Firm’s National Office were aware of a risk that individuals could override the new system by changing their computer date settings to backdate work paper sign-offs. Despite that awareness, the Firm did not take sufficient steps—through written policies, guidance, training, or otherwise—to address that risk. During the 16 month-period following the adoption of the new work paper system, Firm personnel overrode the system and backdated their work paper sign-offs in at least six issuer audits and two quarterly reviews subject to PCAOB standards. This conduct occurred while teams were assembling a complete and final set of work papers for retention, or earlier, in these engagements. Additionally, some auditors on these engagements deleted and replaced sign-offs in order to ensure that reviewer sign-offs were dated after preparer sign-offs. Collectively, this conduct obscured the dates on which work had actually been completed and reviewed”*. For this misconduct, PCAOB had imposed a civil money penalty of \$350,000 on the firm besides censuring the firm, requiring it to take corrective actions to establish, revise, or supplement, as necessary, its quality control policies and procedures.

42.3 There have been many other instances of such wrongdoings being penalized by the PCAOB, e.g., KPMG Singapore- Tan Joon Wei (2021), BDO-Mexico (2019), and Deloitte Brazil (2016) etc.

43 We further note that while submitting the Audit File to NFRA, through a duly notarized affidavit dated 10.08.2022 signed by CA Pradeepa Chandra C., partner of the Firm, it was averred that *“The Audit File for the financial year 2019-20 as defined in Para 6(b) of SA 230 has been submitted”*.... *“It is certified that the above information is true and complete in all respects, and nothing has been concealed”*. The Auditors are expected to know what constitutes *“Audit File”* as per SA 230 and accordingly, all audit work papers were expected

to be available in the Audit File submitted to NFRA. The submission by the Auditors of additional documents now, subsequent to the submission of Audit File, to defend the charges in the SCN, points to the incorrect averments made in the affidavit submitted by the Firm.

- 44 Therefore, considering the provisions of the auditing standards and the affidavit filed by the Firm, the submission of the Auditors regarding the additional documents cannot be accepted and in light of the facts, circumstances and analysis above, we find these additional documents to be an afterthought to cover up the deficiencies in the Audit. Further, this also constitutes tampering of the Audit File. This is unbecoming behavior on the part of Professionals. Besides our Standards, the case laws quoted above show that internationally Regulators treat the integrity of the Audit file as sacrosanct and any kind of tampering is viewed seriously attracting significant sanctions.
- 45 In view of above analysis, we find that the Auditors have violated SQC 1, SA 200, SA 220 and SA 230 .

IV. Lapse in audit of sale of ‘Global Village Undertaking’ at a net consideration of Rs 721 crores

- 46 During the year, the company’s Special Economic Zone (SEZ) for Information Technology titled ‘Global Village Undertaking’ (GVU) was sold for net consideration of Rs 721 crores to its subsidiary GV Tech Park Private Limited (GVTPPL). This subsidiary was created specifically for the transaction of sale of GVU. The Auditors were charged with failure to obtain and examine the valuation report of GVU. The transaction was arranged in such a fashion that the liabilities of Rs 1520.64 crores and assets of Rs 1051.25 crores were transferred to GVTPPL, which issued debentures of Rs 721 crores to TDL. Thereafter, the GVTPPL was taken over by the Sattva Group. Debentures worth Rs 286.72 crores were redeemed and debentures worth Rs 434.28 crores are held as investment in the balance sheet of TDL.
- 47 As per the ‘Business Transfer Agreement’ available in Audit file, TDL was required to obtain consent, inter alia, from its lenders before GVU and its borrowings were transferred to GVTPPL. This is because the assets of technology park were pledged with financial institutions / Banks. As per para 3.3.1 of Ind AS 109- ‘Financial Instruments’, *“an entity shall remove a financial liability (or a part of a financial liability) from its balance sheet when, and only when, it is extinguished—i.e., when the obligation specified in the contract is discharged or cancelled or expire”*. There is no evidence in the Audit File that consent from the lenders was obtained before transfer of borrowings by TDL to GVTPPL. The Auditors did not verify whether TDL had complied with the requirement of Ind AS 109 before extinguishing financial liabilities.

47.1 While denying the charge, the Auditors stated that they had obtained copies of three valuation reports of GVU during audit for FY 2018-19 and attached their copies with reply to SCN. They also attached some no dues or no objections certificate purported to be from lenders of Global Village Tech Park. They stated that debentures of Rs 286.72 crores were

redeemed by TDL to repay various lenders and stated that there is no difference in recording the accounting and disclosure of the consideration of Rs 721 crores. They finally stated that they had complied with SA 500 and Ind AS 109.

47.2 As mentioned earlier, GVTPL was created in August 2019, after the death of VGS for the sale of GVU. The Auditors, in their reply, are relying on an earlier year valuation report which is neither available nor mentioned in the Audit files for FY 2018-19 and FY 2019-20. The Audit file does not mention the encashment of debentures valuing Rs 286 crores. In respect of the no objection from Lenders, it was seen that these are letters issued on or after 27.03.2020, i.e., post the date of sale transaction (24.02.2020). There is no Audit evidence on file to show that the Auditors looked into these transactions in light of the provisions of Ind AS 109 .

47.3 These details and documentation about valuation, no dues from borrowers are additional documents given with the reply which cannot be entertained at this stage for reasons enumerated in Section-C-III of this Order. Thus, we conclude that no Audit procedures were performed in this matter and the Auditors have not complied with SA 500 and Ind AS 109.

D. OTHER NON-COMPLIANCES WITH LAWS AND REGULATIONS

In addition to the major charges mentioned in Section - C of this Order, the Auditors were also charged with the following non-compliances with Laws and Regulations: -

- I. Failure to report non compliances with section 134(1) of the Act.
- II. Failure to comply with SA 315 - “Identifying and assessing the risk of material misstatement through understanding the entity and its environment”, SA 330 - “Auditors response to assessed risk” and SA 500 - “Audit Evidence”.
- III. Failure to comply with SA 700 - “Forming an Opinion and Reporting on Financial Statements”.
- IV. Failure to comply with SA 260 - “Communication with Those Charged With Governance” (TCWG) & SA 265 - “Communicating deficiencies in Internal Control to Those Charged With Governance and Management”.

48 The Auditors have denied their wrongdoings and professional misconduct in all the charges mentioned in the previous paragraph.

48.1 With respect to compliance with section 134(1) of the Act regarding failure to ensure that financial statements were approved by the Board of Directors before these were signed by the Board and the Auditors, the Auditors replied that they had obtained constructive evidence, in the form of receipt of signed copies of the financial statements, before they signed on the same and issued audit report thereon. Further, considering the ‘Doctrine of Indoor Management’, they had ensured the compliance with section 134(1) of the Act. They further stated that the company had complied with section 134(1) of the Act and the Auditor was not required to make any report on this issue. We note that as per section 134(1) of the Act, approval of the Financial Statements by the Board and its signing by the persons authorized by the Board are prerequisites before an auditor makes a report on such approved & signed

financial statements. Further, the reliance on the “Doctrine of Indoor Management” is misplaced as this Doctrine is applicable to third parties, not having access to the internal records of a company. The Auditors should have obtained a certified copy of the Board resolution approving the Financial Statements and authorizing the Directors to sign the Financial Statements and should have kept the same in the Audit File before its assembly. The Auditors did not do the same. Thus, the charge that the Auditors did not ensure compliance with section 134(1) of the Act by TDL, is proved.

48.2 With respect to the charge relating to failure to perform audit procedures as per SA 315, SA 330 and SA 500 to obtain an understanding of the nature of TDL including its operations, its ownership and governance structures, the types of investments that TDL was making and how it was financed, to understand the classes of transactions and account balances¹⁰, the Auditors have denied this charge stating that they had obtained the understanding of TDL during the previous years’ audit and obtained relevant documents in previous years’ audit^{11, 12,13}. There were no changes in the nature of operations, ownership, governance structures, types of investment and how it is financed except for the death of VGS and sale of Tech Park. The Auditors replied that they had obtained balance confirmations from related parties and verified that transactions with related parties were within approved limits. They could not get Sufficient Appropriate Audit Evidence regarding provision for doubtful advance and hence had mentioned the same in the basis of disclaimer of opinion. After considering these submissions, we observe that risk assessment procedures are required to be performed every year by understanding the company and its environment. There is no evidence in the Audit File about performing any risk assessment procedure at planning stage of audit. No analysis of borrowings and loans/advances granted to related parties was done by the Auditors at planning stage to identify RoMM. Accordingly, we conclude that Auditors have failed to understand TDL and perform basic audit procedures for identification of RoMM, and thus violated SA 315, SA 330 and SA 500.

48.3 With respect to non-compliance with SA 700 relating to failure to report misstatements of Rs.4475.69 crores (loans given to MACEL, GVIL & TRRDPL, borrowings, land advances and provision for doubtful advance - as already discussed in this Order), the Auditors have reiterated their replies given in support of each charge and stated that they had given disclaimer of opinion on the basis that in the absence of any conclusive evidence demonstrated by the company for recoverability of Rs 607.80 crores from MACEL, and

¹⁰ para 11(b) of SA 315- “Identifying and assessing the risk of material misstatement through understanding the entity and its environment”.

¹¹ Para 5 of SA 315 – “The auditor shall perform risk assessment procedures to provide a basis for the identification and assessment of risks of material misstatement at the financial statement and assertion levels. Risk assessment procedures by themselves, however, do not provide sufficient appropriate audit evidence on which to base the audit opinion..” Para 25 of Sa 315 – “The auditor shall identify and assess the risks of material misstatement at:

(a) the financial statement level; and

(b) the assertion level for classes of transactions, account balances, and disclosures; to provide a basis for designing and performing further audit procedures.

¹² Para 5 of SA 330 – “The auditor shall design and implement overall responses to address the assessed risks of material misstatement at the financial statement level.” Para 19 of SA 330 states that The auditor shall consider whether external confirmation procedures are to be performed as substantive audit procedures.

¹³ Para 6 of SA 500 : “The auditor shall design and perform audit procedures that are appropriate in the circumstances for the purpose of obtaining sufficient appropriate audit evidence.”

recoverability of Rs 100 crores from Mr. Kiran Hegde & provision thereof, they were unable to comment on the recoverability, requirement or otherwise of provision on those receivables and consequential impact on these financial statements. With respect to non-consideration of Disclaimer of Opinions given by the Auditors in case of GVIL and by their related Audit Firm M/s ASRMP & Co. in case of TRRDPL, the Auditors stated that it was premature to disclaim the Financial Statements as far as advances given to GVIL and TRRDPL were concerned. The detailed analysis of the replies in support of each charge mentioned above has already been done at section C-I and found not satisfactory. We are of the view that such fraudulent transactions were required to be considered while drawing conclusions, which the Auditors failed to do. Accordingly, we find that the Auditors were grossly negligent in drawing conclusions and forming audit opinion. We find that the Auditors did not comply with SA 700.

48.4 With respect to the charge relating to failure to determine TCWG, failure to communicate with TCWG about the responsibilities of auditor; overview of planned scope; timing of the audit; and deficiencies in Internal Control etc., the Auditors replied that due to small mid-sized nature of their firm, possibly each and every discussion with TCWG might not have been recorded but they have relied on the facts and applied professional judgement & skepticism during the course of audit and arrived at audit conclusion based on audit evidence obtained during audit, explanation provided during the audit and discussion with the management/TCWG. Having considered the reply, we note that communication with TCWG & its documentation in Audit File is a mandatory requirement, to be complied with by the auditors, which they did not comply. Further, deficiencies in internal control with reference to diversion of funds to promoter owned entities and evergreening of loans through structured circulation of funds have already been proved. The Auditors have failed to communicate such deficiencies in internal control with TCWG. Accordingly, we find that this charge is proved.

48.5 The Auditors were also charged with non-compliance with SA 210- Agreeing the terms of audit engagements. Having considered the reply, we drop this charge.

E. OMISSIONS AND COMMISSIONS BY THE AUDIT FIRM

In addition to being jointly responsible for the lapses in Audit performed by the EP and other members of the engagement team, the Audit Firm was charged with omissions and commissions solely attributable to it. These are discussed below.

Lapses of Audit Firm on assigning responsibility of audit of TDL

- 49** The Audit firm was charged with bifurcating responsibility of audit engagement of TDL for FY 2019-20 and assigning it to two engagement partners in violation of SQC 1, which requires the Audit Firm to assign responsibility for each engagement to 'an engagement partner'. The firm should establish policies and procedures requiring that:
- (a) The identity and role of the engagement partner are communicated to key members of the client's management and those charged with governance.

- (b) The engagement partner has the appropriate capabilities, competence, authority and time to perform the role; and
- (c) The responsibilities of the engagement partner are clearly defined and communicated to that partner.

- 50** It is observed from the audit plan that the Firm has assigned the responsibility of this engagement to two partners i.e., CA C. Ramesh is named as ‘signing partner’ and CA Chaitanya G. Deshpande is named as ‘Engagement Partner’ (EP). The audit firm had bifurcated the responsibility of one engagement into two partners against the principle of SQC 1 resulting in noncompliance with SQC 1. Further, there is no term like ‘signing partner’ in any of the SAs and responsibilities of signing partner are not mentioned in the audit plan.
- 51** The Audit firm has denied the charge stating that the term signing partner is internally used without reference to any auditing standards. Internal designations do not have any bearing on quality of audit. CA Chaitanya lead the team on day to day basis and reported to CA Ramesh who reviewed the work of the team and signed off the engagement. There is no bifurcation of duties.
- 52** It can be noted that the term ‘Engagement Partner’ (EP) is defined in SQC 1 as *“the partner or other person in the firm who is a member of the Institute of Chartered Accountants of India and is in full time practice and is responsible for the engagement and its performance, and for the report that is issued on behalf of the firm, and who, where required, has the appropriate authority from a professional, legal or regulatory body”*. As per this definition, the EP has to take complete responsibility for the engagement, its performance, and for the audit report. Further, it is noticed from the Audit File that Chaitanya was doing only day to day work whereas responsibility of engagement was on Ramesh, who signed the audit report. Though as per SQC 1, one engagement can have only one EP, in this case the audit firm appointed one signing partner and one EP. CA C. Ramesh was appointed as signing partner and CA Chaitanya G. Deshpande was shown as EP in the audit plan. Chaitanya has not disputed this position in his reply. Therefore, we hold that CA C. Ramesh, as well as CA Chaitanya G. Deshpande were members of engagement team and are jointly and severally responsible for all lapses. The audit firm is also responsible for lack of due diligence in constituting their Engagement Team with multiple EPs in violation of SQC 1.
- 53** We observe from the Audit Firm’s reply that there was no clarity about the EP who was required to take ultimate responsibility for the Audit Engagement. This led to a situation where the entire audit was conducted in a perfunctory manner and no single ET member took the ultimate responsibility of the audit engagement. This has adversely affected the performance of audit engagement as evident from the preceding paras. Therefore, we find that the charge that the Audit Firm bifurcated responsibility of audit engagement of TDL for FY 2019-20 and assigned it to two engagement partners in violation of SQC 1, is proved..

Responsibility of the Audit Firm for the audit work done by the Engagement Team

- 54** In addition to lapses in constitution of the engagement team the Audit Firm was also charged with various omissions and commissions attributed to the Auditors in section C and D above.

Para 2 of SA 220 and para 3 of SQC 1, stipulate that Quality Control Systems, Policies and Procedures are the responsibility of the Audit Firm. The Audit Firm was charged with failure 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.

Responding to the charge, the Audit Firm stated that:

- a) They have issued audit report after taking into account the provisions of the Act, Ind AS prescribed u/s 133 and Standards on Auditing u/s 143(10) of the Act. They have taken management representation letter for various aspects relating to this engagement and reported u/s 143(2) of the Act. They rely on the replies in forgoing para in respect of NFRA's observation on alleged non-compliance with accounting and auditing standards.
- b) They confirmed the "Report on other legal and regulatory requirements" of audit report in compliance to section 143(3) of the Act.
- c) They had provided Disclaimer of Opinion because of the significance of the matters described in the Basis for Disclaimer of Opinion section of their audit report on the Financial Statements and Internal Financial Control over Financial Reporting.
- d) They were unable to comment whether books of accounts as required by the law have been kept by the Company; and whether the Financial Statements comply with the Accounting Standards specified u/s 133 of the Act, because of the matters described in the Basis for Disclaimer of Opinion section of their audit report.
- e) The Balance Sheet, the Statement of Profit and Loss (Including Other Comprehensive Income), the Statement of Changes in Equity and Statement of Cash Flows dealt with by their Audit Report are in agreement with the books of account.
- f) In compliance with section 143(12) of the Act, the Audit Firm replied that there is no fraud identified by them, hence there is no reporting requirement to the Central Government.
- g) They had complied with provisions of section 143 in performing their duties as auditor of the financial statements of TDL.

55 Statutory Audits are performed by Engagement Team on behalf of the Audit Firm appointed as statutory auditor under section 139 of the Act. The audit reports are signed on behalf of the Audit Firm and, therefore, the Audit Firm remains responsible for all the acts of omissions and commissions by the Engagement Team as well as for violation of duties and responsibilities specifically required of the Audit Firm. M/s Sundaresha & Associates was the Statutory Auditor of TDL for FY 2019-20. We have already considered in the preceding paragraphs, the point wise replies of the Audit Firm and determined that the Audit Firm and the Engagement Team have been grossly negligent in not ensuring that the Audit of TDL was performed in accordance with the applicable laws and rules and that the Audit Report issued on behalf of the Audit Firm was appropriate. Therefore, as per the SAs and the legal provisions mentioned above, in addition to the Engagement Team, the Audit Firm is also responsible for the lapses discussed in the preceding paragraphs of this Order.

F. POINTS OF LAW RAISED BY THE AUDITORS

56 Before proceeding with the articles of charges of professional misconduct by the Auditors, we would like to record some legal issues raised by the Auditors through their replies. The Auditors have questioned the legality of the SCN and the investigations done by NFRA. The Auditors are before various courts on issues raised above and since the matter is sub judice, this Order does not deal with them.

G. FINDINGS ON ARTICLES OF CHARGES OF PROFESSIONAL MISCONDUCT BY THE AUDITORS

57 As discussed, the Auditors have made a series of serious departures from the Standards and the Law, in conduct of the audit of TDL for FY 2019-20. Based on the above discussion, it is proved that the Auditors had failed to report fraudulent diversion of funds to related parties and failed to exercise due diligence in performance of audit. The poor quality of Audit followed by tampering of the Audit File, 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 evasive replies further compounds the professional misconduct on the part of the Auditors. Based on the foregoing discussion 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 Accountants Act 1949 (CA Act) as amended from time to time, and as detailed below:

- a) The Auditors committed professional misconduct as defined by clause 5 of Part I of the Second Schedule of the CA Act, 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 as explained in Section - C-I, C-IV, and D-(I & III) above.

- b) The Auditors committed professional misconduct as defined by clause 6 of Part I of the Second Schedule of the CA Act, which states that an EP 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 the Auditors failed to disclose in the audit report the material misstatements made by the Company as explained in Section - C-I, C-IV, and D-(I & III) above.

- c) The Auditors committed professional misconduct as defined by clause 7 of Part I of the Second Schedule of the CA Act, which states that an EP 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, failed to report the material misstatements in the financial

statements arising from diversion of funds & circulation of funds and failed to report non-compliances made by the Company, as explained in Section – C and D above.

- d) The Auditors committed professional misconduct as defined by clause 8 of Part I of the Second Schedule of the CA Act, which states that an EP 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 his total failure to report the material misstatements and non-compliances made by the Company in the financial statements, as explained in the Section – C-I, C-IV, and Section – D-I, D-III, and D-IV above.

- e) The Auditors committed professional misconduct as defined by clause 9 of Part I of the Second Schedule of the CA Act, which states that an EP 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 and related Quality Control Standards and Code of Ethics as explained in Section C and D above.

H. FINDINGS ON ADDITIONAL ARTICLES OF CHARGES OF PROFESSIONAL MISCONDUCT BY THE AUDIT FIRM

- 58** In addition to above, the Audit Firm has committed Professional Misconduct as defined Section 132 (4) of the Act by failing to exercise due diligence and being grossly negligent in the conduct of professional duties in respect of matters explained at Section - E above, as the Audit Firm failed to exercise due diligence and was grossly negligent in the conduct of professional duties, thus, violated SQC 1.

- 59** Therefore, we conclude that all the charges of professional misconduct in the SCN (Except charges relating to noncompliance with SA 210, which has been dropped) stand proved based on the evidence in the Audit File, the Audit Report dated 21.11.2020 issued on behalf of the Firm, the submissions made by the Auditors and the Financial Statements of TDL for the FY 2019-20.

I. PENALTY & SANCTIONS

- 60** 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.

- 61** This order has detailed out all the lapses in Audit and the non-compliances with the SAs, Quality Control Standards and Code of Ethics by the Auditors. The constant refrain of the

Auditors throughout their reply has been that they had given the Disclaimer of Opinion indicating non recoverability of advances made to MACEL and Kiran Hegde. The Standards on Auditing do not free an Auditor from reporting all other misstatements once a Disclaimer on a particular aspect is given. The Auditors have failed in their statutory duty and have tried to hide behind Disclaimer of Opinion, which was incomplete as they did not cover all aspects of infraction of the Laws and the Standards. The death of VGS, the key player of the entire financial fraud, happened in July 2019 and the Auditors had sufficient time to evaluate all the parameters spelt out in this Order where the Standards have not been adhered to. The Auditors had access to the investigation report of Mr. Ashok Kumar Malhotra, which contained complete details of diversion of funds and its modus operandi, including signing of blank cheques. Despite this, they did not report fraudulent diversion of funds, just to maintain their professional relationship with the promoters of the auditee company. They deliberately chose to shy away from discharging their statutory duty to protect the public interest. Besides the non-adherence to the Standards as detailed in this order, the Auditors tampered with the Audit File. All of this weighs heavily on our mind while determining the quantum of penalty.

- 62** As detailed in this Order, substantial deficiencies in Audit, abdication of responsibility and inappropriate conclusions on the part of the Auditors establish their professional misconduct due to lack of due diligence and gross negligence. Despite being qualified professionals, the Auditors have not adhered to the Standards and have thus not discharged the statutory duty cast upon them.
- 63** 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.
- 64** As per information furnished by M/s Sundaresha & Associates vide letter dated 10.09.2022 and M/s ASRMP & Co. vide letter dated 29.09.2022, the statutory audit fees of TDL for 2019-20 was Rs [REDACTED] and total professional fees received by the Audit Firm during FY 2019-20 was Rs [REDACTED]. CA C. Ramesh and CA Chaitanya G. Deshpande earned total professional fee of Rs [REDACTED] and Rs [REDACTED] respectively during FY 2019-20.
- 65** 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:

- a) Imposition of a monetary penalty of Rs One Crore upon M/s Sundaresha & Associates. In addition, M/s Sundaresha & Associates is debarred for a period of four 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. This debarment period will run concurrently along with debarment ordered by the Order no. NF-23/14/2022 dated 26.04.2023 in case of TDL for FY 2018-19 and Order no. NF-23/14/2022 dated 30.05.2023 in case of GVIL for FY 2019-20.
- b) Imposition of a monetary penalty of Rs Five Lakhs upon CA C. Ramesh. In addition, CA C. Ramesh is debarred for a period of 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. This debarment period will run concurrently along with debarment ordered by the Order no. NF-23/14/2022 dated 26.04.2023 in case of TDL for FY 2018-19 and Order no. NF-23/14/2022 dated 30.05.2023 in case of GVIL for FY 2019-20.
- c) Imposition of a monetary penalty of Rs Five Lakhs upon CA Chaitanya G. Deshpande. In addition, CA Chaitanya G. Deshpande is debarred for a period of 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. This debarment period will run concurrently along with debarment ordered by the Order no. NF-23/14/2022 dated 30.05.2023 in case of GVIL for FY 2019-20
- d) Proceedings initiated against CA Megha Sundaresha Andani are hereby dropped.

66 This order will be effective after 30 days from the date of issue of this order.

Signed
(Dr Ajay Bhushan Prasad Pandey)
Chairperson

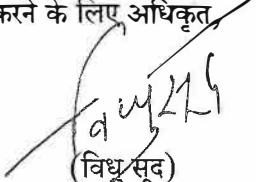
Signed
(Dr Praveen Kumar Tiwari)
Full-Time Member

Signed
(Smita Jhingran)
Full-Time Member

एनएफआरए के कार्यकारी निकाय द्वारा जारी करने के लिए अधिकृत

Date: 18.08.2023

Place: New Delhi


(विधु सूद)
सचिव, एनएफआरए

विधु सूद/Vidhu Sood
सचिव/Secretary
राष्ट्रीय वित्तीय रिपोर्टिंग प्राधिकरण
National Financial Reporting Authority
नई दिल्ली/New Delhi

To,

(1) M/s Sundaresha & Associates,
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(3) CA C Ramesh,
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(4) CA Chaitanya G. Deshpande,
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Bengaluru (Karnataka) -560064.
Email : cachaitanya@outlook.com

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) Tanglin Developments Limited, Bengaluru.
- (v) IT-Team, NFRA for uploading the order on the website of NFRA.