

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

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

Order No. 42/2023

Date: 29.09.2023

ORDER

In the matter of CA Nilesh Shah, ICAI Membership No. 107752 under Section 132(4) of the Companies Act, 2013 read with Rule 11(6) of National Financial Reporting Authority Rules, 2018.

This Order disposes of the Show Cause Notice dated 21.11.2022, issued to CA Nilesh Shah, who is a Member of the Institute of Chartered Accountants of India (ICAI Membership No. 107752) and was the Engagement Partner (EP) for the statutory audit of thirteen branches of Dewan Housing Finance Corporation Limited (DHFL), a company listed on both National Stock Exchange (NSE) and the Bombay Stock Exchange (BSE) for the Financial Year 2017-18. This Order is divided into the following sections:

- A. Executive Summary
- B. Introduction and Background for the Order
- C. Major Lapses
- D. Articles of Charges of Professional Misconduct
- E. Penalty and Sanctions

A. EXECUTIVE SUMMARY

1. This Order is being passed as a result of an investigation by the National Financial Reporting Authority (NFRA) into the professional conduct of CA Nilesh Shah for his role as the Engagement Partner (EP) in the audit of thirteen branches of DHFL. DHFL, a housing finance company listed on both NSE and BSE) and operating through a network of branches, was reportedly involved in financial fraud. NFRA took suo motu notice of the matter and pursuant to an Audit Quality Review (AQR) of the statutory audit of DHFL for FY 2017-18, conducted by Chaturvedi & Shah (CAS), a Mumbai-based Chartered Accountant Firm. During the review, NFRA also noticed that 33 Engagement Partners (EP) or branch auditors had signed the "Independent Branch Auditors' Report" for nearly 250 branches. The Statutory Auditor of the Company viz CAS had referred to these so-called Branch Audits. NFRA investigated these EPs responsible for the branch audits under section 132 (4) of the Companies Act, 2013 (the Act), including CA Nilesh Shah, who was the EP for the audit of thirteen of the 250 branches of DHFL.
2. NFRA's investigations revealed that the appointment of none of the 33 branch auditors was approved at the Annual General Meeting (AGM) of DHFL, as required by the Act. CA Nilesh Shah accepted the appointment, portrayed himself as "Branch Statutory Auditor" in all communications with the Company and CAS, and issued an "Independent Branch Auditor's Report". By doing so CA Nilesh Shah not only accepted a legally invalid appointment but also violated the provisions of the chartered Accountants Act, 1949 (CAs Act), which required the EP to ensure a valid appointment as per the Act.

3. Notwithstanding his defective appointment, the Branch Audit performed by CA Nilesh Shah was investigated by NFRA from the standpoint of compliance with the applicable Standards on Auditing (SAs). It was found that in the performance of the branch audit the EP, CA Nilesh Shah, had not complied with the requirements laid down in the SAs, had not maintained proper audit documentation and displayed a flawed understanding of standards that established the EP's professional misconduct in terms of Section 132 (4) of the Act.
4. Based on the nature of professional misconduct and other factors, this Order imposes on CA Nilesh Shah a monetary penalty of ₹1,00,000/- (One Lakh) and debarment for one year from being appointed as an auditor or internal auditor or from undertaking any audit in respect of financial statements or internal audit of the functions and activities of any company or body corporate.

B. INTRODUCTION AND BACKGROUND

5. NFRA is a statutory authority set up under Section 132 of the Act to monitor the implementation and enforce compliance with the auditing and accounting standards and to oversee the quality of service of the professions associated with ensuring compliance with such standards. NFRA has the powers of a civil court and is empowered under Section 132 (4) of the Act to investigate the prescribed classes of companies and impose penalties for professional or other misconduct of the individual members or firms of chartered accountants.
6. The statutory auditors, both individual and firm of chartered accountants, are appointed by the members of companies under Section 139 of the Act. The statutory auditors, including the Engagement Partners and the Engagement Team that conduct the audit, are bound by the duties and responsibilities prescribed in the Act, the rules made thereunder, the Standards on Auditing (SA), including the Standards on Quality Control and the Code of Ethics, the violation of which constitutes professional misconduct, and is punishable with penalty prescribed under Section 132 (4) (c) of the Act.
7. Following media reports on the alleged siphoning of public money of around ₹31000 crore and the Enforcement Directorate's reported action in April 2020 on an alleged banking fraud of about ₹3700 crore by the promoter/ directors of DHFL, NFRA suo-motu initiated an Audit Quality Review (AQR) to probe into the role of the Statutory Auditors of DHFL for the FY 2017-18, the year in which the alleged fraud was primarily stated to have occurred. While examining the Audit Files¹ of the statutory audit carried out by CAS, a Mumbai-based CA firm, certain prima facie violations were observed relating to the appointment of Branch Auditors and the conduct of branch audits of DHFL, which were referred to by the Statutory Auditor CAS. Accordingly, NFRA suo motu called for the audit files from the EPs who had signed the "Independent Branch Auditors' Report" for nearly 250 branches, under Section 132(4) of the Act, including CA Nilesh Shah, to whom this Order relates and who acted as the branch auditor for the thirteen branches of DHFL viz. Zone Dahisar, RPU Dahisar, Dahisar, Biosar, Mira Bhayondar, Nallasopara, Mumbai Metro, Andheri, Vasai, Nasik, Yavatmal, Aurangabad and Nagpur.
8. DHFL, a housing finance company listed on both NSE and BSE, was required to prepare its Financial Statements for the Financial Year (FY) 2017-18 in accordance with Schedule III and other

¹ As defined in para 6 of SA 230

applicable provisions of the Act and Accounting Standards (AS) notified under the Companies (Accounting Standards) Rules, 2006.

9. As part of NFRA's investigations, CA Nilesh Shah was asked to provide the Audit File vide NFRA letter dated 10.08.2022, giving 15 days' time. The EP submitted the Audit File along with other information in respect of the thirteen branches for FY 2017-18 on 25.08.2022.
10. The investigation by NFRA revealed prima facie, that the branch auditors had violated both the Companies Act, 2013 and the Chartered Accountants Act, 1949 by accepting the appointment that lacked a valid approval and had also violated the SAs while carrying out the branch audit. On being satisfied that prima facie sufficient cause existed to take action under sub-section (4) of Section 132 of the Act, a Show Cause Notice (SCN hereafter) was issued to CA Nilesh Shah on 21.11.2022, asking the EP to show cause why action should not be taken for professional misconduct in respect of the performance as the Statutory Auditor of thirteen branches of DHFL for the FY 2017-18. The EP was charged with professional misconduct on account of:
 - a. Failure to exercise due diligence and ascertain from the Company whether the requirements of Sections 139 of the Act in respect of such appointment have been duly complied with,
 - b. Failure to exercise due diligence and being grossly negligent in the conduct of professional duties,
 - c. Failure to obtain sufficient information which is necessary for the expression of an opinion, or its exceptions are sufficiently material to negate the expression of an opinion, and
 - d. Failure to invite attention to material departure from the generally accepted procedures of audit applicable to the circumstances.
11. The EP was asked to submit his reply by 20.12.2022 and he submitted his reply on 19.12.2022. The EP did not avail of the opportunity of a personal hearing before the Executive Body (EB) of NFRA. The various charges levied in the SCN and the response of the EP to the charges are discussed in Part C of this Order.

C. MAJOR LAPSES BY THE EP

12. The major lapses for which the EP was issued the SCN primarily relate to (i) accepting the audit engagement without a valid authority and thus violating the provisions of the Act and (ii) violations of the Standard of Auditing in conducting the audit.

I. Acceptance of audit engagement without valid authorization and without complying with ethical requirements; and issuing an audit report in violation of the Act

13. The EP was charged with acceptance of an audit engagement without complying with ethical requirements and issuing the audit report without a valid appointment as per the Act, as the appointment of the Audit Firm as "Statutory Auditor for the branches" of DHFL for FY 2017-18 was not done by the competent authority i.e., the shareholders.
14. On examination of the Audit File, we observe that despite a specific requirement² in the Chartered Accountants Act, 1949 (CAs Act) to do so, the EP has not verified if the appointment as "Statutory Auditor for the branches" of the Company was done in compliance with Section 139 of the Act. The EP not only accepted an invalid appointment letter issued by an "Authorised Signatory" without the approval of the Board and shareholders but also issued the audit report without ascertaining the actual objective and scope of the audit. The EP also violated the ethical

² As per Ministry of Corporate Affairs Circular No. 7/2014, dated 01-04-2014, the equivalent sections of the Companies Act 2013 for the above sections of the Companies Act, 1956 are sections 139 and 140.

requirements, as laid down in the Code of Ethics, 2009, which require the EP to ensure professional competence, due care, integrity and professional behaviour in discharging the duties as well as compliance with the Act before accepting the engagement. In the process, he also did not comply with Paras 14, 15 and 16 of SA 200 “Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Standards on Auditing”.

15. The EP submitted that *“I wish to agree that I was not appointed as branch Statutory Auditor of the company for 2017-18 as required under section 139 of the Act with section 143(8) of Companies Act, 2013 in the Notice of 33rd AGM of DHFL held on 21/07/2017 as mentioned in page no 55/848 of the attached show cause notice. Kindly note that my appointment as Statutory Auditor of few branches of the company was for certain verification and certification and was done in consultation with the Statutory Auditors of the Company as per the appointment letter received from the company with a Copy marked to the Statutory Auditor of the Company.....”*
16. We have examined the replies of the EP. We find that as mentioned in para 14 above, the appointment letter acknowledged by the EP and the “Independent Branch Auditors’ Report” issued by him clearly described the engagement as a Branch Statutory Audit. The admission of the EP that he was not a Statutory Auditor shows the absence of professional behaviour and gross negligence on his part. Misconduct, arising out of gross negligence, implies failure to act honestly and reasonably either according to the ordinary and natural standard or according to the standard of a particular profession³. His failure to act honestly and reasonably is established by the fact that despite the clear communications by the Company and CAS that the engagement is a statutory audit, the EP now describes it as “certain verification and certification” work.
17. The below documents evidence that the EP accepted the subject matter audit assignment, acted and called himself as “Statutory Auditor for the Branches” of DHFL until an SCN was issued to him by NFRA:

S.NO.	Name/Nature of Document	Document Date	Details of document
1	Appointment Letter	23.08.2017	Appoints the audit firm as "Statutory Auditor for the branches" at a "Statutory Audit Fees" of ₹2,85,000/-
2	Acceptance Letter	12.09.2017	Signed by Audit Firm accepting appointment as "Branch Statutory Auditor"
3	Guidelines for Statutory Audit of Branches	Issued along with appointment letter dated 23.08.2017	States that <i>“Besides statutory compliance and requirements there are certain specific areas which have to be looked into and verified by the Statutory Auditors...”</i>
4	Confirmation letters issued to CAS	10.04.2018	EP confirms to CAS that <i>“we are aware that (i) the financial information of the branches for the...year ended 31st March, 2018 for which we have been engaged to perform audit, will be</i>

³ Cited in ICAI Code of Ethics, Registrar of Companies, Bihar vs. M.N. Basu - Page 323 of Vol. IV of the Disciplinary Cases, ICAI vs B. L. Khanna (Delhi High Court).

			<i>included in the financial statements of the Company for the...year ended 31st March, 2018 and (ii) our report on our audit of the financial information of the branches will be referred to by you as a basis, in part, for you report on your audit of the financial statements of the Company”.</i>
5	Independent Auditor’s Report	Branch Various dates for thirteen branches	EP certifies under “ <i>Auditor’s Responsibility</i> ” that “ <i>we have taken into account provisions of the Act, the accounting and auditing standards and matters which are required to be included in the audit report under the provisions of the Act and the Rules made thereunder. We conducted our audit in accordance with the Standards on auditing specified under Section 143(10) of the Act. Those Standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance</i> ” and also certified the “ <i>true and fair view of the Branch as at 31st March 2018</i> ”.
6	Branch’s Financial Information Summary Memorandum	05.04.2018	EP certifies that “ <i>In our opinion, based on our audit, the financial information...as of 31st March, 2018 and for the year ended gives a true and fair view</i> ”.
7	EP’s communication to NFRA in response to NFRA letter seeking Audit File	Letter dated 24.08.2022 as received via email on 25.08.2022	States that “ <i>...find enclosed herewith following information / documents pertaining to the Statutory Audit of Branches of Dewan Housing Finance Corporation Limited for financial year 2017-18.</i> ”
8	“ <i>Form No. 3CA</i> ” issued by the EP and forming part of Audit File	Various dates for thirteen branches	States that “ <i>I report that the statutory audit of M/s. Dewan Housing Finance Corporation Limited (Vasai Branch), ... was conducted by me in pursuance of the provisions of the Companies Act, 2013...</i> ” Similar reports have been issued by the EP for other branches of DHFL, for which he was the EP.

Besides the above, the EP prepared a report titled "*Independent Branch Auditors' Report*" on the accounts of the branch examined by him and sent it to the auditor of the company as is required by the proviso to Section 143(8) read with Rule 12 of Companies (Audit and Auditors) Rules, 2014. Thus, the contention of the EP that the subject matter engagement was for "*certain verification and certification*" cannot be accepted.

18. Under Section 22 of the Chartered Accountants Act, 1949 read with Clause (9) of Part I of the First Schedule to the said Act (the meaning of which is conceived in Section 132(4) as professional misconduct) a chartered accountant in practice shall be deemed to be guilty of professional misconduct if an appointment as auditor of a company is accepted without first ascertaining from it whether the requirements of Section 225 of the Companies Act, 1956 (equivalent Sections being Section 139 & 140 of Companies Act, 2013)⁴ in respect of such appointment have been duly complied with.
19. The ICAI Code of Ethics, 2009 makes it clear that "*Under Clause (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949, the incoming auditor has to ascertain whether the Company has complied with the provisions of the above sections. The word "ascertain" means "to find out for certain". This would mean that the incoming auditor should find out for certain as to whether the Company has complied with the provisions of Sections 224, 224A and 225 of the Companies Act. In this respect, it would not be sufficient for the incoming auditor to accept a certificate from the management of the Company that the provisions of the above sections have been complied with. It is necessary for the incoming auditor to verify the relevant records of the Company and ascertain as to whether the Company has, in fact, complied with the provisions of the above sections*". It is evidenced by the instances listed in the Table above, the EP's documentation and reports he issued show that he performed the work as a Branch Statutory Auditor. However, on receipt of the SCN from NFRA which, inter alia, charged him with several violations of the SAs, the EP took a divergent stand and contented that the audit was not a statutory branch audit. In FY 2015-16, the AGM specifically resolved to appoint separate Branch Statutory auditors and Company's Auditors while in 2017-18 there was only one statutory auditor, i.e., CAS, for the Company and all its branches. It is thus evident that the EP, without even being aware of the change in mandate, continued his purported role as statutory auditor and issued the reports accordingly, but on receipt of the SCN, the EP tried to cover up the lapses by taking the plea that the audit was not a statutory audit.
20. As per Section 143 (8) of the Act, the appointment of Statutory Auditor is required to be made under Section 139 of the Act by the members at an annual general meeting. It is observed that the Resolution for Appointment of Auditor for the financial year 2017-18 passed at the 33rd Annual General Meeting of DHFL, held on 21-07-2017, read with the declaration of Voting Results of the resolution to ratify such appointment only refers to the appointment of CAS (Firm Registration No: 101720W), as the Statutory Auditors of the Company to audit the accounts of all the Company's offices including those of its zonal/ regional and branch offices for the financial year 2017-18. No other Branch Statutory Auditors were appointed or ratified by the Company in the said meeting. Only CAS was appointed as the Statutory Auditor for the company as well as all its branches. Thus, the shareholders of the company approved only one Statutory Auditor (viz. Chaturvedi & Shah) for the Company and its branches. Therefore, in the absence of a valid appointment, EP's acceptance vide letter dated 12.09.2017 of the appointment as Statutory Auditor

⁴ As per Ministry of Corporate Affairs Circular No. 7/2014, dated 01-04-2014, the equivalent sections of the Companies Act 2013 for the above sections of the Companies Act, 1956 are sections 139 and 140.

of the branches and issuance of the “Independent Branch Auditor’s Report” for the thirteen Branches of DHFL, including the report required under CARO 2016, describing the engagement as Branch Statutory Audit confirms the absence of professional skepticism and lack of due diligence on his part.

21. Thus. the EP was required to exercise due diligence under SA 200 and adhere to the specific provisions of the Chartered Accountants Act, 1949 under Section 22 read with Clause 9 of Part I of the First Schedule. The non-compliance is thus professional misconduct in terms of section 132(4)(c) of the Companies Act 2013. Branch Statutory Audit is rendered invalid ab-initio due to non-ratification by the shareholders of the Company which was the requirement of the law. This is compounded by the fact that CAS, in their Statutory Audit Report, has referred to the branch audit reports⁵. The said lack of due diligence in accepting an invalid appointment is also professional misconduct as per Clause 7 of Part I of the Second Schedule to the CAs Act, the meaning of which is conceived in Section 132(4)(c) of the Act.. Therefore, we find that the charges in paras 13 and 14 above stand proved.

II. Failure to comply with Standards on Auditing (SAs)

22. Notwithstanding our finding in Part I above that the appointment of CA Nilesh Shah was not as per the provisions of the Law, we now discuss the non-compliance by CA Nilesh Shah with the SAs, since the audit work done by the EP has been referred to in the Audit Report of the Statutory Auditor, CAS. We observe from the various communications between the Company, the Branch Auditor and the Statutory Auditor that the whole Branch Audit engagement was performed by the Branch Auditors as per the scope of work provided by the company in consultation with the Statutory Auditors. The scope describes the engagement as a branch statutory audit under the Act. The Branch Auditors accepted the "Statutory Branch Audit" assigned by the Company and issued the "Independent Branch Auditors’ Report" stating therein that *“we have taken into account provisions of the Act, the accounting and auditing standards and matters which are required to be included in the audit report under the provisions of the Act and the Rules made thereunder. We conducted our audit in accordance with the Standards on auditing specified under Section 143(10) of the Act. Those Standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance”*. Since these branch audit reports are clearly referred to by Company’s Statutory Auditor (CAS) in its report to the members of the Company, we examine here the extent of compliance with the applicable SAs by the Branch Auditor notwithstanding the violation of ethical standards, the Chartered Accountants Act, 1949 and of the Companies Act, 2013 in accepting an invalid appointment as the Branch Auditor. The principles and procedures laid down in the SAs including professional skepticism, audit documentation, sufficiency and appropriateness of audit evidence, audit planning, materiality, engagement risk, nature, timing and extent of evidence-gathering procedures and reporting are all applicable in the branch audit as well, being an audit of historical financial information. Accordingly, the various violations of the SAs with which the EP was charged in the SCN are discussed in the following paragraphs.

Non-Compliance with SA 210 “Agreeing the Terms of Audit Engagements”

⁵ Independent Auditor’s Report of DHFL dated 30.04.2018 issued by CA Jignesh Mehta on behalf of CAS, available in the public domain (<https://www.bseindia.com/bseplus/AnnualReport/511072/5110720318.pdf> - Last accessed 29.09.2023)

23. The EP was charged with non-compliance with SA 210⁶ and displaying an absence of professional skepticism and professional judgment in documenting the objective and scope of the audit, thereby violating SA 200⁷ as well. SA 210⁸ stipulates that the auditor shall agree to the terms of the audit engagement with management or Those Charged With Governance (TCWG) and that subject to paragraph 11 of the SA, the agreed terms of the audit engagement shall be recorded in an audit engagement letter or other suitable forms of a written agreement and shall include (a) the objective and scope of the audit of the financial statements; (b) the responsibilities of the auditor; (c) the responsibilities of management; (d) identification of the applicable financial reporting framework for the preparation of the financial statements; and (e) reference to the expected form and content of any reports to be issued by the auditor and a statement that there may be circumstances in which a report may differ from its expected form and content.
24. The EP in his three-page reply submitted the contentions as noted in para 15 above and stated that *“the appointment letter which was received from the company which covered the scope of the audit and format of certificates etc. which has been accepted by me in my acceptance letter”*.
25. The contention of EP is not acceptable. SA 210 casts a mandatory responsibility on the EP to issue an Engagement Letter. The terms provided by the Company cannot substitute these requirements on the EP.
26. The copy of the appointment letter acknowledged by the Audit Firm and the covering letter to it (that conveys the acceptance of the engagement) did not contain all the details required by Para 9, 10 and 11 of SA 210. It was deficient in terms of the objective of the audit, a proper description of the responsibilities of the auditor and the management and the applicable financial reporting framework. Such an audit engagement letter⁹ (as prescribed by SA 210) was not found to have been issued by EP. Para 13 of SA 210 requires an assessment from the auditor of whether circumstances require the terms of the audit engagement to be revised and whether there is a need to remind the entity of the existing terms. There is no such assessment documented. In fact, between the financial years 2015-16 and 2017-18, the circumstances changed with respect to the scope of the engagement. In 2015-16, the AGM resolved to appoint separate auditors for the company and branches, while in subsequent years only one auditor was appointed for the company including all its branches. The EP failed to notice this critical change. The EP’s response above shows a flawed understanding of the scope of SA 210.
27. We conclude that EP’s negligence of the provisions of SA 210 has resulted in accepting an invalid appointment and issuing a report that is legally valid. Thus, apart from the non-compliance with SA 210, this shows the absence of professional skepticism and professional judgment in understanding the objective and scope of the audit, thereby violating SA 200 also. Therefore, the charges in para 23 above stand proved.

Non-Compliance with SA 230 “Audit Documentation”

28. The EP was charged with non-compliance with SA 230¹⁰. EP’s audit documentation does not give evidence of the nature, timing and extent of audit procedures performed, results of those audit procedures and conclusions reached during the audit as required by SA 230. In terms of SA 230,

⁶ SA 210, Agreeing the Terms of Audit Engagements.

⁷ Para 15 and 16 of SA 200, Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Standards on Auditing.

⁸ Para 9, 10 and 11 of SA 210

⁹ The sample engagement letter provided in appendix I of SA 210 may be referred.

¹⁰ SA 230 – Audit Documentation

the objective of the auditor is to prepare documentation that provides a sufficient and appropriate record of the basis for the auditor's report; and evidence that the audit was planned and performed in accordance with SAs and applicable legal and regulatory requirements. In the absence of the required documentation, the audit report EP issued to CAS, the Statutory Auditor, was without adequate basis and was in violation of SAs.

29. The EP submitted that *"I have submitted all audit working papers, certificates, reports etc. Also audit was planned and performed with professional competence, dedication and full integrity"*. In the absence of any explanations and specific replies to the charges, we examined in detail the audit file submitted by the EP and conclude as follows.
30. There is no evidence in the Audit File to indicate that the EP had performed audit procedures and documented the conclusion, nature, timing and extent of the procedures performed, required by para 8 of SA 230, as detailed below.
31. As explained by SA 230, the nature and purposes of audit documentation are to provide evidence of the auditor's basis for a conclusion about the achievement of the overall objectives of the auditor; and evidence that the audit was planned and performed in accordance with SAs and applicable legal and regulatory requirements. SA 230 lists "enabling the conduct of quality control reviews and inspections in accordance with SQC 1; and enabling the conduct of external inspections in accordance with applicable legal, regulatory or other requirements" among the additional purposes that are served by the audit documentation. Para 7 of SA 230 emphasises the "Timely Preparation of Audit Documentation" i.e. in a manner contemporaneous with the events that are being sought to be documented.
32. Apart from SA 230, there are other SAs that also require the documentation of events, data, evidence, opinions and conclusions. SA 230 makes it very clear that reliance can be placed only on the audit file as evidence of what was done. Para A5 of SA 230 makes explicit that: "Oral explanations by the auditor, on their own, do not represent adequate support for the work auditor performed or conclusions the auditor reached, but may be used to explain or clarify information contained in the audit documentation". Para 14 of SA 230 mandates that 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.
33. SA 230 requires that 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.
34. SA 230 further requires that 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.
35. The Audit File does not contain the basic documentation such as:
 - a. Understanding the branch operations, internal controls and responsibilities at various levels in the branch (refer to SA 315¹¹)
 - b. Audit plan made after understanding the branch operations in accordance with SA 300

¹¹ SA 315, Identifying and Assessing the Risks of Material Misstatement Through Understanding the Entity and its Environment

- c. Determination of materiality levels (refer to SA 320¹²)
 - d. Understanding of the IT system controls (refer to SA 315)
 - e. Trial balance for the previous year (refer to SA 510)
 - f. Summary of the accounting policies, observations from previous audits, inspection reports, and internal audit reports (refer to SA 315)
 - g. Proof of verification of trial balance items, including assets (substantive audit procedures)
 - h. Procedures adopted to verify the loans sanctioned during the year (substantive audit procedures)
 - i. KYC verification, anti-money laundering verification, security verification (substantive audit procedures).
36. In the absence of such proof documented in the audit file, the inevitable conclusion is that the requirements of the SAs are not met. The above facts are evidence that the EP did not follow the requirements of SA 230 and the audit documentation does not give evidence of the nature, timing and extent of audit procedures performed, results of those audit procedures and conclusions reached during the audit. Hence the charges in para 29 regarding non-compliance with SA 230 stand established.
37. The lack of sufficient documentation in an audit is not merely a technical and procedural formality but is a serious issue that strikes at the very root of the audit and may defeat the very purpose of the audit itself. Lack of sufficient documentation has been viewed seriously by national and international regulators as well. For example, in the matter of Bharat Parikh & Associates Chartered Accountants, dated 19-03-2019, the US audit regulator PCAOB took a serious view on the lack of sufficient documentation and imposed penalties and sanctions for violations including insufficient documentation. The PCAOB Order states “*Audit documentation must contain sufficient information to enable an experienced auditor, having no previous connection with the engagement to (a) understand the nature, timing, extent, and results of the procedures performed, evidence obtained, and conclusions reached, and (b) 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.....the documentation for each of those audits was insufficient to demonstrate the nature, timing, extent, and results of the procedures performed, evidence obtained, and conclusions reached, including in those areas of the audits involving significant risks. For the FY 2016 and 2017 Issuer A audits, the documentation also failed to demonstrate who performed the work and the date such work was completed. Additionally, in each of the Issuer A and Issuer B audits, the audit documentation was insufficient to demonstrate which aspects of the audit and which audit documentation Bharat Parikh reviewed*”.

Non-Compliance with SA 700, “Forming an Opinion and Reporting on Financial Statements”

38. The EP was charged with non-compliance with SA 700. As per SA 700¹³ in order to form an opinion, the auditor shall conclude as to whether the auditor has obtained reasonable assurance whether the financial statements as a whole are free from material misstatement, whether due to fraud or error. Such a conclusion shall take into account, inter alia, whether sufficient appropriate audit evidence has been obtained and whether uncorrected misstatements are material, individually or in aggregate. Since, the unmodified opinion expressed by the EP is not supported by evidence, the EP was charged with non-compliance with SA 700¹⁴.

¹² Sa 320, Materiality in Planning and Performing an Audit

¹³ Para 10 to 12 of SA 700, Forming an Opinion and Reporting on Financial Statements

¹⁴ Para 11 of SA 700

39. The EP submitted that *“I have done the audit as per the limited scope given to me in the appointment letter and performed my duty with honesty. Kindly note that the modified opinion was mentioned in the report wherever it was applicable and it was submitted previously to your office”*. In the absence of any explanations and specific replies to the charges, we examined in detail the audit file submitted by the EP and conclude as follows.
40. The EP has not determined any planning and performance materiality in terms of SA 320. The details of audit procedures performed, and the conclusions reached thereon are also not available in the Audit File. As per the SAs, the EP is required to evaluate the effect of the misstatements, if any, and decide to appropriately modify his opinion. In the absence of documented procedures and conclusions, there is no evidence that the EP has obtained reasonable assurance that the financial information is free from material misstatements. However, the EP issued an unmodified opinion without complying with the requirements of SA 700.
41. Therefore, in the absence of any documented conclusions, determination of materiality and assessment of the risk of material misstatements and the test of controls, we observe that the unmodified opinion issued by EP is baseless. Hence, the charges in para 38 above stand proved.

Non-compliance with other SAs

42. The EP was charged with non-compliance with the following provisions of SAs:
- a. Para 6, 7, 8, 9 & 10 of SA 300¹⁵ as the EP failed in establishing an overall audit strategy and development of audit plan etc. in accordance with SA 300.
 - b. Para 5, 6 & 11 of SA 315 and para 1, 5 & 6 of SA 330¹⁶ as the audit file lacks any documentation regarding the performance of risk assessment procedures for material misstatements at the financial statement level and assertion level and response to such risks etc.
 - c. Para 10, 11 & 14 of SA 320 for determining materiality, performance materiality and documentation thereof.
 - d. Non-compliance with para 5, 6 and 8 of SA 510 relating to the performance of necessary audit procedures and obtaining sufficient and appropriate audit evidence to ascertain the accuracy of Opening Balances and the accounting policies reflected in the Opening Balances.
 - e. Para 6 of SA 520¹⁷ relating to design and performance of analytical procedures.
 - f. Para 4, 6, 7, 8 & 9 of SA 530¹⁸ relating to the determination of sample design, sample size and required audit procedures.
 - g. Para 8, 9 & 10 of SA 580¹⁹ regarding obtaining written representations from the management about their responsibilities.
43. The EP submitted that *“I have obtained the audit evidence wherever it was required based on the materiality concept. Sir, with the above explanation, I have complied with the relevant SAs and I do not agree with the non-compliance as mentioned in the said show cause notice”*.
44. In the absence of any explanations and specific replies to the charges, in the absence of any evidence in the audit file, and for the reasons stated in Para 30 to 35 above regarding audit documentation we conclude that the EP failed to comply with the above requirements of the SAs.

¹⁵ SA 300, planning an Audit of Financial Statements.

¹⁶ SA 330, The Auditor’s Responses to Assessed Risks

¹⁷ SA 520, Analytical Procedures

¹⁸ SA 530, Audit Sampling

¹⁹ SA 580, Written Representations

D. ARTICLES OF CHARGES OF PROFESSIONAL MISCONDUCT BY THE EP

45. Given the above-mentioned actions and omissions, it is established that CA Nilesh Shah did not comply with the stipulations in the Chartered Accountants Act, 1949 regarding the acceptance of the statutory audit engagement and showed gross negligence and lack of due diligence while accepting an invalid appointment as auditor. In addition to accepting a legally invalid appointment, the EP also did not ensure the audit quality. The EP was grossly negligent in performing his professional duties by not adhering to the requirements laid down by the relevant SAs. This has led to the issuance of an audit report not backed by valid audit evidence and the absence of quality in the audit work. Specifically, the following failures on the part of EP Nilesh Shah as contained under the Articles of Charges in the SCN are established.
- a) Failure to exercise due diligence and ascertain from the audited Company whether the requirements of Sections 139 of the Act in respect of such appointment had been duly complied with, as explained and proved in part C-I above. (As per Section 22 and Clause 9 of Part I of the First Schedule to the CAs Act);
 - b) Failure to exercise due diligence and being grossly negligent in the conduct of professional duties, because of the lapses and omissions as explained and proved in parts C-I and C-II above. (As per Section 22 and Clause 7 of Part I of the Second Schedule to the CAs Act);
 - c) Failure to obtain sufficient information which is necessary for the expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion, because of the lapses and omissions as explained and proved in part C-II above. (As per Section 22 and Clause 8 of Part I of the Second Schedule to the CAs Act); and
 - d) Failure to invite attention to material departure from the generally accepted procedures of audit applicable to the circumstances of the audited Company, because the EP certified in the report that the audit was done as per SAs mandated under section 143 of the Act and committed the lapses and omissions as explained and proved in part C-II above. (As per Section 22 and Clause 9 of Part I of the Second Schedule to the CAs Act).

Thus, we find that EP Nilesh Shah committed professional misconduct, as defined in the respective clauses of the CAs Act, the meaning of which is conceived under Section 132 (4) of the Companies Act as amounting to professional misconduct.

E. PENALTY AND SANCTIONS

46. Section 132(4) of the Companies Act, 2013 provides for penalties in a case where professional misconduct is proved. The law lays down a minimum punishment for such misconduct.
47. The information contained in the Financial Statement, in this case, includes material information from the Branches of the Company, where a substantial part of the lending activities was carried out.
48. A Branch Auditor is duty-bound to examine and ascertain the integrity of the underlying information forming Financial Statements of such entities²⁰ in the larger public interest.
49. In this case, while all the documents and reports described the engagement as a statutory branch audit and while in substance as well as in form it was a statutory branch audit, none of the legal requirements regarding the appointment of the statutory audit were complied with. More importantly, the EP performed the audit as a statutory audit. He was well aware that these reports

²⁰ As defined in Rule 3 of NFRA Rules 2018

would ultimately be used by the Company's auditor, to whom these reports were addressed. The EP also certified in his report that the engagement is performed as per SAs. Despite all these facts, the evidence shows several non-compliance with applicable SAs. The nature and extent of non-compliance with the SAs led to a baseless audit opinion, which was finally referred to in the report of Chaturvedi & Shah, the Company's statutory auditors.

50. The EP in the present case was required to ensure compliance with SAs to achieve the necessary audit quality and lend credibility to the reports he issued to facilitate the Company's Auditor to issue their report on the Financial Statements. As detailed in the foregoing paragraphs, there were deficiencies in the Audit and abdication of responsibility on the part of CA Nilesh Shah right from the acceptance of the Audit without due diligence in ascertaining the validity of the offer, to the actual conduct of the audit, which establishes his gross negligence resulting in professional misconduct. In fact, accepting an audit assignment in contravention of the Law and continuing it in non-conformity with the SAs, constitutes a flagrant violation of the Law. We also conclude that despite being a qualified professional, CA Nilesh Shah has not adhered to the Standards on Auditing and the provisions of the law.
51. As demonstrated by the discussions above, there are gaps in his understanding of SAs that need to be addressed.
52. We also note that the EP has admitted the lapse in accepting the Audit. Considering the fact that professional misconducts have been proved and considering the nature of violations and principles of proportionality and keeping in mind the deterrence, proportionality, signalling value of the sanctions and time required for improvement in knowledge gaps we, in the exercise of powers under Section 132(4)(c) of the Companies Act, 2013, proceed to order the following sanctions:
- i. Imposition of a monetary penalty of ₹ 100,000 (One Lakh) upon CA Nilesh Shah;
 - ii. CA Nilesh Shah is debarred for **one year** 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.
53. This order will become effective after 30 days from the date of issue of this order.

Sd/-

(Dr Ajay Bhushan Prasad Pandey)
Chairperson

Sd/-


(Dr Praveen Kumar Tiwari)
Full-Time Member

Sd/-

(Smita Jhingran)
Full-Time Member

Authorised for issue by the National Financial Reporting Authority.

Date: 29.09.2023
Place: New Delhi


(Vidhu Sood)

Secretary
राष्ट्रीय वित्तीय रिपोर्टिंग प्राधिकरण
National Financial Reporting Authority
नई दिल्ली / New Delhi
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To,
CA Nilesh Shah,
ICAI Membership No - 0107752,
Nilesh Shah, Chartered Accountants,
B-24, Shankar Vijay-1
Rajawadi Road, Ghatkopar East, Mumbai -400077.
Email: canileshshah1@gmail.com

Copy To: -

- (i) Secretary, Ministry of Corporate Affairs, Government of India, New Delhi.
- (ii) Reserve Bank of India
- (iii) Securities and Exchange Board of India, Mumbai.
- (iv) The Compliance Officer, DHFL
- (v) Secretary, Institute of Chartered Accountants of India, New Delhi.
- (vi) IT-Team, NFRA for uploading the order on the website of NFRA.