

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. 58/2023

Date: 29.09.2023

ORDER

In the matter of CA Supreet Sachdev, ICAI Membership No. 205385 under Section 132(4) of the Companies Act 2013 read with Rule 11(6) of National Financial Reporting Authority Rules 2018

1. This Order disposes of the Show Cause Notice ('SCN' hereafter) no. 23/43/2021 dated 05.01.2023, issued to M/s BSR & Co LLP ('Firm hereafter') and CA Supreet Sachdev (ICAI Membership No. 205385), partner of M/s BSR & Co LLP (ICAI Firm registration no. 101248W/W-100022), who is a Member of the Institute of Chartered Accountants of India and was the Engagement Partner ('EP hereafter') for the statutory audit of **Sobha Ltd** ('Sobha' or 'the company' hereafter) for the Financial Year ('FY' hereafter) 2017-18 and 2018-19.
2. This Order is divided into the following sections:
 - A. Executive Summary
 - B. Introduction & Background
 - C. Lapses in the conduct of audit
 - D. Article of Charges of Professional Misconduct by the EP
 - E. Penalty & Sanctions
- A. EXECUTIVE SUMMARY**
3. NFRA initiated action under Section 132(4) of Companies Act 2013 against CA Supreet Sachdev, the Engagement Partner (EP), for professional or other misconduct in statutory audit of Sobha for FY 2017-18 and 2018-19, pursuant to information received from Securities and Exchange Board of India ('SEBI' hereafter), vide letter dated 11.05.2021.
4. Sobha is a company in the business of real estate and its equity shares are listed on National Stock Exchange ('NSE' hereafter) & BSE Ltd ('BSE' hereafter) and therefore is under regulatory purview of NFRA. Sobha was required to prepare its Financial Statements ('FS' hereafter) for the FY 2017-18 and FY 2018-19 in accordance with Indian Accounting Standards ('Ind AS' hereafter), as notified by Ministry of Corporate Affairs. M/s BSR & Co LLP was appointed as Statutory Auditor of Sobha for FY 2017-18 & FY 2018-19 and CA Supreet Sachdev was the EP.

5. The Order finds that the EP did not comply with the provisions of SA 540¹ (Para 6 & 9), SA 200² (Para 7 read with Para A23) and SA 315³ as he failed to report on the uncertainty about recovery of unsecured land advances amounting to ₹ 1843.13 crore, with no marketable title to the land and some of which also being under litigation. The EP failed to report this matter even after identifying the weakness in the internal controls over the advances for which no ageing schedule was maintained, no monitoring was carried out and no confirmations were obtained by the Company. The auditor had also not reported non-provisioning against the amounts due from certain individuals and the security deposits given to certain other individuals and did not obtain sufficient appropriate audit evidence in respect of these transactions, even though the EP was aware that the transactions were being enquired into by SEBI. Further, the EP did not comment, in its Independent Auditor's Report for FY 2018-19, on the issues raised by SEBI either through qualification or through Emphasis of Matter.
6. Therefore, based on our investigation and the related proceedings under Section 132(4) of the Companies Act and after giving the EP adequate opportunity to present his case, we find the EP guilty of professional misconduct and impose through this Order monetary penalty of ₹ 5,00,000/- on the EP. This Order will take effect after 30 days from its issuance.

B. INTRODUCTION & BACKGROUND

7. The National Financial Reporting Authority ('NFRA' hereafter) is a statutory authority set up under Section 132 of the Companies Act 2013 (Act hereafter) to monitor, implement, 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 prescribed classes of companies and impose penalty for professional or other misconduct of the individual members or firms of chartered accountants.
8. The statutory auditors, both individuals and firms of chartered accountants, are appointed by the members of company under Section 139 of the Act. The statutory auditors, including the Engagement Partners and the Engagement Team that conduct the audit, are bound by the duties and responsibilities prescribed in the Act, the rules made thereunder, the Standards on Auditing, including the Standards on Quality Control and the Code of Ethics, the violation of which constitutes professional misconduct, and is punishable with penalty prescribed under Section 132(4)(c) of the Act.
9. Sobha is a company in the business of real estate. Its equity shares are listed on NSE & BSE and therefore it is under regulatory purview of NFRA. Sobha was required to prepare its Financial Statements ('FS' hereafter) for FY 2017-18 and FY 2018-19 in accordance with Indian Accounting Standards ('Ind AS' hereafter), as notified by Ministry of Corporate Affairs. M/s BSR & Co LLP were appointed as Statutory Auditor

¹ Standard on Auditing (SA) 540, *Auditing Accounting Estimates, including Fair Value Accounting Estimates and Related Disclosure*

² Standard on Auditing (SA) 200, *Overall Objective of the Independent Auditor and the Conduct of Audit in Accordance with the Standards on Auditing*

³ Standard on Auditing (SA) 315, *Identifying and Assessing the Risks of Material Misstatement through understanding the Entity and its Environment*.

of Sobha for FY 2017-18 & 2018-19 and CA Supreet Sachdev was the EP for the said audit assignment.

10. Sobha Ltd had as per its Standalone Financial Statements for FY 2017-18 and FY 2018-19 presented the following figures: -

(₹ in crore)

	2018-19	2017-18
Non – current assets	1,523.02	1,291.81
Current assets	9,024.14	7,530.48
Total Assets	10,547.16	8,822.29
Equity	2,077.38	2,617.09
Income	3,433.78	2,649.69
Total Expenses	3,001.87	2,367.27
Profit Before Tax	431.91	282.42
Income Tax Expenses	145.38	88.48
Profit for the year	286.52	193.94
Other Comprehensive Income	(0.75)	(0.44)
Total Comprehensive Income	285.77	193.50
Earnings Per Share	₹ 30.23	₹ 20.28
Land Advances		
Current	1,356.87	1,332.29
Non-Current	486.26	402.79
Total Land Advances	1,843.13	1,735.08

11. Sobha had a profit before tax of ₹ 282.42 crore & ₹ 431.91 crore during the FY 2017-18 & 2018-19, respectively. Land advances given by the company which were outstanding at the end of FY 2017-18 & 2018 -19 were ₹ 1735.08 crore & ₹ 1843.13 crore respectively, constituting 17.48% and 19.67% of the total assets, much above (127 times in case of FY 2018-19) the overall materiality of ₹ 14.50 crore determined by the EP for the year. Note 11 of the Standalone Financial Statement (SFS) for FY 2018-19 stated that “*Advances for land though unsecured are considered good as the advances have been given based on arrangement/memorandum of understanding executed by the company and the company /seller/intermediary is in the course of obtaining clear and marketable title, free from all encumbrances, including for certain properties under litigation*”.
12. NFRA initiated action under Section 132 (4) of Companies Act 2013 against CA Supreet Sachdev, the Engagement Partner (EP), for professional or other misconduct in the statutory audit of Sobha for FY 2017-18 and FY 2018-19, pursuant to information received from SEBI vide letter dated 11.05.2021, pointing out that:-
- (a) Sobha had not made provision for the outstanding amount of ₹ 8.48 crore due from A since 2012-15. Sobha had billed A for ₹ 10.33 crore, for construction of a house, for which invoice of ₹ 3 crore was raised in 2012 and ₹ 7.33 crore in 2015. A paid only ₹ 1.85 crore but no provisioning for the balance of ₹ 8.48 crore receivable from A was made in 2017-18 & 2018-19.

- (b) VAT /GST of ₹ 8.08 crore in 2017-18 & ₹ 19.89 crore in 2018-19 due on a commercial property (Mall) jointly developed by A & Sobha Ltd, was paid by Sobha Ltd, but was shown as due from tax authorities instead of due from A.
 - (c) Sobha Ltd had advanced ₹ 4.25 crore to C, an associate of A, and ₹ 1.50 crore to D for acquiring land parcels during the period 2004 to 2008. However, neither the land parcels were acquired, nor were the advances refunded. No provisioning was done for ₹ 5.75 crore in the books of Sobha Ltd for FY 2017-18 & FY 2018-19.
 - (d) B and E were given refundable deposits of ₹ 11 crore and ₹ 8 crore respectively in the year 2011 for the joint development of a project. However, neither the possession of the land had been obtained by Sobha nor the amounts had been refunded back to Sobha. Sobha had not made any provision for these refundable deposits in FY 2017-18 & FY 2018-19.
13. In order to examine the matter, NFRA asked for the Audit File, which was submitted by the EP vide letter dated 17.09.2021. After examination of the Audit File and on being satisfied that adequate audit procedures were not performed during the audit, NFRA issued a show cause notice (SCN) dated 05.01.2023 to the EP.
 14. The EP submitted his reply to the SCN on 23.02.2023 and sought personal hearing, which was conducted on 06.07.2023 (initially fixed for 27.06.2023 but rescheduled on the request of EP). The personal hearing was attended by the EP and his advocate Shri Ajay Bahl.
 15. We have perused all material on record including the responses submitted by the EP, written submissions by his advocate after the personal hearing, annual reports, and audit files. Our findings on the charges mentioned in the SCN as well as the points raised by the EP in his written and oral submission are discussed in Part C of this Order.

C. Findings on the issue of NFRA's jurisdiction and the charges against the EP

NFRA's jurisdiction in the case

16. The EP has raised the issue of jurisdiction of NFRA, primarily stating that the audit for the year 2017-18 was completed before NFRA was established and therefore NFRA lacks jurisdiction. Therefore, we deal with this matter first before taking up the charges of professional misconduct against the EP.
17. At the outset it is stated that the Statutory Audit of a company under the Companies Act, 2013 must be conducted in accordance with that law. The Accounting Standards and Standards on Auditing have been defined in the Companies Act, 2013. Accounting Standards are prescribed by the Central Government under Section 133 of the Companies Act, 2013. Auditing Standards are those prescribed by the Central Government under Section 143(10) of the Companies Act, 2013. The Proviso to Section 143(10) states that until the Auditing Standards are prescribed by the Central Government, the Auditing Standards issued by the ICAI will be deemed to be the Auditing Standards under this sub-section.
18. Section 132 of the Companies Act, 2013 that establishes the National Financial Reporting Authority (NFRA) defines its functions and powers. Section 132(4) vests NFRA with the power to investigate into the Professional or Other Misconduct committed by any

member or firm of Chartered Accountants, registered under the Chartered Accountants Act, 1949.

19. The Explanation to Section 132(4) further states that for the purposes of this sub-section “*professional or other misconduct*” shall have the same meaning as assigned under Section 22 of the Chartered Accountants Act, 1949, according to which the expression “*professional or other misconduct*” shall be deemed to include any act or omission provided in any of the Schedules. A combined reading of this Section and the First and Second Schedule thereof implies that non-compliance with Auditing Standards by a Chartered Accountant or a Firm of Chartered Accountants is professional or other misconduct. Further, the Standards on Auditing (SAs) or Auditing Standards have been in existence and compliance with those by the Auditors was mandatory even prior to NFRA’s establishment.
20. The notification of establishment of NFRA does not in any way alter the liability of the statutory auditor to fully comply with the law and/or standards expected of a professional. NFRA's authority to monitor and enforce compliance with the accounting and auditing standards is only with reference to such standards as were established by law even earlier and were fully binding on statutory auditors. All the Standards on Auditing are a part of the law and are required to be mandatorily complied with from the date of their respective applicability, while conducting statutory audits. Hence, no new obligation is created on the EP as these standards were to be mandatorily followed by the EP even prior to NFRA’s establishment. Section 132(4) designates NFRA as the forum for determination of professional misconduct. Setting up of NFRA does not impose any new duties or obligations on Auditors, rather NFRA only evaluates their professional work in accordance with the Standards on Auditing and statutory requirements prevailing at the time of the audit. Therefore, there is no bar on NFRA’s jurisdiction over the cases of professional or other misconduct committed prior to establishment of NFRA.
21. Section 132(4) of the Companies Act is a non-obstante clause, which give exclusive jurisdiction to NFRA in matters of professional or other misconduct. Hence, all cases that fall within the jurisdiction of NFRA will be excluded from the jurisdiction of other institutes. Additionally, Rule 10(3) of the NFRA Rules, 2018, clearly states that (3) *On the commencement of these rules- (a) the action in respect of cases of professional or other misconduct against auditors of companies referred to in Rule 3 shall be initiated by Authority and no other institute or body shall initiate any such proceedings against such auditors.* Thus, NFRA has exclusive jurisdiction in matters of professional or other misconduct. It could not have been the intent of the legislature to leave a regulatory gap in respect of professional or other misconduct committed before NFRA was established. Therefore, the law has provided NFRA an exclusive jurisdiction and states that no other institute can take up these cases. Hence, by necessary implication Section 132 operates retrospectively.
22. Retrospective applicability can either be expressly provided for or can be inferred by necessary implication from the language employed. The Hon’ble Supreme Court in the case of *Zile Singh v. State of Haryana, (2004) 8 SCC 1 at Para 15*, held, “*It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication especially in a case where the new law is made to cure an acknowledged evil for the benefit of the community as a whole (ibid., p. 440).* This can be achieved by express enactment or by

necessary implication from the language employed. If it is a necessary implication from the language employed that the legislature intended a particular section to have a retrospective operation, the courts will give it such an operation. In the absence of a retrospective operation having been expressly given, the courts may be called upon to construe the provisions and answer the question whether the legislature had sufficiently expressed that intention giving the statute retrospectivity. Four factors are suggested as relevant: (1) general scope and purview of the statute; (in) the remedy sought to be applied; (ii) the former state of the law, and (iv) what it was the legislature contemplated. (p. 388).”

23. A plain reading of the law would disclose that Section 132(4A) confers upon the NFRA the power to investigate into the matters of professional or other misconduct committed by any member or firm of Chartered Accountants registered under the Chartered Accountants Act, 1949 in such manner as may be prescribed.
24. The proviso to Section 132(4A) creates a bar on any other institute to initiate or continue any proceedings where the NFRA has initiated an investigation under this Section. This clearly implies that even for matters of professional or other misconduct committed prior to the coming into force of Section 132(4), NFRA can initiate an investigation, which would disentitle any other institute such as the ICAI from continuing their proceedings in such matters of misconduct. The expression “*such matters of misconduct*” would clearly mean misconduct which has been committed prior to 24.10.2018 i.e. the date of coming into force of Section 132(4) and qua which proceedings were already underway by the ICAI and with effect from 24.10.2018, the said proceeding would be in the exclusive domain of NFRA.
25. The presumption against retrospective applicability arises when a vested right is sought to be impaired. The explanation to Section 132(4) would clearly reveal that the subject matter of investigation and penalty under this provision is “*professional or other misconduct*” having the same meaning assigned under Section 22 of the Chartered Accountants Act, 1949. Therefore, it cannot be disputed that no Chartered Accountant can claim to have a vested right to commit professional or other misconduct, which was already prohibited and illegal and subject to disciplinary action under a different regulatory statute, namely, the Chartered Accountants Act, 1949.
26. The reference by the EP to National Company Law Appellate Tribunal order in *Mukesh Maneklal Choksi v/s UOI*⁴ is not applicable in the present matter as the citation in Para 23 of the NCLAT order is merely the tribunal reiterating the arguments made by the appellant and the decision of the tribunal in Para 24 states that National Company Law Tribunal can exercise the powers in Section 140(5) second proviso. Secondly, in Section 140(5) second proviso, the provision under consideration has criminal consequences and is different from the present case in hand where the consequences are civil in nature. As noted before, the compliance with Standards of Auditing was mandatory and non-compliance was punishable even prior to establishment of NFRA, hence no new obligation has been created on the Auditors upon establishment of NFRA.
27. We now discuss the charges included in the SCN.

⁴ Mukesh Maneklal Choksi v/s UOI CA(AT) 89 of 2019

Charge #1: Failure to report non-provisioning of land advances given to C and D

28. The SCN charged the EP for not reporting the non-provision against the advances of ₹ 4.25 crore to **C** and ₹ 1.50 crore to **D** for acquiring land parcels during the period 2004 to 2008 despite several hurdles towards the acquisition of lands. The advances had been outstanding for than 11 years and 8 years respectively. The SCN charged that the auditor had not shown any professional scepticism and had relied on the management representation.
29. The SCN also charged that the financial statements of Sobha for the FY 2018-19 had disclosed Land Advances of ₹ 1843.13 crore, without any provision for potential uncollectability and write off. These outstanding advances were unsecured but were considered good by the management on the basis (as disclosed in the notes to financial statements) that these had been given based on arrangements/ memorandum of understanding executed by the Company and that the Company/ seller/ intermediary was in the course of obtaining clear and marketable title, free from all encumbrances, including for certain properties under litigation. The SCN charged the EP with considering these advances good even though the note to the accounts stated that clear marketable title had not been obtained for the land in question.
30. The EP replied that no testing of advances to **C** and **D** was done for FY 2017-18 as it was below the overall materiality (₹ 9.45 crore) determined for the year. As regards FY 2018-19, the advances were tested following enquiries made by SEBI.
31. The EP contended that any real estate project starting from land parcel identification to launching the project involves considerable time, which is in line with the industry standards. Accordingly, even if the land advances are old, these are not automatically considered for provisioning, as has been assumed by NFRA in its allegation. Various considerations are relevant such as the inherent value of underlying land, possibilities of recovery of dues etc. The EP also contended that merely because a land is under litigation does not mean land advances to landowners will not be recoverable; that they had reviewed the supporting documents and performed audit procedures and collected sufficient appropriate audit evidence. The EP added that the ET had obtained fair valuation report in respect of high value land advances given by the company. In their post personal hearing submission, the EP stated that the Company made a provision on being pointed out by the ET that ₹ 75 lakh given to **C** was without a written agreement. In case of **D** the EP stated that there were sufficient remedies if she was unable to secure the land and the company had decided to pursue the land parcel instead of seeking a refund and that this matter was also discussed in the audit committee.
32. We note that Sobha had shown in its financial statements an outstanding land advance of ₹1843.13 crore against which no provision had been made. This amount included ₹ 534.99 Crore on account of interest capitalised. We have examined the audit papers available in the audit file and the related presentation made to the audit committee. The audit file has a list of individual parties, numbering around 152, to whom advances aggregating to ₹1843.13 crore were made. It appears from the presentation made to the audit committee that the ET had selected top six parties accounting for 89% of the land balance (presented as Advance & Inventory) as at 31.03.2019. Our observations in respect of these advances are as follows:
 - i. Out of 17 parties from whom balance confirmations were sought, the Audit File had confirmation from only three parties, out of which was a related party namely Technobuild.

- ii. Technobuild, against whom ₹ 919 crore have been shown as outstanding is shown as a Related Party owned by Key Management Personnel (KMP) under the Related Party Disclosure. (The amount is shown as ₹ 917.69 crore in the working papers.) The auditors have stated that the land parcels were procured and held as land stock in the books of Technobuild. Although the amount is quite material and accounts for nearly 50% of total land advances, there is no sufficient appropriate audit evidence to demonstrate that there was no need for any provision for doubtful balances. The audit papers lack the basic and essential details such as the project-wise or party-wise details of these advances, status of the related projects and the recoverability of these advances. All that the audit papers state is that the land parcels were held as land stock in the books of Technobuild. We also note that the balance confirmation taken from Technobuild does not have the name of the Director who signed it.
- iii. In case of second advance of ₹ 307.60 crore to Dodda Amanikere Village Property-Hoskote, land stock of ₹ 241.40 crore has been shown, but the audit work papers do not clarify whether the amount of advance of ₹ 307.60 crore excluded the land stock and, if not, then what is the purpose of showing the land advance and land stock separately. Further, for the purpose of computing percentage of audit coverage of total land advances disclosed in the presentation slide, denominator includes only the Land Advances of ₹ 1843.13 crore whereas the numerator includes this land stock of ₹ 241.40 crore. As a result, the percentage (89%) of audit coverage (as a percentage of land advances reported to the Audit Committee) is erroneous.
- iv. In the third case of IndSing Developers it has been stated that the outstanding advance of ₹100.10 crore consists of land advance of ₹ 25.40 crore and ₹ 77.30 crore as interest capitalized on the land advance. It has also been stated that as at 31.03.2019 the company had registered land against the advance of ₹ 23.60 crore in the name of Sobha Ltd. It is not clear how such large amount of the interest capitalized is still being shown as included in the amount of land advance if the registration of land against land advance of ₹ 23.60 crore had already taken place. The audit file has no evidence of any review or analysis.
- v. In the fourth case of Gujarat International Finance Tec City Company Limited the amount of outstanding advance is shown as ₹ 28.40 crore, whereas in the working paper it is shown as ₹ 35.26 crore, without explaining the difference.
- vi. Audit work paper shows that classification of current and non-current is based on management judgement. Land for which the management expects to get it registered in their name within 4 year is considered as current and the others are considered as noncurrent.

The above observations indicate that the EP has not performed proper audit of the land advances, which was a significant class of account balance constituting 17.48% and 19.67% of total assets during FY 2018-19 and FY 2017-18 respectively. These amounts are much above (127 times) the materiality level of ₹14.50 crore chosen for the FY 2018-19 audit. The instances of differences in the amounts of advances shown in the working papers and as presented to the audit committee, absence of clarity about the land stock and the interest capitalized, and absence of sufficient appropriate audit evidence in respect of the statement that land stock in respect of land advance were held in the books

of Technobuild Developers Pvt Ltd are evidence of gross negligence and absence of professional scepticism by the EP.

33. In respect of land advances given to **C** and **D** the EP's statement that there were sufficient remedies to secure the land is not acceptable as the EP has not documented such remedies. It is a matter of record that the EP did not even have information on the ageing of advances. The audit work paper land advances (WP 2019. xlsx) contains the list of land advances made but not the dates when these land advances were given. The work paper indicates that the substantive testing of the land advance to **C** was done but the details of the land advance given to **D** was not available.
34. We also observe that Sobha had disclosed in Note -11 of SFS that land advances were given for certain properties under litigation. However, the EP has failed to document in the Audit File the details of the properties which were under litigation and on which land advances had been given by Sobha.
35. It is not understood how unsecured land advances were considered good, without documenting a valid basis in the audit file, since some of these were outstanding for several years and some were also under litigation. In fact, the EP has considered them all to be good based on MoUs, and not on any legally binding instruments. The reply of the EP that land under litigation does not mean advances are not recoverable does not appear reasonable, considering that such disputes take years to resolve and, and there is no guarantee that they may be decided in the company's favour.
36. In respect of the advance of ₹ 4.25 crore to **C** the EP has stated in the reply dated 23.02.2023 that the company had an option to enforce specific performance or seek a refund of advance with interest. As the land was more valuable, it was the commercial decision of the company to pursue the land than to seek a refund. This argument is again misleading since the commercial interest of the company would be served only when it has the title to the land irrespective of any potential appreciation in its value. Any possibility of appreciation without a clear title to the land is hypothetical and is no justification for not considering provisioning, especially if the properties were under litigation.
37. In respect of the land advance of ₹1.50 Crore to **D**, there was no documentation in the audit file in relation to the identification of the land for which the land advance was given and no testing on the recoverability of the advance.
38. In the presentation made to Audit Committee on 17.05.2019, the EP had indicated the internal control weaknesses in the matter of Land Advances of ₹1843.13 crore, with the recommendations that the Company should maintain an ageing of land advances and institute a forum for obtaining regular confirmation and monitoring of these advances. However, there is no evidence in the Audit File that the EP properly evaluated⁵ and considered these critical weaknesses in the internal financial control system of the Company for modification of his audit report issued pursuant to section 143 (3)(i) of the Companies Act 2013. Despite being aware of the existence of material weaknesses in the internal controls over monitoring land advances, the EP displayed gross negligence in

⁵ paragraph 128-136 and IG 20.1 of ICAI Guidance Note on Audit of Internal Financial Controls over Financial Reporting

not evaluating and considering a modified opinion on the Internal Control over Financial Reporting⁶.

39. The amount of ₹1843.13 crore is a material amount considering the overall size of the balance sheet of the company (₹10,547 crore). The Company as well as the EP had identified that the advances of ₹1843.13 crore were unsecured with no marketable title and that some of these were also under litigation, without, however, properly evaluating the need for a provision. This is important as even a 5% provision would have reduced the profit of the company significantly.
40. It is therefore evident from the foregoing discussion that the EP did not exercise due professional scepticism and judgement and therefore was in non-compliance with SA 200, para 7 of which, read with Para A23, requires the EP to exercise professional judgement and maintain professional scepticism throughout the audit. The EP relied solely on the management representation. In doing so, the EP did not comply with SA 540 as detailed below: -
 - i. The EP did not comply with Para 6 of SA 540 as he failed to obtain sufficient appropriate audit evidence that the accounting estimates relating to land advances of ₹1843.13 crore were reasonable.
 - ii. The EP did not comply with Para 9 of SA 540, as he failed to review the outcome of accounting estimates included in the prior period financial estimates as the advances had been outstanding for several years (no precise date was obtained by the auditor).

We therefore conclude that the EP failed to exercise due professional diligence in the audit of provisioning (or absence of it) against the potentially doubtful land advances which were outstanding for several years. This also shows that the EP did not consider these in identifying and assessing the risks of material misstatement through understanding the entity and its environment which was a violation of SA 315 and was pointed out in the SCN.

Charge # 2 Failure to report on non-provisioning on ₹ 8.48 crore due from A outstanding for more than 3 years.

41. The EP was charged with not reporting the non-provisioning in respect of ₹ 8.48 crore due from A for over 3 years. Sobha had constructed a residential house for A which was billed for ₹ 10.33 crore (invoices dated 31.03.2012 and 30.9.2015 were raised for ₹ 3.00 crore and ₹ 7.33 crore respectively) but had recovered only ₹ 1.85 crore in FY 2012-13 and there was no recovery thereafter. The house was completed in FY 2015-16. The amount of ₹ 8.48 crore had remained unpaid at the end of FY 2017-18 as well as the FY 2018-19, but no provision had been made in any of these years.
42. The EP has submitted vide letter dated 10.03.2022 that they '*...questioned the management of the Company and were informed that the Company was in regular discussions with A, who was not disputing that the amount was due. The management consistently maintained that the receivable was not disputed and was expected to be collected and provision for the outstanding balance was not required. This amount was*

⁶ Paragraph 161 and 162 of ICAI Guidance Note on Audit of Internal Financial Controls over Financial Reporting

also included by A in the * affidavit filed in 2018'. The EP also added that the receivable had been realised in full as of the date of their letter.

43. In his reply dated 23.02.2023 to the SCN, the EP has stated that it was their understanding that as per the company's policy approved by the MD, CFO and AVP Finance, Accounts Receivable outstanding for more than 3 years would be highlighted to AVP Finance, MD, and CFO for further consideration. The ET performed the walkthrough test to confirm that the stated practice was being followed and verified whether the management had identified the relevant risk and whether the control mitigating the risk so identified were designed and implemented appropriately by management. It was also mentioned in the reply that the ET had obtained the list of debtors and recomputed the ageing of debtors for a sample of debtors. Further, the balance from A was selected as part of samples during FY 2017-18 and FY 2018-19.
44. We have perused the working paper related to the ET's examination of the matter and our observations are as follows:
- (a) The workpaper titled "*Contractual Debtors.0010 Sobha contractual Debtors_Marc.xlsx*" clearly states that the company has a policy to provide for the balances outstanding for more than 3 years. The policy document embedded in the working paper is captioned "*Policy for provision for Bad Debts and write-offs/write-backs*". It says that ARs (Accounts Receivables) would be identified and highlighted to VP Finance, CFO and MD and provision would be created based on the approval from the MD. The document is an undated, though signed, standalone one page document on a plain sheet and appears to be a hastily prepared document. There is no evidence that the case of A was placed before the MD for a decision. The EP did not highlight that the due process was not followed in case of the outstanding of ₹ 8.48 crore even though it was a part of the sample selected for audit in 2017-18 and 2018-19.
- (b) In another audit work paper relating to IFC Control Revenue Testing the ET had identified the risk of "*provision of doubtful debt not calculated properly in appropriate period*". The EP has commented that "*Based on the policy defined and the approval from ED manufacturing/CFO, provision is created by Executive Finance and approved by Manager Finance*". The EP concluded in this work paper that "*controls are designed effectively*".

These two working papers point to the inherent contradictions in the test of controls, since as per one audit document provision is to be approved by Manager Finance and in the other audit work paper, the provision has to be created after approval by Managing Director.

45. In the audit work paper on Recoverability Assessment, the ET has recorded "*that the company is following up for the outstanding amount and they don't foresee any challenges in collections. Also, the company has transactions with A and his associates, where the company is liable to pay an amount greater than the outstanding receivable balance. Therefore, no issues perceived on collection. Further, we have verified * affidavit filed by A during the 2018 ** and traced the same amount.*" However, this work paper does not give the specifics of the total amount payable by the company to A and associates and the legal basis of adjusting the receivables against the payables.

As per Para 42 of Ind AS 32⁷, “A financial asset and a financial liability shall be offset and the net amount presented in the balance sheet when, and only when, an entity: (a) currently has a legally enforceable right to set off the recognised amounts; and (b) intends either to settle on a net basis, or to realise the asset and settle the liability simultaneously”. The EP has shown gross negligence of these provisions in reaching his audit conclusion that a set off was available, without establishing that there was a legally enforceable right.

46. We therefore conclude that the EP did not comply with the provisions of Para 9 of SA 540 since he did not obtain sufficient appropriate audit evidence for not considering provisioning in respect of the outstanding dues of ₹ 8.48 crore from A. This also shows that the EP did not consider these in identifying and assessing the risks of material misstatement through understanding the entity and its environment which was a violation of SA 315 and was pointed out in the SCN.

Charge # 3 VAT/GST Liability

47. The EP was charged for not reporting the incorrect classification of the VAT/GST liability in respect of a mall jointly developed by A & Sobha Ltd. Sobha Ltd had paid the VAT/GST of ₹ 8.08 crore in 2017-18 & ₹19.89 crore in 2018-19, which was the joint liability of A and Sobha. The SCN stated that the amounts due from A was shown as due from tax authorities instead of from A.
48. The EP in his reply has stated that the entire amount of VAT/ GST liability was expensed in the respective years and was not shown as ‘Balance from Statutory Authorities’. On verification of the same, the reply of the auditor is accepted, and this charge is dropped.

Charge # 4 Refundable Security Deposit

49. The EP was charged for not reporting non-provisioning in respect of security deposit with B and E, who were given ₹ 11 crore and ₹8 crore several years back as refundable security deposit under the Joint Development Agreement for Sobha Valley View Project being developed by the company. No provision was made even though the possession of the land had not been obtained by Sobha. The acquisition of land from E, was entangled in acquisition claims by Karnataka Industrial Development Board (KIADB) and other litigations.
50. In his written reply as well as during the oral hearing, the EP stated that the deposits were refundable only on completion of the project. The EP explained that construction had been done on the land owned by B, but the project had not been completed. On the land owned by E, work had not commenced. The EP produced audit work paper showing that the amount payable to B under the Joint Development Agreement for her share of revenue was ₹ 33 crore, which was more than the total refundable deposit of ₹ 19 crore given to both the landowners, B and E. The EP produced a copy of the Joint Development Agreement, as per Clause 6(2) of which, in case the landowners did not refund the security deposits, the developer could deduct it with interest from the revenue share payable

⁷ Indian Accounting Standard (Ind AS) 32, *Financial Instruments: Presentation*

to the land owners (**B** and **E**). The EP stated that, based on the above-mentioned considerations and review of documents, the ET was satisfied that the security deposits paid to **B** and **E** was not required to be provisioned.

51. We note that the EP had undertaken the review of the two refundable deposits, but the audit file does not contain any documentation on the line of the argument and reasoning advanced by the EP now. The EP is required to prepare audit documentation, which is sufficient to enable an experienced auditor, having no previous connection with the audit, to understand the result of the audit procedure performed and audit evidence obtained. Therefore, while there may be some merit in the reasoning provided by the EP, we find that by not properly documenting his analysis from the viewpoint of sufficient appropriate audit evidence, he has not met the requirements of the SA.

D. Articles of Charges of Professional Misconduct by the EP

52. As discussed in the foregoing paragraphs, the EP has deviated from the Auditing Standards, in his conduct of the audit of Sobha for FY 2017-18 & FY 2018-19. Based on the above discussions, it is proved that the auditor issued unmodified opinion on the financial statements despite no provisions being made by the company on the land advances of ₹1843.13 crore and the amounts due from A. Based on the foregoing discussions and analysis, we conclude that the auditor has committed professional misconduct as defined under Section 132(4) of the Companies Act, 2013 read with Section 22 of the Chartered Accountants Act, 1949 as amended from time to time, and as detailed below: -

- (a) The EP committed professional misconduct as defined by clause 6 of Part I of the Second Schedule of the Chartered Accountant Act, which states that a Chartered Accountant 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 EP failed to disclose in his report the material misstatement due to provisioning for unsecured land advances, receivable from individuals and refundable deposits as explained in Para 28 to 46 above.

- (b) The EP committed professional misconduct as defined by clause 7 of Part I of the Second Schedule of the Chartered Accountants Act, 1949 which states that a Chartered Accountant 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 EP failed to conduct the audit in accordance with the SAs as explained in Para 28 to 46 above.

- (c) The EP committed professional misconduct as defined by clause 8 of Part I of the Second Schedule of the Chartered Accountants Act, 1949 which states that an Chartered Accountant 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 EP failed to obtain sufficient appropriate audit evidence as required by the SAs and mentioned in Para 28 to 46 above.

53. Therefore, we conclude that the charges of professional misconduct enumerated in the SCN dated 05.01.2023, except for the charge (s) dropped herein, stand proved based on the evidence in the Audit File, the Audit Report issued by auditor, the submissions and admissions made by auditor, the annual report of Sobha for FY 2017-18 & FY 2018-19 and other materials available on record.

E. PENALTY & SANCTIONS

54. It is the duty of an auditor to conduct the audit with professional scepticism and due diligence and report his opinion in an unbiased manner. Statutory audits provide useful information to the stakeholders and public, based on which they make their decisions on their investments or do transactions with the public interest entity⁸.
55. Section 132(4) of the Companies Act, 2013 provides for penalties in a case where professional misconduct is proved. The seriousness with which proven cases of professional misconduct are to be viewed, is evident from the fact that a minimum punishment is laid down by the law.
56. The EP in the present case was required to ensure compliance with SAs to achieve the necessary audit quality and lend credibility to Financial Statements. As we have explained in this Order, failure to question the management on the non-provisioning of the land advances of ₹1843.13 crore (some of which was under litigation and the company was yet to get marketable title) of the value at which the reported figures are presented in the balance sheet and therefore could substantially influence the decision of the users of Financial Statements.
57. 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.

⁸ Public interest entity as defined in Rule 3 of NFRA Rules 2018


58. As per the information available in Annual Reports of Sobha the audit fees (including limited review work) of BSR & Co LLP for FY 2017-18 & FY 2018-19 was [REDACTED] and [REDACTED] respectively.
59. Considering the proved professional misconduct, 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 imposition of a monetary penalty of ₹ 5,00,000 (Rupees Five Lakh) upon CA Supreet Sachdev.
60. This order will become 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

Authorised for issue by the National Financial Reporting Authority,


Vidhu Sood
Secretary

Date: 29.09.2023
Place: New Delhi

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

To,

CA. Supreet Sachdev
Partner of BSR Co. LLP
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Bengaluru-560082
Email ID: ssachdev@bsraffiliates.com

Copy To: -

- (i) Secretary, Ministry of Corporate Affairs, Government of India, New Delhi.
- (ii) Securities and Exchange Board of India, Mumbai.
- (iii) Registrar of Companies, Bangalore.
- (iv) Secretary, Institute of Chartered Accountants of India, New Delhi.

