

**भारत सरकार / Government of India**  
**राष्ट्रीय वित्तीय रिपोर्टिंग प्राधिकरण / National Financial Reporting Authority**  
**7<sup>th</sup> Floor, Hindustan Times House,**  
**Kasturba Gandhi Marg, New Delhi**

Order No - 021/2024

Date: 06.09.2024

**ORDER**

**In the matter of CA Lavitha Shetty under Section 132(4) of the Companies Act, 2013**

1. This Order disposes of the Show Cause Notice ('SCN' hereafter) no. NF-23/14/2022 dated 17<sup>th</sup> May 2024, issued to CA Lavitha Shetty (ICAI Membership No. – 220473), proprietor of M/s Lavitha & Associates (Firm Regn. no. 011882S) Statutory Auditor and Engagement Partner (EP) for the statutory audit of Mysore Amalgamated Coffee Estates Limited (MACEL) for the FY 2018-19 & 2019-20.
2. Orders under section 132(4) of the companies Act 2013 (Act), were passed on 13.04.2023 and 25.04.2023 against CA Lavitha Shetty, Engagement Partner for Statutory Audit of MACEL for the Financial Year 2018-19 & 2019-20. In course of those proceedings CA Lavitha Shetty had, vide letter dated 28.07.2022, submitted information including details of audit and non-audit revenue earned by her proprietary audit firm and its related parties from the auditee company (MACEL) and/or its related parties. In this letter she disclosed the revenue earned from one related party only namely Coffee Day Hotel & Resorts Pvt Ltd (CDHRPL).
3. Later on, it was found that her proprietary firm M/s Lavitha & Associates was the statutory auditor of four more related parties of Mysore Amalgamated Coffee Estates Limited (MACEL) and that she did not disclose details of revenue earned from these four companies in her letter to NFRA. Vide letter dated 27.09.2023 a clarification was sought from her regarding this non-disclosure. Vide her letter dated 04.10.2023 she stated that the said four companies do not fall within the definition of related parties as per the provisions of section 2(76) of the Act. This letter dated 04.10.2023 provided the requisite information relating to these four companies.
4. Prima facie, we found that these four companies are covered within the definition of related parties given u/s 2(76) of the Act. On finding sufficient cause for action under section 132(4) of the Act, 2013 read with the NFRA Rules 2018, a Show Cause Notice (SCN) for submission of incomplete information by CA Lavitha Shetty, was issued and sent through post and email on 17.05.2024. The SCN charged the Auditors for failure to exercise due diligence in the conduct of professional duties.
5. CA Lavitha Shetty was advised to reply to the SCN by 16.06.2024 and also state whether she would like to be heard in person before a final decision is taken in the matter. She sought extension of time up to 17.07.2024 for submission of reply, which was allowed. Thereafter,

she submitted reply to SCN vide letter dated 08.07.2024 received through email on 17.07.2024. She did not avail of the opportunity of personal hearing.

6. We have considered the reply. The reply of CA Lavitha Shetty and its evaluation are given in subsequent paras.
7. Section 2(76) of the Act states that “related party”, with reference to a company, means—
  - (i) .....
  - (ii) .....
  - (iii) .....
  - (iv) *a private company in which a director or manager [or his relative] is a member or director;*
  - (v) .....
  - (vi) *any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager”. (emphasis added).*
8. MACEL and CDHRPL had two common directors (H. V. Santhrupth and B. Sreedhar) out of four directors in each of the companies. CDHRPL had 2 subsidiaries i.e. Wilderness Resorts Pvt Ltd (WRPL - 99.92% shareholding by CDHRPL), and Karnataka Wildlife Resorts Pvt Ltd (KWRPL - 99.99% shareholding by WRPL). CA Lavitha Shetty was statutory auditor of all these four companies. It was stated in the SCN that by virtue of shareholding and common directorships, the directors of these subsidiaries were accustomed to act in accordance with the advice, directions or instructions of Board of Directors (BoD) of MACEL and CDHRPL. Therefore, according to the SCN these two companies were related party as per the section 2(76)(vi) of the Act.
9. Further, in Chandrapore Estates Pvt Ltd and Kurkenmutty Estates Pvt Ltd, Mr V G Sidhharth (VGS) Chairman of Coffee Day Enterprises Ltd (CDEL-holding company of the group) was having 50% and 39.39% shares respectively. VGS was also controlling MACEL, being son of late Shri S.V. Gangaiah Hegde - 91% shareholder of MACEL. This fact has been admitted by CA Lavitha Shetty in her reply dated 18.12.2022 to SCN dated 03.11.2022 issued in the case related to statutory audit of MACEL for FY 2018-19. Therefore, according to the SCN these two companies were related party as per the section 2(76)(iv) of the Act.
10. CA Lavitha Shetty replied that NFRA has already taken action against her under section 132(4) (c) of the Act for deficiencies in audit process for the audit of MACEL for FY 2018-19 & 2019-20. Therefore, a new charge of professional misconduct for the same audit of MACEL for FY 2018-19 & 2019-20 amounts to “double jeopardy”, hence the same was legally not tenable. We note that the issue raised in the present show cause notice pertains to submission of wrong/incomplete information about revenue earned by CA Lavitha Shetty from related parties of MACEL in the course of proceedings before NFRA. As such, this



matter is distinct from the two Orders issued earlier for deficiencies in audit performance. Thus, the argument of “double jeopardy” relied upon by CA Lavitha Shetty does not hold.

11. CA Lavitha Shetty contended that H. V. Santhrupth and B. Sreedhar, two common directors of MACEL and CDHRPL, were neither shareholders nor directors of WRPL and KWRPL, therefore they had no influence on the actions of BoD of WRPL and KWRPL. According to her, mere holding of directorship in CDHRPL without any shareholding cannot help them wield powers over the BoD of WRPL and KWRPL. This reply is not accepted as these two directors of MACEL were also directors of CDHRPL, which had more than 99% shareholding in WRPL and KWRPL. By virtue of common directorships and shareholdings, the directors of these subsidiaries were accustomed to act in accordance with the advice, directions or instructions of Board of Directors (BoD) of MACEL and CDHRPL. Therefore, it is clear that these two companies were related party as per the section 2(76)(vi) of the Act.
12. In respect of Chandrapore Estates Private Ltd (CEPL) and Kurkenmutter Estates Private Ltd (KEPL), CA Lavitha Shetty contended that according to Section 2(76) (iv) of the Act, in case a director or manager of MACEL or their relative was a member or director of CEPL or KEPL then CEPL / KEPL were related parties to MACEL. In this case VGS was the shareholder of KEPL and CEPL, and he is the link to MACEL. The majority shareholder of MACEL was S V Gangaiah, father of VGS. But the law requires relation of the director or manager of MACEL (or their relative) with VGS and not of Shareholder. S V Gangaiah was not a director or Manager. She contended that although VGS had effective control over MACEL, but VGS was not holding any official role in MACEL. Therefore, his relationship with VGS did not fulfil the technical requirements in Section 2(76) (iv). We are not in agreement with this reply. It was seen that VGS was actually controlling all these companies, a fact admitted by CA Lavitha Shetty during earlier proceedings and also in reply to this SCN. Therefore, keeping in mind the control over MACEL and the principle of substance over matter, we find that CEPL and KEPL were related parties of MACEL. This is also as per provisions in subclause (vii) of subsection 76 of section 2 of the Act, wherein even a ‘person’ on whose advice, directions or instructions a director or manager is accustomed to act will qualify to be a related party.
13. CA Lavitha Shetty further contended that the alleged omission was not within the ambit of “conduct of professional duties”. It is noted that the responsibility of providing complete information by a professional to NFRA is a part of professional duties and the information about revenue earned by her from related parties of MACEL was called from her to evaluate her professional work. Also, every Auditor has to comply with the provisions of the law.
14. In view of above, it is proved that CA Lavitha Shetty committed professional misconduct of failure to exercise due diligence in the conduct of her professional duties by not providing complete information about revenue earned by her from related parties of MACEL. This professional misconduct is defined in para 7 of part I of second schedule of the Chartered Accountants Act 1949.

15. As already pointed out, we had sanctioned CA Lavitha Shetty vide our Orders dated 13.04.2023 and 25.04.2023. However, the misrepresentation of facts during those proceedings cannot be overlooked. CA Lavitha Shetty has misrepresented the facts relating to revenue earned by her from MACEL and its related parties and this information was crucial in evaluation of her independence in this matter. We also find that misleading the regulator leads to interference with the statutory functions of the regulator. Having already penalised her, we find that in these proceedings a token penalty would be appropriate given the facts and circumstances of the current professional misconduct. Accordingly, in exercise of powers under section 132(4)(c) of the Act, we order imposition of monetary penalty of Rs One lakh only upon CA Lavitha Shetty.
16. This Order will be 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

Authorized for issue by the National Financial Reporting Authority,

Date: 06.09.2024

Place: New Delhi

  
(Vidhu Sood)

Secretary

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

To,

Copy To: -

1. Secretary, Ministry of Corporate Affairs, Government of India, New Delhi.
2. Secretary, Institute of Chartered Accountants of India, New Delhi.
3. Mysore Amalgamated Coffee Estates Ltd.
4. IT-Team, NFRA for uploading the order on the website of NFRA.