

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

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

No. 027/2024

Date: 23.12.2024

ORDER

Order under Section 132(4) of the Companies Act 2013 in respect of M/s Deloitte Haskins & Sells LLP (Firm Registration No. 117366W/W100018), CA A.B. Jani (ICAI Membership No. 46488) and CA Rakesh Sharma (ICAI Membership No. 102042).

This Order disposes of the Show Cause Notice ('SCN' hereafter) dated 27.08.2024, issued to M/s Deloitte Haskins & Sells LLP (Firm Registration No. 117366W/W100018), the Audit Firm, CA A.B. Jani (ICAI Membership No. 46488), Engagement Partner (EP) and CA Rakesh Sharma (ICAI Membership No. 102042), Engagement Quality Control Review (EQCR) Partner, for the Audit of Zee Entertainment Enterprises Limited for the FY 2018-19 and 2019-20. (the Audit Firm, the EP, and the EQCR Partner are collectively referred to as 'the Auditors' hereafter). This Order is divided into the following sections:

- A. Executive Summary
- B. Introduction and Background
- C. Major Lapses and Violations
- D. Findings on the Articles of Charges of Professional Misconduct
- E. Penalties and Sanctions

A. EXECUTIVE SUMMARY

- 1) ZEEL is a media and entertainment company listed on the Bombay Stock Exchange and the National Stock Exchange. M/s Deloitte Haskins & Sells LLP was the auditor of ZEEL for FY 2018-19 and 2019-20 appointed under Section 139 of the Act.
- 2) As per the consolidated financial statements for 2019-20, ZEEL had Revenue from Operations of ₹8,129.9 crore, Total Current Assets of ₹10,097.3 crore and a Profit After Tax of ₹524.6 crore.
- 3) We *suo motu* examined the Audit File for the statutory audit of Zee Entertainment Enterprises Limited (ZEEL) for FY 2019-20 and FY 2018-19 to assess whether the auditor committed any professional misconduct as defined under Section 132 (4) of the Companies Act, 2013 ('the Act' hereafter).
- 4) Based on the examination of the Audit Files, and responses of the Audit Firm to our queries and other records, we were of the prima facie view that the Auditors had not discharged their professional duties under the Act as well as the Standards on Auditing (SA). Consequently, an SCN was issued to the Auditors asking them to show cause why action

under Section 132(4) of the Act should not be initiated against them for professional misconduct.

- 5) After examining the detailed submissions, including written and oral, this Order concludes that the Auditors failed to meet the relevant requirements of the SAs and violated the Act in respect of certain significant related party transactions. In September 2018, the Chairman of ZEEL, who is also the promoter of Essel Group of Companies, issued a letter to Yes Bank, committing ₹ 200 crore fixed deposit of ZEEL as a guarantee for the loans given by Yes Bank to a promoter group company Essel Green Mobility Ltd. The Bank appropriated the Fixed Deposit (FD) in July 2019, towards settlement of loan amounts due from seven promoter group companies. Neither the creation and maintenance of FD nor its re-appropriation by the Bank was with the approval of the Board or Shareholders of the Company. The statutory auditors failed to identify and report this misrepresentation. Our examination showed that the Auditors were grossly negligent, failed to apply professional skepticism and due diligence, did not adequately challenge the management's assertions, and failed to evaluate reporting of suspected fraud as required under Section 143(12) of the Act, which was evident from unauthorised guarantees/securities, premature closure of the FD by the Bank and unauthorised use of ZEEL's funds for settling the loan of the promoter group companies, with the knowledge of the Chairman of the group and management of ZEEL.
- 6) Based on the proceedings u/s 132(4) of the Companies Act, and after allowing them to present their case, we find that the Audit Firm, the EP, and the EQCR Partner are guilty of professional misconduct and impose, through this Order, the following monetary penalties and sanctions:
 - a. Imposition of a monetary penalty of Rupees Two Crore on the Audit Firm M/s Deloitte Haskins & Sells LLP.
 - b. Imposition of a monetary penalty of Rupees Ten Lakhs on CA A.B. Jani. In addition, EP CA A.B. Jani is debarred for 5 years from being appointed as an auditor or internal auditor or from undertaking any audit in respect of financial statements or internal audit of the functions and activities of any company or body corporate.
 - c. Imposition of a monetary penalty of Rupees Five Lakhs on CA Rakesh Sharma. In addition, EQCR Partner CA Rakesh Sharma is debarred for 3 years from being appointed as an auditor or internal auditor or from undertaking any audit in respect of financial statements or internal audit of the functions and activities of any company or body corporate.

B. INTRODUCTION AND BACKGROUND

- 7) NFRA is a statutory authority set up under Section 132 of the Act to monitor the implementation of the auditing and accounting standards and oversee the quality of service of the profession associated with ensuring compliance with such standards. The Statutory Auditor, appointed by the members of the company under section 139 of the Act is bound by the duties and responsibilities prescribed in the Act, the rules made thereunder, the Standards on Auditing (SA) and the Code of Ethics, the violation of which constitutes professional misconduct. 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.

- 8) ZEEL was required to prepare its Financial Statements for FY 2018-19 and 19-20 under Schedule III and other applicable provisions of the Act and Indian Accounting Standards (Ind AS) notified under the Companies (Indian Accounting Standards) Rules, 2015. The Auditor had issued an unmodified opinion on the financial statements of both these years.
- 9) We *suo motu* decided to examine the audit evidence that led the Audit Firm to issue an unmodified audit opinion for FY 18-19 and 19-20. We called for the Audit File for FY 19-20 and other information under section 132(4) of the Companies Act, 2013 from the Audit Firm on 16.08.2023. The Audit Firm submitted the Audit File on 04.09.2023 and other documents on 01.11.2023. After examination of the Audit File, a questionnaire was sent to the Audit Firm on 01.05.2024. The Audit Firm replied to the queries on 20.05.2024. Certain communications between ZEEL and Yes Bank, not documented in the Audit File, were called for from ZEEL. After examining the Audit File and other information, the Audit File for 2018-19 was also called for on 20.06.2024. The Audit Firm submitted the Audit File on 28.06.2024. The examination of the Audit File, annual reports of the Company, and other communications by the Audit Firm and ZEEL to NFRA, including the response of the Audit Firm to our questionnaire, showed a prima facie case of professional misconduct on the part of the Auditors.
- 10) On satisfaction that sufficient cause existed to initiate action under Section 132(4) of the Act, an SCN was issued to the Auditors asking to show cause why necessary action for professional misconduct against them should not be taken under Section 132(4)(c) of the Act read with Rule 11 of NFRA Rules 2018. The Auditors were charged with the professional misconduct of:
 - a. Failure to disclose a material fact known to the Auditors which is not disclosed in a financial statement, but disclosure of which is necessary in making such financial statement where the Auditors are concerned with that financial statement in a professional capacity,
 - b. Failure to exercise due diligence and being grossly negligent in the conduct of professional duties, and
 - c. Failure to obtain sufficient information which is necessary for the expression of an opinion, or its exceptions are sufficiently material to negate the expressions of an opinion.
- 11) The Auditors were provided one extension of time for submitting their response to the SCN. The Firm, the EP, and the EQCR Partner sent their reply to the SCN through speed post which was received by us on 30.10.2024.

- 12) The SCN also provided an opportunity for a personal hearing to the EP, EQCR Partner and the Audit Firm which was availed by them on 20.11.2024 with their legal counsel Advocate Prachi A. Dhanani. A written statement in continuation to the matters discussed during the in-person hearing has been submitted by the EP on 27.11.2024.
- 13) In response to the SCN and in-person hearing held on 20.11.2024, the Audit Firm raised certain legal challenges to the SCN alleging that there were no divisions in NFRA, that writ petitions in certain other cases of 2017-18 audits pending before Hon'ble Delhi High Court, that SCN cannot be issued against the audit firm, that non-compliances are not a result of the audit firm's quality control failure, that the constitutional validity of Section 132, alleged absence of prescribed procedure, restrictions in the SCN due to limiting evidence to audit file and that NFRA cannot penalise the firm as liability and consequences will extend to all partners who are not involved in the engagement.
- 14) Regarding the alleged absence of divisions in NFRA and other legal challenges, we reject the contentions in light of the Hon'ble NCLAT Order dated 01.12.2023 in Company Appeal (AT) NO. 91 of 2023 & I.A. No. 2413-2415 of 2023 and Hon'ble Supreme Court Order dated 22.03.2024 on Civil Appeal Diary No(s). 5641/2024. We also note that the Audit Firm has challenged the vires of Section 132 before the Hon'ble High Court of Delhi in the matter of the audit of ILFS Financial Services Ltd. However, the present SCN and the proceedings initiated have not been challenged in any Court of Law.
- 15) Before issuing this Order, we perused all the material on record, including the Audit File and the Auditors' written and oral submissions. This Order covers only the violations/actions/omissions that have been proved to result in one or more professional misconduct as per the articles of charges in the SCN.

C. MAJOR LAPSES AND VIOLATIONS

Unauthorised use of ₹200 crore of Company's Funds for Related Parties

- 16) On perusal of the Financial Statements¹ of ZEEL and the Audit Files, we note that the Company had a Fixed Deposit (FD) of ₹200 crore with Yes Bank Ltd with maturity on 10th September 2019. The FD was prematurely closed on 24th July 2019, purportedly by the Bank, to repay the outstanding loans of seven related parties (promoter group entities) of ZEEL. Prima facie, the Company unauthorisedly used the FD since FY 2018-19 as a security for such loans and later for repayment of the related party loans, of the promoter group entities, without the approval of the Audit Committee, the Board and Shareholders, in violation of Sections 177 and 185 of the Act. Therefore, the Auditors were charged with failure to examine and report this matter appropriately in the audit report for FY 2019-20 and to the Central Government under Section 143 (12) of the Act.
- 17) We note that the Auditors had identified that the allocation of FD of ₹200 crore by Yes Bank towards promoter group dues to Yes Bank was a significant risk. Thus, the matter

¹ Note 50 of Standalone Financial Statements and Note 45 of Consolidated Financial Statements

required rigorous examination, however, we find that the Auditors did not obtain sufficient and appropriate audit evidence to support their unmodified opinion and to conclude that this matter was not a suspected fraud reportable under Section 143(12). The Auditors failed to verify several critical evidence as explained in paragraphs 18 to 51 of this Order. These omissions/commissions cumulatively make the audit conclusion baseless and erroneous. The facts and evidence leading to the above findings are explained in the subsequent paragraphs.

Background facts as appearing from the documents available in the Audit File

- 18) Yes Bank prematurely closed an FD of ₹200 crore of ZEEL on 24th July 2019. This FD had been renewed on 13th June 2019. After premature encashment and appropriation against the loan due from seven related parties of ZEEL, the Bank credited interest² of ₹1.3 crore to ZEEL's bank account on the same day. On 18th September 2019, about two months later, ZEEL received letters from its related parties³ stating that Yes Bank had transferred the FD amount to their respective current accounts maintained with Yes Bank, which could have been done erroneously without their knowledge and consent; and that while they were taking up this matter with Yes Bank, they were separately returning the amounts to ZEEL. Subsequently, these related parties paid a total of ₹200 crore to ZEEL between 26th September 2019 to 10th October 2019. Later, they paid the interest at the same rate as the FD interest payable by Yes Bank. ZEEL closed the FD and interest receivable against the receipts from related parties and accounting entries were made accordingly.
- 19) On 30th September 2019, i.e., after receipt of money from a few related parties as above, ZEEL wrote a letter to Yes Bank citing that the fixed deposit⁴ was due for maturity on 10th September 2019 and was found to be missing in the Statement of Account; none of the authorized representatives of ZEEL had given any instructions including premature withdrawal of the FD or fund transfer through any means of communication i.e. letters/emails/fax etc. The Company asked Yes Bank to examine the matter and transfer the funds to ZEEL's bank account maintained with Yes Bank along with accrued interest till the date of the letter. Yes Bank in its reply dated 11th October 2019 stated that the FD was prematurely closed based on a letter dated 4th September 2018 issued by the Chairman of ZEEL, who is also the Chairman of Essel Group Companies. Though the letter from ZEEL is available in the Audit File, its reply from Yes Bank and the letter dated 4th September 2018 issued by the Chairman is found to be absent in the Audit File.
- 20) The company, as per the instructions of the Audit Committee (meeting dated October 17, 2019), conducted an internal enquiry and confirmed that none of the authorised signatories had approved the premature closure of the said FD.
- 21) On July 22, 2020, ZEEL and Yes Bank signed a joint statement stating that the matter was resolved between the Bank and the Company, and both the parties had mutually agreed and documented the understanding confirming the adjustment of amounts received from the

² Interest on FD from 13th June 2019 to 23rd July 2019

³ Seven related parties which had the loans outstanding to Yes Bank

⁴ FD number 000140300230070

aforesaid related parties with the FD amount receivable from Yes Bank. The Audit Report was signed on 24th July 2020 based on the Auditor’s conclusions⁵ that:

- a) *“..the accounting for this matter is appropriate as the related parties and the Bank have confirmed the aforesaid adjustment. Further, the internal investigation did not find any evidence of the signatories of the account authorizing the adjustment made by Yes Bank. Tests performed by DHS (as stated in w/p 23757.01) also did not find evidence of a charge/lien created on this FD in favour of Yes Bank”.*
- b) *“...these facts create a suspicion that a fraud may have occurred here. However, whether the fraud has been perpetrated by Yes Bank unilaterally or by the officers/directors of the Company cannot be concluded as DHS has no evidence to conclude that the actions of Yes Bank were authorized by officers/directors of the Company. Consequently, DHS does not have reasons to believe that a fraud has been committed by the officers/directors of the Company”.*

22) The sequence of events is listed in the following table for better understanding.

Date	Event
4 th September 2018	Issue of a letter by the Chairman of ZEEL to Yes Bank stating as follows – <i>“This is with regards to the Rs 200 Crore loan outstanding in Essel Green Mobility Ltd from Yes Bank Ltd. We will ensure that a fixed deposit of at least Rs.200 Crore is available with Yes Bank Ltd, from any one of Essel Group of companies, including Zee Entertainment Enterprises Ltd, at all times whilst the said facility remains due and outstanding and that in the event of default under the said facility, you may appropriate the fixed deposit towards repayment of the said Facility.”</i> Auditors claim that they never received a copy of this letter from the Company.
4 th September 2018	Creation of FD of ₹150 Crore by ZEEL in Yes Bank.
5 th September 2018	Creation of FD of ₹50 Crore by ZEEL in Yes Bank.
28 th September 2018	Redemption of the above two FDs for ₹ 200 crore.
1 st October 2018	Creation of two FDs totalling ₹200 Crore in Yes Bank.
31 st December 2018	Redemption of the above two FDs for ₹ 200 crore.
1 st January 2019	Creation of two FDs totalling ₹200 Crore in Yes Bank.
2 nd February 2019	ZEEL sends an email to Yes Bank informing that FD cannot be used to settle liabilities of group companies.

⁵ Refer WP 23757 Memo on Yes Bank FD

2 nd February 2019	Redemption of the two FDs for ₹ 200 crore.
8 th , 11 th and 12 th February 2019	Creation of three FDs totalling ₹200 Crore in Yes Bank.
15 th March 2019	Redemption of the above three FDs for ₹ 200 crore and creation of FD of ₹200 Crore in Yes Bank
13 th June 2019	Renewal of the above FD of ₹200 Crore in Yes Bank
24 th July 2019	Premature closure by Yes Bank of the FD of ₹ 200 crore and crediting Principal to the current account of 7 Related Parties of ZEEL, including Essel Green Mobility.
24 th July 2019	Crediting Interest on FD for 13 June to 24 July 2019 to ZEEL's current account
18 th September 2019	Receipt of letters by ZEEL from 7 related parties, stating that Yes Bank had transferred the FD amount to their respective current accounts, and that they will be refunding the money to ZEEL.
26 th September 2019 to 10 th October 2019	Related parties paid a total of ₹200 crore to ZEEL.
30 th September 2019	ZEEL writes letter to Yes Bank asking to explain why the fixed deposit that was due for maturity on 10 th September 2019 was found missing in the Statement of Account.
11 th October 2019	Reply from Yes Bank stating that the FD was prematurely closed based on a letter dated 4 th September 2018 issued by the Chairman of ZEEL, attaching a copy of the said letter from the Chairman. Auditors claim that they never received this letter from the Company.
17 th October 2019	The Audit Committee directs an internal enquiry into the FD matter.
17 th October 2019	The Auditors issued a qualified Limited Review report, due to the " <i>non-availability of relevant information</i> " regarding the closure of this FD, for the quarter ending 30 th Sep 2019. The " <i>relevant information</i> " is referred to as " <i>bank confirmation/communication from the bank etc.</i> ".
21 st January 2020	The Auditors issued a qualified Limited Review report, regarding the closure of this FD, for the quarter ending December 2019. The " <i>relevant information</i> " was not specifically mentioned, instead, it is stated that " <i>non-availability of relevant information (including</i>

	<i>lien on the fixed deposit)/ agreement with the bank for set-off of the amounts”</i>
22 nd July 2020	ZEEL and Yes Bank signed a joint statement stating that the matter was resolved between the Bank and the Company, and both the parties had mutually agreed to the adjustment of amounts received from the related parties with the FD amount receivable from Yes Bank. The declaration is silent about the reason for premature closure.
24 th July 2020	The Audit Committee approved the internal investigation findings that none of the authorised signatories of ZEEL had instructed the closure of FD.
24 th July 2020	The Audit Report (unmodified in this matter of FD) was signed by the EP on behalf of the Audit Firm. The Auditors also concluded that the matter does not attract Section 143(12).

In the above backdrop, we note the following major omissions and commissions by the Auditors. These factors cumulatively show the absence of professional skepticism and due diligence, and gross negligence on the part of Auditors.

i. Yes Bank’s Letter Regarding Closure of FD

- 23) As mentioned above, ZEEL, in its letter dated 30th September 2019, sought an explanation from Yes Bank regarding the closure of the FD and asked the Bank to transfer the funds to ZEEL’s bank account with Yes Bank along with accrued interest till the date of the letter. Though this letter is available in the Audit File, Yes Bank’s reply to it is absent in the Audit File. We obtained a copy of Yes Bank’s reply this letter from ZEEL. In this letter, the Bank has explained the premature closure of FD and also attached a letter dated 4th September 2018 issued by Dr Subhash Chandra, the then Chairman of ZEEL/Essel Group. The letter states that *“This is with regards to the Rs 200 Crore loan outstanding in Essel Green Mobility Ltd from Yes Bank Ltd. We will ensure that a fixed deposit of at least Rs. 200 Crore is available with Yes Bank Ltd, from any one of Essel Group of companies, including Zee Entertainment Enterprises Ltd, at all times whilst the said facility remains due and outstanding and that in the event of default under the said facility, you may appropriate the fixed deposit towards repayment of the said Facility.”* Essel Green Mobility Ltd is a promoter group (Essel Group) company and a related party of ZEEL.
- 24) Yes Bank also stated in the letter that *“We would also like to place on record that various possibilities including appropriation of fixed deposit number xxxxxxxxxxx0070 by the Bank, was duly discussed with the leadership team of Essel Group Companies. Thus, we are surprised and shocked to read the contents of your letter dated September 30, 2019, Hence, you along with Essel Group Companies should stop feigning ignorance about the appropriation of the said fixed deposit by the Bank.”*

25) Thus, according to Yes Bank the FD was prematurely closed based on the letter dated 4th September 2018 issued by the Chairman of ZEEL, who is also the Chairman of Essel Group Companies. We observe that this letter issued by the Chairman directly refers to the FD in question. The absence of any reference to this letter of the Chairman and the Reply from Yes Bank in any of the communications between the Auditors and ZEEL creates doubts that these letters are kept out of records to cover up the role of the Chairman, who is also the father of the MD/CEO of ZEEL. This letter from Yes Bank also shows that the leadership team of ZEEL, which included the MD and Chairman, were well aware of the matter, as is evident from the contents of the Yes Bank letter that *“the matter was duly discussed with the leadership team of Essel Group Companies. Thus, we are surprised and shocked to read the contents of your letter dated September 30, 2019, Hence, you along with Essel Group Companies should stop feigning ignorance about the appropriation of the said fixed deposit by the Bank”* However, the Company pleaded ignorance and in the Audit Committee meeting held on 17th October 2019 (i.e., after the receipt of the letter from Yes Bank), which was attended by the MD, no such matters were apparently discussed, as it appears from Auditors’ documentation. This may amount to the concealment of facts by the Management, falling under the ambit of the definition of fraud as per section 448⁶ of the Act, calling for action under section 447 of the Act and reporting under Section 143(12), which the Auditors failed to identify since they did not exercise required professional skepticism and due diligence, as explained further in this Order.

26) The Auditors replied that *“The Engagement team was never provided with this letter by ZEEL...the first time the engagement team came to know of Letter Oct 11 is through the SCN issued by NFRA.....engagement team can only audit books of account based on underlying evidence and information and explanations provided by the management and TCWG and not take stock of all communications exchanged between the company*”. The Auditors also submitted at length that the limited review reports for the quarter ending September 2019 and December 2019 were qualified due to the absence of communication from Yes Bank and that shows their professional skepticism and compliance with legal requirements.

27) We observe that the letter of 11th October 2019 from Yes Bank is a reply to the letter sent by ZEEL on 30th September 2019 asking for an explanation from the Bank. A copy of the letter from ZEEL is available with ET. Therefore, following up with the management and Yes Bank regarding the reply to this important communication is crucial for obtaining⁷ sufficient audit evidence about the accuracy and completeness of the FD matter. It is important to note that the Auditors qualified the limited review reports for the quarters ending 30th September 2019 and 31st December 2019 due to the *“non-availability of relevant information”* regarding the closure of this FD. In the qualification for September 2019, the *“relevant information”* is referred to as *“bank confirmation/communication from the bank etc.”*. However, in the qualification for December 2019, the *“relevant*

⁶ “fraud” in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;

⁷ Paragraph 9 of SA 500

information” was not specifically mentioned, instead it is stated that “*non-availability of relevant information (including lien on the fixed deposit)/ agreement with the bank for set-off of the amounts*”. The agreement with the bank for set-off is a post-facto development after the FD closure and has no relevance to the subject matter transactions of FD closure by Yes Bank in July 2019. Therefore, the critical evidence in the matter is communications to be received from Yes Bank regarding the reasons for the closure, which was absent at the time of the September limited review reporting (a fact known to the Auditors). The EP stated during the in-person hearing that ‘*since the management is waiting for a reply, we qualified the September limited review report*’. This awaited communication was in fact received before the December limited review reporting (on 11th October 2019), but the Auditors state they were not provided with this information. Hence going by the Auditor’s contentions, there were no changes in the situation that prevailed in the December quarter and the previous quarter. Yet, the language used in the qualification for the December quarter omits the words “*bank confirmation/communication from the bank etc*”. This casts a shadow of doubt on the Auditors’ claim that they were unaware of the communication from Yes Bank.

- 28) Notwithstanding this inconsistency, we observe that the qualification in September and December limited review reports emanates from of the absence of sufficient appropriate audit evidence (absence of information/reply from the bank) regarding this significant transaction. Going by the Auditors’ contentions, the only significant incremental evidence available after the limited review reports and up to the date of the statutory audit report dated 24th July 2020 are the settlement agreement signed between Yes Bank and ZEEL on 22nd July 2020, the internal investigation carried out by ZEEL in the matter, discussions with the management and audit committee, and the direct confirmations obtained by the Auditors from Yes Bank regarding FD Balances. **None of this incremental evidence explains the reason why the FD was closed.** The letter from Yes Bank which explains the reasons for the closure of the FD has not been seen by the Auditors. Hence, as far as the Auditors are concerned, at the time of issuing the Audit Report for FY 2019-20, sufficient appropriate audit evidence regarding this significant transaction was absent. Therefore, there was no justification for not qualifying the audit report dated 24th July 2020, along the same lines as that of the September 2019 limited review report.
- 29) The purported absence of a reply to this important communication should have alerted the Auditors to question the reliability of documents and responses to inquiries to be used as audit evidence. However, the Auditors are silent about any efforts to obtain a reply to the said letter or any enquiries made in this regard. Since the proceeds of the FD were used by related parties, the Auditors were required to verify the identity of the related parties, the nature of the relationships, and perform appropriate substantive audit procedures. This includes ascertaining who controls the related parties and the governance structure of the group. Hence there is no justification for claims such as the ‘*ET is not legally obligated to examine the books of accounts of the related parties*’. Had the Auditors exercised due professional skepticism and due diligence during the audit the role of the Chairman in the premature closure of FD and its subsequent use by the related parties would have come to light.

- 30) The Audit Firm, on being asked why Dr Subhash Chandra was excluded from the internal investigation conducted by the Company and from the scope of enquiries for the Auditors' assessment of fraud under Section 143 (12) of the Act, has responded that-. *"It is relevant to note that, Mr. Subash Chandra was a non-Executive Chairman, and not an authorized signatory of Yes Bank [authorised signatory for transactions with Yes Bank]. He neither participated in the day-to-day operations of the Company nor was he involved in performing any of the functions of the Company. He was not part of the controls environment of the Company. He only participated in the meetings of the Board of Directors of the Company. Therefore, what was relevant from an investigation standpoint was only to purely legally evaluate whether the LOC issued by Mr. Subash Chandra in his individual capacity, would bind the Company and such legal evaluation was performed as stated above"*. We do not see merits in this reply since the two LOCs referred to in this reply are admittedly not connected with the premature closure of FD. Moreover, the MD/CEO of ZEEL is the son of Dr Subhash Chandra and is closely related. His active involvement in the matter is evident from his attendance at the Audit Committee meetings. He, being a Director of ZEEL, falls under the scope of Section 143(12) and hence shall be covered for any procedures for reporting under that Section. Without any direct enquiries with Dr Subhash Chandra, the Auditors concluded the completeness of LOCs/Letters of Comforts issued by him and excluded him from the scope of enquiries for reporting under Section 143(12).
- 31) In response⁸ to our queries⁹, the Auditors stated that there was no response given by Yes Bank to ZEEL's letter dated 30th September 2019. However, on 22nd July 2020 Yes Bank and ZEEL 'agreed to resolve the matter without causing any prejudice to each other'. There is no record of any exchanges between the Bank and ZEEL between the above dates. The Auditors too did not question or ask for communications between ZEEL and Yes Bank that led to the final settlement letter, based on which they gave an unmodified audit opinion¹⁰ in this FD matter in FY 2019-20. We find no evidence of any inquiries made by the Auditors to understand the basis for the premature closure of FD and its appropriation to the related parties. The Auditors pleaded total ignorance of the letter dated 11th October 2019 from Yes Bank despite it being their professional duty in a matter involving potential reporting under Section 143(12) of the Act, to probe deeper with the Company and the Bank regarding all the communications and communication gaps between these entities. Given the experience and expertise of the Audit Firm and the EP/EQCR Partner, such omissions cannot be treated lightly. The absence of professional skepticism is evident in this matter. As per Para 19 of SA 330, *"the auditor shall consider whether external confirmation procedures are to be performed as substantive audit procedures"*. Further, Para A48 of SA 330, inter alia, mentions the situations where external confirmation procedures may provide relevant audit evidence in responding to assessed risks of material misstatement. This includes bank balances and other information relevant to banking relationships. However, the Auditors did not enquire with Yes Bank directly about the basis for the premature liquidation of FD of ₹200 crore, which the Bank had already

⁸ Response of DHS dated 20.05.2024 to NFRA's queries dated 1.05.2024

⁹ NFRA's email dated 1.05.2024 containing queries

¹⁰ The Audit Opinion was modified on certain other grounds.

communicated to ZEEL in October 2019 in writing and well before that in discussions with the top management.

- 32) Corroborating the above findings, we observe that the Auditors ignored several other red flags, which would have alerted them to be professionally skeptical in this matter. These omissions and commissions are explained in paragraphs 36 to 51 of this Order.
- 33) Thus, we conclude that the Auditors did not exercise professional skepticism and were grossly negligent in the audit of the matter related to FD closure. The Audit report dated 24th July 2020 was baseless, erroneous and, hence, unreliable. There was no justification for the Auditors' conclusions that section 143(12) reporting was not triggered in this matter.
- 34) We also note that as per Rule 8 of NFRA Rules 2018, for the purpose of monitoring and enforcing compliance with auditing standards under the Act the Authority may review working papers and communications related to the audit. As per Rule 9, on the basis of its review, the Authority may direct an auditor to take measures for improvement of audit quality including changes in their audit reports and specify a detailed plan with time limits. Accordingly, we reviewed the Audit Files and other communications between the auditor and ZEEL. We find that the Audit Report was admittedly issued without obtaining the relevant information, i.e., the communication from Yes Bank dated 11th October 2019 and the letter dated 4th September 2018 issued by the Chairman. These communications contain critical facts. Had this been known at the date of the auditor's report, they may have caused the auditors to amend their report considering that the financial statements did not disclose this material fact. This calls for compliance with SA 560 relating to subsequent events.
- 35) Since the above-mentioned facts are now known to the Auditors, the Audit Firm is hereby directed under Rule 9(1) of NFRA Rules 2018 to follow the provisions of Paragraphs 14 to 17 of SA 560¹¹ for the audit of ZEEL for FY 2018-19 and 19-20. This exercise shall be completed within 90 days of the issue of this Order. The additional audit documentation and an action taken report shall be submitted within 10 days of completion of the exercise. This direction is without prejudice to the other findings and Sanctions contained in this Order.

Details of Other Corroborative Evidence Mentioned in Paragraph 32 Above.

i. No bank reconciliation for the months in which the FD closure happened

- 36) As per the Audit File, ZEEL became aware of the premature closure only after the due date of the FD, i.e., 10th September 2019. The monthly reconciliation of all the bank accounts is one of the controls¹² ZEEL has instituted to identify and respond to fraud risk. The interest of ₹1.3 crore on premature FD was credited to ZEEL's current account on 24th July 2019. Had there been monthly bank reconciliation, the credit entry of Rs1.3 crores would have been noticed and the premature closure would have been detected in July itself. But as per the Audit Documentation, the matter came to light only in September, that too, not arising

¹¹ Paragraphs 14 to 17 of SA 560 cover facts which become known to the auditor after the Financial Statements have been Issued. In sum, in such cases, the auditor shall consult with management and TCWG to determine if amendments are necessary and assess management's response. If amendments are made, the auditor conducts further procedures, ensures that previous recipients of audit reports are informed, and issues a revised or new report with emphasis on the changes. If management fails to make changes, the auditor shall take steps to prevent reliance on the original audit report.

¹² WP 12300.01 Perform fraud inquiries - Consolidated inquiries - Listed entities.docx

out of bank reconciliation. The Audit Firm has stated in reply to our query that “*bank reconciliation was not performed by the Management and the control was not performed in case of Yes Bank for the month of July and August 2019*”. We observe that the Auditors did not examine why a control that operated effectively in all the months suddenly stopped working for these two months. There is no examination of this inconsistent evidence and why this was not a deliberate act or a management override of control. The ET was aware of this control deficiency, therefore, the absence of examination of fraud risk factors shows a lack of due diligence and professional skepticism. The Auditors' replies such as there is no financial loss to the Company and control deficiency evaluation in respect of bank reconciliation has been performed, etc do not evidence the examination of the reason why a control that operated effectively in all the months suddenly stopped working for these two months.

ii. Email from ZEEL expressing apprehension that Yes Bank may appropriate the FD

- 37) We observe that ZEEL by an email dated 2nd February 2019 from the Finance Controller of ZEEL, had informed the Bank that the FD amount cannot be used for any promoter group liabilities and connect with ZEEL if there is any disconnect on the same. The Legal opinion dated 15th October 2019 obtained by ZEEL, and examined by the Auditors, refers to this email in two places and states that Yes Bank did not respond to this email. This indicates that ZEEL was aware before the premature closure that Yes Bank is likely to appropriate FDs against the dues of promoter group companies. However, the letter dated 30th September 2019, the first communication after the closure of FD, has no reference to the previous email on the same subject. Even after becoming aware of this email, the Auditors did not examine the contents of this mail. The Auditors also did not enquire with the management the reason for such an apprehension expressed in the email. Without any such examination, the Auditors concluded that the Bank had closed the FD unilaterally, and ZEEL was not aware of the reasons for the premature closure. Such omissions from an experienced auditor cannot be taken as inadvertent.
- 38) The Auditors submitted that the ET had discussed the matter concerning this email and it was informed by the management that the promoter group had banking transactions and borrowings with Yes Bank, and since these entities were under stress, the mail was sent as a precaution. We reject these contentions since there is no such evidence available in the Audit File.
- 39) The Auditors further submit that ‘*email exchange cannot create a lien, emotions or concerns or worries cannot be audited by statutory auditors, letters of comfort issued by anyone including promoters do not give the right to any party to appropriate an asset and if someone did this, in the current case Yes Bank, it is pure violation of law*’.
- 40) We observe that despite knowing these factors the role of promoters was not checked by the Auditors. For an auditor, the communications such as emails, are part of audit evidence and ruling it out as “*emotions*” etc. shows the absence of professional skepticism and lack of due diligence.

iii. Promoters not covered in audit examination despite the active involvement of promoters and top management of ZEEL

- 41) The Legal Opinion dated 15th October 2019 also refers to explanations sought from promoters. It states that *“The promoters confirmed the Bank appears to have debited the FD Amount and transferred it to the current account of the promoter group companies.....As per explanations provided by the promoters, the FD amount had been debited by the Bank towards loan liabilities of [*] promoter companies.....which the listed company [ZEEL] would be entitled to adjust in the event the promoters were not able to resolve the issue with the Bank”*. These statements in the legal opinion evidence that the promoters were actively involved in the matter and parallel actions were going on between promoters and Yes Bank. However, the promoters are covered in none of the audit procedures.
- 42) The promoters are also excluded from the scope of an internal investigation carried out by the management as per the directions of the Audit Committee in its meeting held on 17th October 2019. This was supposedly the first meeting in which the FD matter was discussed. It is pertinent to note that Mr Punit Goenka, Managing Director & CEO of ZEEL and son of Dr Subhash Chandra, the promoter, attended this crucial Audit Committee meeting as an invitee. At no stage of the Audit, does the audit file show that the Auditors raised any questions in any of the above matters.
- 43) The Auditors' replies in this regard attempt to justify that promoters need not be enquired for reasons such as they are not authorised by the ZEEL for banking transactions and no charge was registered as required by the Act etc. We observe that such replies do not evidence why the role of promoters is kept out of the audit procedures and internal investigation. The role of all its officers or employees, irrespective of whether they are authorised signatories, are relevant in an examination of suspected fraud under section 143(12).

iv. Past history of chairman having an active role in issuing LOCs

- 44) Yes Bank vide its letters dated 5th May 2020 and 18th March 2020, informed the Auditors about the existence of three letters of comfort (LOC).

i) A LOC dated 31st May 2016 was provided by ZEEL to Yes Bank which according to the Bank, is akin to a guarantee.

ii) The LOC dated 24th November 2018 was provided by Mr Subhash Chandra, the Group Chairman, to Yes Bank in respect of credit facilities of ₹4,210 crore to the group companies.

iii) The LOC dated 14th March 2018 was also given by Mr Subhash Chandra in respect of credit facilities of ₹377 crore to Essel Infraprojects Ltd, a group company.

Note 45 of the standalone financial statements for FY 2019-20 states that *“The Group is of the knowledge that Dr. Subhash Chandra in his individual capacity has given Personal Letters of Comfort (LOC) to a Bank. Based on the legal opinion obtained, the Group is of the view that the aforesaid LOCs are given in his personal capacity and hence will have no financial implication for such LOCs”*.

45) The above instances show that the Chairman Mr. Subhash Chandra had a history of issuing LOCs. The Audit Firm stated in response to our query that the ET had sent direct independent confirmation requests to related parties seeking confirmation of any letter of support/awareness/comfort/ given by group companies on behalf of the Company to the Banks. None of these procedures included Dr Subhash Chandra, despite the Audit Firm being aware that he had a history of issuing at least two LOCs and hence more LOCs might exist. None of the Auditor's procedures and the internal investigation examined whether the Promoter had issued any other letters like the one mentioned above. Thus, there was an absence of due diligence and display of gross negligence by the Auditors in this regard.

v. Investor call hinting at the role of promoters

46) The management had also discussed this matter in an investor call¹³ dated 17th October 2019. To a Question "*Was there any document or impression given to the bank that these are charges which are created?*" It was responded that "*Not by the company, so I definitely can't say that something was given*". This reply does not rule out the involvement of promoters or other related parties. The Auditors failed to further enquire about this with professional skepticism despite taking note of the investor call.

vi. Discrepancies in the timing of ZEEL's communication with Yes Bank were ignored

47) The seven related parties that wrote to ZEEL on 18th September 2019, also started remitting the money back to ZEEL from 26th September 2019 onwards. The first communication from ZEEL to Yes Bank was on 30th September 2019, i.e., after the related parties started paying the money back to ZEEL. Ideally, the related parties should have asked Yes Bank to reverse the erroneous transaction of crediting money to their current account and loan accounts. The Auditors did not challenge this and check as to what prompted the related parties to transfer money to ZEEL instead of to Yes Bank, without even waiting for ZEEL's communication to Yes Bank. This action of ZEEL and its related parties indicates that the decisions had already been taken by the leadership. The steps taken by ZEEL from 30th September 2019 onwards are prima facie smoke screens, for which the Auditors did not raise the pertinent questions with required professional skepticism.

48) When Yes Bank credited interest on FD of ₹1.3 crore to ZEEL's bank account in July 2019, no actions were taken by the Management of ZEEL to identify why suddenly such an amount/interest got credited to ZEEL's bank account. Even after identifying this FD matter as a significant risk, suspecting that fraud might have occurred and considering the same as fit for examination under Section 143 (12) of the Companies Act, 2013, the Auditors failed to make any inquiry of Management, Promoters and others within the entity as appropriate, to determine whether they knew about any actual, suspected or alleged fraud affecting the entity. The Auditors did not challenge the management why no action was taken in July 2019, when the interest got credited, why there was a delay in writing to Yes Bank and why there was no follow-up with the Bank after the first letter in September 2019 and the final settlement in July 2020.

¹³ WP 23757.01 Yes Bank FD Memo - additional Procedures.docx

49) The Auditors submit that “Based on audit procedures and professional judgement of the engagement team, it was concluded that the liquidation of the fixed deposit by Yes Bank raised suspicion that fraud may have occurred.

However, it could not be determined whether the fraud was committed solely by Yes Bank or with the involvement of the officers/directors of the Company, since, the engagement team, as auditors, had no evidence to conclude that Yes Bank's actions were authorized by the officers/directors.

Accordingly, the engagement team concluded that there were not sufficient grounds to believe that fraud was committed by the officers or directors of the Company.”

50) We do not accept the above contentions since the conclusion of the ET is without adequate audit procedures and evidence and the key factors omitted by the ET make this conclusion invalid and unreliable.

vii. Inadequate audit procedures and insufficient audit evidence

51) The Auditors’ conclusion that “DHS does not have reasons to believe that a fraud has been committed by the officers/directors of the Company” is based on certain reasons noted in the Audit File¹⁴. We prima facie observe that these reasons are not supported by adequate audit procedures and evidence. The following table explains the deficiencies/absence of due diligence in each of these conclusions.

Auditors’ Basis of Conclusion as Noted in the Audit File	Our Observations
<p>“DHS concludes that the scope of the investigation and the procedures performed by the management auditor were adequate.”</p>	<p>The management auditor, Mr. Rakesh Chaturvedi, was the head of the internal audit function of ZEEL. He was also the CFO of a subsidiary of ZEEL for more than 7 years and was General Manager (Finance) with Zee Group for more than 5 years in past. Thus, the objectivity of the management auditor was questionable.</p> <p>The scope of the management auditor was not documented. Also, the scope does not include enquiries with the promoters.</p> <p>The scope of the investigation does not cover the organisation structure of the Zee/Essel group to understand the duties and responsibilities of the persons under investigation. There is no evidence that these individuals do not hold multiple responsibilities across group/promoter group entities.</p> <p>The Auditors submit that Rakesh Chaturvedi is not a management expert as per SA 500</p>

¹⁴ Refer WP 23757 Memo on Yes Bank FD and 23757.01 Yes Bank FD Memo - additional Procedures.docx

	<p>definition. He was an employee of the Company. Hence SA 500 is not applicable.</p> <p>We observe that the very fact that he is an employee of the organisation, whose officers and employees are under the purview of Section 143(12) reporting, makes this investigation entirely unreliable. This internal investigation report therefore lacks persuasive evidentiary value and any reliance on such an investigation by the Auditors amounts to gross negligence.</p>
<p><i>“DHS also notes that there were no findings to indicate that the identified individuals directed Yes Bank to adjust the fixed deposit balance towards the dues of the related parties (promoter group entities) nor they approved any lien on the fixed deposit balance with Yes Bank.”</i></p>	<p>The basis for this conclusion is the email verification of the authorised signatories of ZEEL. The ZEEL employee referred to above performed this verification with the help of another employee Mr Kamlesh Kumar, an IT person in ZEEL. The authorised signatories (CFO, Finance Controller, Lead Finance, VP Finance and MD/CEO) are persons at the highest levels in the hierarchy. There is no evidence that the investigators are free of influence from the persons under investigation. Also, see our previous observations in this regard in para 1 of this table.</p>
<p><i>“Yes Bank had also written to us directly on May 5, 2020 and in that letter they did not mention/confirm the fixed deposit balance nor did they mention about the lien on the fixed deposit.”</i></p>	<p>The letter did not mention the reasons and basis for the premature closure of FD. Yes Bank in another communication to the Auditors (dated 5th May and 18th March 2020) raised concerns about the conduct of MD/CEO and the Promoter. It stated that <i>“it is important to note that the conduct of MD&CEO/founder chairman of ZEEL/Essel Group Companies poses serious corporate governance issues, lack of Board governance and proper oversight; colossal failure of the finance audit function as a control function; lack of fiscal discipline; undue concentration of power/authority with the promoters etc., which Deloitte may like to appropriately address”</i>. The Auditors did not do any follow-up on this information that raised a red flag on the integrity and objectivity of the management and promoters. The Auditor’s examination of suspected fraud does not consider such information from the lender (Yes Bank), which was a credible and important source of input for the auditor.</p> <p>The Auditors state that <i>“the 5 May 2020 letter from Yes Bank had nothing to do with the FDs</i></p>

	<p><i>of Rs. 200 crores lodged by the Company with Yes Bank</i>". We observe that if this is the case, then the letter cannot form one of the bases for ruling out Section 143(12) reporting on the FD matter.</p>
<p><i>"The adjustment of amounts paid by the related parties against the FD receivable from Yes Bank was authorized by the Audit Committee and the Board of Directors of the Company. Consequently, DHS concludes that this adjustment was approved appropriately."</i></p>	<p>The Auditors did not examine the source of repayments made by the related parties. The transactions and communications between ZEEL and its related parties before and after the closure of the FD remain unverified. Thus, there is no reasonable assurance that the loans were not repaid out of the funds provided by ZEEL.</p> <p>The Auditors state that the examination of the source of any payment made by related parties which are linked to the promoters or their group does not fall within the scope of the statutory audit; ET has no access to the bank statements and NFRA is expanding the scope of the audit.</p> <p>We do not accept the above argument. As per SA 550, the Auditor is required to perform specific procedures to identify, assess, and respond to the risks of material misstatement associated with a company's related party transactions. The auditor is also required to obtain an understanding of the nature of these transactions, in this case, unusual transactions. Appendix 2 to SA 240 suggests specific responses to the auditor's assessment of the risks of material misstatement due to fraud, such as, <i>"For significant and unusual transactions, particularly those occurring at or near year-end, investigating the possibility of related parties and the sources of financial resources supporting the transactions"</i>.</p>
<p><i>"The communication between Yes Bank and ZEEL provided to DHS does not indicate the basis on which Yes Bank has appropriated these fixed deposits against the dues of related parties"</i>.</p>	<p>However, the Auditors did not make any effort to understand the basis for the actions of the Bank, which is the most critical element in this matter. The Internal Investigator also did not address this matter. Without this information, the auditor is not in a position to conclude that sufficient appropriate audit evidence is obtained</p>
<p><i>"The Company has written to Yes Bank requesting on September 30, 2019 asking Yes Bank why was the fixed deposit amount not credited to ZEEL's bank account on the date of maturity of the FD and as informed by management, they have had</i></p>	<p>in the matter under examination. Thus, the Auditors were required to examine why this does not constitute a scope limitation as detailed in various SAs. (Paras 16 (b), 22, A21 (iii to vi) and A53 of SA 260 (Revised), Paras 13, A13 to A15 of SA 705 (Revised).</p>

<p><i>discussions with Yes Bank in Q3 and Q4 to obtain confirmation that the FD was apportioned against dues to promoter/Essel group Companies and on what basis the apportionment was done by Yes Bank.</i>”</p>	<p>The seven related parties wrote to ZEEL on 18th September 2019. They also started remitting the money back to ZEEL from 26th September 2019 onwards. Still, the first communication from ZEEL to Yes Bank on 30th September 2019 did not mention any of these matters. It pleaded total ignorance of the matter and asked explanation from Yes Bank as if ZEEL was totally unaware of the matter.</p>
<p><i>“The internal investigation did not find any evidence of the signatories of the account authorizing the adjustment made by Yes Bank. Refer w/p 23757.01 for details of DHS’s testing on this investigation.”</i></p>	<p>The internal investigation does not constitute sufficient appropriate audit evidence given the absence of objectivity and independence of the investigators. The scope of the work of the internal investigation is inadequate as it does not cover promoters and group companies, the transactions between promoters/group companies and ZEEL, the organisation structure of the Group and the basis for the closure of FD.</p>
<p><i>“The Company has also not taken any legal action against Yes Bank but has concluded the matter amicably with the Bank and the related parties. The Audit Committee informed us that the Company did not take a legal route as it had already received the funds from the related parties and it did not want to engage the resources of the Company and time of senior management in fighting a legal case. Since, there was no financial loss to the Company, the matter was resolved amicably.”</i></p>	<p>The sources of repayment by the group companies remain unverified. Even after settlement of the matter between the Bank and ZEEL, the basis for the Bank to appropriate the FD remains unverified. These critical omissions and the factors mentioned in Para 12 of this SCN indicate that the entire process was orchestrated. However, the Auditors did not design and perform adequate audit procedures to address the matter.</p>
<p><i>“Based on the register of charges and minutes of the meeting of the Board of Directors, noted that there was no charge/lien created on this fixed deposit.”</i></p>	<p>Because of the omissions as noted above, absence of due diligence and absence of professional skepticism the Auditors failed to notice the letter issued by the Promoter, which directly put the FD as a security for the loans of the Group Companies. There is no assurance that the promoter had not issued any other such letters.</p> <p>The Auditors submit that individuals cannot encumber the assets of the Company unless approved by the Board and hence the LOC issued by the Promoter is invalid. We do not accept such contentions in the context of the</p>

	sufficiency of audit evidence required in the matter.
<p><i>“These facts create a suspicion that a fraud may have occurred here. However, whether the fraud has been perpetrated by Yes Bank unilaterally or by the officers/directors of the Company cannot be concluded as DHS has no evidence to conclude that the actions of Yes Bank were authorized by officers/directors of the Company. Consequently, DHS does not have reasons to believe that a fraud has been committed by the officers/directors of the Company.”</i></p>	<p>The Auditors did not perform audit procedures with due professional skepticism to obtain evidence. As explained in this Order, the conclusions are based on insufficient evidence and do not consider several red flags evident in the process.</p>

Violation of the Act and SAs

52) Based on the above and as explained earlier, the Auditor’s conclusion arises from partial and selective information. The critical factors such as the role of the promoters, the basis for appropriation of FD and transactions between ZEEL and the group companies are kept out of the purview of examination. Several red flags were ignored, such as the email from ZEEL regarding apprehension that Yes Bank may appropriate the FD, information provided by the lender regarding the absence of good governance factors, explanations obtained by the Legal Expert from the promoters, history of issuing LOCs by the Promoters, presence of MD/CEO in the crucial Audit Committee meeting in which decision for internal investigation is made, where MD/CEO is under investigation, keeping the promoters out of the purview of investigations, no bank reconciliation only for the months in which the FD closure has happened, inordinate delay in communication with the Bank, absence of regular follow up, continuous renewal of the same high-value FD since September 2018, discrepancies in the timing of ZEEL’s communication with Yes Bank were ignored, etc. These omissions/commissions render the Auditors’ conclusion baseless and erroneous. In substance, ZEEL had misappropriated its money and made unauthorised transactions (using the FD for repayment of the related party loans and keeping the FD with the Bank since FY 2018-19 as a security for such loans) with the related parties, without the approval of the Audit Committee, the Board and Shareholders for any of these transactions, thus violating Sections 177 and 185 of the Act. The Auditors submitted during the in-person hearing that the legal opinion obtained by the Company stated that *“if the matter is ratified by the audit committee of the Company, breach of Section 177 of the Companies Act, 2013 can be defended especially given that the promoter companies acknowledged that the transfer of funds to the Company was subject to approval by the audit committee of the Company.”*. We observe that this legal opinion does not rule out a breach of section 177 regarding the transactions with related parties post-closure of the FD. It talks only about defending a breach. The legal opinion also does not address the violations of sections 177 and 185 when the FD was created and maintained as a security

for the related party loans. It may be recalled that the management was well aware of the possibility that Yes Bank might appropriate this FD towards related party loans, as is evident from the email dated 2nd February 2019 from the Finance Controller of ZEEL. Yet, the required approvals as per Sections 177 and 185 were not taken by ZEEL. Without exercising professional skepticism and due diligence the Auditors ignored all these facts.

53) Therefore, there is no sufficient evidence for the Auditors' claim that the Company did not suffer any financial loss and there are no material misstatements in the financial statements. The Letter of Comfort issued by the Chairman was prima facie in his personal capacity and in using the Company's money to honour such a personal commitment, the promoters misused ZEEL's funds. The Auditors failed to examine and report all this in the audit report for FY 2019-20 and to the Central Government under Section 143 (12) of the Act.

54) Based on all the above, the charges in Paragraph 16 are proved.

55) In addition, the Auditors were also charged with failure to comply with the following requirements of the Standards of Auditing (SAs)/the Act, due to the above-mentioned lapses.

- a) Paragraphs 6 and 11 of SA 500 and Paragraph 17 of SA 200, i.e., failure to design and perform audit procedures that are appropriate in the circumstances to obtain sufficient appropriate audit evidence and to deal with inconsistent evidence from different sources.
- b) Para 3 of SA 330 The Auditor's Responses to Assessed Risks, i.e. failure to obtain sufficient appropriate audit evidence about the assessed risks of material misstatement, through designing and implementing appropriate responses to those risks.
- c) Para 19 read with Para A48 of SA 330 i.e., the Auditor's Responses to Assessed Risks and failure to perform external confirmation procedures regarding the reason for closure of FD.
- d) Para 18 of SA 240 The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements, i.e. failure to make enquiries of Management, and others within the entity (promoters and directors) as appropriate, to determine whether they have knowledge of any actual, suspected or alleged fraud affecting the entity.
- e) Para 7 and 8 of SA 240 The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements, i.e. failure to maintain professional skepticism throughout the audit to detect if management has overridden controls to conduct fraud.
- f) Paragraph 11 of SA 230 which requires that if the auditor identified information that is inconsistent with the auditor's final conclusion regarding a significant matter, the auditor shall document how the auditor addressed the inconsistency. None of the inconsistent evidence noted in this Order has been addressed by the Auditors.

- g) Paragraphs 10, 11, 12 and 13 of SA 700, and Paragraphs 17 to 20 of SA 200 i.e., failure to provide reasonable assurance, based on audit evidence and in compliance with applicable SAs, about whether the financial statements as a whole are free from material misstatement¹⁵, whether due to fraud or error.
- h) Paragraph 15 of SA 200, i.e., failure to plan and perform the audit with professional skepticism.

56) The auditors submitted in this regard that the September 2019 and December 2019 limited review reports have been qualified, the required communications to TCWG have been made, additional procedures including re-performance on a sample basis of the investigation commissioned by the Audit Committee have been performed, control deficiency evaluation in relation to non-preparation of bank reconciliation statements for a few bank accounts has been performed, direct confirmations from all related parties whether they are aware of any lien on the assets of the Company towards any of their dues have been obtained, direct confirmations (including from Yes Bank) from all banks for any lien over any of the Company's assets have been obtained, and key audit matter for the matter relating to fixed deposit with Yes Bank detailing each and every key procedure performed by the engagement team have been included, therefore, each of these procedures demonstrates diligence and skepticism exercised by the engagement team.

57) As already explained in the above paragraphs, none of these procedures identified the actual reason for the closure of the FD, which is the key evidence required to conclude the matter. The procedures also omitted several significant red flags regarding suspected fraud and concealment of facts. The replies of the Auditors such as *"the Company came to know about the closure from its related parties" no financial loss ...the internal committee investigated, verified emails of the authorised signatories, verified register of charges, verified minutes of the corporate management committee and found no authorisation from the company regarding lien or premature closure..."* etc show unjustified reliance on management's submissions, despite contradictory evidence.

58) The Auditors further state that in the absence of any authorisations or approvals from the Company, *"the act of Yes Bank appropriating the assets of the Company against dues of the promoter companies without the Company's authority remains a mystery..."*. *"it is abstruse and beyond our knowledge as to how a bank, regulated by the RBI, could claim/appropriate the assets of a company without a specific resolution of the Board..."* it is *"surprising"* how Yes bank appropriated the assets of the company against dues of its related parties and under what authority....".

59) We observe that terms such as *"mystery"*, *"abstruse"*, *"surprise"* and *"beyond our knowledge"* regarding a significant transaction for an auditor mean that the auditors did not apply audit procedures to obtain sufficient appropriate audit evidence and imply that there are significant uncertainties or a lack of understanding about the transaction. Use of such language confirms a need for further investigation and careful consideration of the impact

¹⁵ the Auditors fixed Performance materiality at ₹18.43 crore and overall materiality at ₹24.58 crore.

on the audit report. The SAs address such situations in the form of prescriptions regarding the absence of sufficient appropriate audit evidence and scope limitations, which the Auditors did not follow despite concluding that the act of the bank was a mystery. Such a reply also indicates the following deficiencies in the overall audit approach.

- a. Risk of Material Misstatement: This implies there could be a higher risk of material misstatement related to the transaction, and the auditor might need to apply additional audit procedures to gain sufficient understanding and assurance.
- b. Professional Skepticism: The auditor would be expected to exercise heightened professional skepticism. This could involve questioning management's explanations, seeking corroborative evidence, and considering whether there may be fraud or error.
- c. Audit Evidence: The auditor must ensure they have obtained sufficient appropriate audit evidence regarding the transaction. If the transaction remains "mysterious" or unexplained, it might not be possible to conclude its validity, which could impact the audit opinion.
- d. Impact on Audit Report: If the auditor cannot obtain sufficient appropriate audit evidence to support the transaction, this may result in a modified opinion.

60) Thus, the charges in paragraph 55 above are proved, based on the above-stated evidence.

Communication with Those Charged with Governance (TCWG)

61) SA 260 (Revised) mandates effective two-way communication by the auditor with TCWG of the Company. However, the Auditors did not determine the persons comprising TCWG. The communications the Auditors claimed to have made with TCWG were presentations made to the Audit Committee. This was in contravention of the requirement of SA, which requires that if an auditor communicates with a subset of TCWG like the audit committee, then the auditor must also determine who else in TCWG it must communicate with. This clearly indicates that the audit committee is not synonymous with TCWG.

62) Based on the above, the Auditors were also charged with failure to comply with the following requirements of the Standards of Auditing (SAs).

- a) Para 11 of SA 260 (Revised) Communication with Those Charged with Governance, i.e. failure to determine the appropriate person(s) within the entity's governance structure with whom to communicate.
- b) Para 12 of SA 260 (Revised) Communication with Those Charged with Governance, i.e. failure to determine whether the auditor also needs to communicate with the governing body if the auditor communicates with a subgroup of TCWG, for example, an audit committee.

63) The Auditors submitted that the Audit Committee is the TCWG and they complied with all the requirements of SA 260. We observe that this reply is not supported by evidence in the Audit File where there is no discussion of why the audit committee was considered as the TCWG, as defined in SA 260 (Revised). Hence the charges in paragraphs 61 and 62 above are proved.

Engagement Quality Control Review

- 64) The EQCR Partner was charged with failure to exercise due diligence and professional skepticism in the conduct of his duties regarding the FD matter.
- 65) The replies of the EQCR show that he fully agreed with the ET in all matters related to the FD closure. According to SA 220, the Engagement Quality Control Review (EQCR) Partner shall discuss significant matters with the EP. This premature closure of the Fixed Deposit of ₹200 crore was a significant matter. However, the EQCR Partner did not notice all the facts and evidence explained in paragraphs 16 to 63 above, since none of the work papers evidence such an objective review by the EQCR Partner. There is no documentation of any discussions in this regard, which is a mandatory procedure as per SA 220. Hence the charges in paragraph 60 are proved.

Role of the Audit Firm

- 66) The Audit Firm in its response to SCN and also during the in-person hearing submitted that *“the SCN seeks to penalize the Firm based on specific criticism of an engagement team concerning an audit of a company’s financial statements for two years, without specifying any specific / particular allegations against the Firm.....the consequences of ...alleged professional misconduct stemming from such exercise of professional judgement/skepticism cannot be visited on the Firm and as a consequence on the other partners ...who were not involved in the ..audit .”*. It is also submitted that the firm has a system of quality policies and procedures that were fully adhered to in the audit; therefore, there are no lapses from the Firm’s side.
- 67) In this regard, it is pertinent to point out that the SCN had specifically mentioned that M/s Deloitte Haskins & Sells LLP, the Audit Firm, CA A.B. Jani and CA Rakesh Sharma are collectively referred to as ‘Auditor’. Therefore, the contentions in this regard are not tenable. The Audit Firm is the legal entity appointed as auditor of ZEEL under Section 139 of the Act and must be held accountable and responsible for the Audit, in addition to the individual who shared professional misconduct.
- 68) The requirements of Sub-Sections 9 and 10 of Section 143, SQC-1¹⁶ and SAs, which are subordinate legislations, lay down the following in clear terms:

¹⁶ 220 - Quality Control for an Audit of Financial Statements, deals with the overall quality of an audit engagement. SA 220 provides that: “2. Quality control systems, policies and procedures are the responsibility of the audit firm. Under SQC 1, the firm has an obligation to establish and maintain a system of quality control to provide it with reasonable assurance that: (a) The firm and its personnel comply with professional standards and regulatory and legal requirements; and (b) The reports issued by the firm or engagement partners are appropriate in the circumstances. This SA is premised on the basis that the firm is subject to SQC 1.” Standard on Quality Control (SQC) 1 delineates the responsibilities of the Firm regarding audit quality. Audit quality is the foundation of any statutory audit. Further, SAs, such as SA 200, SA 220, SA 230, SA 260 (Revised), SA 610(Revised), SA 620 and SA 700(Revised) refer to SQC1 when it comes to specific aspects of audit such as documentation, communication with those charged with governance, engagement of Auditor’s expert, evaluating the adequacy of internal audit function of the Company, and general quality aspects.

- a. Responsibility for the overall quality of all the audit engagements, by ensuring that the firm's personnel comply with applicable laws, SAs, and ethical requirements and issues reports appropriate to the situation, rests with the firm¹⁷.
 - b. Within the above framework, the individual engagement partners are personally responsible¹⁸ for the quality of specific engagements to which they are assigned by the firm as per its policies.
- 69) When a firm is appointed as an auditor under Section 139, all the responsibilities cast under the Act are primarily on the firm. Hence the report issued by the Audit Firm, signed by EP, is the primary responsibility of the Audit Firm issuing the report under the Act. As mandated by Section 132, the responsibility of overseeing the quality of service of the professions associated with ensuring compliance with auditing standards rests with NFRA. Monitoring and enforcing compliance with standards of auditing (SA) is another statutory duty cast on NFRA.
- 70) Taking the above cardinal factors into account, Section 132 (4) of the Act empowers NFRA to investigate the matters of professional or other misconduct committed by any member or firm of chartered accountants, registered under the Chartered Accountants Act, 1949. Violation of the Act, SAs, or SQC 1 is one of the key ingredients of professional misconduct, as envisaged by the Act. Therefore, the charges in the SCN that apply to EP and EQCR equally apply to the Audit Firm, as explicitly mentioned in the SCN addressed to all three parties.
- 71) We note that globally also this is the accepted position. The PCAOB (US Audit Regulator) orders quoted by NFRA in its various disciplinary orders underline this fact. For instance, PCAOB,¹⁹ for charges including violations of auditing standards related to the audit of financial statements of Medicis Pharmaceutical Corporation and subsidiaries, imposed civil money penalties of \$2,000,000 to the firm Ernst & Young LLP, \$50,000 to Jeffrey S. Anderson, the Partner with final responsibility of the subject matter audit engagement, \$25,000 to Robert H. Thibault, the independent review partner, and \$25,000 to Ronald Butler, the second partner, supervised by Anderson. The partners were also barred from being associated with a registered public accounting firm. In another case, the PCAOB²⁰ imposed civil money penalties of \$1,000,000 on KPMG India and \$75,000 on its partner Lakhani for lapses in audit documentation by the partner, who was an ET member. PCAOB also suspended Lakhani from being an associated person of a registered public accounting firm for a period of one year.

¹⁷ SQC- lays down these core principles a Firm must adhere to ensure minimum required quality in any audits undertaken at the firm level. It emphasises that "3. The firm should establish a system of quality control designed to provide it with reasonable assurance that the firm and its personnel comply with professional standards and regulatory and legal requirements, and that reports issued by the firm or engagement partner(s) are appropriate in the circumstances". SQC-1 then mandates in detail the stipulations at the firm level

¹⁸ Paragraphs 3, 4 and 8 of SA 220.

¹⁹ PCAOB Release No. 105-2012-001 February 8, 2012.

²⁰ In the Matter of KPMG Assurance and Consulting Services LLP and Sagar Pravin Lakhani, PCAOB Release No. 105-2022-033 December 6, 2022.

D. Findings on the Articles of Charges of Professional Misconduct

72) Given the Auditors' above actions and omissions, we have reasons to believe that the Auditors did not exercise due diligence in ensuring the audit quality expected in an audit of a public interest entity and were grossly negligent in the conduct of the professional duties by not adhering to the requirements as laid down by the relevant statutes. The Auditors' conclusion that they do not have reasons to believe that fraud is committed by the officers of the Company is not supported by sufficient appropriate audit evidence. The Auditors also failed to identify the persons comprising TCWG. The Auditors' failures in the audit, as mentioned in Paragraphs 16 to 70 above, amount to professional misconduct as per Section 132 (4) of the Companies Act, 2013:

- a) M/s Deloitte Haskins & Sells LLP and CA A.B. Jani committed professional misconduct as defined by Section 132(4) of the Companies Act, 2013, read with Section 22 and Clause 5 of Part I of the Second Schedule of the Chartered Accountants Act, 1949 (No. 38 of 1949) as amended from time to time, which states that a CA is guilty of professional misconduct when he "fails to disclose a material fact known to him which is not disclosed in a financial statement, but disclosure of which is necessary in making such financial statement where he is concerned with that financial statement in a professional capacity".

The charge is proved since M/s Deloitte Haskins & Sells LLP and CA A.B. Jani failed to disclose the absence of an actual reason for the closure of the FD and failed to consider in their audit report the impact of the absence of sufficient appropriate audit evidence regarding the FD matter, as detailed in Paragraphs 16 to 63 and 66 to 70 of this Order. The reporting under Section 143(12) was also inadequate due to the omission of this critical fact.

- b) M/s Deloitte Haskins & Sells LLP and CA A.B. Jani and CA Rakesh Sharma committed professional misconduct as defined by Section 132 (4) of the Companies Act, 2013, read with Section 22 and Clause 7 of Part I of the Second Schedule of the Chartered Accountants Act, 1949 (No. 38 of 1949) as amended from time to time, which states that an Auditor is guilty of professional misconduct when he "does not exercise due diligence or is grossly negligent in the conduct of his professional duties".

This charge is proved as the Auditors, conducted the Audit of a Public Interest Entity in disregard of their statutory duties, evidenced by multiple critical omissions, commissions, and violations of the Act and standards, which are subordinate legislation and failure to appropriately report under Section 143(12) of the Act. The instances of failure to conduct the audit in accordance with the Act and SAs, failure to examine contradictory evidence, and failure to report non-compliance made by the Company, the absence of due diligence, and professional skepticism are explained in Paragraphs 16 to 70 of this Order, and

- c) M/s Deloitte Haskins & Sells LLP and CA A.B. Jani and CA Rakesh Sharma committed professional misconduct as defined by Section 132 (4) of the Companies Act, 2013, read with Section 22 and Clause 8 of Part I of the Second Schedule of the

Chartered Accountants Act, 1949 (No. 38 of 1949) as amended from time to time, which states that an auditor is guilty of professional misconduct when he “fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion”.

This charge is proved as the Auditors failed to show adequate evidence in the Audit File to support their audit opinion on the true and fair nature of the financial statements and the absence of reporting under Section 143(12) of the Act, as detailed in Paragraphs 16 to 70 of this Order.

73) Therefore, we conclude that the charges of professional misconduct in the SCN, as detailed above, are established based on the evidence in the Audit File, the audit reports on the financial statements for the FY 2018-19 and 2019-20, the submissions made by the Auditors, and the Annual Report of ZEEL for FY 2018-19 and 2019-20.

E. PENALTY AND SANCTIONS

74) Section 132 (4) of the Companies Act, 2013 provides for penalties in a case where professional misconduct is proved. The seriousness with which proved cases of professional misconduct are viewed is evident from the fact that a minimum punishment is laid down by the law.

75) The audit of ZEEL for FY 2018-19 and 19-20 by M/s Deloitte Haskins & Sells LLP, the Audit Firm, CA A.B. Jani and CA Rakesh Sharma, contained significant flaws violating multiple Auditing Standards and Section 142(12) of the Act. Key evidence related to significant transactions was totally omitted by the Auditors. The Engagement Quality Control Review was also found to be inadequate. These failures collectively resulted in erroneous reporting and misleading information to the investors, lenders, and the Central Government. Under Rule 9 of NFRA Rules 2018, the Audit Firm is being directed²¹ to follow SA 560 which essentially requires them to revisit the audit report.

76) Because professional misconduct has been proved and considering the nature of violations and principles of proportionality and in view of the directions issued to the Audit Firm, we, in the exercise of powers under Section 132 (4) (c) of the Companies Act, 2013, order:

- a. Imposition of a monetary penalty of Rupees Two Crore upon M/s Deloitte Haskins & Sells LLP.
- b. Imposition of a monetary penalty of Rupees Ten Lakhs upon CA A.B. Jani and in addition CA A.B. Jani is debarred for 5 years from being appointed as an auditor or internal auditor or from undertaking any audit in respect of financial statements or internal audit of the functions and activities of any company or body corporate.
- c. Imposition of a monetary penalty of Rupees Five Lakhs upon CA Rakesh Sharma and in addition, CA Rakesh Sharma is debarred for 3 years from being appointed as an

²¹ Refer paras 34 and 35 in page 12 of this Order.

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

Signed on 23.12.2024.

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: 23.12.2024

Place: New Delhi

Vidhu Sood

(Vidhu Sood)
Secretary

To,

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

Copy To: -

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

