



**THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA**  
(Set up by an Act of Parliament)

ORDER UNDER SECTION 21B(3) OF THE CHARTERED ACCOUNTANTS ACT 1949 READ WITH RULE 19(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATION OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007.

File No. : PR-5/2014-DD/31/2014- DC/598/2017

**In the matter of:**

**Shri Debashis Bandyopadhyay,  
Securities and Exchange Board of India (SEBI)  
SEBI Bhawan, C-4A, G Block,  
Bandra Kurla Complex, Bandra (East)  
MUMBAI – 400 051.**

**..... Complainant**

**Versus**

**CA. Kirit Kumar Ramanlal Shah ... (M. No. 034612)  
B/4, Vardhmankrupa Row House  
Opp Satadhar Society  
Satadhar Cross Road  
Sola Road  
AHMEDABAD – 380 061.**

**..... Respondent**

**Members Present:**

**CA. Prafulla Premsukh Chhajed, President  
Smt. Anita Kapur, Member (Govt. Nominee)  
Shri Ajay Mittal, IAS (Retd.), Member (Govt. Nominee)  
CA. Debashis Mitra, Member  
CA. Manu Agrawal, Member**

**Date of Final Order: 20th August , 2019**

**Place of Final Order: Mumbai**

1. Vide report dated 26.07.2019 (**copy enclosed**), the Disciplinary Committee in view of the Appellate Authority order dated 7<sup>th</sup> June 2019 considered the matter and was of the opinion that **CA. Kirit Kumar Ramanlal Shah (M. No. 034612)** was **GUILTY of Professional and Other Misconduct falling within the meaning of Clause (2) of Part IV of First Schedule and Clauses (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949** with respect to the allegations relating to the statutory auditor of SMS Techsoft (India) Ltd(herein after referred to as the “**Company**”) for F.Y. 2012-13 certifying a false disclosure in the Financial Statements of the Company for the said Financial year relating to utilization of proceeds of preferential allotment of Rs. 30 crores for purchase of land.



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2. An action under Section 21B (3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and communication dated 7<sup>th</sup> August 2019 was addressed to him thereby granting him an opportunity of being heard in person and/or to make a written representation before the Committee on 20<sup>th</sup> August 2019 at Mumbai.

3. The Respondent appeared before the Committee on 20<sup>th</sup> August 2019 at Mumbai and made his representations wherein, he, *inter alia*, stated that he had resigned as Statutory Auditor of the said Company long back immediately after having known allegedly wrong things doings/done by the said company. He had exercised utmost care and due diligence while carrying out audit assignment for the said company and, it was a bitter fact that Company and its Management had not provided him the required documents for his audit despite his many follow ups. However, with displeasure and reluctance to save his income of audit fees due to his physical disabilities and awkward position, he had done the said audit as his only son had separated from him. He further stated that he was appointed as auditor of the company in the financial year 2012-13 (i.e. after year ended March, 2012 wherein the Company had raised its share capital (by issue of shares) and had taken step to show use of funds in procurement of said land. Both these incidents took place in 2011-2012 when he was not their auditor and as such both the matters were certified by the previous auditor and he had just shown those as previous year's figures which were certified in past by some other Chartered Accountant. It proved that the said acts had been done in F.Y. 2011-12 and not afterwards.

4. The Committee had considered the written submissions made by the Respondent and noted that the Respondent was the Statutory Auditor of the Company for the F.Y. 2012-13 and he had issued his audit report on 30<sup>th</sup> May, 2013. The Committee noted that the Complainant had brought on record copy of the Order of SEBI dated 5<sup>th</sup> November, 2013 passed by SEBI wherein it was mentioned as under:

*"In its balance sheet for the financial year 2011-12 and 2012-13 the Company has sought to show that it had acquired a land for the value of Rs.30,00,00,000/- during the financial year 2011-12. In my view, general corporate purposes provide the framework for ongoing decisions and activities of the business corporate purposes. They cannot be meant for any or every purposes that are not within scope of business or operations of a company and that are neither in the interest of the company nor its shareholders. I,*



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*therefore, find that any land deal much less a non-existent land deal as claimed by the company in this case, cannot be the purpose for which the proceeds of preferential allotment as disclosed to the shareholders could be utilised. From the facts found during inquiry, I note that company had never utilised any such money for the purchase of any land as claimed by it and had made false disclosures in its balance sheets for the financial years 2011-12 and 2012-13 suggesting utilisation of proceeds of preferential allotment for purchase of land and had deliberately suppressed the material fact" (C17).*

5. As regards the charge of false disclosure in the Financial Statement for the Financial Years 2012-13 suggesting utilization of proceeds of preferential allotment of Rs. 30 crores for purchase of land, it was noted that the Respondent had given contradictory submission. In his written statement, he submitted that during the audit assignment, he was provided with agreement to sale for land shown as fixed assets in Balance sheet of 2011-12 for which the Company was yet to execute sale deed at the time of audit. The Respondent also stated that he was informed by the Company during the year of audit that the said deal was terminated for title deficiencies in land documents and the Company had acquired database for business development. As against it during hearing, he denied to have received any document to verify the existence of land. Accordingly, it was evident that at the time of audit the Respondent had not exercised his due diligence in carrying out the verification procedures.

6. The Committee noted that as per Para 44 of the Statement on CARO 2003, issued by the Institute, the Respondent was independently responsible to verify the existence of assets being shown in opening balance sheet and to also report in CARO. However, in extant case, he had failed to exercise due diligence while carrying out the audit and also failed to obtain sufficient information which was necessary for expression of an opinion.

7. Thus, upon overall consideration and looking in to the facts of the case, the Committee noted that in such circumstances, the Respondent should have been more cautious while verifying the existence of land which constituted 90% of the total fixed asset value of the company instead of simply relying upon the closing balances as certified by the previous auditor. Had he done so, the fact regarding non-existence of land and fact of non-payment against such land could have been unearthed during his audit period. Thus, in view of the Committee, due to non-exercise of due diligence by the Respondent, he had indirectly allowed the Company to misstate the assets in the Financial Statement of the Company for the F.Y. 2012-2013 for which he had acted as the statutory auditor.



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8. The Committee was thus of the opinion that the misconduct on the part of the Respondent had been established within the meaning of Clause (2) of Part IV of First Schedule and Clauses (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 and keeping in view the facts and circumstances of the case as aforesaid, ordered the removal of name of Respondent **CA. Kirit Kumar Ramanlal Shah (M. No. 034612)** from Register of Members for a period of 18 months.

Sd/-  
[CA. Prafulla P. Chhajed]  
Presiding Officer

Sd/-  
[Smt. Anita Kapur]  
Member, Govt. Nominee

Sd/-  
[Shri Ajay Mittal, IAS (Retd.)]  
Member, Govt. Nominee

Sd/-  
[CA. Manu Agarwal]  
Member

Sd/-  
[CA. Debashis Mitra]  
Member

Date: 20<sup>th</sup> August, 2019

Place: Mumbai



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**CONFIDENTIAL**

**DISCIPLINARY COMMITTEE [BENCH - III (2019-2020)]**

**(Constituted under Section 21B of the Chartered Accountants Act, 1949)**

**Findings under Rule 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.**

**File No. : PR/5/2014/DD/31/2014-DC/598/2017**

**In the matter of :**

**Shri Debashis Bandyopadhyay**

Securities & Exchange Board of India (SEBI)

Plot No. C4-A, 'G' Block

Bandra Kurla Complex

**Mumbai - 400 051**

**Complainant**

.....

**Versus**

**CA. Kirit Kumar Ramanlal Shah (M. No. 034612)**

B-4, Vardhmankrupa Row House

Opp. Satadhar Society

Sola Road

**Ahmedabad - 380 061**

**Respondent**

.....

**Members Present :**

**CA. Prafulla Preme Sukh Chhajed, Presiding Officer**

**Smt. Anita Kapur, Government Nominee**

**Shri Ajay Mittal, Government Nominee**

**CA. (Dr.) Debashis Mitra, Member**

**CA. Manu Agrawal, Member**

**Date of Hearing : 25<sup>th</sup> July, 2019**

**Place of Hearing : "ICAI Bhawan", Indraprastha Marg, New Delhi**

**Party present :**



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**Respondent  
Shah**

**: CA. Kirit Kumar Ramanlal**

**Charges in Brief :**

SEBI has alleged that the Company, M/s SMS Techsoft (India) Limited made false disclosures in its Balance Sheets for the Financial Years 2011-12 and 2012-13 regarding utilization of proceeds of preferential allotment of Rs. 30 crores for purchase of land and suppressed the material fact in its annual report for the financial year 2012-13 with regard to the said financial transactions wherein the money had been circulated by it through one Smt Manjula Ben Shah. With regard to this, SEBI had sought information/explanation from the Respondent. However, no information/explanation was received.

**Brief facts of the Proceedings:**

1. It is noted that the said case was heard by the erstwhile Disciplinary Committee in April, 2018 and vide Report dated 26<sup>th</sup> June 2018, the Disciplinary Committee was of the view that Respondent was guilty of professional and other misconduct falling within the meaning of clause (2) of Part IV of First Schedule and Clauses (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949. The Committee, thereafter, passed an order dated 20<sup>th</sup> November, 2018, wherein the name of Respondent was ordered to be removed for a period of Eighteen (18) months.

2. The Respondent thereafter filed an appeal under Section 22 G of the Chartered Accountants Act, 1949. The Appellate Authority vide its Order dated 7<sup>th</sup> June, 2019, felt it appropriate that the Respondent should be given one more opportunity of hearing by the Disciplinary Committee and thus set aside the Impugned Order and



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reverted the matter to Disciplinary Committee with a direction to decide the matter by 10<sup>th</sup> September, 2019.

3. In view of Appellate Authority Order, the matter was heard on 25<sup>th</sup> July 2019. It was noted that the Respondent was present in person and as regard the Complainant-Department, a letter dated 20<sup>th</sup> June, 2019 was received wherein it was that the competent authority had concluded the accounts of the Company in question for the period under examination, were falsified and further that the presence of any official of SEBI may not be warranted. Accordingly, it was stated that the matter be proceeded with as deemed fit and considered appropriate as per the Bye-laws/Rules of ICAI

4. While initiating the proceedings, the Respondent was put on oath. The Respondent was asked if charges should be read out, he stated that he was well aware of allegations leveled against him and could be taken as read. On being asked whether the Respondent pleaded guilty, he pleaded Not Guilty. The Respondent made his submission before the Committee. The Committee cross-examined him. Accordingly, hearing in the matter was concluded.

**Findings of the Committee :**

5. The Respondent was the statutory auditor of SMS Techsoft (India) Ltd for FY 2012-13. The facts of the case is that the said Company had raised a fund of Rs.30,00,00,000 (Thirty Crore only) by issuing Preferential Shares. It is alleged that there is false disclosures in the balance sheet suggesting utilization of proceeds of preferential allotment of Rs. 30 crores for purchase of land which was shown as part of fixed assets in the balance sheet while, the factual position was that the Company did not own any land. Moreover, the material fact with regard to the said financial transactions was that the money had been circulated by the Company through one Smt. Manjulaben Shah which was suppressed. Further, on information being sought



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by SEBI, the Respondent did not provide any explanation as regards the aforesaid disclosure in the financial statement of the Company.

6. The Respondent in his written Statement has submitted that the Company had made the allotment on preferential basis in 2011-12 (before the date of his appointment) which was approved by Bombay Stock Exchange. Thus, it was upon the previous auditor to verify the inflow as well as the outflow of the funds for which he was not supposed to seek clarification from the Management of the Company. He also stated that during the course of his audit assignment, he was provided with the agreement to sale for land shown as fixed assets in Balance Sheet for the year 2011-2012 for which the Company was yet to execute sale deed at the time of audit. He was further informed by the Company during the year of his audit that the said deal had been terminated for title deficiencies in land documents. His submission was that although he had exercised utmost care and diligence while carrying out the audit assignment but the Management of the Company was not at all providing him the required documents for the audit purpose despite follow up. He further stated that with displeasure and reluctance to save his income of audit fee he had done the audit as his son had separated from him at that time after marriage.

7. During hearing, the Respondent again stated that he was the auditor of financial year 2012-2013 and the alleged transaction took place during previous year 2011-2012. Further, during audit of his period, he had sought documents from the company for verification of land stated in financial statement, which, however, were not provided to him.

8. It is noted that the Respondent was the statutory auditor of the Company for the FY 2012-13 and issued his audit report on 30<sup>th</sup> May 2013. Thus, the role of the Respondent has been examined only with respect to the allegation pertaining to the F.Y. 2012-13. The





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Committee noted that the Complainant has brought on record copy of the Order of SEBI dated 5<sup>th</sup> November, 2013 passed by SEBI which states as under:

*“In its balance sheet for the financial year 2011-12 and 2012-13 the Company has sought to show that it had acquired a land for the value of Rs.30,00,00,000/- during the financial year 2011-12. In my view, general corporate purposes provide the framework for ongoing decisions and activities of the business corporate purposes. They cannot be meant for any or every purposes that are not within scope of business or operations of a company and that are neither in the interest of the company nor its shareholders. I, therefore, find that any land deal much less a non-existent land deal as claimed by the company in this case, cannot be the purpose for which the proceeds of preferential allotment as disclosed to the shareholders could be utilised. From the facts found during inquiry, I note that company had never utilised any such money for the purchase of any land as claimed by it and had made false disclosures in its balance sheets for the financial years 2011-12 and 2012-13 suggesting utilisation of proceeds of preferential allotment for purchase of land and had deliberately suppressed the material fact in its annual report for the financial year 2011-12 with regard to the financial transactions wherein the money had been circulated by it through Manjulaben”.*

9. As regards the charge of false disclosure in the financial statement for the financial years 2012-13 suggesting utilization of proceeds of preferential allotment of Rs. 30 crores for purchase of land, it is noted that the Respondent has given contradictory submission. In his written statement, he submitted that during the audit assignment, he was provided with agreement to sale for land shown as fixed assets in Balance sheet of 2011-12 for which the Company was yet to execute sale deed at the time of audit. The Respondent also stated that he was informed by the Company during the year of audit that the said deal was terminated for title deficiencies in land documents and the Company had acquired database for business development. As against it during hearing, he denied to have received any document to verify the existence of land. Accordingly, it is clear that at the time of audit the Respondent had not exercised due diligence which was important when such land constituted 90% of the total fixed asset value of the company.



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10. Moreover, it is noted that as per the Statement on CARO 2003 under para 44 of the CARO 2003, the auditor is required to report as under:

*“44. Whether the Company is maintaining proper records showing full particulars, including quantitative details and situation of fixed assets.*

*(h) The purpose of showing the situation of the assets is to make verification possible. There may, however, be certain classes of fixed assets whose situation keeps changing, for example, construction equipment which has to be moved to sites. In such circumstances, it should be sufficient if record of movement/custody of the equipment is maintained.*

*(k) Quantitative details in respect of fixed assets may be maintained on the following lines:-*

*(i) Land may be identified by survey numbers and by deeds of conveyance.*

*45. Whether these fixed assets have been physically verified by the management at reasonable intervals; whether any material discrepancies were noticed on such verification and if so, whether the same have been properly dealt with in the books of account;*

*(b) Physical verification of the assets has to be made by the management and not by the auditor. It is, however, necessary that the auditor satisfies himself that such verification was done and that there is adequate evidence on the basis of which he can arrive at such a conclusion. The auditor may prefer to observe the verification, particularly when verification of all assets can be made by the management on a single day or within a relatively short period of time. If, however, verification is a continuous process or if the auditor is not present when verification is made, then he should examine the instructions issued to the staff (which should, therefore, be in writing) by the management and should examine the working papers of the staff to substantiate the fact that verification was done and to determine the name and competence of the person who did the verification. In making this examination, it is necessary to ensure that the person making the verification had the necessary technical knowledge where such knowledge is*



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*required. It is not necessary that only the company's staff should make verification. It is also possible for verification to be made by outside expert agencies engaged by the management for the purpose.*

*(g) Apart from the audit procedures mentioned above, it would be appropriate for the auditor to obtain a management representation letter confirming that the fixed assets are physically verified by the Company in accordance with the policy of the company. The management representation letter should also mention the periodicity of the physical verification of fixed assets. The letter should also include the details of the material discrepancies noticed during the physical verification of the fixed assets. If no discrepancies were noticed during the physical verification, the management representation letter should also mention this fact clearly."*

11. As regards the argument that the land was purchased during FY 2011-12, the provisions of SA 510 (Revised) applicable for the year under consideration. Initial Audit Engagements – Opening Balances merits consideration, that elucidates as under :

*"A2 If the prior period's Financial Statements were audited by a predecessor auditor, the auditor may be able to obtain sufficient appropriate audit evidence regarding the opening balances by perusing the copies of the audited Financial Statements including the other relevant documents relating to the prior period Financial Statements such as supporting schedules to the audited Financial Statements. Ordinarily, the current auditor can place reliance on the closing balances contained in the Financial Statements for the preceding period, except when during the performance of audit procedures for the current period the possibility of misstatements in opening balances is indicated.*

*A4 For non-current assets and liabilities, such as property plant and equipment, investments and long-term debt, some audit evidence may be obtained by examining the accounting records and other information underlying the opening balances. In certain cases, the auditor may be able to obtain some audit evidence regarding opening balances through confirmation with third parties, for example, for long-term debt and investments. In other cases, the auditor may need to carry out additional audit procedures."*



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12. From the above, it is clearly evident that the Respondent was independently responsible to verify the existence of assets being shown in opening balance sheet and to also report in CARO. However, in extant case, he has failed to exercise due diligence while carrying out the audit and failed to obtain sufficient information which was necessary for expression of an opinion. Due to his non-exercise of due diligence, he had indirectly allowed the Company to misstate the assets in the Financial Statement of the Company for the F.Y. 2012-2103 for which he had acted as the statutory auditor.

13. As regards the charge of not providing any explanation, the Respondent in his Written Statement before the Director (Discipline) submitted that he has not received any letter seeking information in the matter of the said Company from SEBI. It is noted that the Complainant, vide email dated 1<sup>st</sup> October, 2013 addressed to the Respondent's email id (as per ICAI records also) had advised him to appear on 4<sup>th</sup> October, 2013 along with the documents used to conduct the audit of the Company for the year 2012-13 including all the bank statements of the Company for the said period and all the papers related to the land deal including the payment evidence. The Complainant also brought on record an email from the mail delivery subsystem to the effect that the delivery to the Respondent's email id was complete, but, no delivery notification was sent by the destination server. Thus, since there is an evidence of delivery, the Respondent is held guilty as regards the charge of not providing the explanation to SEBI.

**CONCLUSION :**

14. Thus in conclusion, in the opinion of the Committee, the Respondent is **GUILTY** of Professional and Other Misconduct falling within the meaning of Clause (2) of Part IV of First Schedule and Clauses (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.



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**Sd/-**

**Sd/-**  
**(CA. PRAFULLA P. CHHAJED)**  
**PRESIDING OFFICER**

**(SMT. ANITA KAPUR)**  
**GOVERNMENT NOMINEE**

**Sd/-**

**(SHRI AJAY MITTAL)**  
**GOVERNMENT NOMINEE**

**Sd/-**

**[CA. (DR.) DEBASHIS MITRA]**  
**MEMBER**

**Sd/-**

**(CA. MANU AGRAWAL)**  
**MEMBER**

**Date : 26<sup>th</sup> July, 2019**

**Place : New Delhi**