

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH**

CP No. 4365/140(5)/MB/2018

Under section 140(5) of Companies Act,  
2013

In the matter of  
Union of India, Ministry of Corporate  
Affairs,  
Through Regional Director (Western  
Region),  
100, Everest, 5th Floor, Marine Drive,  
Mumbai- 400002

**...Petitioner**

V/s  
Mr Mukesh Maneklal Choksi  
Membership No. 031751  
The proprietor of Mukesh M Choksi &  
Company,  
Firm's Registration No. 131513 W  
101, Micky Heritage, Above HDFC  
Branch,  
7th Road Santacruz (East),  
Mumbai- 400055

**... Respondent No. 1**

Zen Shaving Limited  
Registered Office: Anmol CHS-C Wing,  
Flat No 1602,  
S.V. Road, Goregaon (West),  
Mumbai-400062

**...Respondent No. 2**

Order delivered on 06.02.2019

**Coram:**

Hon'ble Mr.V.P. Singh, Member (Judicial)  
Hon'ble Mr Ravikumar Duraisamy, Member (Technical)

For the Petitioner: Mr S. Ramakantha, Joint Director, Mr R.K. Dalmia,  
Joint Director, Mr Vinod Sharma RoC, Mr R.K.  
Gholap, Dy. RoC

For the Respondents: Mr Mukesh Maneklal Choksi - Party In Person  
and Mr Eshwar, PCS

*Perse; V.P. Singh, Member(Judicial)*

**ORDER**

The Petitioner has filed this Petition Under Section 140(5) of the Companies Act,2013. Brief facts of the case as stated in the petition are that the Respondent No. 1 Mr Mukesh Maneklal Choksi, "Membership No. 031751) who is the proprietor of

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Mukesh M Choksi & Company (Firms Regd No 131513W) was a statutory auditor of respondent No. 2 company during the financial year 2014-15 and 2015 – 16. The Statutory Auditor, the company or the auditor, have never filed the requisite forms with Registrar Of Companies.

1. Respondent No. 2 is Zen Shaving Ltd.; Public limited company got registered in Mumbai on 7 March 1995. It is stated that Respondent No. 1 submitted the Audit report of Respondent No. 2 of the financial year 2014 – 15 and 2015 – 16.
2. That on the basis of multiple complaints made by one Mr Jagdip H Vaishnav, relating to the alleging siphoning of the investor's money, the Ministry of corporate affairs ordered the inspection of Respondent No.2 under Section 206 (5) of the Companies act 2013. The sum and substance of the allegations raised in the complaints are as follows;
  - (i) Shares are not listed on the Pune Stock Exchange.
  - (ii) They are siphoning of investors' money.
  - (iii) The company has not issued a financial statement after 1995.
  - (iv) Company changes registered office frequently
  - (v) No company representative attends calls given by ROC Mumbai
  - (vi) Investors are complaining about serious irregularities but do not get any response from Regulators, Investigating Agencies.

Under inspection, the Inspecting Officer has submitted an inspection report dated 10<sup>th</sup> may 2018 and supplementary inspection report dated 13 August 2018. The inspection report, in short, is given as under;

1. It is alleged that several letters were issued to the respondent No. 2 company on multiple occasions, seeking permission and documents for inspection but

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respondent No. 2 company failed to reply to the letters. The letters issued to the respondent were returned with the remark 'Left' by the postal department. The inspector stated that he was seeking preliminary information and documents for inspection from the Respondents, but the said letters were not replied to by the Director's of respondent No. 2 company, ultimately letters were returned with the postal remark 'LEFT'.

2. It is further submitted by the petitioner that as per the provision of section 207 (3) of the Companies Act 2013, the Inspecting Officer is vested with the powers of the Civil Court, for inter-alia, directing production of books of account etc., of the company under inspection, and further to summon and enforce attendance of persons for examination under oath. The summons were issued to all the directors of respondent No. 2 company in addition to the summons which were issued to the proprietorship firm of Respondent No. 1, who were the Statutory Auditors of Respondent No. 2 company for the financial year 2014 – 15 and 15 – 16.
3. It has been stated in the Inspection Report Dt. 10th May 2018 & Supplementary Inspection Report Dt. 13th August 2018, Respondent No. 2, i.e. the company has filed the Statutory Returns (Annual financial statements and Annual Returns) up to the financial year 2015 – 16. The financial statement and Board of Directors of the Respondent No. 2 company for the period above were signed on 5th September 2016, by Mr Arvind Goyal Babulal, the chairman of the respondent No. 2, Company. Respondent No. 1 during the inspection made the statement on oath that he has signed the Auditor's Report, without examining books of accounts of Respondent No. 2 company.

3. The relevant extract of the statement under oath from the Inspection Report dated 10.05.2018 and Supplementary Inspection Report dated 13.08.2018, recorded by the Respondent No 1 under Section 207 (3)(b) of the Companies Act, 2013, is cited herewith.

**Question No- 9: - Where is the factory/manufacturing facility of the Company is Located?**

**Answer No 9:- I Do not know.**

**Question No- 10: Who are the persons, capable of giving information about the public issue, its utilisation and day to day affairs of the company, also mention their address etc.,?**

**Answer No 10:- According to the best of my knowledge ShriArvindGoyal, Director, Shri Jayesh Sampat, director, and ShriVithal Das AnannatPrabhuthe director of the company are capable of giving information about the public issue and day to day affairs/financial affairs of the company.**

**Question No- 11:- When was the last AGM of the Company was held, its agenda and where it is held?**

**Answer No 11:- I do not Know.**

**Question No- 12:- Have you attended the AGMs of the company during your tenure as a Statutory Auditor of the Company?**

**Answer No 12:- I never attended any AGM of the Company.**

**Question No- 13:- Whether any Income Tax raids are conducted and the documents seized by the IT Departments?**

**Answer No 13:- I do not know.**

**Question No- 14:-Do you know an order has been issued to carry out the Inspection u/s 206 read with section 207 of the Companies Act, 2013?**

**Answer No 14:- Yes, this aspect came to my knowledge on receipt of summon dated 09.03.2018.**

**Question No- 19:- ShriVithaldasAnantPrabhu, Director of the Company, at the time of recording his statement on 03.01.2018 has stated that he " was working as ordinary Clerk with Mr MukeshChoksi, the former CA of the company, using my innocence he induced me to join the company as director and he has promised me to take care of any consequences arising out of activates of the company " In this regard what you want to say?**

**Answer No 19:- They have seen the situation, and in the pretext of receiving monetary gain they become directors of the company. I have not induced them.**

**Question No- 20:- Who is the company secretary of the company their addresses, membership/Registration No./Mobile/Tel. No?**

**Answer No 20:- I do not know.**

**Question No- 21:- Do you know S M Bhat& Associates, Membership No 030696.3, Sweet Home, 9<sup>th</sup> Road Extension, JPVD Scheme, Mumbai- 40009 the Statutory Auditor of the company for the Financial Year 2013-14.?**

**Answer No 21:- I know him as a Chartered Accountant. I will Submit the relevant information latest by 20.03.2018.**

**Question No- 22:- when you are appointed as statutory auditor of the Company?**

**Answer No 22:- for the Financial year 2014-15.**

**Question No- 23:- How long you are a statutory auditor of the company?**

**Answer No 23:- I was appointed as the statutory auditor, for the financial year 2014-15 & 2015-16.**

**Question No- 24:- Do you have the copy of the consent letter given to the company for appointment as Statutory Auditor of the Company and the copy of appointment letter issued by the company?**

**Answer No 24:- consent letter given to the company is annexed to my letter dated 12.03.2014.**

**Question No- 25:- Whether an Internal Audit System was in place?**

**Answer No 25:-No.**

**Question No- 26:- Where are Books, of Accounts, records, papers etc., are kept?**

**Answer No 26:- The records are with ShriArvindGoyalBabulal, Director of the Company, I am not aware where he is keeping them.**

**Question No- 27:- Have you called for any Books of Accounts and Statutory Registers from the Company?**

**Answer No 27:-I have not called for any Books of Accounts and Statutory Registers from the Company.**

**Question No- 28:- Who has submitted and coordinated the audit of Books of Accounts, Statutory Registers, other papers etc., of the Company?**

**Answer No 28:-ShriArvindGoyal, Director of the Company has coordinated the audit work.**

**Question No- 29:- Where you have audited the Books of Accounts and Statutory Registers, Papers etc., of the Company?**

**Answer No29:-I have not audited the books of accounts of the company. However, I have signed the auditor report of the company for the relevant period.**

**Question No- 30:- What is/was your role as an auditor, mention in brief your duties and responsibilities in the company under inspection?**

**Answer No 30:- I have to check the Accounts, Statutory Registers, Papers etc., but the records essential for audit purpose was not produced before me. I have been informed**

**that there is no activity carried out by the company he simply produced before me profit and loss account and the balance sheet. I have certified the Balance Sheet and Profit and Loss Account for the financial year 2014-15 & 2015-16. I have been informed that the company has not done any activity.**

4. The inspecting Officer in his inspection report dated 10.5.2018 and supplementary report dated 13.8.2018 has submitted his Inspection Report wherein it is stated that:
  1. Many of the allegations raised by the complainant, Mr Jagdip H. Vaishhav, are true due to the sheer fact that no registered office of the Respondent No 2 Company, existed.
  2. No books of accounts of the Respondent no 2 Company were produced to the Inspecting Officer despite notices and summons being issued to the R2 Company, its directors and statutory auditors.
  3. The Director/Managing Director at the helm of affairs failed to respond to the notices issued by the Inspecting Officer.
  4. The R2 Company came out with Initial Public Officer (IPO) and issued prospectus to raised public funds on 10.10.1996. There after the team of directors has completely changed. The Initial Promoters of the Company are not involved in the affairs of the Company after 29.09.2005. The R2 company is not listed on any stock exchange despite the assurances given in the Prospectus dated 10.10.1996.
  5. The date of retirement of Shri Ketan A Gaglani, Managing Director who was involved in the day to day affairs of the Respondent No 2 company since 18.12.1995( the company was incorporated on 07.03.1995) had retired on 29.09.2005.
  6. The present directors, who took over the affairs of the R2 Company since 04.10.2014, are not traceable.

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7. The present directors of the R2 Company are dummy/shadow directors of Mr Arvind Goyal Babulal, the Chairman of the R2 Company, who dodged his responsibilities to assist in the inspection.
  8. All the commonly known attributes of a shell company exist in the case of R2 Company under inspection.
  9. Mr Arvind Goyal Babulal, the Chairman of the R2 company, regarding provisions of Section 2(60)(v) of the Companies Act, 2013, is the "officer in default."
  10. The actions of the company and its directors prove that all the allegations raised are true and correct.
5. On perusal of the Application, it appears that the Respondent No 2 Company is not listed on any stock exchange despite the assurances given in the Prospectus dated 10.10.1996 and the present directors of the R2 company are apparently dummy/shadow directors of Mr Arvind Goyal Babulal, the Chairman of the R2 Company, who dodged his responsibilities to assist in the inspection and all the commonly known attributes of a shell company are existing in the case of R2 Company under inspection.
  6. It is contended that after the Inspection, the Inspecting Officer has submitted a Report dated 10.05.2018 and a Supplementary Inspection Report Dt.13.08.2018.
  7. It is further stated that as per provision Under Section 207 (3) of the Companies Act, 2013, the Investigating Officer vested with the powers of Civil Court for directing a production of Books of Account of the company under inspection and further to summon, enforce the attendance of the person and examination under oath. Inspecting officer issued summons to all the Directors of the R2 Company in addition to the summons to R1, who were the Statuary Auditors of the R2 company for the Financial Years 2014-15 and 2015-16.



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8. Ld.RoC has emphasized the statement of Statutory Auditor wherein he has stated that he has not Audited Books of Account of the company however he has signed Auditor Report of the company for the relevant period.
9. Ld. RoC, has further emphasised the Statutory Provision under section 141(3)(b) which provides that;
- The following person shall not be eligible for appointment as an Auditor of the company namely;
- (d) a person who, or his relative or partner-
- (i) is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company:
- Provided that the relative may hold security or interest in the company of face value not exceeding one thousand rupees or such sum as may be prescribed;
10. It is further contended that R1 acted as Statuary Auditor and issued following Auditors Report that is reproduced below:-

To,

*The Members of ZEN Shaving Limited*

**Report on the Standalone Financial Statements**

**We have audited the accompanying Standalone Financial Statement Zen Shaving Limited (the "Company") which comprises the Balance Sheet as at March 31, 2015, the statement of Profit Loss for the year then ended and a summary of significant accounting policies and other explanatory information.**

**Management's Responsibility for the Financial Statements.**

*Management is responsible for the matters stated in Section 134 (5) of the Companies Act, 2013 ("the Act") with respect to the preparation of these standalone financial statements that give a true and fair view of the financial position, financial performance and cash flows of the Company in accordance with the accounting standards specified under section 133 of the act, read with Rule 7 of the Companies (Accounts) Rules, 2014. The responsibility also includes maintenance of adequate accounting records in*

*accordance with the provision of the Act for safeguarding of the assets of the Company and for preventing and detecting frauds and other irregularities: selection and application of appropriate accounting policies; making judgments and estimates that are reasonable and prudent; and design, implementation and maintenance of adequate internal financial controls, that were operating effectively for ensuring the accuracy and completeness of the accounting records, relevant to the preparation and presentation of the financial statement that give a true and fair view and are free from material misstatement, whether due to fraud or error.*

**Auditors' Responsibility**

**Our responsibility is to express an opinion on these stand-alone financial statements based on our Audit."**

11. The Petitioner submitted that it is clear from the findings of the Inspecting Officer in his Report dated 10.05.2018 that the Respondent No 1, being the Statutory Auditor of the Respondent No 2 Company has miserably failed to fulfil the statutory duty entrusted to him as per the provisions of the Companies Act, 2013. The said fact is also evident from the crux of the statement given by the R1, recorded under section 207 (3)(b) of the Companies Act, 2013, which have been summarised above.
12. Relying on the statement on oath of R-1, it is clear that the R1 Mr.Mukesh M Choksihas failed to exercise his duty of Statutory Auditor, and he has certified the Profit & Loss Account and Balance Sheet of the company without even examining any of the records/ Books of the Account of the R2 Company.
13. It is recorded that family members of R1 are shareholders of the R2 Company, whereas Section 141(3)(d) provides that Chartered Accountant is ineligible to become an Auditor of the company, whose relative or partner is holding any security or interest in the company.
14. It is amply clear that family members of the statutory auditor of R1 are shareholders of R2 company, and R1 has issued Audit certificate of the company, without even examining any Books of

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Account of the R-2Company, which is clear cut violation of the statutory provision of Section 141(3)(d) of the Companies Act, 2013.

15. By our order dated 3.1.2019, we passed an interim order which is as under;

(a) that Respondent No. 1 shall immediately cease to function as statutory auditor of Respondent No. 2 Company.

(b) Permit the Petitioner to appoint an independent Auditor for the Respondent No 2 Company to replace Respondent No 1, regarding the first proviso to Section 140(5) of the Companies Act, 2013 read with Explanation I to it.

We further directed R1 and R2 to file para-wise reply/counter affidavit within 15 days from the date of the order, but R1 and R2 did not file any para-wise reply.

The Contents of the affidavit in reply submitted by R1 ShriMukeshManeklalChoksiis given below:

"That I am accepting the order passed by the Hon'ble National Company Law Tribunal.

That I have signed the Audit Reports of Zen Shaving Ltd in good faith and I have followed the procedures which previous Auditors have followed.

The office bearers of the company are not available, and therefore I could not receive any information from them."

16. Auditor has given the affidavit that he has signed the Audit Report of Zen Shaving Ltd in good faith and have followed the procedures which previous Auditors have followed. He has certified that he has given the certificate after examining the accounts of Zen Shaving Ltd, but he has admitted that he has followed the procedure, which the previous auditors were following. Though Auditor was to file the para wise detailed reply, regarding the allegations levied against him, by the Union of India, but he intentionally avoided filing any para-wise reply. The

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explanation submitted by the Auditor shows that even without examining books of accounts, he has submitted the Audit Report and certified the Profit & Loss Account Statement and Balance Sheet of the company i.e. Zen Shaving Ltd. It is also clear from the statement made by the Auditor, R1, before the Enquiry Officer that he knows the duties and responsibilities of the Auditor and he is aware that he was his duty-bound to check the accounts, statutory registers, papers, etc., but the records essential for audit purpose was not produced before him. He has further stated that it was informed to him that no activity is being carried out by the company and profit and loss account and the balance sheet was produced before him. He has certified the Balance Sheet and Profit and loss account for the F.Y. 2014-15 and 2015-16. He has been informed that the company has not done any activity during this period. He has further stated that he has not audited the books of accounts of the company and has signed the auditor's report of the company for the relevant period. He has also accepted that he has not called for any books of accounts and statutory registers from the company for audit purpose and the same is with Mr Arvind Goyal Babulal, Director of the Company and that he is not aware of where Mr Arvind Goyal Babulal is keeping them. He has also accepted this fact that there was no internal audit system in the company. He has accepted that he has submitted his consent letter dated 12.3.2014 for being appointed as statutory auditor of the company. The Statutory Auditor R1 has also accepted that he does not have any working papers for auditing the accounts of the company for the F.Y. 2014-15 and 2015-16 whereas as per ICAI Guidelines, he is supposed to maintain the working papers for at least five years. The Respondent No 1, Statutory Auditor has admitted in his **statement that he has not audited the Books of Account of the Company and has only signed Auditor Report of the Company for the relevant period.** It shows that the Statutory Auditor has given a false certificate that

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he has audited the Books of Account of the company for the relevant period.

17. The Auditor of the company R1 Mr Mukesh Choksi has not contradicted the finding of the Inspection Report. No counter affidavit has been filed against the said findings. There is no denial of the allegations levied against the Auditor. In reply to the above allegations, the Statutory Auditor has stated that he has signed the auditor report of Zen Shaving Ltd in good faith and has followed the procedures which the previous auditor has followed. The reply of R -1, Statutory Auditor is a sham and against the statutory duties of Auditor given under Sec 143 of the Companies Act. The Statutory Auditor cannot escape from his liability by saying that he has followed the practice, which was being adopted by the previous auditor.
18. On the basis of admission of Auditor R1, Mr Mukesh Maneklal Choksi, it is clear that R1 Statutory Auditor has acted fraudulently and colluded with the Directors of the company in relation to the affairs of the company and he has misused his position as Statutory Auditor of the company and certified the Profit & Loss Account and Balance Sheet of the company even without examining the account books, statutory registers, papers etc., which were essential for audit purposes. It is also clear from his statement that documents were never produced before him, but he certified the Balance Sheet and Profit and loss Account, without even auditing the books of accounts of the company. He has also given the false certificate that he has audited the financial statement of Zen Shaving Ltd, which comprises of Balance Sheet as on 31.3.2015, the statement for profit/loss for the Financial year ending 2015 and summary of significant accounting policies and other Explanatory Information.
19. The explanation submitted by Auditor clearly shows that he has submitted the Audit Report without even auditing the accounts. Such activities of R1 are in clear cut violation of duties of Auditor prescribed U/S 143 of the Companies Act.

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20. It appears that the Statutory Auditor R-1 in collusion with the Directors of the R-2 company has made the Audit Certificate as a **tradeable commodity**, which cannot be permitted at any cost. It is not irrelevant to mention following observation regarding the role of Statutory Auditor of a company by the Hon'ble Bombay High Court in Price Waterhouse and Co. and Ors. Vs Securities and Exchange Board of India and Ors., 2010 SCC OnLineBom1197 :

*"It is however required to be noted that normally an investor would like to invest his money in the shares of a Company on the basis of reflection of Company's financial health as disclosed in the balance-sheet of the Company and he may consider that it is safe to invest money in a particular company, if the balance-sheets have been certified by reputed Chartered Accountants, and it reflects that the financial position of the Company is sound. An investor is likely to be guided by the audited balance-sheet of the Company and would presume that the facts incorporated in the balance-sheet are true and correct. Considering the said aspect, even though the petitioners may not have direct association in the share market activities, yet the statutory duty regarding auditing the accounts of the Company and preparation of balance-sheets may have a direct bearing in connection with the interest of the investors and the stability of the securities market."*

21. In the present times when the national economy is highly dependent upon the profitability and credibility of commercial institutions, the role of Statutory Auditors is becoming a very important tool of keeping a check and preventing re-occurrence of scams like Satyam. This Tribunal while exercising its power under the Insolvency and Bankruptcy Code, 2016 and the Companies Act, 2013 has on several occasions made crucial decisions in important matters relating to Amalgamations and Merger, Oppression and Mismanagement, Voluntary Liquidation, Insolvency petitions, etc. and for such matters, it has to rely upon the reports of the Independent Auditors. Thus, it is not only the Company or the Board of Directors or promoters of a company, but the investors, both current and prospective, Securities

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Market, and the Courts/Tribunals too, that often rely upon the reports of independent Auditors. The role of Statutory Auditor is thus vital, and the auditor owes a fiduciary duty towards Nation. It is, therefore, necessary to take stern action against the person who has tried to diminish the credibility of the Auditor's profession.

22. The conduct of the Respondent no. 1, who happens to be a senior member of the ICAI, amounts to a gross violation in the form of professional misconduct and has challenged the credibility of the whole Profession. The respondent no. 1 has brought disrepute to the Institute of Chartered Accountant and the profession itself. We hope the ICAI will take necessary action against Respondent No. 1 for his professional misconduct.
23. On the above basis, it is clear that the R-1 Mr Mukesh Maneklal Choksi colluded with the Director of R-2 company and has given a false Audit certificate relating to the Profit & Loss Account and Balance Sheet of the R-2 company, without even examining and verifying the books of accounts, The Statutory Auditor has not given any plausible explanation for such irresponsible fraudulent activities. Thus the charges levelled against the R-1 Mr Mukesh Maneklal Choksi have been found correct therefore petition deserves to be allowed.

**ORDER**

Since Respondent No 1, Mr Mukesh Maneklal Choksi, Statutory Auditor, colluded with the Chairman/Director of R-2 company and has given a false Audit certificate relating to the Profit & Loss Account and Balance Sheet of the R-2 company, without even examining and verifying the books of accounts, and the Statutory Auditor has not given any plausible explanation for such irresponsible fraudulent activities.

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Therefore under 2nd Proviso to Section 140(5) of the Companies Act, 2013, R1, **Mr Mukesh Maneklal Choksi shall not be eligible to be appointed as an Auditor of any company for a period of 5 years from the date of passing this order, and the auditor shall also be liable for action under Section 447 of the Companies Act, 2013.**

**Further by exercising powers under section 147(3)(i) of the Companies Act 2013, we also direct the Statutory Auditor Mr Mukesh M. Choksi to refund the remuneration received by him, during the period he acted as Auditor, back to the Company.**

24. It is directed that a copy of this order be sent to National Financial Reporting Authority and ICAI to take proper action as it may deem fit.
25. The above order is in addition to our earlier order which we have passed on 3.1.2019 which is as under:
- (a) that Respondent No. 1 shall immediately cease to function as statutory auditor of Respondent No. 2 Company.
  - (b) Permit the Petitioner to appoint an independent auditor for the Respondent No 2 Company to replace Respondent No 1.

Sd/-

**RAVIKUMAR DURAISAMY**  
Member (Technical)

**6<sup>th</sup> February, 2019**

Sd/-

**V.P. SINGH**  
Member (Judicial)