

**CONFIDENTIAL**

**DISCIPLINARY COMMITTEE [BENCH-III (2018-19)]**

**[Constituted under section 21B of the Chartered Accountants Act, 1949]**

**Findings under Rule 18(17) and 19(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007**

**File no.: PPR/P/4/14-DD/2/INF/14-DC/768/2017**

**In the matter of :**

**CA. Rajesh Kumar Rathi (M. No. 071059)  
"SUKUN"  
5-B-3/1, South Tukoganj,  
Behind Shanti Mandapam,  
INDORE - 452001**

**... Respondent**

**Members Present :**

**Shri Naveen Kumar Gupta, Presiding Officer  
Smt. Anita Kapur, (Govt. Nominee)  
Shri Ajay Mittal, (Govt. Nominee)  
CA. Shyam Lal Agarwal, Member  
CA. Sanjay Kumar Agarwal, Member**

**Date of Final Hearing: 23<sup>rd</sup> October, 2018**

**Place of Final Hearing: New Delhi**

**Parties Present:**

- (i) Respondent- CA. Rajesh Kumar Rathi**
- (ii) Counsel for Respondent- CA. Santosh Deshmukh**

**Allegations of the Informant, Smt. Meenakshi Dubey (Manager-Department of Non Banking Supervision) Reserve Bank of India, Bhopal:**

1. The Committee noted that the basic charge against the Respondent was in respect of the Audited Financial Statement of the Himmat Finlease Pvt. Ltd. (hereinafter referred to as the “Company”) for the Financial Year 2011-2012 audited by the Respondent. It was stated that the Company was entitled to continue such Certificate of Registration in terms of asset / income pattern as on 31<sup>st</sup> March, 2011 (Sic 2012) whereas the Company was not fulfilling the requirements of having the business as Non-Banking Financial Companies. Thus, it was alleged that the Respondent had failed to submit Exception Report to the RBI .The Committee also noted that another charge alleged against the Respondent was that in the Audited Financial Statement of the Company for the Financial Year 2011-2012, 20% of the profit was not transferred to the Statutory Reserve Fund as per the requirement of 45-IC of the RBI Act 1934.

**Proceedings:**

2. At the time of hearing on 20<sup>th</sup> July 2018, the Committee noted that the Respondent along with his Counsel was present before the Committee. Being the first hearing, the Respondent was put on oath. On being asked, as to whether the charges may be taken as read, the Respondent stated that he was aware of the allegations and the charges might be taken as read. On being asked, as to whether he pleaded guilty, he replied that he did not plead guilty and would opt to defend his case.

Thereafter, the Counsel for Respondent made his submissions in the matter before the Committee. The Respondent was examined by the Committee on the submissions made by him. Based on the documents available on record and after considering the oral and written submissions made by the Respondent before it, the Committee asked the Respondent to submit the following information/documents within 45 days from the date of the hearing :

- a. In the absence of transfer of 20% of profits to Statutory Reserve, why Exception Report was not filed by the Respondent.
- b. Any evidence that no adverse action was taken against the company by the RBI on account of matter being discussed.



c. Order of RBI with respect to the Company in relation to the year under enquiry

The Respondent was directed to make his further written submission, if any. Accordingly, the matter was part-heard and adjourned.

3. At the time of hearing on 23<sup>rd</sup> October, 2018, the Committee noted that the Respondent, along with his Counsel was present before the Committee. The Committee noted that there was change in the constitution of the Committee since last hearing in the matter and, accordingly, gave an option to the Counsel for the Respondent to either seek de-novo or might proceed in the case from where it was left earlier. The Counsel for the Respondent requested to grant de-novo hearing. The Committee accepted the request of the Respondent and accordingly, hearing in the matter was initiated afresh. The Committee asked the Counsel for the Respondent whether he wished the charges to be read out or these could be taken as read. The Counsel stated that he was aware of the allegations raised against the Respondent and the same might be taken as read. On being asked, as to whether the Respondent pleaded guilty, he replied that the Respondent did not plead guilty and opted to defend the case.

Thereafter, the Counsel for Respondent made his submissions in the matter before the Committee. Based on the documents available on record and after considering the oral and written submissions made by the Counsel, the Committee examined the Respondent. The Committee directed the Respondent to submit within 15 days of the date of the hearing :

a) the exception report submitted by the Respondent to RBI as referred by the Regulator in its letter dated 12<sup>th</sup> Oct, 2018.

Thereafter, the hearing in the matter was concluded by the Committee.

**Findings of the Committee :**

4. The Committee noted that the basic charge against the Respondent was that he had stated in his report that the Company was entitled to continue to hold the Certificate of Registration as NBFC and also failed to submit the Exception Report to RBI despite the

fact that the financial assets of the Company were less than 50% of total assets of the Company and financial income was less than 50% of the total income of the Company, thereby not fulfilling the requirement of continuing the business as Non-Banking Financial Companies as laid under section 45 I(a) of the Reserve Bank of India Act, 1934, Further the Company failed to transfer 20% of the profit to the Statutory Reserve Fund.

5. The Respondent in his Written Statement submitted that preparation of books of accounts was the responsibility of the Company and the responsibility of the Auditor was to express opinion on the same. With respect to any penal action initiated against the Company by the RBI, it was submitted that the RBI being satisfied with documentary evidences, submissions and explanations of the Company, allowed it to continue to hold the certificate of Registration unconditionally and did not initiate any penal proceedings against the Company which implied that the Company, was not considered to have defaulted under the provisions of RBI Act 1934.

6. With respect to first charge, the Committee noted that the certificate dated 10<sup>th</sup> December 2012 wherein the Respondent had submitted the details of assets and income pattern of the Company was based on erroneous interpretation that cash and bank balance formed part of the Financial Assets. However, the RBI was apparently not satisfied with the same, pointed out the non-maintenance of the principal business criteria and called explanation from the Company vide letter dated 14<sup>th</sup> January 2013. Thereafter, in reply to the same, the Respondent had given a modified (revised) certificate dated 25<sup>th</sup> January 2013 stating that the Company had maintained financial assets and financial incomes more than 50% of the total assets and total income respectively on average basis. The Committee further noted that the RBI apparently did not agree with the same and preferred to file a complaint against the Respondent with ICAI though it did not initiate any action against the Company. The Committee in this regard noted that though the conclusions arrived at by the Respondent were faulty on account of his interpretation that cash and bank balance formed part of the financial assets or average basis could be adopted but the same was a bonafide error which was not in nature of any gross negligence as basic data was disclosed. The Committee accordingly decided to hold the

Respondent not guilty of any professional misconduct w.r.t this charge but also decided to issue a caution note to the Respondent in respect to the same.

7. As regards the second charge that 20% of profit was not transferred to the Statutory Reserve Fund, the Committee noted the provisions of Section 45-IC of RBI Act, 1934 in respect statutory reserve fund which states as under:

*"45-IC Reserve fund:-*

*(1) non-banking financial Company shall create a reserve fund and transfer therein a sum not less than twenty per cent of its net profit every year as disclosed in the profit and loss account and before any dividend is declared".*

Further, the Committee noted that Para 2.11 of 'Technical Guide on Audit of Non-Banking Financial Companies' issued in 2010 states as follows:

*"Every NBFC is required to create a Reserve Fund to which at least 20 percent of its net profits must be transferred before declaration of any dividend. The Reserve Fund can be used only for the purposes specified by the RBI from time to time. The Central Government has the power to exempt, on the recommendation of the RBI, an NBFC from this requirement provided the sum total of its statutory reserves and share premium account is not less than its paid up capital. (emphasis added)"*

8. It was noted from the Director's Report that the Company had not declared any dividend during the period concerned. In the absence of clarity as to whether the phrase 'before any dividend is declared' refers to the point of time when the reserve fund was to be set aside in the Financial Statements or defined the condition to create reserve fund and also the fact that the Company had not declared any dividend during the financial year, it could not be mandated that the requirement of transfer to Statutory Reserve Fund was applicable on the Company. Further, it was noted that no action was taken by RBI against the Company. Accordingly, it was viewed that the Respondent was under no obligation to give an Exception Report. Thus, the Committee decided that the Respondent was not guilty w.r.t this charge.

**Conclusion :**

9. Thus, in conclusion, in the opinion of the Committee, the Respondent is **NOT GUILTY** of Professional Misconduct falling within the meaning of Clauses (6), (7) and (9) of part I of Second Schedule to the Chartered Accountants Act, 1949. It was to be further noted that although the Respondent herein, was held **NOT GUILTY**, an advisory is being issued to him to be more alert and careful while dealing with the matters in his future assignments.

10. The Committee accordingly Orders for closure of this case against the Respondent.

Sd/-  
(CA. Naveen N.D Gupta)  
Presiding Officer

Sd/-  
(Smt. Anita Kapur)  
Member (Govt. Nominee)

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

Sd/-  
(CA. Sanjay Kumar Agarwal)  
Member

Sd/-  
(CA. Shyam Lal Agarwal)  
Member

Date : 29<sup>th</sup> January, 2019

Place : New Delhi

**Certified Copy**

  
**SHASHI MAHAJAN**  
Deputy Secretary  
Disciplinary Directorate  
The Institute of Chartered Accountants of India  
ICAI Bhawan, I.P. Marg, New Delhi-110 002