



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

[PPR/P/380/17-DD/351/INF/2017/DC/934/2018]

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. PPR/P/380/17-DD/351/INF/2017/DC/934/2018

CA. P Mohandas (M.No.021262)
M/s. Balan & Co.
Chartered Accountants
Bank Road
Aluva
Kochi - 683 101

..... Respondent

Members present:

CA. Atul Kumar Gupta, Presiding Officer
Smt. Anita Kapur, Member (Govt. Nominee)
Shri Ajay Mittal, Member (Govt. Nominee)
CA. Manu Agrawal, Member

Date of Final Hearing: 23rd January, 2021 through Video Conferencing

Place of Final Hearing: New Delhi

1. Vide report dated 28th August 2020 (**copy enclosed**) the Disciplinary Committee was of the opinion that **CA. P Mohandas (M.No.021262)** was **GUILTY** of Professional Misconduct falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountant Act 1949 with respect to failure to submit exception report to RBI in respect of KMLM Financial Services Ltd (hereinafter referred to as the "**Company**") for the F.Y. 2015-16 as the Company met Principal Business Criteria and thus was carrying NBF1 activity, without obtaining a Certificate of Registration from RBI which is in violation of Provisions of Chapter III B of RBI Act, 1934. It was stated that similar violation on the part of the Respondent was earlier condoned internally by RBI, the Informant and same lapse was again observed by it on the part of the Respondent. Accordingly, the Respondent is held guilty of Clause (7) of Part I of Second Schedule which states as under:-
"does not exercise due diligence, or is grossly negligent in the conduct of his professional duties."

2. An action under Section 21B (3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and communication dated 4th January, 2021 thereby granting him an opportunity of being heard in person or through videoconferencing and/or to make a written representation before the Committee on 23rd January 2021.

3. The Committee noted that neither Respondent nor his authorized representative was present before it for hearing. The Committee further noted that already an adjournment in the matter had been granted to the Respondent on 7th December, 2020 when it was fixed for hearing. At the present hearing, the Committee had granted him the opportunity to appear before it through either alternatives of appearing in person or through video conferencing still he failed to appear before it. The Committee viewed that sufficient opportunity had been given to the Respondent as envisaged



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under Rule 19 of CA Rules, 2007. Accordingly, the Committee viewed that he has nothing further to say and decided to pronounce the order based on information available on records.

4. It was noted that the Respondent, inter alia, submitted that the Company was not carrying out any NBFC Business during the financial year 2015-16. The Company had neither accepted any public deposit nor carried out any lending activities during the year under consideration. However, it had advanced some amount to its sister concern which was not a loan to the outsider. The Respondent also contended that the Company was not involved into any lending activity from the financial year 2014-15 onwards and that the amount reported in the financials was the balance carried over from the previous FY 2013-14. He further submitted that he was under an impression that the loan to sister concern would not fall under the category of lending activity and therefore, the exception report was not submitted by him to the RBI.

5. The Committee considered the submissions made by the Respondent and observed that the financial assets of the Company amounted Rs.23655811/- which constitutes more than 50% of the total assets of the Company (A-52). Similarly, the financial income of the Company amounted Rs.1451060/- (A-53) which constitutes more than 50% of the total income of the Company. Accordingly, the Company had met the Principal Business Criteria and thus was carrying NBF activity without obtaining a Certificate of Registration from RBI which is in violation of Provisions of Chapter III B of RBI Act, 1934. Accordingly, it was incumbent upon the Respondent, being auditor of the Company, to comply with the requirements of paragraph 5 of Non-Banking Finance Companies Auditors' Report (Reserve Bank) Directions, 2008 to submit an exception report to the RBI which he failed to do so. The Committee also noted the fact that none of the stakeholders were affected and also the advanced age of the Respondent.

6. The Committee thus viewed that the misconduct on the part of the Respondent has been held and established within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountant Act 1949. Thus the Committee, keeping in view the facts and circumstances of the case as aforesaid, ordered the Respondent **CA. P Mohandas (M.No.021262), be reprimanded.**

Sd/-
[CA. Atul Kumar Gupta]
Presiding Officer

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

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

Sd/-
[CA. Manu Agrawal]
Member
(approved & confirmed through e-mail)

Date: 23rd January, 2021



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CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – III (2020-21)]
[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. PPR/P/380/17-DD/351/INF/2017/DC/934/2018

CA. P Mohandas (M.No.021262)
M/s. Balan & Co.
Chartered Accountants
Bank Road
Aluva
Kochi - 683 101

..... Respondent

Members Present:

CA. Atul Kumar Gupta, Presiding Officer
Smt. Anita Kapur, Member (Govt. Nominee)
Shri Ajay Mittal, Member (Govt. Nominee)
CA. Chandrashekhhar Vasant Chitale, Member
CA. Manu Agrawal, Member

DATE OF FINAL HEARING: 06.08.2020 through Video Conferencing

The brief background of the instant case:-

1. The Respondent was the statutory auditor of the Company KLM Fincorp Ltd., a group Company of KMLM Financial Services Ltd. and KMLM Financial Services Ltd. for the F.Y. 2011-12 and 2015-16 respectively. In 2012, the NBFC activity of KLM Fincorp Ltd. was not reported by the Respondent to the RBI which had then applied for Certificate of Registration (COR) for a NBFC as required under the Notification No. DNBS. 201DG (VL)-2008 dated September 18, 2008. The said lapse on the part of the Respondent was condoned internally by the Regional Office of RBI. However, same lapse was again observed by RBI on the part of the Respondent with respect to KMLM Financial Services Ltd. (hereinafter referred to as '**the Company**') which incidentally belonged to the same Group. It was reported that financial asset of the Company constituted more than 50% of total assets and that financial income constituted more than 50% of total income. Thus, it



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was reported that the Company was meeting Principal Business Criteria and was, thus, carrying NBF1 activity without obtaining a certificate of Registration from RBI which was non-compliance of Provisions of Chapter III B of RBI Act, 1934 and was required to be reported by the Respondent through Exception report to RBI.

Against the aforesaid background, the allegations raised against the Respondent was as under:-

1.1 The Respondent failed to submit exception report to RBI **(A4-A5 read with C3-C4)** in respect of the Company for the F.Y. 2015-16 as the Company met Principal Business Criteria and thus was carrying NBF1 activity, without obtaining a Certificate of Registration from RBI which is in violation of Provisions of Chapter III B of RBI Act, 1934.

2. Proceedings:

At the time of meeting on 6th August 2020, the Committee noted that the Respondent vide his e-mail dated 4th August, 2020 stated that his residence and office was in containment zone so curfew was imposed. Also, he was, then, more than 70 years old and accordingly, requested the Committee to decide on the case based on the submissions as available on record.

In view of above, based on the documents/ information available on record and written submissions made by the Respondent, the Committee concluded hearing in the matter.

Findings of the Committee:

3.The Committee noted that in the extant case, it has been alleged against the Respondent that he failed to submit exception report to RBI **(A4-A5 read with C3-C4)** in respect of the Company for the F.Y. 2015-16 as the Company met Principal Business Criteria and, thus, was carrying NBF1 activity, but it was functioning so without obtaining the Certificate of Registration from RBI which was in violation of Provisions of Chapter III B of RBI Act, 1934. Such violation was required to be reported by the Respondent through Exception Report to RBI which he failed to comply with.



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4. The Respondent in his Written Statement in this regard submitted that the Company was not carrying out any NBFC Business during the financial year 2015-16. The Company had neither accepted any public deposit nor carried out any lending activities during the year under consideration. However, it had advanced some amount to its sister concern. The amount shown as advance in the financial statement was inter corporate advance to its sister concern and not a loan to the outsiders. The Respondent also contended that the Company was not involved into any lending activity from the financial year 2014-15 onwards and that the amount reported in the financials was the balance carried over from the previous FY 2013-14. The Respondent submitted that he was under an impression that since the loan was given to sister concern and to any outside person, hence, such advance would not fall under the category of lending activity and therefore, the exception report was not submitted by him to the RBI. The Respondent further argued that in the said circumstances the Stakeholders were not affected at any cost and that the statutory returns were filed then and there with appropriate authorities. There was no FDI in the company and company was not carrying out any NBFI activities as on 31.03.2016

5. The Committee in this regard perused the the financial statements of the Company for F.Y. 2014-15, and noted that the financial assets of the Company amounted Rs.23655811/- which constitutes more than 50% of the total assets of the Company **(A-52)**. Similarly, the financial income of the Company amounted Rs.1451060/- **(A-53)** which constitutes more than 50% of the total income of the Company. Accordingly, the Company was an NBFC as it met the Principal Business Criteria defined by RBI through Press Release dated April 18, 1999 based on which a particular Company could be identified as NBFC based on its gross assets and gross income when it states as follows:-

“In order to identify a particular Company as a non-banking financial Company (NBFC), it will consider both, the assets and the income pattern as evidenced from the last audited balance sheet of the Company to decide its principal business. The Company will be treated as an NBFC if its financial assets are more than 50 per cent of its total assets (netted of by intangible assets) and income from financial assets should be more than 50 per cent of the gross income. Both these tests are required to be satisfied as the determinant factor for principal business of a Company.”

In view of the above, it was observed that based on the composition of assets as well as that of the income that existed on the Balance Sheet date for FY 2014-15, it was clear the said Company met the criteria as laid for identification of NBFC.



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6. The Committee further noted that para 3 of “Non-Banking Finance Companies Auditors Report (Reserve Bank) Directions, 2008” provides that the auditor’s report on the accounts of a NBFC shall inter-alia include a statement on the following matters, namely:

“(A) In the case of all non-banking financial companies

- I. Whether the Company is engaged in the business of non-banking financial institution and whether it has obtained a Certificate of Registration (CoR) from the Bank”*

Further, Para 5 of Non-Banking Finance Companies Auditors’ Report (Reserve Bank) Directions, 2008, provides that the auditor is under obligation to submit an exception report to the Bank in following cases:

(i) *“Where, in the case of a non-banking financial Company, the statement regarding any of the items referred to in paragraph 3 above, is unfavourable or qualified, or in the opinion of the auditor the Company has not complied with:*

- (a) the provisions of Chapter III B of RBI Act (Act 2 of 1934)”*

7. Accordingly, in light of above discussion, the Committee was of the view that once the Company assumed the status of NBFC, it was incumbent upon the Respondent being auditor of the Company to comply with the requirements of para 5 of Non-Banking Finance Companies Auditors’ Report (Reserve Bank) Directions, 2008 and submit an exception report to the RBI which he failed to do. As regards the Respondent argument that the loan reported to be given was only to its sister concern and that there was no lending during the financial year, it was viewed that firstly, the said press release which lays down the Principal Business Criteria to identify NBFC does not provide for any relaxation for transactions held with the sister concern. Further, irrespective of the fact as to whether any lending transaction took place during the year or not, the stated criteria is based on composition of assets and that of income as existing in the last audited financial statements. Hence, the arguments of the Respondent given in his defence were not acceptable. The Committee noted the fact that none of the stakeholders were affected and also the advanced age of the Respondent. However, the Committee was of the considered opinion that the Respondent failed to exercise due diligence in his professional work and was thus held guilty of professional misconduct falling within the meaning of clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

Conclusion :



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8. Thus in light of above, the Committee held the Respondent **GUILTY** of Professional Misconduct falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949 read with Section 22 of said Act.

sd/-

[CA. Atul Kumar Gupta]
Presiding Officer

mail)

sd/-

[Shri Ajay Mittal]
Member, (Govt. Nominee)
(approved & confirmed through e-mail)

sd/-

[CA. Manu Agrawal]
Member
(approved & confirmed through e-mail)

sd/-

[Smt. Anita Kapur]
Member, (Govt. Nominee)
(approved & confirmed through e-

sd/-

[CA. Chandrashekhar Vasant Chitale]
Member
(approved & confirmed through e-

DATE: 28th August, 2020 (through video conferencing)