

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – IV (2023-2024)]

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

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

File No: [PPR/P/34/2016-DD/47/INF/2016-DC/835/2018]

In the matter of:

CA. Akhila Nand Singh (M. No. 511170)

M/s Sharma Goel & Co., LLP

Chartered Accountants

A-47, Lower Ground Floor,

Hauz Khas,

New Delhi – 110016

MEMBERS PRESENT:

CA. Ranjeet Kumar Agarwal, Presiding Officer (through VC)

Ms. Dakshita Das, I.R.A.S. (Retd.), Government Nominee (through VC)

CA. Mangesh P Kinare, Member (in person)

CA. Cotha S. Srinivas, Member (through VC)

DATE OF FINAL HEARING : 02nd November 2023

DATE OF DECISION TAKEN : 09th January 2024

PARTY PRESENT:

Respondent : CA. Akhila Nand Singh (in person)

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1. **Background of the Case:**

Letters dated 05th October 2015, 06th October 2015 and 24th May 2016 were received from Assistant General Manager, Reserve Bank of India (RBI) levelling certain allegations against the Respondent. The allegations pertain to four companies namely, M/s. Goswami Credit & Investment Ltd., M/s. Brahmaputra Capital & Financial Services Ltd., M/s. Mansarover Investments Limited and M/s. Jindal Equipment Leasing & Consultancy Limited (hereinafter collectively referred to as the "**Companies**"). The Respondent was the auditor of the subject Companies and allegedly failed to report on non-compliance of certain criterias viz., negative net owned funds (NOF), not meeting the principal business criteria etc. in exception report(s) pertaining to the subject Companies.

2. **Charges in brief:**

2.1 **M/s Goswami Credit & Investment Limited:**

It was observed that the Company's Net Owned Fund (NOF) was negative and exceeded the limits of exposure norms since 2011. However, there was no mention of these issues in the exception report of the Respondent pertaining to Financial Year 2014-15.

2.2 **M/s Brahmaputra Capital and Financial Services Limited:**

It was observed that the Company did not meet Principal Business Criteria (PBC) since 2011. However, there was no mention of this issue in the exception report of the Respondent pertaining to Financial Year 2014-15.

2.3 **M/s Mansarover Investments Limited:**

The Respondent has not reported negative NOF (Net Owned Funds) in the exception report for the year 2013-14 and 2014-15 as required under Para 5 of NBFCs Auditor's Report (RBI) Directions.

2.4 **M/s Jindal Equipment Leasing & Consultancy Services Limited:**

It was observed that the Company's investment in six companies exceeded the single / group exposure norms, but the Respondent had reported that the

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Company's investment in only two companies exceeded single exposure norms. Thus, the Respondent had allegedly not reported about exceeding exposures in all six companies in the exception report as required under Para 5 of NBFCs Auditor's Report (RBI) Directions, 1998 and in respect of contraventions of provisions of Chapter IIIB of RBI Act, 1934.

3. **The relevant issues discussed in the Prima facie opinion dated 16th June 2018 formulated by Director (Discipline) in the matter in brief are given below:**

3.1 In respect of first allegation relating to non-reporting of negative NOF (Net Owned Funds) in exception report for Financial Year 2014-15 of M/s. Goswami Credit & Investment Limited which as per the Informant exceeded the limit of exposure norms since 2011, it was observed from the perusal of Balance Sheet of M/s. Goswami Credit & Investment Limited for F.Y. 2014-15 that it's NOF was negative. It was seen that as per the allegation, the Respondent failed to submit exception report in respect of negative NOF. As per Para 5 of Notification No. DNBS.201/DG(VL)-2008 dated 18th September 2008, an auditor is under an obligation to submit exception report in case of non-compliance of provisions of Chapter IIIB of RBI Act, 1934. Further, Section 45-IA (1) of RBI Act (which is covered under Chapter II B of RBI Act, 1934) states that:

"(1) Notwithstanding anything contained in this Chapter or in any other law for the time being in force, no non-banking financial company shall commence or carry on the business of a non-banking financial institution without:

(a) obtaining a certificate of registration issued under this Chapter; and

(b) having the net owned fund of twenty-five lakh rupees or such other amount, not exceeding two hundred lakh rupees, as the Bank may, by notification in the Official Gazette, specify." (emphasis added)

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Since, the Company was having Negative NOF, hence the provisions of submission of exception report were applicable on the auditors. The Respondent had not given any reason of non-submission of exception report in his context in his written statement. Thus, the failure of the Respondent in submission of exception report in respect of negative NOF makes him prima facie Guilty of Professional Misconduct falling within the meaning of Clause (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act 1949 in respect of this allegation.

3.2 In respect of next allegation relating to non-reporting in exceptional report of M/s Brahmaputra Capital and Financial Services Ltd for F.Y. 2014-15 that the Company did not meet the Principal Business Centre (PBC) since 2011, it was observed that the Principal Business Criteria was reported by the Statutory Auditor by indicating the asset/income pattern of the NBFC in the certificate issued by him that the Company was engaged in the business of NBFC requiring to hold COR u/s 45-IA of the RBI Act. The term principal business is not defined by law. The RBI has described it vide Notification No. DNBS (PD)CCNo.81/03.05.002/2006-07 dated October 19, 2006, to identify NBFC 's wherein it states as follows:

“The company will be treated as a non-banking financial company (NBFC) if its financial assets are more than 50 per cent of its total assets (netted off by intangible assets) and income from financial assets is 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 the present case, the financial assets of the Company were more than 50% of total assets, however, as regards income criteria, it was seen from the Profit and Loss account that the income was generated by writing back of provision of standard assets. It was also observed that such amount could not be considered to be ‘income’. The term “income” was defined in Para 8

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read with Para 14.06 of 'Guidance Notes on Terms used in financial statements.' It was viewed that writing back of provision was not a consideration received from rendering any service. In fact, it was just a change in estimation of provision and as such excess provision was written back. So, writing back of provision was not income from the financial assets. Hence, the same could not be construed as income for the criteria of principal business. Hence, it could be opined that the income from financial asset of the Company was zero. Since, the Income of the Company was zero, hence, it could not be said that the Company was carrying of business of NBFC as for NBFC, both income as well as assets criteria was required to be fulfilled. Accordingly, the Company did not meet the PBC criteria. However, the Respondent had reported that the Company continued to undertake NBF business. Thus, the Respondent failed to report a fact that the Company was not meeting PBC either in certificate or in exceptional report. Accordingly, the Respondent was viewed as *prima facie* Guilty of Professional Misconduct falling within the meaning of Clause (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act 1949 in respect of this allegation.

3.3 In respect of next allegation that the Respondent in exception report had not reported negative NOF (Net Owned Funds) in the exception report of M/s. Mansarover Investments Limited for the year 2013-14 and 2014-15 as required under Para 5 of NBFCs Auditor's Report (RBI) Directions, it was observed that Para 5 of Notification No. DNBS. 201/DG(VL)-2008 dated 18th September 2008 requires an auditor to submit exception report in case of non-compliance of certain provisions of Act / directions issued by RBI which also includes non-compliance of provisions of Chapter III B of RBI Act, 1934. As per section 45-IA (1) of RBI Act (which is covered under Chapter II B of RBI Act, 1934).

"(1) Notwithstanding anything contained in this Chapter or in any other law for the time being in force, no non-banking financial company shall commence or carry on the business of a non-banking financial institution without—

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*(a) obtaining a certificate of registration issued under this Chapter;
and*

*(b) having the net owned fund of twenty-five lakh rupees or such other amount, not exceeding two hundred lakh rupees, as the Bank may, by notification in the Official Gazette, specify.”
(emphasis added)*

Since, the Company was having Negative NOF, hence the provisions of submission of exception report were applicable on the auditors. The Respondent had not given any reason of non-submission of exception report in his written statement. Thus, the failure of the Respondent in submission of exception report in respect of negative NOF makes him prima facie Guilty of Professional Misconduct falling within the meaning of Clause (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act 1949 in respect of this allegation.

3.4 In respect of the last allegation pertaining to M/s Jindal Equipment Leasing & Consultancy Services Limited, the Respondent submitted that the provision of Chapter IIIB of RBI Act, 1934 was not applicable to the above company as it had an asset size of less than Rs. 100 crores and due to this, it was not coming under NBFC-ND-SI. It was observed that in March 2014 and March 2015, the asset size of the Company was Rs. 98,04,39,230/- and Rs. 84.49.82.157/- respectively which was less than the 100 crores. It was also observed that NBFCs are classified into three groups i.e. NBFC-D, NBFC-ND and NBFC-ND-SI. NBFC-ND companies were those companies with assets less than Rs. 100 crores and NBFC-ND-SI companies were those whose assets were Rs. 100 crores or above. It was observed that the present company falls under NBFC-ND. Further, as per Para 16A(iii) of Notification No. DBOD.No.FSD.5046/24.01.028/2006-07 dated 30th November 2006, single / group exposure norms related to lending and investment was applicable to only NBFC's-ND-SI. However, in the extant case, it was noted that the Respondent had reported about investment exceeding single exposure norms in exception report and in referred appendix, investments in only two entities were reported whereas as per details submitted by RBI,

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there were six such entities when read with Investment Schedule of the entity. In view of the discrepancies noted, it was observed that the matter required to be further investigated.

- 3.5 The Director (Discipline) in his Prima Facie Opinion dated 16th June 2018 held that the Respondent was *prima facie* Guilty of Professional Misconduct falling within the meaning of Clause (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949. The said Clauses of the Schedule to the Act, states as under:

Clause (7) of Part I of Second Schedule:

"A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct if he:

(7) does not exercise due diligence or is grossly negligent in the conduct of his professional duties."

Clause (8) of Part I of Second Schedule:

"A Chartered Accountant in practice shall be deemed to be guilty of Professional Misconduct if he:

(8) 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."

- 3.6 The Prima facie opinion formed by the Director (Discipline) was considered by the Disciplinary Committee at its meeting held on 26th June 2018. The Committee on consideration of the same, concurred with the reasons given against the charges and thus, agreed with the prima facie opinion of the Director (Discipline) that the Respondent was prima facie GUILTY of Professional Misconduct falling within the meaning of Clause (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 and accordingly, decided to proceed further under Chapter V of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. The Committee also directed the Directorate that in terms of the provisions of sub-rule (2) of Rule 18, the prima facie opinion formed by the Director (Discipline) be sent to the

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Respondent including particulars or document relied upon by the Director (Discipline), if any, during the course of formation of prima facie opinion and the Respondent be asked to submit his Written Statement in terms of the provisions of the aforesaid Rules, 2007.

4. Date(s) of Written submissions/Pleadings by parties:

The relevant details of filing of documents in the instant case by the parties are given below:

S. No.	Particulars	Dated
1.	Date of 'Information' Letter	22 nd June 2016
2.	Date of Written Statement filed by the Respondent	08 th August 2016
3.	Prima facie Opinion by Director (Discipline)	16 th June 2018
4.	Written submissions filed by the Respondent after PFO	27 th August 2018 and 30 th August 2023

5. Written submissions filed by the Respondent:

- 5.1** The Respondent vide his additional submissions dated 27th August 2018, submitted in respect of M/s Goswami Credit & Investment Limited that the matter relating to NOF was required to be stated by the auditor specifically in respect of his report issued under Para 3 of the Directions for 2016 onwards while the complaint relates to the Financial Years 2014-15. The Respondent stated that there was no question of intent by him to hide or not to give proper information as he was required to give and also there was no such information which he should have obtained from the Company but had not been obtained. There was no element of acting dishonestly or unreasonably. The matter regarding report on NOF was specifically included as an issue requiring the comment of the auditor in Para 3 of the Directions issued only in

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2016. The Respondent submitted that the information pertaining to Negative NOF for the financial year 2014-15 had been duly reported in the certificate of Assel Income Pattern, which was also reported to RBI.

5.2 In respect of M/s Brahmaputra Capital and Financial Services Limited, the Respondent submitted that the Company did not have an income during the years 2011 to 2015. If the Company did not have any income during the relevant years, it could not be concluded that the Company's financial income was less than 50% of its total income. This was a case of neutrality, where the Company did not have any income and hence, it was not concluded that the Company was earning more income of "Non-Financial" nature as compared to "Financial" nature. The Respondent stated that there was no question of any suppression of the facts or difference of opinion of the facts regarding the matter. There was only a difference in the interpretation in this specific case where income was "Zero". At the time of making reports and expressing opinions, the auditors are required to exercise their judgment. It is established by the Court of Law that errors of judgment does not constitute any professional misconduct. In the instant case, the Respondent believed that his interpretation in a typical situation where the income was "Zero" was fit and proper.

5.3 In respect of allegations pertaining to M/s Mansarover Investments Limited for the year 2013-14 and 2014-15, the Respondent stated that the matter relating to NOF was required to be stated by the auditor specifically in respect of his report issued under Para 3 of the Directions for 2016 onwards but the complaint relates to the years 2013-14 and 2014-15. The Respondent submitted that the information pertaining to Negative NOF for the financial years 2013-14 and 2014-15 had been duly reported in the certificate of Asset Income Pattern, which was also reported to RBI.

5.4 In respect of allegations pertaining to M/s Jindal Equipment Leasing & Consultancy Services Limited, the Respondent stated that considering the size of the Company, any reporting that single/group exposure norms related to lending and investment were applicable only on Systemically Important

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NBFCs. This particular company did not qualify as a Systemically Important NBFCs. Accordingly, the Respondent could not be made answerable for professional misconduct for the discharge of his duties as a Statutory Auditor for non-reporting of an issue which was not mandatorily required to be reported case of the Company being not falling under particular type of (i.e Systemically Important) NBFCs.

5.5 The Respondent further vide additional submissions dated 30th August 2023, submitted in respect of M/s Goswami Credit & Investment Limited that apart from the relevant aspects of Para 3(A) of Notification No. DNBS. 201/DG(VL)-2008 dated 18.09.2008 updated as on 30.06.2013, the auditor shall include a statement on the following matters also in case of NBFCs not accepting public deposit and not covered in NBFC-ND-SI in accordance with para 3(c):

- A) Whether a Board of Directors passed a resolution for non-acceptance of any public deposits.
- B) Whether the Company has accepted public deposits during the relevant period/year.
- C) Whether the Company has complied with the prudential norms relating to income recognition, asset classification and provisioning for bad and doubtful debts as applicable to it in terms of Non-Banking Financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Direction 2007.

The Respondent stated that the information regarding negative NOF was certified by him on 04th September 2015 and was submitted to the RBI on 29th October 2015. The Respondent further added that there was no prescribed format for providing the exception report. Further, the Company was not a Systematically Important Non Banking Finance Company as its asset size was below 100 crores and accordingly, the exposure norms applicable to Systematically Important Non Banking Finance Company were not applicable in the present case.

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5.6 In respect of M/s Brahmaputra Capital and Financial Services Ltd. the Respondent contended that Principal Business Criteria was required to be reported if financial assets were not more than 50% of total assets and financial income was not more than 50% of total income. In the present matter, the Company's financial assets were more than 50% of the total assets and since then there was no income in the Company (except provision written back) hence 50% of zero would remain zero and there was no contravention of the provisions of RBI Act 1934. The term "income" was defined in para 8.01 and 14.06. of Guidance Note on Terms Used in Financial Statement according to which the provision written back was not an income. However, if RBI considers that provision written was an income, then in that case, it should be financial income as it was the provision which was made on financial assets in earlier years and accordingly, financial income would be more than 50% of total income.

5.7 In respect of M/s Mansarover Investments Limited the Respondent stated that as per para 3(A) of notification no. DNBS.201/DG(VL)-2008 dated 18th September 2008 updated as on 30th June 2013, following matters need to be reported in the Exception Report in case of NBFC's not accepting public deposits which was duly reported by the Respondent:

- i) Whether the Company is engaged in the business of Non-Banking Financial Institution and whether it has obtained a Certificate of Registration from the Bank.
- ii) In the case of a Company holding CoR issued by the Bank, whether the Company is entitled to hold such CoR in terms of its assets/income pattern as on March 31 of the applicable year.

That apart from the relevant aspects of Para 3(A) of Notification No. DNBS. 201/DG(VL)-2008 dated 18.09.2008 updated as on 30.06.2013, the auditor shall include a statement on the following matters also in case of NBFCs not accepting public deposit and not covered in NBFC-ND-SI in accordance with para 3(c):

- A) Whether a Board of Directors passed a resolution for non-acceptance of any public deposits.

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- B) Whether the Company has accepted public deposits during the relevant period/year.
- C) Whether the Company has complied with the prudential norms relating to income recognition, asset classification and provisioning for bad and doubtful debts as applicable to it in terms of Non-Banking Financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Direction 2007.

The Respondent added that the information regarding negative NOF was certified by him on 02nd September 2014 and 04th September 2015 and was submitted to the RBI on 05th September 2014 and 29th October 2015.

- 5.8** In respect of M/s Jindal Equipment Leasing & Consultancy Services Ltd., the Respondent submitted that as per para 16A(iii) of Notification No. DBOD No. FSD.5046/24.01.028/2006-07 dated 30.11.2006, single / group exposure norms related to lending and investments were applicable to NBFC's-ND-SI. Further, the requirement of exposure norm was prescribed in "Systematically Important Non-Banking Financial Companies Prudential Norms (Reserve Bank) Direction 2015 which was applicable to NBFC-ND-SI. The Respondent submitted that in view of the above provision, reporting of single / group exposure norms was not required to report in the Company.

6 **Brief facts of the Proceedings:**

- 6.1** The details of the hearing(s) fixed and held/adjourned in the said matter is given as under:

Particulars	Date of meeting(s)	Status
1 st time	02 nd May, 2023	Part heard and adjourned.
2 nd time	25 th August, 2023	Part heard and adjourned.
3 rd time	02 nd November, 2023	Hearing concluded and Judgment Reserved
4 th time	09 th January, 2024	Decision taken

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6.2 On the day of first hearing on 02nd May 2023, the Committee noted the presence of the Respondent in person. Thereafter, the Respondent was put on oath and the Committee enquired from the Respondent as to whether he was aware of the charges; and the same were also read out as contained in the para 2 above. The Respondent replied that he is aware about the charges but pleaded 'Not Guilty' on the charges levelled against him. Thereafter, as per Rule 18(9) of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee adjourned the case to a later date and accordingly, the matter was part heard and adjourned.

6.3 On the day of second hearing on 25th August 2023, the Committee noted the presence of the Respondent in person. The Committee asked the Respondent to make his submissions on merits of the case. The Respondent submitted that to meet Principal Business Criteria, financial assets, and income from financial assets of the Company should be more than 50% as per norms of the RBI. In case of M/s. Brahmaputra Capital and Financial Services Ltd., the Company had a provision which was written back, and the same could not be treated as income from financial assets as the same was not generated from the operations of the Company. It was also contended that even if RBI considers that provision written was an income, then in that case, it should be financial income as it was the provision which was made on financial assets in earlier years and accordingly, financial income would be more than 50% of total income. He further submitted that in the case of M/s. Jindal Equipment Leasing & Consultancy Services Limited, provision was not applicable to this entity as it had an assets size of less than 100 crores and due to this, it was not coming under NBFC-ND-SI. The Respondent further added that in the financial years ending in March 2014 and March 2015, asset size of the Company was Rs. 98,04,39,230/- and Rs. 84,49,82,157/- respectively which was less than 100 crores. The Respondent further stated that NBFCs were classified into three groups i.e. NBFC-D, NBFC-ND, and NBFC-ND-SI. NBFC-ND companies were those companies with assets less than 100 crores and NBFCs-ND-SI companies were those

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whose assets were 100 crores or above. The present company falls under the category of NBFC-ND Companies as it had assets size of less than 100 crores. Thereafter, the Committee directed the Respondent to file his submissions giving cross reference to the documents relied upon i.e., annexures, circular/guidance note of the Reserve Bank of India within 7 days. Thus, the matter was part heard and adjourned.

6.4 On the day of final hearing on 02nd November 2023, the Committee noted the presence of the Respondent in person. Thereafter, the Committee asked the Respondent to present his final submissions. The Respondent submitted that with respect to M/s Goswami Credits Investments Ltd., there was no prescribed format for the exception report. There were certain things which required to be reported in the exception report and the same was defined in Para 3 of the Notification no. DNV5201/DG (VL-2000) dated 18th September 2008, updated as on 30th June 2013. The Respondent further submitted that with respect to the second Company i.e. M/s Brahmaputra Capital and Financial Services Ltd., the Principal Business Criteria (PBC) was required to be reported if financial assets were not more than 50% of the total assets and financial income was not more than 50% of the total income. In the present matter, the Company's financial assets were more than 50% of the total assets since there was no income in the Company except provision written back and 50% of zero would remain zero and thus, there was no contravention of the provision of the RBI Act. In respect of the third Company i.e. M/s Mansarovar Investments Ltd., the Respondent submitted that as per Para 3 of Notification no. DMBS201/DG (VL 2008), dated 18th September 2008, updated as on 30th June 2013, the following matter needed to be reported in the exception report in case of NBFCs i.e., whether the Company not accepting public deposits had been duly reported by the Respondent and whether the Company was engaged in the business of Non-Banking financial institution and whether it had obtained the certificate of registration from the Bank. In respect of last Company i.e., M/s Jindal Equipment, Leasing and Consultancy Services Ltd., the Respondent submitted that he was not bound to report for the particular exposure norms.

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Based on the documents and information available on record and after considering the oral and written submissions made by the Respondent, the Committee concluded hearing in the matter and reserved the judgement. Thus, the case was concluded, and judgement was reserved.

- 6.5 Thereafter, in the meeting held on 09th January 2024, the Committee noted that hearing in the matter was concluded on 02nd November 2023, and the Judgment was reserved. The Committee based on the facts, documents, and information on record and after considering oral and written submissions made by the Respondent, passed its judgment in the captioned matter.

7 **Findings of the Committee:**

- 7.1 The Committee thoroughly examined the charges levelled against the Respondent and noted that the first and third charges, outlined in Para 2.1 & 2.3 above pertained to M/s Goswami Credit & Investment Limited and M/s Mansarover Investments Limited respectively. The Committee observed that both these charges were related to the same issue that the Respondent had not reported negative NOF (Net Owned Funds) in the exception report of the subject companies as required under Para 5 of NBFCs Auditor's Report (RBI) Directions. Additionally, there was an allegation that M/s Goswami Credit & Investment Limited exceeded the limits of exposure norms since 2011. The Committee also observed that while the charge pertaining to M/s Goswami Credit & Investment Limited was related to Financial Year 2014-15, it was related to Financial Years 2013-14 and 2014-15 in respect of M/s Mansarover Investments Limited. The Committee observed that the main issue in both charges pertaining to subject companies was non-reporting of negative Net Owned Fund in the exception report by the Respondent. Therefore, the Committee has addressed and analyzed these charges collectively.

- 7.2 The Committee examined the exception report dated 30.05.2015 submitted by the Respondent to the RBI in respect of M/s Goswami Credit & Investment

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Limited pertaining to Financial Year 2014-15. The Committee noted that the Respondent has reported the following to the RBI:

"In our opinion and to the best of our information and according to the explanations given to us, the Company has complied in all material aspects, with the prudential norms relating to income recognition accounting standards, assets classification and the minimum provisioning for the bad and doubtful debts, specified in the directions provided by the RBI in terms of Non-Banking Financial Prudential Norms (Reserve Bank) Directions, 1988, as applicable to it; except:

The Policy for demand Loan given by the Company as to the repayment, interest servicing and monitoring of the loans need to be strengthened in line with Non-Banking Financial (Non-Deposit Accepting) Companies Prudential Norms (Reserve Bank Directions, 2007). These loans are repayable on demand. During the year, interest on such loans has been serviced by converting into principal, and the same has also been acknowledged by the borrowers."

7.3 Thus, the Committee noted that the Respondent has not reported about the negative Net Owned Fund (NOF) in the exception report submitted to the RBI. In this specific context, the Committee noted that the Respondent has provided the copy of letter dated 04.09.2015 addressed by him to the Directors of the subject Company, stating the following:

"In relation to the audit of Goswamis Credit & Investment Ltd., please submit Asset / Income Pattern certificate for the financial year 2014-15 to Reserve Bank of India as required regarding Principle Business Criteria (PBC) and negative Net Owned Fund (NOF) and send us the acknowledgement of receipt by RBI."

7.4 The Committee noted that a certificate dated 04.09.2015 was annexed with the above letter addressed by the Respondent to the Directors of M/s

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Goswami Credit & Investment Limited reporting the income and asset pattern of the Company as on 31st March 2015. The Committee examined the said certificate and found that this certificate signed by the Respondent was clearly reporting that the Net Owned Fund (NOF) of the Company was Rs. (-) 2121.73 lakhs as on 31st March 2015. The Respondent also provided the copy of letter dated 31.10.2015 addressed by the Company to the Respondent firm stating that the said assets / income pattern certificate for the financial year 2014-15 had been submitted by them to the RBI on 29.10.2015. In this regard, the Respondent has also provided the copy of letter dated 28.10.2015 addressed by the Company to the Reserve Bank of India submitting the auditors certificate therewith wherein the seal of the RBI is affixed showing that the said letter was received by the RBI. The Committee also noted that the copy of said certificate dated 04.09.2015 signed by the Respondent has also been provided by the Informant while raising allegations against the Respondent.

7.5 Similarly, in respect of M/s Mansarover Investment Limited, the Committee noted that the Respondent has provided the copy of letter dated 02.09.2014 addressed by him to the Directors of the subject Company, stating the following:

"In relation to the audit of Mansarover Investment Ltd., please submit Asset / Income Pattern certificate for the financial year 2013-14 to Reserve Bank of India as required regarding Principle Business Criteria (PBC) and negative Net Owned Fund (NOF) and send us the acknowledgement of receipt by RBI."

7.6 The Committee also took note of another letter dated 04.09.2015 addressed by Respondent to the Directors of the subject Company on the above-mentioned lines pertaining to Financial Year 2014-15. The Committee noted that two separate certificates dated 02.09.2014 and 04.09.2015 were annexed with the above letters of the even dates addressed by the Respondent to the Directors of M/s Mansarover Investment Limited reporting

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the income and asset pattern of the Company as on 31st March 2014 and 31st March 2015 respectively. The Committee examined these certificates and found that these certificates signed by the Respondent were clearly reporting that the Net Owned Fund (NOF) of the Company was Rs. (-) 1782.78 lakhs as on 31st March 2014 and Rs. (-) 969.67 lakhs as on 31st March 2015. The Respondent also provided the copy of letters dated 08.09.2014 and 31.10.2015 addressed by the Company to the Respondent firm stating that the assets / income pattern certificate for the financial year 2013-14 and 2014-15 had been submitted by them to the RBI. In this regard, the Respondent has also provided the copy of letters dated 02.09.2014 and 28.10.2015 addressed by the Company to the Reserve Bank of India submitting the auditors certificate therewith wherein the seal of the RBI is also affixed showing that the said letters were received by the RBI. The Committee also noted that the copy of certificate dated 04.09.2015 showing the negative Net Owned Fund of Rs. (-)969.67 lakhs as on 31st March 2015 signed by the Respondent has also been provided by the Informant while raising allegations against the Respondent.

7.7 The Committee carefully examined the evidence provided by the Respondent in relation to M/s Goswami Credit & Investment Limited and M/s Mansarover Investment Limited. The key focus was on the reported negative Net Owned Fund (NOF) for both companies, as highlighted by the Informant. Upon thorough review, the Committee took into consideration the documents provided by the Respondent, including letters addressed to the Directors of the respective companies, certificates signed by the Respondent reporting the income and asset patterns, and the acknowledgment from the Reserve Bank of India (RBI) indicating the receipt of the submissions. For M/s Goswami Credit & Investment Limited, the Committee observed that the certified document dated 04.09.2015, signed by the Respondent, indeed reported a negative NOF of Rs. (-) 2121.73 lakhs as on 31st March 2015. The Respondent also claimed that the Company had duly submitted the required certificates to the RBI, as evidenced by the acknowledgment received and the seal of the RBI affixed on the relevant documents. Similarly, in case of

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M/s Mansarover Investment Limited, the Committee noted that the certificates dated 02.09.2014 and 04.09.2015, signed by the Respondent, indicated negative NOFs for the respective financial years. The Respondent also provided the evidence of the submission of these certificates to the RBI, supported by acknowledgment and the RBI seal on the relevant letters. This acknowledgement seal was further strengthened by the presence of these certificates pertaining to FY 2014-15 in the documents provided by the Informant. In light of these submissions and material on record, the Committee observed that even though the Respondent did not explicitly report about the negative Net Owned Funds in his exception reports submitted to the RBI, but the Respondent had reported about the negative Net Owned Funds of both Companies in his certificates and those certificates were also submitted to the RBI by the Respondent through the Company.

7.8 The Committee also considered the Respondent's submission that the matter relating to Net Owned Funds (NOF) was required to be stated by the Auditor specifically in respect of his report issued under Para 3 of the RBI Directions for 2016 onwards while the allegation pertained to FY 2013-14 and 2014-15. The Committee examined the Master Direction - Non-Banking Financial Companies Auditor's Report (Reserve Bank) Directions, 2016 issued by the RBI vide its circular Master Direction DNBS. PPD.03/66.15.001/2016-17 dated 29th September 2016. The Committee noted that Para 3(A)(III) of these Directions states as under:

"3. Material to be included in the Auditor's report to the Board of Directors

The auditor's report on the accounts of a non-banking financial company shall include a statement on the following matters, namely:

(A) In the case of all Non-Banking Financial Companies

III. Whether the non-banking financial company is meeting the required net owned fund requirement as laid down in Master Direction - Non-Banking Financial Company – Non-Systemically Important Non-Deposit taking Company (Reserve Bank) Directions, 2016 and Master Direction - Non-Banking Financial Company - Systemically Important

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Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016.”

7.9 In this regard, the Committee also examined the earlier RBI's Directions – 'Non-Banking Financial Companies Auditor's Report (Reserve Bank) Directions, 2008' updated vide RBI's circular DNBS (PD) CC No.280/03.02.001/2012-13 dated 02nd July 2012. The Committee noted that nothing specific about Net Owned Funds is contained under Para 3(A) of these Directions, which applies in the case of all Non-Banking Financial Companies. The Committee also observed that Para 3(B)(v) of these Directions speaks about Net Owned Funds but the said para applies in the case of a non-banking financial company accepting/holding public deposits. In this specific context, the Committee examined the director's reports pertaining to both subject companies for the relevant period and observed that in the those director reports, it was reported that 'the subject Companies neither had any deposit at the beginning of the financial year under review nor they accepted any deposits covered under Chapter V of the Companies Act, 2013 during the relevant financial years, therefore no amount was outstanding / remained unpaid at the end of the relevant years.' The Committee observed that even the Respondent has also reported in his exception reports submitted to the RBI for the subject companies for Financial Year 2014-15 that the Company had not accepted public deposits during the year ended 31st March 2015. Consequently, the Committee observed that the Respondent's submissions made in the specific context of reporting about Net Owned Funds, were strengthened and established in light of these evidences available on record. Therefore, on overall consideration of the facts, information and material on record, the Committee observed that the charge of non-reporting by the Respondent regarding negative Net Owned Funds of M/s Goswami Credit & Investment Limited and M/s Mansarover Investments Limited for the relevant period was not established against the Respondent.

7.10 As regards charge of Net Owned Funds of M/s Goswami Credit & Investment Limited exceeding the limits of exposure norms since 2011, the Committee

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considered the Respondent's submissions that the Company was not Systematically Important Non Banking Finance Company as its asset size was below Rs. 100 crore and accordingly, the exposure norms as applicable to Systematically Important Non Banking Finance Company were not applicable in this case. The Committee observed that there was no other information provided by the Informant which could throw light on the said allegation or the related provisions / rules to prove any non-compliance by the Respondent. Accordingly, the Committee observed that this charge was not established against the Respondent in the lack of sufficient information / material provided by the Informant.

7.11 Thus, on consideration of overall facts, submissions, and documentary evidence(s)/material on record and after thoroughly considering the instant charges pertaining to M/s Goswami Credit & Investment Limited and M/s Mansarover Investments Limited, levelled against the Respondent, the Committee held the Respondent **NOT GUILTY** of Professional Misconduct falling within the meaning of Clauses (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

7.12 The Committee then examined and deliberated on the other charge pertaining to M/s Brahmputra Capital & Financial Services Limited, that the subject Company did not meet Principal Business Criteria, and this issue was also not reported by the Respondent in his exception report for the Financial Year 2014-15. In this context, the Committee examined the RBI's circular DNBS (PD) C.C. No. 81/03.05.002/2006-07 dated 19th October 2006 on 'Amendment to NBFC regulations - Certificate of Registration (CoR) issued under Section 45-IA of the RBI Act, 1934 – Continuation of business of NBFIs - Submission of Statutory Auditors Certificate – Clarification'. The said circular refers to the definition of 'Principal Business' given, vide Press Release 1998-99/1269 dated April 8, 1999 which states that:

'The Reserve Bank of India today announced that in order to identify a particular company as a non-banking financial company (NBFC), it will

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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 off 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.'

7.13 Thus, the Committee observed that the Company will be treated as a non-banking financial company (NBFC) if its financial assets are more than 50 per cent of its total assets (netted off by intangible assets) and income from financial assets is 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. The Committee then examined the certificate dated 04.09.2015 signed by the Respondent reporting the income and asset pattern of the Company as on 31st March 2015 of M/s Brahmputra Capital & Financial services Limited. The Committee noted that this certificate is provided by the Informant while raising allegation against the Respondent. From the details of asset pattern of the subject company as on 31st March 2015 reported by the Respondent in the said certificate, the Committee observed that the financial assets of the subject Company were more than 50 per cent of its total assets (netted off by intangible assets). The Committee then examined the income pattern of the subject Company as on 31st March 2015 and observed that the Respondent has reported the amount of Rs. 8.50 lakhs as excess amount of provision written back. Besides this, no other income is reported under profit and loss account. The Committee noted that the main argument raised by the Respondent in this regard was that the provision which was written back by the Company during the FY 2014-15 was not an income. Thus, both the financial income and total income were zero and thus, it could not be said that the financial income was less than 50% of gross income. In this context, the Committee examined the Guidance Note on Terms used in Financial Statement issued by ICAI. The Committee

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noted that Para 8.01 of the Guidance Note defines the term 'income' and refers to the term 'revenue' for its definition. The Committee then noted that Para 14.06 of the Guidance Note defines the term 'revenue' as under:

"14.06 Revenue

The gross inflow of cash, receivables or other consideration arising in the course of the ordinary activities of an enterprise from the sale of goods, from the rendering of services, and from the use by others of enterprise resources yielding interest, royalties, and dividends. Revenue is measured by the charges made to customers or clients for goods supplied and services rendered to them and by the charges and rewards arising from the use of resources by them. It excludes amounts collected on behalf of third parties such as certain taxes. In an agency relationship, the revenue is the amount of commission and not the gross inflow of cash, receivables, or other consideration."

7.14 The Committee observed that the provisions which had been written back by the Company is not specifically included in the definition of the term income / revenue as stated above. The Committee also observed that the Informant has even not provided any specific provision / rule proving otherwise that the provisions written back should be taken as a part of gross income for the limited purpose and assessing the principal business criteria. In this context, the Committee also took note of the Respondent's another submission that in case, RBI considers that provision written back is an income then even in that case also, the same was financial income as the provision was originally created on financial assets in earlier years.

7.15 The Committee thoroughly examined the present charge and observed that there were the lack of evidence provided by the Informant supporting the inclusion of provisions written back as part of gross income for assessing the principal business criteria. The Committee observed that the provisions written back by the Company were not specifically included in the definition of income/revenue provided in the relevant Guidance Note. Additionally, there was no evidence provided by the Informant to establish that provisions

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written back should be considered as part of gross income for assessing the principal business criteria. Moreover, the Committee also considered the Respondent's submission that even if the provision written back was considered as an income, it falls under 'financial income' as the provision was originally created on financial assets in earlier years. Thus, on consideration of overall facts, submissions, and documentary evidence(s)/material on record and after thoroughly considering the charge pertaining to M/s Brahmputra Capital & Financial Services Limited, levelled against the Respondent, the Committee held the Respondent **NOT GUILTY** of Professional Misconduct falling within the meaning of Clauses (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

- 7.16** The Committee then examined and deliberated on the last charge pertaining to M/s Jindal Equipment Leasing & Consultancy Services Limited, that the subject Company's investment in six companies exceeded the single / group exposure norms, but the Respondent had reported in his exception report that the Company's investment in only two companies exceeded single exposure norms. In this context, the Committee took note of the Respondent's submissions that as per Para 16A(iii) of Notification No. DBOD.No.FSD.5046/24.01.028/2006-07 dated 30th November 2006, single / group exposure norms related to lending and investment were applicable to NBFC's-ND-SI only. Further, the requirement of exposure norm was prescribed in "Systemically Important Non - Banking Financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Direction 2015 which was also applicable to NBFC-ND-SI. The Committee also observed that while forming prima facie opinion in the instant matter, the Director (Discipline) had also observed that as on 31st March, 2014 and 31st March 2015, the total asset size of the subject Company was Rs. 98,04,39,230/- and Rs. 84 49.82.157/- respectively which shows that the total assets size of the Company for these two years was less than Rs. 100 crores. It was also observed that the NBFCs were classified into three groups i.e., NBFC-D, NBFC-ND, and NBFC-ND-SI. In this regard, while NBFCs-ND companies were those companies with assets less than Rs. 100 crores, NBFCs-ND-SI companies were those whose assets were Rs. 100 crores or

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above. Thus, the subject company falls under NBFC-ND. It was also observed that Para 16A(iii) of Notification No. DBOD.No.FSD.5046/24.01.028/ 2006-07 dated 30th November 2006, single / group exposure norms related to lending and investment was applicable to only NBFC's-ND-SI.

7.17 Thus, on consideration of overall facts, submissions, and documentary evidence(s)/material on record and after thoroughly considering the instant charge pertaining to M/s Jindal Equipment Leasing & Consultancy Services Limited, levelled against the Respondent, the Committee observed that the single / group exposure norms related to lending and investment were not applicable to the subject Company as it did not fall under the category of NBFC's-ND-SI. The Committee also observed that there was no other document or material provided by the Informant which could provide otherwise. The Committee also observed that even though the Respondent had reported in his exception report about two entities wherein the investments of the subject Company was exceeding single / group exposure norms, but the fact of the matter was that these norms were not applicable on the Company. In this specific context, the Committee was of the view that the reporting done by the Respondent in his exception report in respect of two companies exceeding single / group exposure norms was done as an additional measure and therefore, reporting in exception report for remaining four companies was not required. Thus, the Committee opined that the Respondent was not mandatorily required to report any non-compliance in this matter. Accordingly, the Committee held the Respondent **NOT GUILTY** of Professional Misconduct falling within the meaning of Clause (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

8 **Conclusion:**

In view of the findings arrived in above paragraphs, vis-à-vis material on record, the Committee gives its charge wise findings as under:

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Charges (as per PFO)	Findings	Decision of the Committee
Para 2.1 and 2.3 as above	Para 7.1 to 7.11 as above	Not Guilty - Clause (7) and (8) of Part I of Second Schedule
Para 2.2 as above	Para 7.12 to 7.15 as above	Not Guilty - Clause (7) and (8) of Part I of Second Schedule
Para 2.4 as above	Para 7.16 to 7.17 as above	Not Guilty - Clause (7) and (8) of Part I of Second Schedule

9 In view of the above observations, considering the oral and written submissions of the Respondent and material on record, the Committee held the Respondent **NOT GUILTY** of Professional Misconduct falling within the meaning of Clause (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

10. **Order**

Accordingly, in terms of Rule 19(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee passes an Order for closure of this case against the Respondent.

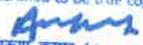
Sd/-
(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

Sd/-
(MS. DAKSHITA DAS, I.R.A.S., RETD.)
GOVERNMENT NOMINEE

Sd/-
(CA. MANGESH P KINARE)
MEMBER

Sd/-
(CA. COTHA S SRINIVAS)
MEMBER

DATE: 05/02/2024
PLACE: New Delhi

सही प्रतिलिपि का प्रमाण प्रमाणित
Certified to be true copy

अरुण कुमार / Arun Kumar
परिषद् कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahdara, Delhi-110032