

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/36/2016/DD/48/INF/2016/DC/1250/2019]

In the matter of:

**CA. Gautam Kumar Aggarwal (M.No.086622), Delhi in Re:**  
102, Harsha House,  
Karampura Commercial Complex,  
New Delhi – 110015

MEMBERS PRESENT:

**CA. Ranjeet Kumar Agarwal, Presiding Officer (In person)**  
**Ms. Dakshita Das, I.R.A.S. (Retd.) Govt. Nominee (In Person)**  
**CA. Mangesh P Kinare (Through VC)**

**DATE OF FINAL HEARING : 21<sup>st</sup> November 2023**

**DATE OF DECISION TAKEN : 09<sup>th</sup> January 2024**

PARTY PRESENT

**Counsel(s) for Respondent : CA. A P Singh along-with CA. Utsav Hirani  
(Through VC)**

**1. Background of the case:**

The Respondent was the statutory auditor for the Financial Year 2013-2014 of M/s. Nalwa Investments Limited (hereinafter referred as "M/s. Nalwa") and for Financial Year 2014-2015 of M/s. Hexa Securities & Finance Company. Ltd  
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(hereinafter referred as "M/s. Hexa") and he failed to submit the exception report to Reserve Bank of India as per para 5 of NBFCs Auditor Report (RBI) Directions, 2008 in respect of contraventions of provisions of Chapter IIIB of RBI Act, 1934.

2. Charges in Brief: -

Net owned funds of M/s. Nalwa and M/s. Hexa were negative (-Rs. 991.25 lakh) and (-Rs. 9805.33) for the Financial Year 2013-2014 and 2014-2015 respectively on account of group exposure. The Respondent has failed to submit exception report to Informant Bank as required under para 5 of NBFCs Auditor Report Directions 2008 in respect of contraventions of provisions of Chapter IIIB of RBI Act 1934.

3. The relevant issues discussed in the Prima facie opinion dated 12<sup>th</sup> September 2018 formulated by Director (Discipline) in the matter in brief are given below:-

3.1 On the perusal of Balance Sheet of M/s. Nalwa for F.Y. 2013-2014, it is noted that NOF was negative. 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 18<sup>th</sup> 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 as also argued by the Respondent. It is noted that Section 45-IA(1) of RBI Act (which is covered under Chapter III B of RBI Act,1934) inter-alia 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)

- 3.2 Since the Company (M/s. Nalwa) was having Negative NOF, the provisions of submission of exception report were applicable on the auditor. The Respondent in his defence had stated that he was not required to submit Exception Report. Thereafter, he had stated that there was no specified format for providing the said Exception Report. Further the Respondent himself had calculated negative NOF Rs.753.08 lakhs and submitted the same along with his written statement. In response to letter dated 09<sup>th</sup> January, 2015 of Informant Bank, the Respondent had not denied that he was not liable to submit the Exception Report but rather he enclosed audit report submitted by him to Board of Directors of respective Companies.
- 3.3 The fact of negative net owned fund was known to the Respondent. It is evident that there was non-compliance of provisions of Chapter III B which triggered the responsibility on the Respondent to report the same in an exception report by virtue of Para 5 of above notification. There was failure on the part of the Respondent in submission of exception report in respect of negative NOF which makes him prima-facie guilty of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants, Act, 1949.
- 3.4 The Director (Discipline) in his Prima Facie Opinion dated 12<sup>th</sup> September 2018 has held that the Respondent is prima facie GUILTY of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949. The said Clause to 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 –

*does not exercise due diligence, or is grossly negligent in the conduct of his*

*professional duties;"*

3.5 The Prima Facie Opinion formed by Director (Discipline) was considered by the Disciplinary Committee at its meeting held on 25<sup>th</sup> November 2019. The Committee on consideration of the same, concurred with the reasons given against the charge and thus, agreed with the prima facie opinion of the Director (Discipline) that the Respondent is prima facie **GUILTY** of Professional Misconduct falling within the meaning of Clause (7) 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 Respondent including particulars or documents 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:**

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 <sup>nd</sup> June 2016
2.	Written Statement filed by the Respondent	19 <sup>th</sup> August 2016
3.	Prima facie Opinion by Director (Discipline)	12 <sup>th</sup> September 2018
4.	Written Submissions by the Respondent after PFO	19 <sup>th</sup> November 2023

5. **Further written submissions filed by the Respondent:**

The Respondent vide letter dated 19<sup>th</sup> November, 2023 made submissions, which are summarized as under:

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**5.1 Further submissions of the Respondent made vide letter dated 19<sup>th</sup> November, 2023:**

i. The Respondent has submitted that Director (Discipline) has not given observation/opinion in case of M/s. Hexa in prima facie opinion and in case of Nalwa, a specific attention was drawn to Block 8 of financial statements, wherein disclosure for negative net owned funds aggregating to INR 753.08 lakhs for the financial year 2013-2014 has been given.

**6. Brief facts of the Proceedings:**

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

Particulars	Date of Meeting(s)	Status
1st time	14th September 2023	Adjourned at the Request of Respondent
2nd time	25th October 2023	Part heard and adjourned
3rd time	21st November 2023	Hearing Concluded and Judgement Reserved
4 <sup>th</sup> time	09 <sup>th</sup> January 2024	Decision taken

6.2 On the day of first hearing of the case on 14<sup>th</sup> September 2023, the Committee noted that the Respondent vide email/letter dated 13.09.2023 has sought adjournment stating that due to health-related issues, he would not be able to attend the hearing. The Committee acceded to the request of the Respondent and adjourned the matter to a later date.

6.3 On the day of second hearing of the case held on 25<sup>th</sup> October 2023, the Committee noted that the Respondent was present through Video conferencing

mode. Being first hearing of the case, the Respondent was put on oath. Thereafter, the Committee enquired from the Respondent as to whether he was aware of the charges, and then charges as outlined in para 2, above against the Respondent were read out. On the same the Respondent replied that he is aware about the charges but pleaded Not Guilty to the charges levelled against him. In view of 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 later date.

**6.4** Thereafter, on the day of final hearing of the case held on 21<sup>st</sup> November 2023, the Committee noted that the Respondent and the Counsel(s) for the Respondent, CA. AP Singh and CA. Utsav Hirani were present through Video conferencing mode. The Committee asked the Counsel for the Respondent to make final submissions. The Counsel for the Respondent submitted in case of Hexa Securities Private Limited, no opinion/observations have been given by the Director (Discipline) in prima facie opinion. In case of Nalwa, the Counsel for the Respondent submitted that specific attention was drawn to financial statements, wherein disclosure for negative net owned funds aggregating INR 753.08 lakhs for the financial year 2013-2014 has been made and same is part of prima facie opinion of Director (Discipline).

**6.5** Further, the Counsel for the Respondent giving reference to the written submissions dated 19<sup>th</sup> November 2023 stated that in accordance with the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, which governs the disciplinary mechanism, each allegation must be linked to a particular Clause or Clauses of Parts of the Schedules given in the Chartered Accountants Act by the complainant or provider of information. In this case, the informant has not specified the allegations to respective Clauses of the various Parts of Schedules to the Chartered Accountants

Act, 1949.

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- 6.6 The Counsel for the Respondent submitted that the relevant report has been given to the Board of Directors of the Companies and therein negative Net Owned Funds has been duly reported. He further submitted that report submitted to the Informant also and brought on record, screenshot of the same as evidence.
- 6.7 Based on the documents and information available on record and after considering the oral and written submissions made by the Respondent, the Committee concluded the hearing in the matter and reserved its Judgement.
- 6.8 Thereafter, in the meeting held on 09<sup>th</sup> January 2024, the Committee noted that the matter was heard and concluded on 21<sup>st</sup> November 2023 and the judgement was reserved in this case. After considering the documents and information available on record and considering the oral and written submissions made by the Respondent at the time of hearing(s), the Committee passed its judgement.

## 7 Findings of the Committee

The Committee noted background of the case as well as oral and written submissions made by the Respondent, documents/material on record and gives its findings as under:

- 7.1 The Committee noted that the charge in captioned case is that M/s. Nalwa and M/s. Hexa are having negative (-) Net Owned Funds for financial year 2013-2014 and 2014-2015 respectively and the Respondent being Statutory Auditor of these Companies failed to submit exception report(s) to the Informant (Reserve Bank of India) as per Para 5 of Notification No.DNBS.201/DG(VL)-2008 dated 18<sup>th</sup> September, 2008 whereby an auditor is under an obligation to submit exception report in case of non-compliance of provisions of Chapter IIIB of RBI Act, 1934.
- 7.2 On perusal of documents on record, the Committee noted that the Informant Bank had addressed a letter dated 09<sup>th</sup> January, 2015 to the Respondent firm (with copy

to ICAI, based upon captioned case was treated Information) seeking explanation from the Respondent as to why exception report had not been submitted in case of M/s Nalwa. The Committee further observed that in reply to said letter, the Respondent vide letter dated 23<sup>rd</sup> January, 2015 which had been duly received by the Informant bank on 23<sup>rd</sup> February, 2015, had submitted that "exception report of the Company for the year ended 31<sup>st</sup> March, 2014 due to loss is enclosed". Moreover, the Respondent brought on record the exception report addressed to the Board of Directors of the Company dated 30<sup>th</sup> June, 2014. It is apparent to note that the Respondent signed the financial statements of M/s. Nalwa on same date i.e. 30<sup>th</sup> June, 2014. Thereafter, the Respondent brought on record, a screenshot evidencing that report had been submitted to the Informant (RBI).

**7.3** In case of M/s. Hexa, the Committee noted that it is apparent to note that the Director (Discipline) has not given any specific opinion/views in respect of allegation pertaining to M/s. Hexa. On perusal of documents on record, the Committee observed that M/s. Hexa has negative (-) Net Owned Fund for financial year 2014-2015. However, the Respondent vide letter dated 30<sup>th</sup> June, 2015 addressed to the Board of Directors of the Company had submitted that "Net Owned Fund of the Company has become negative".

**7.4** The Committee thoroughly examined the present case involving Respondent's failure of submitting the exception report to the RBI. The Committee observed that the Respondent, while certifying the financial statements, had not complied with the requirement to submit exception reports to RBI for the Financial Years 2013-14 and 2014-15 in case of M/s. Nalwa and M/s. Hexa respectively. Upon close scrutiny of the letters from the RBI dated 09<sup>th</sup> January, 2015 and 25<sup>th</sup> October, 2015 and the subsequent responses from the Respondent, it was observed that the omission was not intentional. The Committee observed that the Management of M/s. Nalwa vide letter dated 12<sup>th</sup> February, 2015 in response to letter of RBI dated 09<sup>th</sup> January, 2015 has sought three months times to prepare and finalize a comprehensive business plan to recoup the negative NOF of the Company. Further



the Committee also noted that, the Respondent vide letters dated 30<sup>th</sup> June, 2014 and 30<sup>th</sup> June, 2015 had submitted exception report(s) to Board of Directors of the Companies in which he had clearly mentioned about negative Net Owned Funds of the Companies. Consequently, the Committee observed that despite the omission of this specific requirement of submission of exception report to RBI, there was no malafide intent on the part of the Respondent to conceal or misrepresent any relevant fact and it could be considered as inadvertent omission on the part of the Respondent. Considering the overall submissions and material, including the auditor's reports, and the responses to RBI, the Committee concluded that the benefit of doubt must be extended to the Respondent in the present case. Thus, the Committee held the Respondent **NOT GUILTY** of Professional Misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

**8 Conclusion**

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

Charge(s) (as per PFO)	Findings	Decision of the Committee
Para 2 as above	Para 7.1 to 7.4 as above	<b>NOT GUILTY</b> – Clause (7) of Part I of the Second Schedule.

**9** In view of the above observations, considering the submissions of the Respondent and documents on record, the Committee held the Respondent **NOT GUILTY** of Professional Misconduct falling within the meaning of Clause (7) 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.

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

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

Sd/-  
(CA. MANGESH P KINARE)  
MEMBER

DATE : 05.02.2024  
PLACE: NEW DELHI

सही प्रतिलिपि होने के लिए प्रमाणित /  
Certified to be true copy

  
नीलम पुंडीर / Neelam Pundir  
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer  
अनुशासनालयक निदेशालय / Disciplinary Directorate  
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