

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/G/357/2017-DD/143/INF/2018-DC/1254/2019]

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)

1. Background of the Case:

Letters dated 16th March 2017 and 09th May, 2017 were received from Assistant General Manager, Reserve Bank of India (RBI) containing certain allegations. The allegations pertain to three companies namely, M/s Manjula Finances Ltd., M/s Renuka Financial Services Ltd., and M/s Everplus Securities and Finance Ltd (hereinafter collectively referred to as the "Companies"). It was stated that these companies were meeting the

Principal Business Criteria for the last two years and were doing the principle business as NBFC. The Respondent had audited the financial statements of the Companies for Financial Years 2014-15 and 2015-16.

2. Charges in brief:

The Respondent failed to submit exception report for the subject Companies pertaining to Financial Years 2014-15 and 2015-16 in accordance with Paragraph 5 of 'Non-Banking Financial Companies Auditor's Report (Reserve Bank) Directions, 2008 (now para 5 of NBFC Auditor's Report (Reserve Bank) Directions, 2016).

3. The relevant issues discussed in the Prima facie opinion dated 15th October 2018 formulated by Director (Discipline) in the matter in brief are given below:

3.1 The RBI had described it vide Notification No. DNBS(PD)CC No. 81/03.05.002/2006-07 dated 19th October 2006 to identify NBFC's wherein it stated 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.'

3.2 In the present case, it was observed that the financial assets of the Companies were more than 50% of total assets, as well as income from financial assets was also more than 50% of the gross total income. The term "income" was defined in Para 8 read with Para 14.06 of "Guidance Notes on Terms used in financial statements". Hence, it could be opined that both conditions were satisfied by the Companies and accordingly, they were required to get themselves registered as NBFC with RBI.

3.3 It could be said that the Companies were carrying the business of NBFC and were falling under the Principal Business Criteria (PBC). The Respondent in his Audit Report of the Companies for the Financial Years 2014-15 had mentioned that "*The Company made an application for registration under*

Section 45IA of the Reserve Bank of India Act, 1934, to carry on the business as a Non-Banking Financial Institution. The application has since been rejected. The Company has subsequently restricted its activity mainly holding shares as promoter and dealing in Group Company”.

- 3.4 The Respondent in his Audit Report of the Companies for the financial year 2015-16 had mentioned that “*The Company is doing principal business as Non-Banking Financial Companies and Company should made an application for registration under Section 45IA of the Reserve Bank of India Act, 1934 to carry on the business as a Non-Banking Financial Institution*”. Therefore, the Respondent himself had accepted that Companies were carrying on the business of NBFC and were required to obtain Certificate of Registration as NBFC. Since these Companies had not applied for registration, thus, the Respondent was required to submit Exception Report which he failed to submit to comply with paragraph 5 of ‘Non-Banking Financial Companies Auditor’s Report (Reserve Bank) Directions, 2008 (now para 5 of NBFC Auditor’s Report (Reserve Bank) Directions, 2016.
- 3.5 In terms of Section 45IA of the RBI Act, 1934, it was mandatory for a Company to obtain Certificate of Registration (CoR) from Reserve Bank of India before commencing or to carry on business of a non-banking financial institution. Moreover, it was noted that the Respondent had relied on Management Representation Letters for financial year 2014-15 which stated that Companies had applied for registration as NBFC, but the application was rejected. The Respondent also could not bring on record any such applications by the Companies which were rejected by the Informant bank i.e., RBI. Moreover, the application was made during Financial Year 1997-98 and 1999-2000 by the Companies which was quite a long time before as compared to the Financial Years 2014-15 and 2015-16.
- 3.6 The Director (Discipline) in his Prima Facie Opinion dated 15th October 2018 held that the Respondent was *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 Item of the Schedule to the Act, states as under:

Clause (7) of Part I of Second Schedule:

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“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.”

3.7 The Prima facie opinion formed by the Director (Discipline) was considered by the Disciplinary Committee at its meeting held on 25th November 2019. 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 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 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	11 th June 2018
2.	Date of Written Statement filed by the Respondent	02 nd August 2018
3.	Prima facie Opinion by Director (Discipline)	15 th October 2018
4.	Further Written Statement by the Respondent	13 th July 2020

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5. Further written submissions filed by the Respondent:

- 5.1** The Respondent vide his additional submissions dated 13th July 2020 argued on the merits of the matter. The Respondent stated that as per the verdict passed by various Courts with respect to the definition of 'professional misconduct', it had been held that professional misconduct on the part of a person exercising one of the technical professions, could not fairly or reasonably be found, merely on a finding of a bare non-performance of a duty or some default in performing it. It was a well-settled principle of law that the charge of professional misconduct was not one of inefficiency, but of misconduct and in an allegation of misconduct, an imputation of a certain mental condition was always involved.
- 5.2** The Respondent submitted that the allegations pertained to non-filing of exception report of the subject Companies for the Financial Years 2015-16 as required under the NBFC Auditor's Report (RBI) Directions, 2016. The Respondent stated that the said directions were applicable to the Companies which were registered as NBFCs with RBI. The Respondent submitted that at the time of signing the financial statements of the Companies, those were not registered as NBFCs and therefore, the activity was given in "Emphasis of matter" and Companies Auditor's report order. The Respondent stated that due to the fact that the subject Companies were not registered as NBFCs, therefore, exception report as required by RBI in case of NBFC, was not required. But he was vigilant enough to add all such relevant information in various heads.
- 5.3** The Respondent also submitted that "Non-Banking Financial Institution" was understood as a company registered with RBI and engaged in the business of loans and advances, acquisition of shares / stocks / bonds / debentures / securities issued by the Government or local authority or other marketable securities of a like nature, leasing, hire-purchase, insurance business, chit business, but does not include any institution whose principal business is that of agriculture activity, industrial activity, purchase or sale of any goods or providing any services and sale/purchase/construction of immovable property. A non-banking institution which is a company and has the principal business of receiving deposits under any scheme or arrangement in one lump sum or in installments by way of contributions or in any other manner, is

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also a Non-Banking Financial Company. Further, the RBI vide a notification, being no. DNBS(PD)CC No. 81/03.05.002/2006-07 dated 19th October 2016 has further declared that a company will be treated as a non-banking financial company (NBFC) if its financial assets are more than 50 percent of its total assets (netted off by tangible assets) and income from financial assets is more than 50 percent of the gross income. It has further been clarified by the RBI vide the same notification that both the above tests were required to be satisfied as a determinant factor for principal business of the Company.

- 5.4** The Respondent contended that on reading the meaning of the term Non-Banking Financial Company along with the notification issued by the RBI dated 19th October 2016, it is evident that in order to be categorized as NBFC, it is necessary that the principal business of a company is engagement in loans and advances etc. as well as the company being registered as a NBFC with RBI. However, in the present matter, neither the said Companies were registered with RBI as a NBFC at the time of signing of its financials nor was the principal business of the said Companies was that of a NBFC.
- 5.5** The Respondent stated that the basis on which an inquiry was initiated against the Respondent alleging that the percentage of financial assets to total assets of the Companies ranges between 72% to 99% and therefore, the principal business of the said companies was that of a NBFC, was false and denied. The Respondent submitted that the calculation of 72% to 99% was made by the Informant considering the investments made by the subject Companies in unquoted securities. But the said investments were non-marketable and could not be considered while determining the principal business of the Company.
- 5.6** The Respondent submitted that the subject Companies did not fall under the ambit of NBFCs since both conditions of financial assets and financial income were not met as these were less than 50% of the total assets and total income and therefore, the Respondent was not obligated to file an exception report as per Para 5 of the directions.

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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	Judgment delivered

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 in order to meet the Principal Business Criteria, Financial assets, and income from financial assets of the Companies should be more than 50% as per norms of the RBI. The Respondent also submitted that NBFCs are classified into three groups i.e. NBFC-D, NBFC-ND, and NBFC-ND-SI. The Respondent further submitted that NBFCs-ND companies are the companies with assets less than 100 crores and NBFC-ND-SI are the companies with assets of 100 crores or above. The Respondent contended that the subject Companies falls under NBFC-ND category as they had the assets size of less than 100 crores, for which the exception reports were not required to be reported by the Respondent. The Committee then directed the Respondent to file his submissions giving cross reference to the documents

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relied upon i.e., annexures, circular of the Reserve Bank of India within seven days. Accordingly, the matter was part heard and adjourned to a later date.

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 the Reserve Bank of India rejected the application(s) of three subject Companies filed voluntarily for registration and the same was reported by the Company in Notes to accounts. In 2016, CARO was amended and as per Clause 16, a Company was required to get registration from Reserve Bank of India. He further submitted that as all three Companies were not registered with RBI, so to whom, he would have submitted the exception reports. Based on the documents and information available, as well as the oral and written submissions made by the Respondent, the Committee concluded hearing in the matter and reserved their 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 at the time of hearing, passed its judgment in the captioned matter.

7. **Findings of the Committee:**

7.1 The Committee deliberated on the charges, outlined in Para 2 above, that in case of M/s Manjula Finances Ltd., M/s Renuka Financial Services Ltd., and M/s Everplus Securities and Finance Ltd (Companies), the Respondent failed to submit exception report to RBI for the Financial Years 2014-15 and 2015-16. It was stated that the exception report was required to be submitted in compliance with paragraph 5 of 'Non-Banking Financial Companies Auditor's Report (Reserve Bank) Directions, 2008 (now para 5 of NBFC Auditor's Report (Reserve Bank) Directions, 2016).

7.2 In this regard, the Committee examined the requirements of submitting exception report to the Reserve Bank of India contained in Non-Banking Financial Companies Auditor's Report (Reserve Bank) Directions, 2008 (now,

Non-Banking Financial Companies Auditor's Report (Reserve Bank) Directions, 2016 issued through Master Direction DNBS. PPD.03/66.15.001/2016-17 dated 29th September 2016). The Committee noted that Para 5 of these directions which deals with 'Obligation of auditor to submit an exception report to the Bank', reads as under:

"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 ...

it shall be the obligation of the auditor to make a report containing the details of such unfavourable or qualified statements and/or about the non-compliance, as the case may be, in respect of the company to the concerned Regional Office of the Department of Non-Banking Supervision of the Bank under whose jurisdiction the registered office of the company is located as per Second Schedule to the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998."

7.3 The Committee then noted that Para 3(A)(I) of these directions which deals with 'Matters to be included in the auditor's report', reads as under:

"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

1. 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."

7.4 The Committee observed that Para 5 of Non-Banking Financial Companies Auditor's Report (Reserve Bank) Directions, 2008 outlines the obligations of an auditor when the statement regarding certain items in Para 3 is unfavorable or qualified. If the auditor finds any such discrepancies or non-compliance in the case of a non-banking financial company, he is required to submit a report containing details of the unfavorable or qualified statements and/or non-compliance to the concerned Regional Office of the Department of Non-Banking Supervision of the Bank. Furthermore, the Committee took note of Paragraph 3(A)(I) of these directions, which outlines the matters that

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should be included in the auditor's report for non-banking financial companies wherein one of the key aspects is whether the company is engaged in the business of a non-banking financial institution and whether it has obtained a Certificate of Registration (CoR) from the Bank.

- 7.5** In the present case, based on the submissions of the Respondent, the Committee observed that as on the date of signing of financial statements of the subject Companies, they were not registered with the RBI as Non-Banking Financial Companies (NBFCs) even though they were doing the principal business as NBFCs. The Committee thoroughly examined the Respondent's submissions and the direction contained in Non-Banking Financial Companies Auditor's Report (Reserve Bank) Directions, 2008 issued by the RBI. The Committee observed that the Respondent was required to submit his exception report to the RBI on the subject companies for the Financial Year 2014-15 and 2015-16.
- 7.6** However, the Committee then examined the letters dated 16th March 2017 sent by the RBI to the Respondent's firm in respect of three subject Companies. These letters explicitly referred the Auditor's report, where the Respondent had certified that the subject companies were engaged in the principal business as NBFCs. The Committee then scrutinized the individual audit reports issued by the Respondent for the financial statements of all three subject Companies for the Financial Year 2015-16. It was observed that, in accordance with Para xvi of the report as per the Companies (Auditor's Report) Order 2016, the Respondent had reported that the subject Companies were conducting their principal business as Non-Banking Financial Companies and had not obtained requisite NBFC registration from RBI. The Respondent being their Auditor also suggested in the report that the Companies should apply for registration under Section 451A of the Reserve Bank of India Act, 1934, to operate as a Non-Banking Financial Institution. The Committee noted that this information had also been highlighted and reported in the Respondent's independent auditor's report under Emphasis of Matter.
- 7.7** The Committee also considered three separate letters, all dated 27th March 2017, through which the Respondent's firm responded to the RBI's letters dated 16th March 2017 concerning the subject Companies. In these

responses, the Respondent's firm asserted that they misunderstood the requirement for submitting exception reports, believing it applied only to companies already registered as NBFCs. Additionally, the Committee reviewed the Management Representation Letters provided to the Respondent by the subject companies for the Financial Years 2014-15 and 2015-16. These letters indicated that the Companies had made an application for registration under Section 45IA of the Reserve Bank of India Act 1934 to carry on the business as a Non-Banking Financial Institution, but the application had since been rejected. It was also stated therein that the Company had subsequently restricted its activity mainly holding shares as promoter and dealing in Group Company.

7.8 The Committee thoroughly examined the present case involving the subject companies failure to register with the RBI as NBFCs despite conducting the principal business as such and consequently, Respondent's failure of submitting the exception report to the RBI. The Committee observed that the Respondent, while certifying the financial statements, had failed to comply with the requirement to submit exception reports to the RBI for the Financial Year 2014-15 and 2015-16 which apparently looked to be an inadvertent omission. The Committee noted that the Respondent had specifically reported in the audit reports that the subject companies were engaged in the principal business as Non-Banking Financial Companies and had duly highlighted the need for them to apply for registration under Section 45IA of the Reserve Bank of India Act, 1934. Upon close scrutiny of the letters from the RBI dated 16th March 2017, and the subsequent responses from the Respondent's firm, it was observed that the omission was not intentional. The Committee also noted that the Respondent's firm, in its responses to the RBI, clarified that they misunderstood the requirement of submitting exception reports only for registered NBFCs. Furthermore, the management of the subject Companies also stated that they made an application for registration to carry on the business as a Non-Banking Financial Companies, but the same had since been rejected. Consequently, the Committee observed that the omission of this specific requirement of submission of exception report was mere misinterpretation of the provisions and there was no malafide intent on the part of the Respondent to conceal or misrepresent any relevant fact. Considering the overall submissions and material, including the auditor's

reports, and the responses to the RBI, the Committee concluded that the benefit 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 findings arrived in above paragraphs, vis-à-vis material on record, the Committee gives its charge wise findings as under:

Charges (as per PFO)	Findings	Decision of the Committee
Para 2 as above	Para 7.1 to 7.8 as above	Not Guilty - Clause (7) of Part I of Second Schedule

In view of the above observations, considering the oral and written 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.

9. **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: 05th FEBRUARY 2024

PLACE: New Delhi