



भारतीय सनदी लेखाकार संस्थान

(संसदीय अधिनियम द्वारा स्थापित)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

[DISCIPLINARY COMMITTEE [BENCH-IV (2024-2025)]]

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

ORDER UNDER SECTION 21B(3) OF THE CHARTERED ACCOUNTANTS ACT, 1949 READ WITH RULE 19(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATIONS OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007.

[PPR/P/399/2017/DD/04/INF/2018/DC/1550/2022]

In the matter of:

CA. Vineet Gupta (M. No. 089823)

H-1555, Basement,

Chittaranjan Park, New Delhi-110019

.....Respondent

MEMBERS PRESENT:

1. CA. Ranjeet Kumar Agarwal, Presiding Officer (In person)
2. Shri Jiwesh Nandan, I.A.S (Retd.), Government Nominee (In person)
3. Ms. Dakshita Das, I.R.A.S. (Retd.), Government Nominee (Through VC)
4. CA. Mangesh P Kinare, Member (Through VC)
5. CA. Abhay Chhajed, Member (In person)

DATE OF HEARING : 19th MARCH, 2024

DATE OF ORDER : 16th May, 2024

1. That vide Findings dated 16.01.2024 under Rule 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Disciplinary Committee was inter-alia of the opinion that **CA. Vineet Gupta (M. No. 089823)** (hereinafter referred to as the **Respondent**) is **GUILTY** of Professional Misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

2. That pursuant to the said Findings, an action under Section 21B(3) of the Chartered Accountants (Amendment) Act, 2006 was contemplated against the Respondent and a communication was addressed to him thereby granting an opportunity of being heard in person/ through video conferencing and to make representation before the Committee on 19th March 2024.

3. The Committee noted that on the date of hearing on 19th March 2024, the Respondent was physically present at ICAI Bhawan, New Delhi and he verbally reiterated his written



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representation dated 26th February 2024 on the Findings of the Disciplinary Committee, which, inter-alia, are given as under:-

- (a) It was contention of the Management that the land was acquired for a solar power plant installation and then leasing it out along with the project would earn rental income based on which the Respondent concluded the same as a financial asset. The RBI Act does not define "Financial Assets," but any assets acquired by a business entity (NBFC) for business purposes should be included in financial assets.
- (b) The professional judgment of the Respondent (to treat the Land as a 'Financial Asset') is further strengthened by a fact that 'the land' was never put thereafter to any alternate use and was left unused which make the intent categorical that it was bought for the sole purpose of installing solar power project for which land is a pre-requisite.
- (c) Based on audit evidence and professional judgement, he concluded that the land acquired by the Company for the Solar Power project, earmarked for leasing, qualifies as a financial asset and its nature remains unchanged over time, depending on usage.
- (d) The representative of the Company in a meeting held with the Respondent, categorically stated in respect of 'Purchase of land' that it is to be considered a financial asset on grounds that the Company has bought land for purposes like installation of solar power project, or any other purpose as defined in Memorandum of Articles or leasing etc. The Respondent, being an auditor, had performed sufficient procedures to rightly conclude that the asset used/ intended to be used for leasing purpose is a financial asset.
- (e) The purpose of identifying financial assets and gross income as per the notification of RBI is to determine whether the concerned business entity continues to remain a NBFC and whether NBFC is in a position to continue or not as per the Principal Business Criteria and the 'market value of the investment' gives the exact position of the same.
- (f) Considering the principle of substance over form, the market valuation of the investments which also forms part of the audited balance sheet genuinely reflected the actual asset pattern of the Company and thus is a correct parameter to determine whether the concerned business entity continues to remain an NBFC or not. The Respondent considered it appropriate and suitable to consider the market valuation of Investments to truly determine whether the Company met the principal business criteria or not as the historical cost of shares was not the correct or accurate reflection of its valuation/ market worth.



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(g) That the net realizable value or market value is a correct indicator to determine the true value of any asset. Accordingly, on the same analogy, the Respondent adopted the market valuation of the investments in place of the book value of shares to truly reflect the actual/genuine asset pattern of the Company. Therefore, he should not be held guilty of any professional misconduct.

4. The Committee considered the reasoning as contained in Findings holding the Respondent 'Guilty' of Professional Misconduct vis-à-vis written and verbal representation of the Respondent. The Committee noted that the issues/ submissions made by the Respondent as aforesaid have been dealt with by it at the time of hearing under Rule 18.

5. Thus, keeping in view the facts and circumstances of the case as aforesaid, material on record including verbal and written representation of the Respondent on the Findings, the Committee noted that the intended plans of the management to give the land in question on lease should be treated as a financial asset, was not appropriate. The Committee was also of the view that in order to identify a particular Company as a non-banking financial Company (NBFC), both the assets and the income pattern will be considered as evidenced from the book values appearing in last audited balance sheet of the Company to decide its principal business, whereas the Respondent had relied upon the market value of the investment which was not correct. The Committee noted that the Respondent had considered market value of assets, instead of book value as shown in last audited balance sheet of the Company to decide its principal business asset/ income criteria, which was in violation of press release bearing No. 1269 dated 08th April 1999 issued by the Reserve Bank of India.

वर्ष 2023 का सनदी लेखाकार संस्थान, दिल्ली का कार्यालय

6. The Committee further noted that in case where the Company was not meeting the Principal Business Criteria in terms of its assets / income pattern, the auditor of that Company was required to mention the same in his audit report, and was also required to submit an exception report to concerned Regional Office of the Department of Non-Banking Supervision of the Bank. Hence, the Committee held that the Respondent in the present case was required to rely upon the figures of the last audited Balance Sheet rather than market value of the investment. Since the Company was not fulfilling the principal business criteria, the Respondent was required to submit exception report in this regard, but he failed to do so. Hence, the Professional Misconduct on the part of the Respondent is clearly established as spelt out in the Committee's Findings dated 16th January 2024, which is to be read in consonance with the instant Order being passed in the case.

7. Accordingly, the Committee was of the view that the ends of justice would be met if punishment is given to him in commensurate with his Professional Misconduct.



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8. Thus, the Committee ordered that the Respondent i.e., CA. Vineet Gupta (M. No. 089823), be REPRIMANDED and also imposed a fine of Rs. 25,000/- (Rupees Twenty five thousand) upon him, which shall be paid within a period of 60 (sixty) days from the date of receipt of the Order.

Sd/-

(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

Sd/-

(SHRI JIWESH NANDAN, I.A.S. {RETD.})
GOVERNMENT NOMINEE

Sd/-

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

Sd/-

(CA. MANGESH P KINARE)
MEMBER

Sd/-

(CA. ABHAY CHHAJED)
MEMBER

प्रमाणित सत्य प्रतिलिपि / Certified True Copy

(Signature)

जेम्स डीवर / JAMES DEVER
सहायक सचिव / Assistant Secretary
अनुशासन विभाग / Discipline Directorate
भारतीय सनदी लेखाकार संस्थान
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CONFIDENTIAL

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

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

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

File No.: [PPR/P/399/2017/DD/04/INF/2018/DC/1550/2022]

In the matter of:

CA. Vineet Gupta (M. No. 089823), New Delhi in Re:
H-1555, Basement,
Chittaranjan Park, New Delhi-110019

MEMBERS PRESENT:

CA. Ranjeet Kumar Agarwal, Presiding Officer (in person)
Shri Jiwesh Nandan, I.A.S. (Retd.), Government Nominee (in person)
Ms. Dakshita Das, I.R.A.S. (Retd.), Government Nominee (in person)
CA. Mangesh P Kinare, Member (Through VC mode)
CA. Cotha S Srinivas, Member (in person)

DATE OF FINAL HEARING : 18th August 2023

PARTIES PRESENT

Respondent : CA. Vineet Gupta (Through VC)
Counsel for the Respondent : CA. Utsav Hirani (Through VC)

1. Background of the Case:

The Respondent was the Statutory Auditor of M/s. Allegeny Finlease Pvt. Ltd, New Delhi based NBFC registered with the Informant/RBI who violated the guidelines of the RBI issued vide notification No. DNBS.201/DG(VL)-2008 dated 18.09.2008 requiring the statutory auditors to submit an exception report informing non-compliance by the Company. As per press release dated 08th April 1999 issued

by RBI to consider gross assets and gross income for identification of principal business of an NBFC, to identify a particular Company as a non-banking financial Company, both the assets and the income pattern will be considered as evidenced from the last audited balance sheet of the Company to decide its principal business.

2. Charges in brief: -

It was alleged that the Respondent as auditor of the Company failed to identify shortcomings and failed to submit exception report in respect of the following non-compliance by the Company:-

2.1 The Company was not meeting PBC i.e., principal business criteria (since the date of purchase of land) as on March 31, 2012 as prescribed for NBFCs in terms of the press release No. 1269 dated 8th April 1999 issued by RBI.

3. The relevant issues discussed in the Prima facie opinion dated 08th April 2021 formulated by Director (Discipline) in the matter in brief is given below:-

3.1 It is noted that as per calculation submitted by the Respondent himself in his written statement dated 14th May, 2018, financial assets of the Company was less than 50% of the total assets of the Company. Respondent stated that the assets as disclosed in the Balance Sheet of the Company as at 31st March, 2012 includes investments in shares whose market valuation as at 31st March, 2012 was Rs.39.89 crores. However, as per press release dated 8th April 1999 issued by RBI to consider gross assets and gross income for identification of principal business of an NBFC, in order to identify a particular company as a non-banking financial company (NBFC), both the assets and the income pattern will be considered as evidenced from the last audited balance sheet of the Company to decide its principal business. Respondent was required to rely upon the figures on the Balance Sheet rather than the market value of the investment. Moreover, Respondent's contention that land can also be part of financial assets (as the same was to be given on lease in near future) is not tenable as the said submission was not supported by any evidence. Since the Company was not fulfilling the principal business criteria and the

Respondent was required to report the same in his audit report and he was also required to submit an exception report in this regard, but he failed to do so.

3.2 The Director (Discipline) in his Prima Facie Opinion dated 08th April 2021 has held that the Respondent is prima facie GUILTY of professional misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949. The said Item to the Schedule to the Act, states as under:

Item (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."

3.3 The Prima Facie Opinion formed by Director (Discipline) was considered by the Disciplinary Committee at its meeting held on 8th April 2022, New Delhi. 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 Item (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 Complainant and 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 by parties:

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

S.No.	Particulars	Dated
1.	Complaint in Form 'I' filed by the Complainant	26 th September 2017
2.	Written Statement filed by the Respondent	14 th May 2018
3.	Prima facie Opinion by Director (Discipline)	08 th April 2021
4.	Further Written Statement by the Respondent	26 th July 2022 and 07 th July 2023

5. Brief facts of the Proceedings:

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

Particulars	Date of Meeting(s)	Status
1 st time	22 nd May, 2023	Part heard and adjourned
2 nd time	20 th June, 2023	Part heard and adjourned
3 rd time	11 th July, 2023	Adjourned at the request of the Respondent
4 th time	18 th August, 2023	Hearing concluded & decision taken

5.2 On the day of first hearing of the case on 22nd May 2023, the Committee noted that the Respondent along with his counsel(s) were present through Video Conferencing mode. The Respondent was put on oath. The Committee enquired from the Respondent as to whether he was aware of the charges and the same were read out to him as contained in the para 1 above and on the same the Respondent replied in affirmative and pleaded Not Guilty to 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 later date and accordingly, the matter was part heard and adjourned.

5.3 On the day of second hearing on 20th June 2023, the Committee noted that the Respondent along with the Counsel were present through Video Conferencing Mode for the hearing. The Committee asked the Counsel to make his submissions in the matter. The Counsel for the Respondent stated that written submissions dated

26th July 2022 has been submitted on the charges alleged against him. Referring to those submissions as contained in the said written submissions, he reiterated that as per various judgement(s) of Courts; misconduct arises from ill motive and mere acts of negligence, innocent mistake or errors of judgement, do not constitute misconduct.

5.4 The Counsel for the Respondent submitted that the Respondent has minutes and confirmation from Management of the Company; wherein land was intended to be used for leasing/business purposes and therefore same was treated as financial assets. The Counsel for the Respondent further submitted that land will qualify as financial asset as the management had certified that land has been taken for the purpose of leasing. The Respondent has exercised his professional judgement, and there was no material misrepresentation or concealment of facts, and there is no effect on user also. The Counsel for the Respondent further submitted that the auditor, in this type of case, would naturally follow the management's submission. Based on the documents and information available on record and after considering the oral and written submissions made by the Counsel for the Respondent, the Committee directed that following documents/information be submitted by Respondent; viz:-

- (a) Memorandum of Association (MOA) for leasing business/financial assets in case of land and,
- (b) His submissions in context of AS- 26 on subject issue.

As per directions of the Committee, the Respondent vide letter dated 07th July 2023 submitted the above documents/Information as sought for. The Memorandum of Association of the Company defines the object of the Company for which it was established. Some of the clauses of Memorandum of Association are as follows:

"(4) to carry on the business of leasing and as such to give on lease all kinds of equipment, plant and machinery, household articles, land, building, agricultural land, plantations, agricultural produce, aircrafts, ships, vehicles, electrical and electronic equipment, goods, articles and commodities of all kinds and other moveable and immovable properties, rights, claims and other interest therein.

(5) to carry on and undertake the business of leasing, hire, purchase and to finance lease operations of all kinds and purchasing, selling, hiring, or letting on hire all kinds of plant, machinery, diesel generator sets, data processing equipment and computers, motor cars and other vehicles."

He further stated that in case the land given for leasing purposes, NBFC has a contractual right to receive rent from the lessee. This rent was a contractual right to receive cash, which meets the definition of a financial asset under both Ind AS 109 and Ind AS 32. The conclusion of the management that the land given for leasing purposes is a financial asset is supported by the definitions of financial asset in Ind AS 109 and Ind AS 32, as well as by the fact that the land is not used in the NBFC's principal business activities. This classification has several implications for the NBFC's financial statements, which are consistent with the requirements of these two accounting standards.

5.5 Subsequently, this case was fixed for hearing on 11th July 2023 and was adjourned at the request of the Respondent.

5.6 On the day of final hearing of the matter on 18th August 2023 the Committee noted that the Respondent along with his Counsel were present through Video conferencing mode. The Committee directed the Counsel for the Respondent to make submissions in the matter. The Counsel for Respondent raised preliminary objection stating that Deputy General Manager, Reserve Bank of India had filed information case in Form 'I', which was not as per applicable Rules. The Committee directed the Counsel for the Respondent to make final submissions on merits of the case. The Counsel submitted that as per directions of the Committee at its meeting held on 20th June 2023, he had filed Memorandum of Association of the Company and submissions on Accounting Standard 26. He submitted that during tenure of the Respondent as auditor, land was not leased out, but management had actively considered utilizing it for establishment of solar plant as an alternative. The Counsel submitted that the responsibility of a Chartered Accountant is to audit the financial statements based upon Standards on Accounting and while auditing the financial statement he relied upon the management representations and explanations given by the management. The Counsel submitted that there was no error regarding the

preparation of any financial statements. The Respondent relied on the representations which were given by the management.

5.7 After detailed deliberations, and on consideration of the facts of the case, various documents on record as well as oral and written submissions made by the Counsel for the Respondent before it, the Committee concluded hearing in the instant matter.

6. Findings of the Committee:

The Committee noted the 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:

6.1 The Committee noted that the Counsel for the Respondent raised preliminary objection to this case and stated that Deputy General Manager, Reserve Bank of India had filed information case in Form 'I', which was not having proper authorization as per applicable Rules. The Committee observed that said objection had already been dealt with by the Director (Discipline) in prima facie opinion. The Director (Discipline) mentioned that Rule 3 of Rules, 2007 deals with procedures for filing a formal complaint whereas the instant matter is an Information case which has been treated as "information" in accordance with the provisions of Rule 7 of Rules, 2007. Further, as per Rule 11 of Rules, 2007, procedures laid down for dealing with complaint in sub-rule (6) of Rule 3, sub-rules (1), (2), (3) and (4) of rule 5, sub-rules (1), (2), (3) and (5) of rule 8, rule 9 and rule 10 shall also apply to 'Information' received by Director relating to misconduct of members. It is relevant to mention here that neither Rule 7 nor sub-rule (6) of Rule 3 says that sender of 'Information' should have been authorized by a person holding a post equivalent to Joint Secretary. Hence, objection raised by the Respondent with regard to authorization is not tenable.

6.2 In respect of the allegation relating to principal business criteria not met by the Company as on 31st March 2012, the Committee refers to press release bearing No. 1269 dated 08th April 1999, which states as under:

"The Reserve Bank of India today announced that in order to identify a particular company as a non-banking financial company (NBFC), it will consider both, the assets and the income pattern as evidenced from the last audited balance sheet of the company to decide its principal business. The company will be treated as an NBFC if its financial assets are more than 50 percent of its total assets (netted off by intangible assets) and income from financial assets should be more than 50 percent of the gross income. Both these tests are required to be satisfied as the determinant factor for principal business of a company."

6.3 Further, the Committee noted the provision of Section 45-IA of the Reserve Bank of India Act, 1934, relevant paragraph of which states as under: -

"(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."

6.4 Further, as per para 15 of Non-Banking Financial (Non-deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007, the Statutory auditor has to submit a certificate to RBI, relevant paragraph of which states as under: -

"Every non-banking financial company shall submit a Certificate from its Statutory Auditor that it is engaged in the business of non-banking financial institution requiring it to hold a Certificate of Registration under Section 45-IA of the RBI Act. A certificate from the Statutory Auditor in this regard with reference to the position of the company as at end of the financial year ended March 31 may be submitted to the Regional Office of the Department of Non-Banking Supervision under whose jurisdiction the non-banking financial company is registered,

[within one month from the date of finalization of the balance sheet and in any case not later than December 30th of that year. Such certificate shall also indicate the asset / income pattern of the non-banking financial company for making it eligible for classification as Asset Finance Company, Investment Company, or Loan Company].

6.5 Moreover, in terms of NBFC Regulations - certificate of Registration (COR) issued under Section 45-IA of the RBI Act, 1934 - continuation of business of NBFC - submission of Statutory Auditors' Certificate, *"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"*. (Emphasis Provided)

Non-Banking Financial Companies Auditor's Report (Reserve Bank) Directions, 2008" cast duty on the Auditor of an NBFC to report the following in his audit report: -

"3. Matters to be included in the auditor's report

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

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

II. In the case of a company holding CoR issued by the Bank, whether that company is entitled to continue to hold such CoR in terms of its asset/income pattern as on March 31 of the applicable year.

...."

It further states as under: -

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“5. Obligation of auditor to submit an exception report to the Bank

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

(a) the provisions of Chapter III B of Reserve Bank of India Act, 1934 (Act 2 of 1934); or

(b) the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998; or

(c) Non-Banking Financial (Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007; or

(d) Non-Banking Financial (Non- Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007;

it shall be the obligation of the auditor to make a report containing the details of such unfavorable 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.”

6.6 The Committee noted the submissions of the Respondent in which he had asserted that in determining the applicability of the PBC criteria, two parameters are to be particularly measured; financial asset and gross income. However, the term "financial asset" has not been defined in the RBI Act or any of its Notifications. The entire income of the Company is qualified as having arisen from application of financial assets only, based upon the general understanding of what constitutes financial assets. The assets as disclosed in the Balance Sheet of the Company as

on 31st March 2012 include investments in shares whose market valuation as at 31st March 2012 was Rs. 39.89 crores. Since the term "financial asset" had not been defined, there was no clarity whether in the computation of such assets, it would be appropriate to determine the valuation based on historical cost or market realizability. However, since land was valued only at Rs. 5.44 crores as compared to the realizable valuation of the shares held by the company at Rs.39.89 crores, and further based on the reasoning with respect to land (as explained by the management to be held for using it for "leasing" in the near future), he considered it fit and proper to regard the application of funds of the company to be in excess of 50% for financial assets. Hence, the Respondent stated that there was no requirement for this issue to be included in the Exception Report.

6.7 Thereafter, the Committee noted the contents of reply of the Respondent dated 28.03.2016 addressed by him to the RBI stating that as per audited balance sheet for the year ended 31st March 2012, the bifurcation of financial assets to total assets and income from financial assets to gross income were as under:-

S. No	Particulars	Book value (In lacs)	Market value (In lacs)
A	Total Assets	927.01	4521.88
	Financial Assets	382.55	3977.41
	Financial Assets % to Total Assets	41.27%	87.96%
B	Gross Income	63.40	63.40
	Income from Financial Assets	63.40	63.40
	Income from Financial Assets % to Gross Income	100%	100%

The Respondent also stated that the Company informed that it had invested in land only for short term to earn out of existing business opportunities. However, due to changed market conditions, its plan did not materialize. Therefore, the Respondent assumed that the Company has met the principal business criteria as on 31st March 2012 and accordingly, he was of the view that there was no non-compliance.

6.8 The Committee observed that the Respondent has asserted that during the relevant financial year, the land in question was not leased out but the management has actively considered utilising it for establishment of a solar plant as an alternative. The auditor draws upon their past experience and interactions with the management to make decisions and exercise professional judgement; and the Respondent in instant case relied on their knowledge of management's plans and intentions regarding the land in question which approach was in alignment with the standards on auditing.

6.9 The Committee noted that the Respondent had further asserted that although formal lease deed was not executed; the management had concrete plans in place to do so considering it as a valuable financial asset; and the Respondent's professional judgement played a vital role in making this determination.

6.10 The Committee also noted that according to the NBFC Prudential Norms, a financial asset is defined as "any asset that represents a contractual right to receive cash or another financial asset from another entity." The Committee observed that as per AS-26, Accounting Standard on Intangible Assets, the definition of financial asset is stated as under:-

"A Financial asset is any asset that is:

- a) Cash;*
- b) A contractual right to receive cash or another financial asset from another enterprise;*
- c) A contractual right to exchange financial instruments with another enterprise under conditions that are potentially favourable; or*
- d) An ownership interest in another enterprise"*

Accordingly, the land which is given for leasing purposes would fall under the said definition.

6.11 The Committee noted that as per press release dated 8th April 1999 issued by RBI to consider gross assets and gross income for identification of principal business of NBFC, in order to identify a particular company as a non-banking financial company (NBFC), both the assets and the income pattern will be considered as

evidenced from the last audited balance sheet of the company to decide its principal business. The Committee also noted from the main objects clause of the Memorandum of Association of M/s Allegeny Finlease Private Limited which inter-alia provided for carrying on undertaking the business of leasing, hire purchase, and to finance lease operations of all kinds.

6.12 The Committee observed that the Respondent had primarily relied on the representations and the facts which were given to him by the management at the relevant point of time based on which the Respondent used his professional judgement. The management of the company had indicated that the land which it had planned to give on lease as financial asset placing assumption on the fact that any asset that represent a contractual right to receive cash arising out of lease would be a financial asset.

6.13 The Committee further noted the submission of the Respondent that any negligence in performance of duty or error of judgement in discharge of duty cannot be considered as professional misconduct unless ill-motive in such conduct was established. It was urged that since there was management representation given to the Respondent, such a conduct of Respondent in the instant case cannot be treated as a matter of professional misconduct.

6.14 On an overall consideration of the matter, the Committee was of the view that it is not possible to accept the submission of the Respondent that the intended plans of the management to give the land in question on lease should be treated as a financial asset. This is for the reason that in order to be covered within the ambit of "financial asset", a contractual right to receive cash or another financial asset from another enterprise should have arisen; whereas in the present case, the company had not leased out the land in question by way of entering into a formal lease deed and therefore it can safely be concluded that no contractual right has accrued on the part of the company for receipt of rental income arising out of lease. In other words, for the purpose of giving the treatment of financial asset to a leased land, a formal

lease deed should have been executed which was found lacking in the present case, because of which the intended plans of the management would not qualify the land in question as a financial asset. The Committee was also of the view that in order to identify a particular company as a non-banking financial company (NBFC), both the assets and the income pattern will be considered as evidenced from the book values appearing in last audited balance sheet of the company to decide its principal business; whereas the Respondent had relied upon the market value of the investment which was not correct. In view of submissions/reply of the Respondent, the Committee noted that the Respondent had considered market value of assets, instead of book value as shown in last audited balance sheet of the company to decide its principal business asset/ income criteria, which was in violation of press release bearing No. 1269 dated 08th April 1999 issued by the Reserve Bank of India (as explained in para 6.2 above). However, in view of calculation submitted by the Respondent himself as above, it was admitted that the Company was not meeting Principal Business Criteria as book value of financial assets to total assets was 41.27% which was less than of 50% of limit as prescribed by Reserve Bank of India.

6.15 In view of the foregoing, the Committee noted that in case where the Company was not meeting the Principal Business Criteria in terms of its assets / income pattern, the auditor of that company was required to mention the same in his audit report and was also required to submit an exception report to concerned Regional Office of the Department of Non-Banking Supervision of the Bank. As per the calculation submitted by the Respondent himself, the financial assets of the Company were less than 50% of the total assets of the Company. Hence, the Committee was of the considered view that the Respondent in the present case was required to rely upon the figures of the last audited Balance Sheet rather than market value of the investment. Since the Company was not fulfilling the principal business criteria, the Respondent was required to submit exception report in this regard, but he failed to do so. Accordingly, the Committee held the Respondent **GUILTY** of professional misconduct in term (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

