

## Order

### Under Section 29A of the National Housing Bank Act, 1987 in respect of M/s Kerala Housing Finance Limited

#### 1. Background

1.1 The Kerala Housing Finance Limited, a company having its registered office at II Floor, Pan African Plaza, Pulimood Junction, M.G. Road, Thiruvananthapuram, Kerala- 695001 (hereafter referred to as “the Company”) had applied on June 12, 2001 for grant of CoR to National Housing Bank (“NHB”) under Section 29A of the National Housing Bank Act, 1987 (“the Act”). Section 29A of the Act envisages that any housing finance institution which is a company shall commence or carry on the business of housing finance after obtaining Certificate of Registration (CoR) from NHB. The application of the Company was examined and rejected by NHB vide letter No. NHB (ND)/DRS-RNS/KER 2/2504/2002 dated August 7, 2002, citing following reasons:

- (i) Failed to apply for registration under Section 29A of the said Act within the time prescribed and continued to carry on the business of housing finance institution.
- (ii) Accepted deposits from public without being eligible to do so.
- (iii) Failed to submit a copy either of the advertisement or of the statement in lieu of advertisement to NHB before accepting/renewing deposits.
- (iv) Did not maintain adequate liquid assets as stipulated.
- (v) Failed to comply with the Credit Concentration norms.
- (vi) Irregular in submission of various returns, statements and other information since inception.
- (vii) Failed to submit the Auditor’s Certificate

1.2 The Company appealed against the Order of NHB before the Appellate Authority, which set aside the NHB’s order vide its order dated August 22, 2003 and advised to reconsider the application of the Company based on the latest position. NHB reconsidered the application of the Company on the basis of the information furnished and it was again rejected on January 28, 2004 citing the reasons as under:-

- (i) Total borrowing of the Company inclusive of public deposits and Non-Convertible Debentures exceeded the limit which was in contravention to Paragraph 3 (3) of the Directions.
- (ii) Irregular in submission of return to NHB. The Company failed to submit the Auditor's Certificate in terms of paragraph 38 of the Directions and has also not made available to NHB the Auditor's Report in terms of paragraph 29 of the Directions for 2001-02 and 2002-03.
- (iii) Failed to maintain liquid assets as required under Section 29B of the said Act and has also not paid the penal interest in full of Rs. 2,44,346.36 levied for shortfall in maintenance of liquid assets.
- (iv) Capital Adequacy Ratio as on 31st March, 2002 was below the minimum prescribed level of 12% and thereby not eligible to accept public deposits in terms of paragraph 3(2) (ii) of the Directions. In spite of this and prohibitory order issued by NHB, the company continued to accept public deposits.
- (v) Not complying with provisions relating to provisioning and credit concentration of the Directions.
- (vi) The Company had an accumulated loss of Rs. 56.85 lakh as on 31st March, 2002.
- (vii) The Company has failed to furnish the information desired by NHB.

**1.3** The Company again appealed to the Appellate Authority. The Appellate Authority vide its interim order dated June 14, 2004 advised NHB to cause an inspection of the Company and submit a report before July 31, 2004. Accordingly, NHB conducted an inspection and submitted the findings / report on July 30, 2004. Subsequently, the Appellate Authority passed an Order dated September 14, 2004 dismissing Appeal of the Company and upheld the Order passed by NHB.

**1.4** The Company then filed a Writ Petition before the Hon'ble High Court of Delhi on September 17, 2004 praying for quashing of the order dated January 28, 2004 of NHB and Order dated September 14, 2004 of the Appellate Authority. In pursuance of the Order of the Hon'ble High Court dated January 10, 2005, application of the Company was taken for reconsideration for grant of CoR. However, considering the contraventions/non-compliance of the provisions of the said Act and the Directions issued thereunder, by the Company, the application for grant of CoR under Section 29A of the said Act was again rejected vide Order dated December 28, 2005. The Company filed an appeal before the Appellate Authority which

set aside the Order of NHB and directed NHB to grant CoR to the Company. Accordingly, a CoR bearing No. 02.0064.06 dated April 17, 2006 was granted to the Company without permission to accept public deposits.

**1.5** As part of supervision, inspection of the Company with reference to the financial position as on March 31, 2013 was undertaken by NHB in January, 2014 and the Company was found to have been contravening various provisions of the said Act and the Directions, Circulars, Guidelines, Codes etc., issued thereunder by NHB from time to time. Some of the major contraventions included short-provisioning against NPAs resulting in overstatement of Net Owned Funds, recognition of income on NPAs, issuance of unsecured NCDs which are not excluded from the definition of public deposits, non-creation of Reserve Fund as required u/s 29C of the said Act, contravening the provisions of Companies Act, SEBI Rules, accepting money in cash and non-maintenance of records for cash transactions of more than Rs.10 lakh as required under Rule 3 of Prevention of Money Laundering Act, 2002, etc.

**1.6** The above inspection findings/observations were communicated to the Company vide its letter No. NHB (ND)/HFC/DRS/Sup./9657/2014 dated June 30, 2014. In the meanwhile, the Company vide letter dated June 24, 2014 submitted that provisions of Housing Finance Companies issuance of Non-Convertible Debentures on Private Placement (NHB) Directions, 2014, are affecting the business of small housing finance companies and requested a hearing. The request was acceded to by NHB and the hearing was held on July 8, 2014. Following the hearing, NHB also received a representation from the Company vide letter dated July 14, 2014 seeking exemption from the applicability of these Directions. After considering the facts, it was decided not to grant any exemption to the Company from the applicability of the said Directions.

**1.7** Subsequently, a snap inspection of the Company was undertaken by NHB in July, 2014 to verify the status of compliances with the provisions of the Housing Finance Companies Issuance of Non-Convertible Debentures on Private Placement (NHB) Directions, 2014. The inspection report brought out various contraventions by the Company on the issue of compliance with the provisions of the said Directions.

**1.8** In view of the contraventions observed during the inspection in July, 2014, a Show-Cause notice vide its letter No. NHB (ND)/HFC/DRS/Sup./11430/2014 dated August 1, 2014

on non-compliances with the NCD Directions was issued and simultaneously in the said notice, the Company was advised not to issue/renew Non-convertible Debentures without obtaining prior written permission from NHB.

**1.9** Further, a meeting with the Company officials was also held on August 14, 2014, in which it was informed by the Company that they had stopped issuing/renewing of NCDs/Bonds after receipt of the above Show Cause Notice of August 1, 2014. During the meeting, it was also agreed by the Company officials that the Company would immediately submit an action plan for repayment of NCDs collected on or after April 1, 2014, at the earliest. In response to NHB's letter No. NHB (ND)/HFC/DRS/Sup./9657/2014 dated June 30, 2014, on non-compliance with provisions of the Sections 29A, 29B, 29C, 33(1) and (2), 34(2) of the Act and other contraventions with regard to Housing Finance Company (NHB) Directions 2010, Circulars, Guidelines etc., NHB received a reply from the Company vide its letter dated August 25, 2014, which was examined and found to be not satisfactory. Accordingly, a Show-Cause Notice was issued vide letter No NHB (ND)/HFC/DRS/ Sup./16696/2014 dated December 8, 2014.

**1.10** It is pertinent to mention that the Company was found to be irregular in submission of prescribed returns and filing its reply to NHB on earlier occasions also and NHB also levied penalties in this regard, in addition to the penalties levied for non-compliance with the provisions of the Directions/NHB Act, 1987. The Company had also paid the penalties by accepting non-compliances on its part.

**1.11** In the meanwhile, NHB informed SEBI vide its letter No NHB/HFC (DRS)/Sup./7232/2014 dated May, 29 2014 about issuance of NCDs by the Company which *prima facie* violated the various provisions of the Companies Act, 2013 and SEBI Regulations in respect of offer of NCDs. NHB also, vide its letter No NHB/HFC(DRS)/Sup./7937/2014 dated June, 04 2014, informed Financial Intelligence Unit-India about the non-compliance of Know Your Customer Guidelines and Anti-Money Laundering Measures. Based on NHB's information, SEBI examined the matter on issuance of equity shares and Non-Convertible Debentures by the Company and passed an Order dated July 31, 2015 restraining directors and promoters of the Company from mobilizing funds through issue of equity shares or through any other form of securities, to the public and / or invites subscription, in any manner whatsoever, either directly or indirectly till further directions. Further, vide another order

dated November 20, 2015, SEBI directed the Company, inter-alia, to cease to mobilize fresh funds from investors through the Offer of NCDs or through the issuance of equity shares or any other securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly till further directions.

**1.12** In view of the continuous non-compliance and poor response from the Company, a personal hearing was granted to the Company on July 20, 2015, wherein the Company was ill-prepared to respond to NHB's queries and requested for another hearing to discuss pending issues and plan of action for repayment of NCDs. Accordingly, another meeting was held on July 30, 2015 to discuss its gross violations of the provision of the Act, HFCs (NHB) Directions 2010, NCDs Directions 2014, Guidelines, Circulars etc., including non-responding to show-cause notices issued by NHB on various contraventions. The major issues, inter-alia, deliberated in the said meeting with the officials of NHB were as follows:

- (a) Acceptance of public deposits in the form of NCDs in contravention to CoR issued to the Company.
- (b) Non-compliance with the NOF requirement as assessed NOF was below Rs.10 crore as on March 31, 2013.
- (c) Appointment of individual as Trustee which is not registered with the SEBI in contravention of SEBI Guidelines.
- (d) Acceptance of money in cash in respect of NCDs issued by the Company in contravention to the NCD Directions, 2014.
- (e) Acceptance of money in cash of Rs.10 lakh and non-reporting of STR/CTR to FIU-IND in these cases.
- (f) Not furnishing records / documents/vouchers in respect of payments made for purchase of land.

NHB examined the reply received from the Company vide its letter dated December 24, 2014 to the Show-Cause Notice issued vide letter No NHB (ND)/HFC/DRS/ Sup./16696/2014 dated December 8, 2014 and since the reply was found to be not satisfactory, NHB levied penalty of Rs.5,25,000/- vide letter No. NHB(ND)/HFC/DRS/Sup./8899/2015 dated September 10, 2015.

**1.13** Another Show-Cause Notice was issued by NHB vide its letter No. NHB (ND)/HFC/DRS/Sup./ 12409/2015 dated December 11, 2015, to the Company, with regard

to the cancellation of CoR granted by NHB u/s 29A of the said Act, indicating the failure to comply with the condition subject to which the CoR was issued to it, as the Company had accepted public deposits in disguise of NCDs and has not repaid the NCDs accepted/renewed on or after April 1, 2014 as advised to the Company by NHB.

**1.14** The Company vide its letter No. KHFL/HO/NHB/DRS/A 1/103/2015-16 dated December 15, 2015 (Received by NHB on 29-12-2015) in response to NHB's letter Nos. NHB/ND/DRS/Sup./8899/2015 dated September 10, 2015 and NHB/ND/DRS/Sup./12409/2015 dated December 11, 2015, has submitted its reply, which was duly considered by NHB and again found to be not satisfactory. But, the Company did not pay the penalty of Rs. 5,25,000/- imposed by NHB vide letter September 10, 2015, within prescribed time as directed by NHB.

**1.15** Later, though the Company finally paid the penalty on January 20, 2016 as per the order dated September 10, 2015 of NHB, since the company's operations continued to be in violation of the conditions subject to which the CoR was issued and the explanations given by the company was found to be not-satisfactory, NHB, finally cancelled the CoR of the Company vide its order dated February 17, 2016 for the reasons cited in the said Order. The Company preferred an appeal against the above Order of NHB before the Appellate Authority (AA). Subsequent upon hearing the parties on April 12, 2016, following Order was passed by the Appellate Authority on April 21, 2016:

*"This is an appeal filed under section 29A(7) of the National Housing Bank Act, 1987 by the Kerala Housing Finance Ltd. (KHFL), Thiruvananthapuram challenging the following two impugned orders passed by the National Housing Bank,*

- (i) Order dated 11.12.2015 imposing a penalty of Rs. 5,25,000/- on the Appellant.*
- (ii) Order dated 17.02.2016 cancelling the certificate of registration (CoR) of Appellant.*

*The Submission of the aggrieved party from the aforementioned orders are:*

- (i) The grounds of cancellations of CoR are not recorded and are without reasons.*
- (ii) The KHFL has complied with the direction of NHB to pay penalty, and that the same has been paid. The NHB has further gone and issued a cancellation of CoR which tantamount to double punishment for the same offence.*

*The National Housing Bank Countered by saying*

- (i) The reasons of violation have been given to KHFL in writing.*
- (ii) The penalty has been imposed on the basis of inspection in 2013.*
- (iii) The Appellant has not paid the penalty in time.*
- (iv) NHB has followed it up by another inspection to check violations.*

**Decision:**

*“I have heard both the parties and perused records of the case. To meet the end of justice, I remand the case to the Respondant Bank to confirm whether two penalties, namely a fine of Rs. 5,25,000/- and cancellation of CoR can be imposed on the Applicant under the NHB Act.*

*Further, NHB may undertake another Inspection to check whether the violations are continuing”.*

**1.16** Accordingly, an interim reply was sent to the Appellate Authority on May 05, 2016 informing the contraventions of the various provisions of said Act and Directions, Guidelines, Circulars etc., issued thereunder, which were taken into consideration for the cancellation of CoR. It was also clarified in the above letter that NHB can cancel CoR even after having imposed the penalty, if NHB is of the view that by doing so that it shall not be prejudicial to the public interest and necessary in order to protect the public interest. In terms of order of the Appellate Authority, a special inspection to check whether the violations are continuing was conducted during May 09, 2016 to May 20, 2016. After receiving the inspection report a letter dated June 03, 2016 was sent to AA, indicating the status of the violations mentioned in the letter dated May 05, 2016 along with the additional non-compliances/contraventions observed during the sample verification in the above inspection. A copy of letter dated June 03, 2016 along with annexures was also conveyed to the counsel of the Appellant i.e. Smt. Revathy Raghvan as per e-mail dated June 29, 2016 from DFS, MoF, GoI.

**1.17** The second hearing of the case was held by the Appellate Authority on September 16, 2016 and the Appellate Authority issued following Order:

*“The learned Counsel for the Appellants drew attention to an order dated 21.04.2016 of my predecessor whereby the case had been remanded to the Respondent Bank to confirm whether two penalties, namely a fine of RS.5.25 lac and cancellation of Certificate of Registration can be imposed on the Appellant under NHB Act. The order also directed NHB to undertake another inspection to check whether the violations are continuing.*

*Once the case has been remanded, the appeal stands disposed and no further action is required at the Appellate level until and unless the Respondent Bank passes fresh orders with which the Appellants are aggrieved. No such order has been passed by the Respondent Bank after the remand of the case and, accordingly, no proceedings survive before this Appellate Authority.*

*The Respondent Bank is advised to pass a speaking order on issue of financial penalty and cancellation of Certificate of Registration being imposed simultaneously, as well as on the issue of compliance by the Appellants with the requirements of law and guidelines /instructions issued by NHB, after affording them an opportunity of responding to the inspection report and a personal hearing to present their case.*

*Case disposed off accordingly”.*

## **2. PROCEEDINGS:**

**2.1** Following the Order of the Appellate Authority, the responses received through the Company’s counsel, Mrs. Revathy Raghvan vide her letter received on September 12, 2016 and further submission of the Company’s vide its letter dated September 30, 2016, on the inspection observations of NHB conveyed vide letter dated June 03, 2006, was examined and the replies made thereto by the Company were found unsatisfactory. The Company was found to be contravening various provisions of the Act and the Directions, Circulars, Guidelines, Codes etc., issued thereunder by NHB from time to time. Some of the major contraventions observed were as under: -

- a) short-provisioning due to wrong assets classification resulting in overstatement of Net Owned Funds and hence not meeting the minimum NOF requirement;
- b) recognition of income on NPAs;
- c) non-compliance of provisions of the ‘Housing Finance Companies issuance of NCDs on private placement basis (NHB) Directions 2014;
- d) creation of DTA on provision for contingency;
- e) non- creation of Deferred Tax Liability (DTL) on amount transferred in the FY 2014-15;
- f) wrong assets classification;
- g) inclusion of DTA into General Reserve;
- h) accepting money in cash and non-maintenance of records for cash transactions of more than Rs.10 lakh as required under Rule 3 of PMLA, 2002;

- i) not having Asset Liability Management Policy and Risk Management Policy, disclosure not made as per Direction;
- j) concentration of credit /investment, not having audit committee;
- k) non-submission of data to Credit Information Companies (CIC) etc.; and
- l) Contravention of provisions of Companies Act, SEBI Rules, Income Tax Act etc.

**2.2.** To give further opportunity of hearing to the Company on continuing violations of NHB's Act/ Directions etc., a Show Cause Notice vide letter No. NHB (ND)/HFC/DRS/Sup./ 10909/2015-16 dated November 28, 2016 was issued to the Company advising the Company to show cause as to why action should not be initiated for the continuous contraventions/non-compliance of the provisions of the Act and the Directions, Guidelines, Policy Circulars etc., issued thereunder and other Regulations as mentioned therein.

### **3. REPLIES/SUBMISSIONS OF THE COMPANY:**

**3.1** The Company vide letter dated December 19, 2016 submitted its reply to above Show Cause Notice dated November 28, 2016 referring to its earlier submissions made vide letter dated September 30, 2016. The Company has cited the corrective measures taken/to be taken by the Company to plug the lacunae observed during the inspection and to set right those by proposing to adopt a Road Map appended thereto. While recognising the deficiencies/lacunae observed in the inspection, the Company requested NHB to take a lenient view in the matter and to give another opportunity to adopt a well-designed corrective path by the Company by revising its systems and practices. The Company also requested that a personal hearing as requested in its letter dated September 30, 2016 may be given to enable them to put all aspects involved in a clearer perspective.

**3.2** Accordingly, a personal hearing was given to the Company on January 27, 2017. In the said meeting, all the issues (already communicated vide our show cause notice dated November 28, 2016) were taken up one-by-one with the Company. The Company accepted all the non-compliances deliberated therein except the followings:

- 1. Para 2(iii)(b) on "No board approval obtained with regard to limits and the amount of issue of NCDs".

2. Para 2(iii)(e) on “Not complied with specified ‘Procedure for Issuance’ as Specified Auditors Certificate was not taken”.
3. Para 2(iii)(g) on “Not complied with clause 8.4(d) of the Trust Deed with regard to furnishing certain information”.

The Company submitted in the meeting that they will furnish relevant proof from its records showing compliance in connection with the above issues. Accordingly, the proceedings of the personal hearing was minuted and duly acknowledged by the Managing Director of the Company.

**3.3** The Company replied vide its letter No. KHFL/HO/A-14/003/2016-17 dated February 01, 2017 enclosing the list of documents submitted as under:

1. Photocopies of approvals obtained as documentary evidence in respect of Equity Shares allotted on 30-3-2015, 3-6-2015, 27-6-2015 and 30-7-2015.
2. Photocopies of approvals obtained as documentary evidence in respect of four NCD allotments.
3. Before constitution of Audit Committee in March 2015, matters coming under the purview of Audit Committee were decided by the Board of Directors. As documentary evidence for this, the photocopy of the Board Meeting held on 05-09-2014, containing inter alia approval of Annual Accounts and re-appointment of Auditors (which are coming within the purview of Audit Committee).
4. Copies of the confirmations given by the Debenture Trustees for having verified the related information in respect of each of the monthly statement of Debenture Trustees for the months Jun 2015 to September 2015 are attached.

However, it could not furnish proof of compliance with respect to the non-compliances pointed out /deliberated during meeting held on January 27, 2017.

#### **4. CONSIDERATION OF THE ISSUES:**

**4.1** In terms of the provisions of the said Act, NHB has been empowered under section 52A to impose fine for violations of any of the provisions of the said Act. The section reads as under:

*“ 52A. Power of National Housing Bank to impose fine.- (1) Notwithstanding anything contained in section 49, if the contravention or default of the nature referred to in section 49 is committed by a housing finance institution which is a company, the National Housing Bank may impose on such institution-*

*(a) a penalty not exceeding five thousand rupees; or*

*(b) where the contravention or default is under sub-section (2A) or clause (a) or clause (aa) of sub-section (3) of section 49, a penalty not exceeding five lakh rupees or twice the amount involved in such contravention or default, where the amount is quantifiable, whichever is more; and where such contravention or default is a continuing one, further penalty which may extend to twenty-five thousand rupees for every day, after the first, during which the contravention or default continues.*

*(2) For the purpose of imposing penalty under sub-section (1), the National Housing Bank shall serve a notice on the housing finance institution requiring it to show cause why the amount specified in the notice should not be imposed as a penalty and a reasonable opportunity of being heard shall also be given to such housing finance institution.....”*

**4.2** Thus, on being satisfied that the following violations are covered within the purview of the aforesaid section, NHB levied penalty of Rs.5,25,000/- vide its letter dated September 10, 2015:

- (i) Acceptance of Deposits which are not excluded from the definition of public deposits and as detailed in our supervisory letter, in contravention of provisions of Section 29A of the Act under which it was issued Certificate of Registration not valid for acceptance of public deposits.
- (ii) Non-creation of Reserve Fund / non-transfer of prescribed amount to Reserve Fund, in contravention of provisions of Section 29C of the Act.
- (iii) Failure to provide certain information / data sought by the inspection officials during the course of its inspection, in contravention of provisions of Section 34 of the Act.
- (iv) Assignment of risk weights of 50% to its reported standard housing loan assets without considering their LTV ratio, in contravention of provisions of paragraph 30 of the Directions.
- (V) Investment inland or buildings above the prescribed level, in contravention of provisions of paragraph 31(1) of the Direction.

(vi) Failure to constitute an Audit Committee, in contravention of provisions of paragraph 40 of the Directions

**4.3** Even after regular follow ups, the Company had neither paid the penalty within prescribed time period nor repaid the NCDs accepted/renewed on or after April 1, 2014 as advised by NHB. Since the Company failed to comply with the conditions subject to which CoR had been issued, NHB cancelled the CoR of the Company in terms of Section 29A of the said Act. For ready reference, relevant provision of the Act is reproduced below:

*“29A. Requirement of registration and net owned fund.- (1) Notwithstanding anything contained in this Chapter or in any other law for the time being in force, no housing finance institution which is a company shall commence or carry on the business of a housing finance institution without –*

- (a) obtaining a certificate of registration issued under this Chapter; and*
  - (b) having the net owned fund of two crores rupees or such other higher amount, as the National Housing Bank may, by notification, specify.*
- .....

*(6) the National Housing Bank may cancel a certificate of registration granted to a housing finance institution under this section if such institution-*

- (i) ceases to carry on the business of a housing finance institution in India; or*
- (ii) has failed to comply with any condition subject to which the certificate of registration had been issued to it; or*
- (iii) at any time fails to fulfil any of the conditions referred to in clauses (a) to (g) of sub-section (4); or*
- (iv) fails-*
  - (a) to comply with any direction issued by the National Housing Bank under the provisions of this Chapter; or*
  - (b) to maintain accounts in accordance with the requirement of any law or any direction or order issued by the National Housing Bank under the provisions of this Chapter; or*

*(c) to submit or offer for inspection its books of account and other relevant documents when so demanded by an inspecting authority of the National Housing Bank; or*

*(v) has been prohibited from accepting deposit by an order made by the National Housing Bank under the provisions of this Chapter and such order has been in force for a period of not less than three months:*

*Provided that before cancelling a certificate of registration on the ground that the housing finance institution has failed to comply with the provisions of clause (ii) or has failed to fulfil any of the conditions referred to in clauses (a) to (g) of sub-section (4), the National Housing Bank, unless it is of the opinion that the delay in cancelling the certificate of registration shall be prejudicial to public interest or the interest of the depositors or the housing finance institution, shall give an opportunity to such institution on such terms as the National Housing Bank may specify for taking necessary steps to comply with such provision or fulfilment of such condition:*

*Provided further that before making any order of cancellation of certificate of registration, such institution shall be given a reasonable opportunity of being heard.....”*

**4.4** Hence, from the above mentioned provisions, it is clear that the imposing of financial penalty under section 52A of the Act and cancellation of CoR under Section 29A of the Act are two independent provisions. The ambit and powers vested with NHB for cancellation of CoR under sub-section (6) of Section 29A is much more wider than the powers vested under clause (b) of sub-section(1) of Section 52A. As already discussed hereinbefore, NHB had imposed the financial penalty vide letter dated September 10, 2015 for various contraventions by the Company and subsequently, cancelled the CoR on February 17, 2016 when the Company failed to comply with the conditions subject to which CoR was issued. Hence imposing of financial penalty and the cancellation of COR was not exercised simultaneously by NHB. It was when the Company failed to pay the penalty as per the orders of NHB against the Company for continuous contraventions of the provision of the Act and Directions etc. and it was further observed that Company was also not complying with the conditions subject to

which CoR was issued, NHB had to cancel the CoR after following the due process. The Company continued committing various irregularities and failed to observe laid down rules which are meant to protect the public interest, thus resulting in cancellation of CoR.

**4.5** Further, in terms of the directions of the Appellate Authority vide its Order dated April 21, 2016, an inspection was carried out in the month of May, 2016 to check whether the violations were continuing and it was once again observed that the Company continued to contravene the provisions of the Act, Directions, Guidelines, Circulars etc. issued thereunder. The major contraventions observed, among others, are as follows:

- a) short-provisioning due to wrong assets classification resulting in overstatement of Net Owned Funds;
- b) recognition of income on NPAs;
- c) non-compliance of provisions of the Housing Finance Companies Issuance of Non-Convertible Debentures on Private Placement (NHB) Directions 2014;
- d) creation of DTA on provision for contingency;
- e) non- creation of DTL on amount transferred in the FY 2014-15;
- f) wrong assets classification;
- g) inclusion of DTA into General Reserve;
- h) accepting money in cash and non-maintenance of records for cash transactions of more than Rs.10 lakh as required under Rule 3 of PMLA, 2002;
- i) not having Asset Liability Management Policy and Risk Management Policy, disclosure not made as per Direction;
- j) concentration of credit /investment, not having audit committee;
- k) non-submission of data to Credit Information Companies (CIC) etc.; and
- l) contravention of provisions of Companies Act, SEBI Rules, Income Tax Act etc.

**4.6** The above observations were made available to the Company for their explanation. The same was replied by the Company through its counsel Mrs. Revathy Raghvan which was received by the Bank on September 12, 2016. The reply was taken for consideration and it was found to be not satisfactory. Following which, a show-cause Notice dated November 28, 2016 was issued as to why action should not be initiated against your Company for the above mentioned non-compliance. As per the order of the Appellate Authority opportunity for personal hearing was also given to the Company. The Company accepted all the non-

compliances as pointed by NHB in the Show Cause Notice except the following as recorded in the minutes of the meeting dated Jan 27, 2017:

1. Para 2(iii)(b) on “No board approval obtained with regard to limits and the amount of issue of NCDs”.
2. Para 2(iii)(e) on “Not complied with specified ‘Procedure for Issuance’ as Specified Auditors Certificate was not taken”.
3. Para 2(iii)(g) on “Not complied with clause 8.4(d) of the Trust Deed with regard to furnishing certain information”.

**4.7** But, the Company again failed to furnish proof of compliance as committed by them in the said meeting. It clearly shows that the Company has no proof to substantiate their claim and thus the Company was found in violations, among others, of the following:

- a) short-provisioning amounting Rs.4.08 crore due to wrong assets classification was observed in 462 number of cases resulting in overstatement of Net Owned Funds ;
- b) recognition of income amounting Rs.4.37 crore on NPAs was observed in 328 number of cases;
- c) non-compliance of provisions of the ‘Housing Finance Companies Issuance of Non-Convertible Debentures on Private Placement (NHB) Directions 2014 viz rating requirement, maturity, limits and the amount if issue of non-convertible debentures, conditions for issue of non-convertible debenture, procedure for issuance, debenture trustee etc.;
- d) non- creation of DTL on amount transferred in the FY 2014-15;
- e) accepting money in cash and non-maintenance of records for cash transactions of more than Rs.10 lakh as required under Rule 3 of PMLA, 2002. Sample inspection reveals such 7 instances amounting to Rs.9.36 crore. ;
- f) not having Asset Liability Management Policy and Risk Management Policy, disclosure not made as per Direction;
- g) non-submission of data to Credit Information Companies (CIC) etc.; and
- h) Contravention of provisions of Companies Act, SEBI Rules, Income Tax Act etc.

## **5. FINDINGS**

**5.1** After careful examination of the facts and issues, it observed that the Company is in continuous contraventions / non-compliance of the provisions of the Act and the Directions,

Guidelines, Policy Circulars, etc., issued thereunder and other Regulations, including the non-compliance of the conditions subject to which the CoR was issued to the Company. The explanations given by the Company in its replies to the various show-cause notices issued by the Bank do not at all justify the contravention and non-compliances by the Company and thus found to be not satisfactory as already discussed hereinabove. I find that adequate opportunity had been given to the Company to put forth its views in the matter.

**5.2** Having considered the matter in totality, I am of the opinion that this is a fit case for cancellation of the Certificate of Registration of Kerala Housing Finance Limited, as the Company has continuously failed to comply with the conditions subject which the certificate of registration was issued for the following reasons, among others:

- a) not having the minimum Net Owned Fund (NOF) as stipulated under the National Housing Bank Act, 1987 due to wrong asset classification resulting in short provisioning, recognition of income on NPAs etc.;
- b) The Company violated the provisions of the "Housing Finance Companies Issuance of Non-Convertible Debentures on Private Placement (NHB) Directions 2014" viz rating requirement, maturity, limits and the amount of issue of non-convertible debentures, conditions for issue of non-convertible debenture, procedure for issuance, debenture trustee etc.;
- c) The Company did not create DTL on amount transferred in the FY 2014-15;
- d) The Company violated provisions of Prevention of Money Laundering Act, 2002 by accepting money in cash and non-maintaining records of cash transactions of more than Rs.10 lakh as required under Rules framed thereunder;;
- e) The Company failed to formulate Asset Liability Management Policy and Risk Management Policy and did not made necessary disclosure as per the Directions; and
- f) The Company failed to submit data to Credit Information Companies (CIC) etc.

In addition to the above the Company has also been found in contravention of the provisions of the Companies Act, SEBI Rules, Income Tax Act etc.

## **6. DECISION**

**6.1** On perusal of the facts and circumstances mentioned above and deliberate considerations of the submissions made by the Company, I, in exercise of powers conferred

under sub-section (6) of Section 29A of the National Housing Bank Act, 1987, hereby cancel the Certificate of Registration 02.0064.06 dated April 17, 2006, granted to Kerala Housing Finance Limited., a company having its registered office at II Floor, Pan African Plaza, Pulimood Junction, M. G. Road, Thiruvananthapuram, Kerala- 695001.

**6.2** The Company be advised to surrender the Certificate of Registration to NHB and stop the business of housing finance. This order, however, shall not prevent the Company from recovering its loans/instalment of loans from the borrowers and repayment of liabilities and expenses. This order shall come into force with immediate effect.

Sriram Kalyanraman  
Managing Director & CEO,  
National Housing Bank

Date: 13-06-2017

Place: New Delhi