

**THE DISCIPLINARY COMMITTEE
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER MISCONDUCT**

ICSI/DC/274/2014

Date of hearing: 19th December, 2016
Order issued on: 16th January, 2017

Mr. B. Mohanty,
Registrar of Companies, West Bengal

....Complainant

Vs

Mr. Sandeep Agarwal, AC527542, CP. No. 9833

.... Respondent

Present:

Director (Discipline)
The Respondent in person

FINAL-ORDER

1. A complaint dated 19th November, 2014 in Form 'I' was filed under Section 21 of the Company Secretaries Act, 1980 (hereinafter referred to as 'the Act') read with sub-rule (1) of Rule 3 of the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007 (hereinafter referred to as 'the Rules') by Shri B. Mohanty on behalf of Registrar of Companies (hereinafter referred to as the 'Complainant') against Shri Sandeep Agarwal, ACS-27542 (CP No. 9833) (hereinafter referred to as the 'Respondent').
2. The Complainant has *inter-alia* alleged that the Respondent has not exercised due diligence while filing Form 20B of M/s Roofers Infra-Projects Limited, for FY ending 31st March, 2013. The Complainant further pointed out that the Balance sheet of M/s. Roofers Infra Projects Limited for FY ended 31st March, 2013 was showing the company's liability towards 12.5% Non-Convertible Redeemable Debentures as Rs. 7440/- lacs. However, the Annual Return as on 30th September, 2013, the total debenture amount was shown as Rs. 2150/- lacs. The Complainant further alleged that the list of debenture holders was also not attached to the alleged Form 20B.



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3. Pursuant to sub-rule (3) of Rule 8 of the Rules, a copy of the Complaint was sent to the Respondent *vide* letter dated 1st December, 2014 calling upon him to submit the written statement. The Respondent submitted his written statement dated 16th December, 2014 wherein he *inter-alias* stated that in Form 20B, Point No. 10, in the field of "Total Debentures of the company" it was mentioned as Rs 215 Crore, which is a clerical mistake, showing total authority to issue debentures by the company for which the charge was created. However, as per the Balance Sheet, as on 31st March, 2013, the company had issued Rs. 74.40 Crore Debenture (12.5% non-Convertible Redeemable Debentures). The Respondent further stated that the list of debenture holders was bulky and attaching the same was increasing the size of the e- Form, he further stated that he had attached the "List of Shareholders" and other attachments with the Form 20B and instructed the company to submit the List of Debenture holders to ROC office, which the company had submitted. The Respondent further stated that he had received a letter/ Notice from the ROC, West Bengal dated 5th November 2014 stating the similar violation to which he had replied on 21st November, 2014 *vide* his letter dated 19th November, 2014 wherein he had also attached a CD containing entire list of debenture holders.
4. Pursuant to sub-rule (4) of Rule 8 of the Rules, a copy of the written statement was sent to the Complainant *vide* letter dated 23rd December, 2014 asking him to submit the rejoinder followed by a reminder dated 28th January, 2015. However, no rejoinder was received from the Complainant as on date.
5. Pursuant to Rule 9 of the Rules, the Director (Discipline) after examination of the material on record, formed her *prima-facie* opinion dated 22nd April, 2016 and placed the same before the Disciplinary Committee on 29th July, 2016. The Director (Discipline) in her *prima-facie* opinion held that the Respondent *prima-facie* "Guilty" of Professional misconduct under Item (7) of Part-I of the Second Schedule of the Company Secretaries Act, 1980 (the Act) as the Respondent did not exercise due diligence while certifying the Form 20B, as he has wrongly mentioned in Point No. 10 in Form 20B, the amount of total debentures of the company as Rs. 215 Crores instead of Rs. 74.40 Crores. Further, the Respondent has also not attached the list of debenture holders with the Annual Return.
6. The Disciplinary Committee at its meeting held on 29th July, 2016 considered the *prima-facie* opinion dated 22nd April, 2016 of the Director (Discipline) wherein the Director (Discipline) was of *prima-facie* opinion that the Respondent is "GUILTY" of Professional Misconduct under Item (7) of Part I of the Second Schedule to the Act as the Respondent did not



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exercise due diligence while certifying the Form 20B of M/s Roofers Infra Projects Limited and that he had wrongly mentioned the amount of total debentures of the company as Rs. 215 Crores instead of Rs. 74.40 Crores at Point No. 10 in the said Form 20B. Further the Respondent was also failed to attach a list of the debenture holders of the Company with its Annual Return. The Disciplinary Committee agreed with the *prima-facie* opinion dated 22nd April, 2016 of the Director (Discipline) and decided to proceed further in the matter in accordance with the Act and the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007.

7. Accordingly, a copy of the *prima-facie* opinion of the Director (Discipline) was sent to the parties *vide* letter(s) dated 31st August, 2016 to the parties asking them to submit their written statement and the rejoinder, respectively.
8. The Respondent *vide* his letter dated 13th September, 2016, (a copy of marked to the Complainant), submitted his written statement to the *prima-facie* opinion of the Director (Discipline). The Respondent inter-alia stated that the difference in the amount of NCR Debentures as mentioned in Form 20B was a clerical mistake and non-attaching of Debenture holders detail was due to the limitation of size of the said form, but said details were provided on a CD to ROC, Kolkata later on. The Respondent further submitted that he will be more careful while practicing his profession and requested to consider his case sympathetically and do not take any disciplinary action against him for his honest confession and unintentional mistake. And that he is a young professional with dependent parents along with his spouse & children and started his practice few years back and their livelihood totally depends on his profession.
9. A reminder was sent to the Complainant *vide* letter dated 18th November, 2016 asking to submit Rejoinder along with supporting documents, if any, to the *prima-facie* opinion of the Director (Discipline), with a copy of the same to the Respondent, within 10 days of receipt of the said letter. However, no response has been received from the Complainant.
10. The parties *vide* letter dated 5th December, 2016 were called upon to appear before the Disciplinary Committee on 19th December, 2016 at Kolkata.
11. On 19th December, 2016 the Respondent appeared before the Disciplinary Committee and was unable to provide a single satisfactory answer to any of the questions asked to him. His constant and standard reply was



restricted to his being only 2yrs in profession at that time and the said assignment came to him through a "Management Consultant". Some of the critical and relevant questions that evolved , no satisfactory answer included the following-

- a. When this assignment came to him in 2014 ?Did he not wonder & ascertain as to why a company with a multi crore debenture has sought the services of an unrelated Company Secretary and why he has been picked for the assignment.
- b. What did he mean by term "Authorised Debentures" which none in the Disciplinary Committee has ever heard of
- c. How he could not have exercise minimal due diligence with regard to No. of Debentures, authorised and paid up, list of debenture holders Was this not a basic due diligence expected from CS

12. It is evident that the Respondent has a very callous and casual approach in discharge of his duty professional responsibility and exercising due diligence

13. The Disciplinary Committee recorded the plea of the Respondent of being pleaded guilty and decided to take action as per the provisions under Rule 19 of the Rules. Further, on the request of the Respondent, the Disciplinary Committee decided to provide him an opportunity of being heard before it under Rule 19 (1) of the Rules on the same day i.e. 19th December, 2016 itself before passing any order by the Disciplinary Committee which the Respondent consented to.

14. The Disciplinary Committee after considering the oral submissions made by the Respondent before it; the material on record and the nature of issues involved and in totality of the circumstances of this case passes the following order under Section 21B(3) of the Company Secretaries Act, 1980 read with under Rule 19 (1) of the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007-

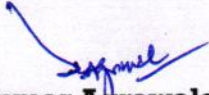
- (i) Removal of name of the Respondent for 30 days from the Register of Member and
- (ii) Fine of Rs 10,000/- payable within 30 days from the date of the issue of this order



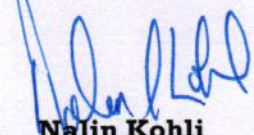
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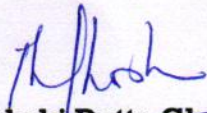
In the event of the Respondent not depositing the aforesaid fine within the stipulated period, the Committee is entitled to proceed ex-parte and take a view of removal of the name of the Respondent from the Register of Members for another 30 days which the Respondent agreed during the hearing.



Santosh Kumar Agrawala
Member



Nalin Kohli
Member



Meenakshi Datta Ghosh
Member



Mamta Binani
Presiding Officer

