

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

ICSI/DC/289/2015

Order Reserved On: 13th March, 2018

Order Issued On: 25th April, 2018

Shri Bhalchandra J. Shah,

.....Complainant

Vs.

Ms. Kala Anand Agarwal,

FCS-5976, CP No. 5356, ACS-30237 (CP No. 11187)

.....Respondent

Present

Mrs. Meenakshi Gupta, Director (Discipline)

Ms. Kala Anand Agarwal, the Respondent

FINAL ORDER

1. A Complaint dated 2nd March, 2015 (Annexure-I) 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 ('the Rules') by Shri Bhalchandra J Shah (hereinafter referred to as the 'Complainant') against Ms. Kala Anand Agarwal, FCS-5976, CP No. 5366 (hereinafter referred to as the 'Respondent').
2. The Complainant has inter-alia alleged that the Respondent has certified and filed e-Form MGT-14 for M/s. Devbhumi Estates (Mumbai) Pvt. Ltd. (hereinafter referred to as 'the Company'), pertaining to a Board resolution which was purportedly passed in a Board meeting of the company held on 30th June, 2014 for noting the notice of disclosure of interest received from one of the directors of the company namely Shri Ashit Madhusudan Patel. The Complainant further stated that the meeting held on 30th June, 2014 is illegal and void-ab-initio being meeting without proper and valid quorum as per Article no 18 of the Articles of Association of the company.
3. The Respondent in her written statement dated 9th May, 2015 has *inter-alia* stated that she was engaged by M/s. Devbhumi Estates (Mumbai) Pvt. Ltd., (the company) vide letter dated 5th August, 2014 to certify and file Form MGT-14 for disclosure of interest of directors. The Respondent further stated that before certifying the said form, the following documents were verified by her:



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- (i) Attendance Sheet of the Board meeting held on 30th June, 2014.
 - (ii) Certified true copy of the minutes of the said meeting.
 - (iii) Articles of Association of the company downloaded by her after taking online inspection of the company on the MCA website. Receipt of the online inspection taken by her and a copy of Articles of Association available on MCA website is attached which shows that the Article 18 regarding quorum for board meeting of the company has been crossed by the witness.
4. The Respondent further stated that before certifying the form MGT-14, she had taken a public inspection of documents filed by the company, more particularly the Articles of Association of the company as available in MCA records. However, the said Articles of Association does not contain the so called "quorum" clauses as claimed by the Complainant. In fact, the Articles of Association as attached to the complaint is not reflected anywhere on the MCA portal, nor was the same available for inspection in the "D" file maintained by the Registrar of Companies.
 5. The Complainant in its Rejoinder dated 11th June, 2015 has reiterated his submissions in the complaint and denied that the Articles of Association attached to the complaint filed by him were not available to the Respondent for inspection in the file maintained by the Registrar of Companies. The Complainant further stated that the old Articles of Association relied upon by the Respondent were the first Articles filed by the Company on its incorporation and subsequently the Articles of the company were amended with all the requisite documents being filed with the concerned ROC on 10th September, 2002.
 6. The Disciplinary Committee in its meeting held on 28th April 2017 considered the *prima-facie* opinion dated 24th April, 2017 of the Director Discipline alongwith all material on record and vide its Interim Order dated 1st July, 2017 agreed that the Respondent is *prima-facie* 'Guilty' of Professional or other misconduct under Item (7) of Part I of the Second Schedule of the Company Secretaries Act, 1980, as the Respondent certified form MGT-14 without verifying the relevant records of the company in certifying the MGT-14 for noting the notice of disclosure of interest of one of the Directors of M/s Devbhumi Estates (Mumbai) Pvt. Ltd.
 7. Pursuant to the Rules, the written statement of the Respondent was called on the *prima-facie* opinion of the Director Discipline which was submitted by the Respondent vide letter dated 27th July, 2017. The Complainant vide letter dated 4th Aug, 2017 submitted his rejoinder on written statement to the *prima-facie* opinion of the Director Discipline.



8. The Disciplinary Committee held its hearing in the matter on 9th September, 2017 at New Delhi, wherein the Respondent appeared in person, made oral submissions and submitted letter dated 9th September 2017 to the Disciplinary Committee. However, no communication has been received from the Complainant and none appeared on his behalf before the Disciplinary Committee.
9. The Disciplinary Committee considered the written as well as oral submissions of the Respondent wherein she gave a brief background of the case that she was engaged by M/s Devbhumi Estates (Mumbai) Pvt. Ltd. to certify and file Form MGT-14 and she had followed the requisite due diligence was carried out by a practising Company Secretary for the certification of the Form MGT-14. A copy of the Interim Order dated 9th September, 2017 has been sent to the parties vide letter dated 6th October, 2017. However, in the interest of justice, the Disciplinary Committee decided to call upon both the parties to appear before it on the next date of hearing.
10. The Respondent appeared in person, made oral submissions and submitted written submissions before the Disciplinary Committee in its meeting held on 13th March 2018. However, no communication has been received from the Complainant and none appeared on his behalf on 13th March 2018 before Disciplinary Committee.
11. The Respondent made mainly the following submissions oral /written before the Disciplinary Committee on 13th March, 2018:
 - (i) The Respondent informed that the claim of Complainant that there is amended copy of Articles of Association which provides for quorum for holding Board meeting is not valid as such Articles of Association was not available in public domain till 9th September 2017.
 - (ii) The Respondent further submitted that as per the attendance register, the quorum for the Board meeting was there in terms of Companies Act 2013 and Articles of Association of the Company. She has verified Minutes of Meeting and Attendance Register in original and done requisite due diligence for certification of Form MGT 14.
 - (iii) The Respondent has argued that as per doctrine of Indoor Management, as a practising professional she need not inquire whether internal proceedings relating to the contract are followed or not. She was supposed to verify that the transactions are in accordance with Memorandum and Articles of Association.
12. The Disciplinary Committee after considering the material on record, oral submissions made by the Respondent, all the facts and circumstances in the matter, observed that the complaint is primarily filed for certification of e-form MGT-14 pertaining to a resolution passed



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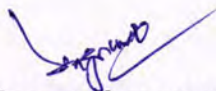
for disclosure of interest of Director in other entity without exercising due diligence by the Respondent and without verifying the relevant records /documents as required under the Companies Act, 2013. The Disciplinary Committee felt the said resolution is of no consequence on the rights of functioning of management, directors, shareholders and stakeholders of the company and no change has occurred in the management of the company due to passing of resolution. Further, the amended copy of Articles of Association as claimed by the Complainant was not available in public domain till 9th September, 2017, which was not rebutted by the Complainant as he did not appear before the Disciplinary Committee inspite of repeated opportunity provided to him.

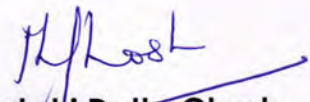
13. In view of the observations made in para 12 above and particularly non availability of the Articles of Association as claimed by the Complainant in public domain on the date of certification of form MGT 14 by the Respondent, the Disciplinary Committee arrives at the findings that in fact the Respondent under the circumstances of this case has exercised due diligence in certification of Form MGT 14 after verifying the relevant records of the company as stated in para 3 above and also the Articles of Association as available in public domain, therefore, the Respondent is 'Not Guilty' of the Professional misconduct under Item (7) of Part-I of the Second Schedule of the Company Secretaries Act, 1980, which reads as under :

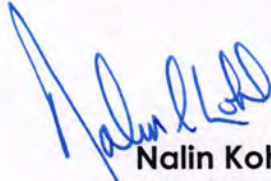
"A Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he –

(7) Does not exercise due diligence, or is grossly negligent in the conduct of his professional duties."


Accordingly, the complaint of the Complainant is disposed off and the case is closed pursuant to sub-rule (2) of Rule 19 of the Rules.


Santosh Kumar Agrawala
Member


Meenakshi Datta Ghosh
Member


Nalin Kohli
Member




Makarand Lele
Presiding Officer