

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

ICSI/DC/300/2015

Order Reserved on: 18th August, 2017

Order issued on: 28th December, 2017

Shri Mukesh Arneja

.....Complainant

Vs.

Shri Nimesh Kumar, ACS-28487

.....Respondent

Present

Mrs. Meenakshi Gupta, Director (Discipline)

Shri Mukesh Arneja, the Complainant in person

Shri Nimesh Kumar, the Respondent in person

FINAL ORDER

1. A complaint dated 1st May 2015, in Form 'I' was filed under Section 21 of Company Secretaries Act, 1980 (herein after referred to as 'the Act') read with sub rule (1) of the of Company Secretaries (Procedure of Investigation of Professional and other Misconduct and Conduct of Cases) Rules, 2007 (herein after referred to as 'the Rules') by Shri Mukesh Arneja (herein after referred to as the 'Complainant') against Shri Nimesh Kumar, ACS-28487 (CP no. 10247) (herein after referred to as the 'Respondent').
2. The Complainant Shri Mukesh Arneja in his complaint dated 1st May, 2015 in Form "I" has inter-alia alleged against the Respondent Shri Nimesh Kumar that the Respondent has made false statements in the Compliance Certificate issued for M/s. Mohindra Sales Pvt. Ltd for F.Y. 2011-12 and 2013-14, that the Notices for the meetings of the Board of Directors, Annual General Meeting and Extra-ordinary General Meetings were sent to the directors and the members of the company; and has not reflected certain transfers of shares.
3. The Respondent in his written statement dated 29th June 2015 has inter-alia stated that complaint was filed with mala-fide intention after three years to harass the professionals of the Company and disrepute their image and he has done due diligence and had checked the bank statements of the company and other records for issuance of certificate regarding allotment of shares. Further, he had been given to understand by the management that the Complainant has been a paid director of the company who was responsible for taking care of all the statutory records of the company, whereas now, he himself has taken away all the records of the company in order to harass the company and its professionals. Further, for the F.Y. 2011-12 & 2012-13, there were indeed certain transfer/ transmission of shares, which have been filed with ROC portal. However, the Compliance Certificate does not reflect the said transfer/



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transmission. This is purely a clerical and a typographical error. There was no ill-intention behind it and if needed, he can issue a rectified Compliance Certificate.

4. The Complainant submitted his rejoinder reiterating his earlier submission along with certain additional plea that the Respondent has admitted his negligence by averring that the compliance Certificates filed for FY 2011-12 and 2012-13 does not reflect the transfers/transmission given effect to by the Company and same was a clerical/typo error, however the Respondent has not filed any rectification of the said compliance certificates and the said plea of 'clerical' and 'typo' error was only taken after filing the present Complaint. The Respondent has also failed to substantiate that the notices of the board meetings and general meetings of the Company were duly sent. The Respondent was not present at any such board meeting on which the said allotment were made.

5. Pursuant to rule 9 of the Rules, the Director (Discipline) formed his prima-facie opinion dated 14th December, 2015, wherein the Director (Discipline) was of the opinion that the Respondent did not exercise due diligence and was grossly negligent in the conduct of his professional duties and the Respondent is prima-facie 'Guilty' of Professional Misconduct under Clause (7) of Part I of the Second Schedule to the Act and decided to proceed further in the matter in accordance with the Rules. The *Prima facie* opinion of Director (Discipline) was placed before the Disciplinary Committee on 29th July, 2016. The Disciplinary Committee agreed with the *prima-facie* opinion of the Director (Discipline) as the Respondent has not provided any substantial evidences for the dispatch or receipt of the notices to the Complainant but has merely stated that the Complainant has taken the records of the company which is without substantiating his defence. Furthermore, the Respondent has admitted that certain transfers of shares were not reflected in the Compliance Certificates issued by him and decided to proceed further in the matter in accordance with the provisions contained in the Act and the Rules.

6. The respondent vide his letter dated 29th September 2016, submitted his written statement to the prima-facie opinion of the Director (Discipline). The Respondent has inter-alia stated that the Director (Discipline) issued prima-facie opinion by ignoring the material facts stated by him in his written statement and beyond the principle of natural justice. The Director Discipline failed to ascertain the mala-fide intention of the Complainant. The Complainant has been a habitual litigant and has a long history of harassing people by dragging them into unnecessary litigations. He was shown all the necessary documents including minutes, copy of notices, attendance sheet etc. evidencing the holding of board and other meetings. Now, the Complainant is alleged to have taken away all such necessary documents of this matter from the custody of the Company as stated in the reply filed by the Company to CLB (now NCLT).

7. The complainant has submitted his rejoinder on dated 29th December, 2016 to the prima-facie opinion of the Director (Discipline) and stated that , the Respondent, in his reply, has neither denied nor specifically challenged the allegations levelled against him by the Complainant by way of any substantial



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[Signature]

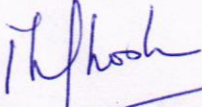
evidence in his favour. Furthermore, the Complainant has not replied specifically to the charges asserted against him and trying to escape his responsibility by tendering vague, evasive, ambiguous and equivocated replies.

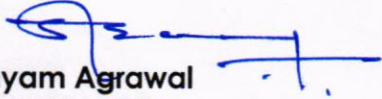
8. On 18th August, 2017, the parties appeared before Disciplinary Committee. The Respondent was unable to provide satisfactory answer to the allegations levelled on him. He admitted that he has adopted very callous and casual approach in discharge of his duty professional responsibilities and has not exercised required due diligence.
9. The Respondent decided to plead guilty under sub-rule (8) of Rule 18 of the Rules,. The Disciplinary Committee recorded the plea of the Respondent pleading guilty and decided to take action as per the provisions of Rule 19 of the Rules.
10. At 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. 18th August, 2017. Accordingly, an opportunity of being heard was provided to the Respondent, before passing any order by the Disciplinary Committee under Section 21B (3) of the Act, in terms of sub-rule (1) of Rule 19 of the Rules.
11. **The Disciplinary Committee considered all the material on record; the nature of issues involved and in the totality of the circumstances of the case and the Respondent pleading guilty to the charges, passes the following order under Section 21B (3) of the Act read with Rule 19 (1) of the Company Secretaries Rules:-**

- i) **Fine of Rs. 25000/- payable within 60 days from the date of issue of this final order.**

In case of failure of the Respondent to pay the fine of Rs. 25000/- within the stipulated time period, his name shall be removed from the Register of Members of the ICSI for a period of 75 days, after 60 days from the date of issue of this final order.


Santosh Kumar Agrawala
Member


Meenakshi Datta Ghosh
Member


Shyam Agrawal
Presiding Officer

