

THE DISCIPLINARY COMMITTEE
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER MISCONDUCT
ICSI/DC/313/2015

Order Reserved On: 25th March, 2017
Order issued on: 28th April, 2017

Mr. Sunil Kumar Agarwal

...Complainant

Vs

Ms. Seema Sharma, ACS-25258, CP. No. 11118

.... Respondent

Present:

Director (Discipline)

The Respondent in person along with Mr. Niladri Banerjee, Advocate

None for the Complainant

FINAL ORDER

1. The Respondent Ms. Seema Sharma appeared before the Disciplinary Committee along with her Advocate and made submissions. The Disciplinary Committee has considered this complaint three times in its meetings held on 29th July, 2016, 19th December, 2016 and 25th March, 2017. The Disciplinary Committee considered the request of the Complainant dated 11th March, 2017 and decided to proceed ex-parte in the case.

2. The Disciplinary Committee noted the following: -

- (i) The Complainant is one of the directors of the M/s La Chemico Private Limited and there are some management disputes between the Complainant and Mr. Anil Kumar Agarwal, the other director of the company. Here, Mr Suyash Agarwal, son of Mr. Sushil Agarwal was appointed as an Additional Director of the company without obtaining the consent of the other Director. Mr. Sushil Agarwal has also filed a case of oppression and mismanagement before the Hon'ble Company Law Board



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(now National Company Law Tribunal), Kolkata against the Complainant.

- (ii) The contention of the Complainant was that the Respondent has deliberately and wrongfully certified and submitted Form DIR-12 (*Particulars of appointment of Directors and the key managerial personnel and the changes among them, pursuant to sections 7(1)(c), 168 & 170 (2) of The changes among them Companies Act, 2013 and rule 17 of the Companies (Incorporation) Rules 2014 and 8, 15 & 18 of the Companies (Appointment and Qualification of Directors) Rules, 2014*) with Registrar of Companies pertaining to change in designation of Shri Suyash Agarwal as Director in M/s La Chemico Private Limited illegally. The Respondent wilfully did not attach the copy of the Board Resolution along with the said DIR-12 and thus did not exercise due diligence before filing the said form with Registrar of Companies.
- (iii) A further contention of the Complainant was that without informing him, without calling any meeting and without attaching any document or resolution in Form DIR-12, Shri Suyash Agarwal's designation was changed from Additional Director to Director at the Annual General Meeting dated 28th September, 2013, which to his knowledge was never called and held, as the he neither received any notice for the same nor has he signed any attendance register evidencing the same. The aforesaid deficient Form DIR-12 was filed by the Respondent on 20th May, 2014 for confirmation of appointment of Shri Suyash Agarwal, as a Director without attaching any document as evidence for this change in status.
- (iv) The Respondent defended that one Shri Sushil Kumar Agarwal, Director of M/s. La Chemico Pvt. Ltd., had contacted her for few of their Registrar of Companies filing works particularly for regularization of the Additional Director in the company. She had been briefed that Shri Suyash Agarwal was appointed as Additional Director in one of the Board Meetings and needed to be regularized in the Annual General Meeting.
- (v) The Respondent submitted that as a matter of her own precaution she had asked for a certified copy of the resolution of



the meeting in which the appointment of the new Director was made and the same was provided to her on the letter head of the company duly signed by Shri Sushil Kumar Agarwal. The Respondent further stated that for authenticity of the signing Director, she personally verified the same from the MCA portal.

- (vi) The Respondent, while relying upon the certified true copy of the Resolution duly signed by the Director, was satisfied that the appointment is genuine and she had no reason to suspect the documents and appointment and therefore, certified form DIR-12 in her professional capacity. On the date of filing of form DIR-12 for regularization of Additional Director, form DIR-12 was available on MCA website; there was no option in form DIR-12 to attach an extract of the said Resolution.
- (vii) The Respondent later received a letter from Shri Anil Kumar Agarwal, the other Director of the company, and his advocate, alleging the genuineness of the appointment. The Respondent also replied this letter. She also furnished the documents provided to her by the company, to Shri Anil Kumar Agarwal. Shri Anil Kumar Agarwal along with Shri Raja Sarkar, his advocate has been issuing baseless letters to her alleging that she had deliberately not provided the attachment. She has also issued letters and one letter through her advocate explaining the entire status before receiving the copy of the instant complaint.
- (viii) The Respondent later came to know that Shri Sushil Kumar Agarwal has also filed a case of oppression and mismanagement, before the Hon'ble Company Law Board (now National Company Law Tribunal), Kolkata against Shri Anil Kumar Agarwal, among others. The Respondent further stated that such complaint is a reaction to the case of oppression and mismanagement filed against them.

3. The Respondent was honest to admit before the Disciplinary Committee that she could have been more diligent while certifying the alleged Form DIR 12. The Respondent also submitted that she had been made a victim in complainant's family oriented dispute.

4. The Respondent pleaded herself guilty under sub-rule (8) of Rule 18 of the Company Secretaries (Procedure of Investigations of Professional



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and other misconduct and conduct of cases) Rules, 2007 (the Rules), the Disciplinary Committee recorded the plea of the Respondent of being guilty and decided to take action as per the provisions under Rule 19 of the Rules.

5. The Disciplinary Committee decided to provide her an opportunity of being heard before it under Rule 19 (1) of the Rules on the same day i.e. 25th March, 2017 as an opportunity of being heard before passing any order under Section 21B (3) of the Company Secretaries Act, 1980, in terms of sub-rule (1) of Rule 19 of the Company Secretaries (Procedure of Investigations of Professional and other misconduct and conduct of cases) Rules, 2007.

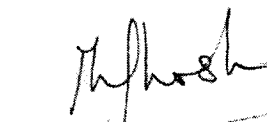
6. **After an interval of half an hour, the Disciplinary Committee considered all the material on record; the nature of issues involved and in the totality of the circumstances of the case, passes the following order under Section 21B (3) of the Company Secretaries Act, 1980 read with Rule 19(1) of the Company Secretaries (Procedure of Investigations of Professional and other misconduct and conduct of cases) Rules, 2007: -**

1) Reprimand

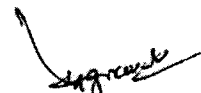
7. The Interim Orders dated 29th July, 2016 and 19th December, 2016 passed by the Disciplinary Committee in this case are attached to this Final Order, for the purposes of records.



Ahalada Rao V
Member



Meenakshi Datta Ghosh
Member



Santosh Kumar Agrawala
Member



Nalin Kohli
Presiding Officer

THE DISCIPLINARY COMMITTEE
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER
MISCONDUCT
ICSI/ DC/313/2015

Order reserved on: 26th August, 2016

Order issued on: 19th September, 2016

Mr. Sunil Kumar Agarwal

....Complainant

Vs

Ms. Seema Sharma, ACS-25258, CP. No. 11118

.... Respondent


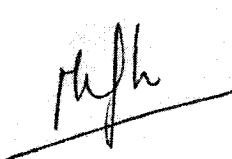


Present:

Director (Discipline)

INTERIM ORDER

1. Pursuant to Section 21 (3) of the Company Secretary Act, 1980 (the Act) pursuant to Rule 9 (2) (b) of the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 (The Rules), the Disciplinary Committee considered the *prima-facie* opinion dated 12th August, 2016 of the Director (Discipline) and the material on record. Wherein the Director (Discipline) is *prima facie* of the 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 exercise due diligence while certifying the alleged Form DIR-12 of M/s. La Chemico Pvt. Ltd., as the extract of the Resolution dated 28th September, 2013 for regularisation of Shri Suyash Agarwal as a Director in M/s. La Chemico Pvt. Ltd., has been certified by Shri Sushil Kumar Agarwal i.e. the father of Shri Suyash Agarwal. In these circumstances the Respondent ought to have also checked and verified all relevant vital documents such as the attendance sheet, the notices issued, records pertaining to quorum at the Board meeting held on 28th September, 2013, more particularly when the DIR 12 was being filed after a considerable delay and had been signed by the father, Shri Sushil Kumar Agarwal.



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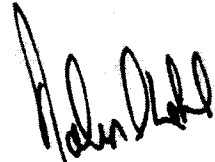
2. The Disciplinary Committee after considering the prima facie opinion, the material on record, totality of all the facts and circumstances and after detailed deliberations, agreed with the *prima-facie* opinion of the Director (Discipline), that the Respondent is "GUILTY" of Professional Misconduct under Item (7) of Part I of the Second Schedule to the Act.
3. The Disciplinary Committee decided to proceed further in the matter in accordance with the provisions of the Act and the Rules.



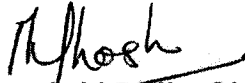
Ahalada Rao V
Member



Santosh Kumar Agrawala
Member




Nalin Kohli
Member



Meenakshi Datta Ghosh
Member




Mamta Binani
Presiding Officer

THE DISCIPLINARY COMMITTEE

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER MISCONDUCT

ICSI/DC/313/2015

Date of hearing: 19th December, 2016

Order issued on: 16th January, 2017

Mr. Sunil Kumar Agarwal

....Complainant

Vs

Ms. Seema Sharma, ACS-25258, CP. No. 11118

.... Respondent

Present:

Director (Discipline)

The Complainant along with Mr. Raja Sarkar, Advocate & CS R Ghosh

The Respondent along with Mr. Niladri Banerjee, Advocate

INTERIM - ORDER

1. The parties *vide* letter dated 5th December, 2016 were called upon to appear before the Disciplinary Committee on 19th December, 2016 at Kolkata.
2. Mr. Raja Sarkar, Advocate & CS R Ghosh along with the Complainant appeared before the Committee and gave a brief background of the Complainant's family dispute and the petitions filed before the NCLT. The Complainant further alleged that the Respondent has deliberately and wrongfully certified and submitted Form DIR-12 with ROC pertaining to change in designation of Shri Suyash Agarwal, Director in M/s. La Chemico Pvt. Ltd. The Complainant further stated that the Respondent wilfully did not attached the copy of the Board Resolution along with the said DIR-12 and thus not exercise due diligence before filing the said form with ROC.
3. Mr. Niladri Banerjee, Advocate, along with the Respondent also appeared before the Committee and while denying the allegations levied against the respondent submitted that she had certified and filed the alleged DIR 12 Form on the basis of certified copy of the extract of the resolution dated 28th September, 2013 passed at the shareholders meeting of the company pertaining to the said regularisation of appointment Shri Suyash Agarwal as



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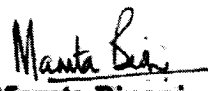
a Director in M/s. La Chemico Pvt. Ltd.. The Advocate of the Respondent further gave a background of the disputes of the Complainant with his brother and the litigations filed.

4. The Disciplinary Committee considered the material on records; the nature of issues involved and in the totality of the circumstances of this case, decided to adjourn the matter. The Committee further asked the Parties to file their written arguments, if any in the matter within two weeks of today. In case of non receipt of any additional documents from either party, it shall be presumed that the party has nothing further to add
5. The Disciplinary Committee further decided to call upon both the parties to appear before it at the next date of hearing in this case, as may be decided by the Presiding Officer of the Disciplinary Committee. **In case any of the parties for sudden or personal reasons is unable to attend the meeting scheduled; the parties may appear through an authorised representative along with a duly signed and attested letter of authority addressed to the Disciplinary Committee seeking exemption from personal appearance failing which, the matter will be heard ex-parte.**


Santosh Kumar Agrawala
Member


Nalin Kohli
Member


Meenakshi Datta Ghosh
Member


Mantra Binani
Presiding Officer

