**THE DISCIPLINARY COMMITTEE**

**THE INSTITUTE OF COMPANY SECRETARIES OF INDIA**

**IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER MISCONDUCT**

**ICSI/DC/311/2015**
**ICSI/DC/312/2015**
**ICSI/DC/314/2015**
**ICSI/DC/315/2015**

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

**Mr. Anil 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 Disciplinary Committee decided to pass this Final Order as a Common Order for the four complaints of professional and other misconduct filed by the same Complainant against the Respondent as the facts and circumstances of all these four complaints are similar, involving four different companies viz. M/s Vipasa Agency Private Limited, M/s Tirupati Metals Private Limited, M/s Common Distributors Private Limited and M/s Assemble Dealers Private Limited.

2. The Disciplinary Committee has considered all these four complaints, three times in the meetings held on 29th July, 2016, 19th December, 2016 and 25th March, 2017.

3. The Disciplinary Committee noted the following: -

(i) The Complainant is one of the directors of the aforesaid companies and there are some management disputes between the Complainant and Mr. Sushil 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 allegedly obtaining the consent of the Complainant and also whereby the Complainant was illegally restrained to do any work as a Director. Mr. Sushil Agarwal has also filed a case of oppression and mismanagement before the Hon'ble CLB (now NCLT), Kolkata against the Complainant.

(ii) The contention of the Complainant was that the Respondent has certified and filed 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)* pertaining to the appointment of Shri Suyash Agarwal as an Additional Director of the said companies without exercising due diligence; has not attached the Board Resolution along with the said DIR 12. The Complainant also alleged that the consent of Shri Suyash Agarwal to be an Additional Director of the company is not in Form DIR 2, hence it is defective and that no meeting was held on 14th March, 2014.

(iii) The Respondent denied the allegations levied against her and her contention was that she had certified and filed the alleged DIR 12 Form on the basis of certified true copy of the extract of the resolution dated 14th March, 2014 passed by the company pertaining to the said appointment; she has checked the MCA portal for checking the authenticity of the signing director of the said resolution and she had no reason to suspect the documents and appointment and therefore she has certified Forms DIR 12. She further stated that since the date of appointment of

Additional Director is prior to 1st April, 2014 and, therefore, there was no option in DIR 12 to attach the Board Resolution.

(iv) The Respondent further submitted that maintaining the Attendance Register for these companies is not mandatory. She had taken a letter from one of the Directors stating that the appointment of Shri Suyash Agarwal as an Additional Director was made at a duly convened Board meeting having quorum.

4. Earlier, the Disciplinary Committee on 29th July, 2016 considered and agreed with the *prima-facie* opinion dated 12th August, 2016 of the Director (Discipline) that the Respondent is "Guilty" of violation of Item (7) of Part I of the Second Schedule of the Company Secretaries Act, 1980 for not exercising necessary due diligence while certifying form DIR 12; and decided to proceed further in the matter in accordance with the Company Secretaries Act, 1980 and the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007.

5. Mr. Niladri Banerjee, Advocate, along with the Respondent also appeared before the Committee on 25th March, 2017. The Disciplinary Committee noted that the Complainant vide his letter dated 11th March, 2017 requested to proceed ex-parte in these cases.

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

7. 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, accordingly the same was provided to the respondent.

8. After an interval of half an hour, the Respondent pleaded herself guilty under sub-rule (8) of Rule 18 of the Company Secretaries (Procedure of Investigations of Professional 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.

9. **The Disciplinary Committee considered all the material on record; the nature of issues involved and in the totality of the circumstances of these cases, 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: -**

   i) **Reprimand; and**

   ii) **Consolidated fine of Rs. 10000/-, in all four complaints payable within 60 days from the date of issue of this final order.**

   **In case of failure of the Respondent to pay the amount of Rs. 10000/- within the stipulated time period, her name shall be removed from the Register of Members of the ICSI for a period of 30 days.**

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

**Ahalada Rao V**
**Member**

**Santosh Kumar Agrawala**
**Member**

**Meenakshi Datta Ghosh**
**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/314/2015**

**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. Common Distributors Pvt. Ltd., as the extract of the Resolution dated 14th March, 2014 appointing Shri Suyash Agarwal was 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 14th March, 2014 more particularly when the DIR 12 was being filed after a considerable delay and had been signed by the father, Shri Sushil Kumar Agarwal.

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/314/2015**

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

**Mr. Anil 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, 2016were called upon to appear before the Disciplinary Committee on 19th December, 2016 at Kolkata.

2. Mr. Raja Sarkar, Advocate & CS R Ghosh alongwith 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 the ROC pertaining to the appointment of Shri Suyash Agarwal as an Additional Director of M/s. Common Distributors Pvt. Ltd.The Complainant further raised question on legality of certified copy of the extract of the resolution dated 14th March, 2014 of the company pertaining to the said appointment relied by the Respondent for the said certification as no meeting of the company was held on 14th March, 2014.

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 14th March, 2014 of the company pertaining to the said appointment and

was not aware of the dispute(s) in the management of the Company. 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 consideredthe material on records; the nature of issues involved and in the totality of the circumstances of this case,directed the Complainant to file the Memorandum of Association and Articles of Association of the company. The Parties were also asked to file their written arguments, if any in the matter within two weeks from 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 Committeefurther 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**

**Mamta Binani**
**Presiding Officer**