

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

ICSI/DC/244/2014

Order Reserved on: 11th March, 2019

Order issued on: 14 MAY 2019

Shri Navin Kumar Singh

....Complainant

Vs

Shri Dharamendra Kumar Dubey, (FCS-7898) (CP No. 8882)

....Respondent

CORAM:

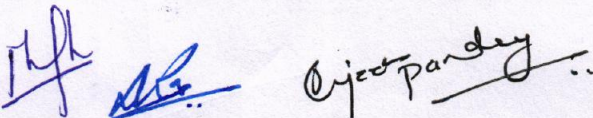
Shri Ranjeet Pandey, Presiding Officer
Shri Nagendra D Rao, Member
Shri B Narasimhan, Member
Mrs. Meenakshi Datta Ghosh, Member

Present

Mrs. Meenakshi Gupta, Director (Discipline)
Shri Vikash Kr. Srivastava, Deputy Director, Disciplinary Directorate
Complainant alongwith Shri Sujit Kumar, Advocate
Respondent in person

FINAL ORDER

1. A complaint dated 3rd July, 2014 in Form 'I' was filed by Shri Navin Kumar Singh, (hereinafter referred to as 'the Complainant') against Shri Dharamendra Kumar Dubey, FCS-7898 (CP No. 8882) (hereinafter referred to as 'the Respondent') under Section 21 of the Company Secretaries Act, 1980 ('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').
2. Pursuant to Rule 9 of the Rules, the Director (Discipline) after examining the complaint, written statement, rejoinder and other material on record, formed the prima-facie opinion dated 6th May, 2015 wherein the Director (Discipline) *inter-alia* observed that the Respondent is "Not Guilty" of professional misconduct under the Company Secretaries Act, 1980 as the Respondent has relied on the Balance Sheet signed by two directors of the company and the Auditors Report for filing the alleged forms.
3. The Board of Discipline at its 63rd Meeting held on 12th August, 2015 considered the *prima-facie* opinion of the Director (Discipline) dated 6th May, 2015 and the





material on record. The Board of Discipline after considering the same and all the facts and circumstances of the matter, advised the Director (Discipline) to further investigate the matter.

4. Accordingly, pursuant to the decision of the Board of Discipline, the parties were called for hearing on 3rd May, 2016 before the Director (Discipline). The Director (Discipline) after hearing both the parties, considered further documents submitted vide letter dated 3rd May 2016 by the Complainant substantiating his allegations. After thorough investigation, it was *inter-alia* observed that:

- (i) the Respondent was aware that there was dispute amongst the Directors of M/s Junasis Developers & Exporters Pvt. Ltd. He initially was not willing to take up the assignment. The Respondent while certifying the forms had relied on the information provided by one of the Directors of the company and failed to verify the documents/records as given below:
 - a) Attendance Register,
 - b) Minutes of the meeting,
 - c) Authorization of the Director for signing the e-forms,
 - d) Date of approval of the Financial Statement.
- (ii) While filing of e-form, the date of AGM in which the accounts were adopted by shareholders was required to be mentioned and which details were not filled in form 23AC for the years 2006-07 & 2007-08.
- (iii) As per Section 220(2) of the Companies Act, 1956, if, the Financial Statements were not approved by the Shareholders in the Annual General Meeting, a statement in this regard needs to be attached in the e-form. However, no such attachment was annexed to the form filed with the Registrar of Companies.
- (iv) The Authorized Share Capital of the company as per the certified copy of the MOA was Rs. 5 Lakh divided into 5,000 share of Rs. 100 each. However, the Annual Return (Form 20B) filed with the Registrar of Companies, shows authorised share capital of Rs. 1 lakh divided into 10,000 share of Rs. 10. But the Authorized capital in the prefilled section of the e-forms was Rs. 5 lakh.
- (v) The name and signature of the signing Director was not mentioned in form 20B and details of the directors of the company were not properly filled about their appointment and cessation during the year.
- (vi) Copy of balance sheet submitted by the Respondent as annexure to written statement showed that it was signed by two Directors namely S/Shri Sunil Kumar and Sunil Kumar Singh. However, the documents submitted by the complainant appear to be signed only by Shri Sunil Kumar.

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In view of the aforesaid observations in clause (i) to (vi) para 4, the Director (Discipline) in Further Investigation Report dated 25th September, 2017 was 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 has certified forms 23 AC and 20 B without exercising due diligence as he had not seen and verified the relevant records of the Company such as :

- a) attendance register,
 - b) Minutes of the meeting,
 - c) Authorization of the Director signing the e-forms,
 - d) Date of approval of the Financial Statement and other observations made in Para 4 above.
5. On 11th September, 2018, the Disciplinary Committee agreed with the above observations in the Further Investigation Report dated 25th September, 2017 of the Director (Discipline) to adjudicate the matter in accordance with Rule 18 of the Rules, read with the Act, to finally conclude as to whether the Respondent is guilty or not in the matter. A copy of the prima-facie opinion of Director (Discipline) was sent to the parties asking them to submit, a written statement (from Respondent) and Rejoinder (from Complainant), respectively.
 6. The Respondent had submitted written statement dated 25th November, 2014, to the complaint. The Complainant submitted rejoinder dated 30th December, 2014 and 5th November 2018. No Written statement to the prima-facie -opinion of Director (Discipline) received from the Respondent.
 7. The Disciplinary Committee heard the matter on 11th March, 2019. The Complainant appeared with Shri Sujit Kumar, Advocate. The Respondent appeared in person.

- 7.1 The Complainant reiterated his submissions as made in the complaint/ rejoinder as under:

The Complainant has alleged that the Respondent has wrongly certified and filed Form 23AC, Form 23ACA and Form 20B for the Financial Years 2006-07 & 2007-08 for M/s Junasis Developers & Exporters Pvt. Ltd. as the documents attached with the forms were wrong and fake. The Complainant has pointed out the following discrepancies:-

- i) Date was not mentioned on the Balance Sheet.
- ii) Shri Sunil Kumar was 'Managing Director' whereas his designation was mentioned on the Balance Sheet as 'Director'.

Mph

MSA

Rajeev Pandey



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- iii) Auditors Firm registration no. & membership no. of the CA was not mentioned at the signature place of Auditor.
- iv) Auditor has signed his report on 1st September, 2008 in New Delhi whereas the Director's Report was signed at Patna on the same date. Signing of Directors report on 1st September, 2008 gives presumption that Board Meeting was held on 1st September, 2008.
- v) There was no signature of any person on the Balance Sheet. As the same has been filed with verification of a Director and a Company Secretary. It is necessary to have at least a duly signed original copy of the same with them. The Complainant further stated that he has not signed any such Balance Sheet then how the same uploaded with verification.
- vi) After incorporation of said company, three Directors namely (i) Md. Imteyaz (ii) Shakil Ahmad (iii) Md. Junaid resigned from the post of Director with effect from 29th August, 2006 and same was filed in prescribed format before ROC Bihar and Jharkhand in e-format (Form 32). But the Annual Return did not show the resignation of the said three Directors.
- vii) The Company has transferred / allotted share of ex-Directors in favour of Shri Navin Kumar Singh vide resolution dated 30th August, 2006 passed in Board Meeting but the Annual Return did not show the fact of transfer of their shares.
- viii) At the time of incorporation, company had appointed Chartered Accountant M/s. Krishna Kumar & Associates, Raman Mohan Garden Kalambag Road, Muzaffarpur, UP -842002. But Audit Report was signed by another auditor.
- ix) Nominal value per share and allotted equity shares were wrong in the Annual Return filed.

7.2 The Respondent reiterated his submissions made in the written statement as under:-

- (i) That Shri Sunil Kumar one of the director of M/s. Junasis Developers and Exports Pvt. Ltd., had approached him with some papers available with him to update the records of the company. The status of the company was showing as dormant company as annual filing of the records of the company had not been done since its incorporation. The Respondent further stated that the Complainant who was one of the directors was not co-operating in the filing of the records of the company for the reasons best known to him. The company was making continuous default in filing of the documents. Shri Sunil Kumar informed that some records of the company were malafidely taken away /misplaced by the Complainant to create problems in the company.

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- (ii) That the Respondent was reluctant to file the forms with the limited information available with the company; however Shri Sunil Kumar continued persuading him to file the forms, which as a professional he could not refuse as Shri Sunil Kumar informed him that the company had already incurred huge penalties. The Respondent further stated that no prejudice has been caused either to the company or to the Complainant due to filing of the documents of the company rather it has helped in streamlining the compliances of the company. However, the Complainant has resorted raising very minor technical objections which have not caused any harm to the interest of the Complainant.
- (iii) That the Respondent stated that the Complainant has filed the complaint after a considerable delay. The company under the Companies Act, 1956 is required to maintain the records for a maximum period of seven years and it is expected that in all possibilities the company has already destroyed the records. Hence, the company/ Respondent may not be able to produce the records. The complaint is otherwise time barred pursuant to Rule 12 of the Rules and therefore, should not be entertained and should be dismissed.
- (iv) That the Respondent further stated that the Complainant has simply made a sweeping statement that the Respondent has given wrong certificate on Form 23AC and Form 23ACA and Form 20B for the financial years 2006-07 & 2007-08 of M/s. Junasis Developers & Exporters Pvt. Ltd. The Respondent further stated that as per Section 215 of the Companies Act, 1956, the Balance Sheet can be signed by any two Directors. It is not necessary that the Complainant must have signed the Balance Sheet before uploading.
- (v) That no record was made available by the management with regard to the appointment/ removal/ cessation of the directors.
- (vi) That the Complainant has not provided any evidence of the transfer of shares held by ex-directors in his favour nor the fact was informed to the Respondent by the management of the company. The information was also not available on the MCA portal. It was informed by the company that the Complainant had taken away some share certificates of the company and forged them in his favour for his own advantage. There was no record relating to the transfer of the shares available with the company.
- (vii) That it was informed by the management that no Auditor was appointed by the company other than Shri Rajinder Prasad

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Grover. Consequently, no Form 23B was filed by the company in respect of M/s. Krishna Kumar & Associates and accordingly, no such Form was available on the MCA data, which goes to prove that M/s. Krishna Kumar & Associates were appointed as the auditors of the company. The allegation is, therefore, baseless, wrong and hence denied.

- (viii) That the denomination of the shares was mentioned as Rs. 10/- instead of Rs. 100/- due to typographical mistake, however, the total capital was correctly reflected and there was no effect on the share capital of the company.

8 The Respondent could not give satisfactory reply to the following:

- (i) That while filing of e-form, the date of AGM in which the accounts are adopted by shareholders was required to be mentioned and which details was not filled in form 23AC for the year 2006-07 & 2007-08.
- (ii) That as per section 220(2) of the Companies Act, 1956, if the financial statements were not approved by the Shareholders in the Annual General Meeting, a statement in this regard needs to be attached in the e-form. However, no such attachment was annexed to the form filed with the Registrar of Companies.
- (iii) The Authorized Share Capital of the company as per the certified copy of the MOA was Rs. 5 Lakh divided into 5,000 share of Rs. 100 each. However, the Annual Return (Form 20B) filed with the Registrar of Companies, shows the authorised share capital of Rs. 1 lakh divided into 10,000 share of Rs. 10. But the Authorized capital in the pre-filled section of the e-forms was Rs. 5 lakh.
- (iv) The name and signature of the signing director was not mentioned in the form 20B and details of the directors of the company were not properly filled about their appointment and cessation during the year.

9 In view of the aforesaid observations, the Disciplinary Committee after considering the submissions made by the Complainant and Respondent, prima-facie opinion of Director (Discipline); Further Investigation Report of the Director (Discipline); the material on record and after examining the totality of facts and circumstances in this matter, held the Respondent 'Guilty' of professional misconduct under item (7) of Part I of the Second Schedule to the Act as the Respondent has certified forms 23AC and 20B without exercising due diligence as he had not seen and verified the relevant records of the Company before certification of the aforesaid forms.

10 However, the Respondent on his own volition pleaded guilty. The Disciplinary Committee recorded the plea of the Respondent and decided to give the Respondent an opportunity to be heard before passing any order under subsection (3) of Section 21B of the Act.

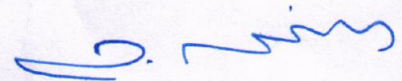
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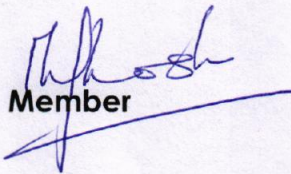
- 11 The Respondent submitted in person before the Disciplinary Committee that he has already pleaded guilty and doesn't want to come again for hearing and requested to conclude the matter on the same day and even if it is necessary to hear, the opportunity of hearing may be given to him today itself under the relevant Rule on the quantum of punishment before passing order under Section 21B (3) of the Company Secretaries Act, 1980. Accordingly, at the request of the Respondent, an opportunity of hearing was given to the Respondent on the same day. During hearing, the respondent submitted that that he had already pleaded guilty and requested that in the circumstances of the case, the Disciplinary Committee may take a lenient view of the default of the Respondent and may consider awarding a minimal punishment.
- 12 The Disciplinary Committee after considering non exercise of due diligence on part of the Respondent as stated in para 9 above; all the material on record; the nature of issues involved; in the totality of the circumstances of the case and that the Respondent has pleaded guilty of the charges against him, passes the order of "**REPRIMAND**" under Section 21B (3) of the Act read with Rule 19 (1) of the) Rules.



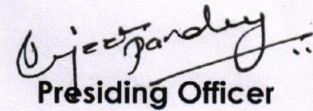
Member



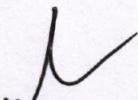
Member



Member

Presiding Officer



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