

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

ICSI/DC/271/2014

Order Reserved on: 5th October, 2018

Order Issued on: 20 OCT 2018

Shri Praveen Kumar Mundra

..... Complainant

Vs.

Shri Mata Prasad Sharma, FCS-2673 (CP No. 4536)

.....Respondent

Present

Mrs. Meenakshi Gupta, Director (Discipline)

FINAL ORDER

1. A complaint dated 27th October, 2014 in Form 'I' was filed under Section 21 of the Company Secretaries Act, 1980 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 Praveen Kumar Mundra (hereinafter referred to as the 'Complainant') against Shri Mata Prasad Sharma, FCS-2673 (CP No. 4536) (hereinafter referred to as the 'Respondent').
2. The Complainant has *inter-alia* alleged that in the Compliance certificate issued by the Respondent for the year ended 31st March, 2012 in respect of the Company M/s. SCL industries Ltd (Now SCL Industries Private Limited), the Respondent vide Para 19 indicated as follows:-
 - a) "**the company has not issued any equity Shares during the financial year**"; whereas Form 23AC for the year ended 31st March, 2012 filed by the company through Chartered Accountant Ms. Shruti Prafulchandra Shah Membership No 101499 shows increase of Share Capital by Rs. 1067000. The Company has raised 106700 shares at a huge premium of Rs.990 per shares against average net worth of Rs. 13.98 per shares.

The Respondent has issued the Compliance Certificate to help one of the director of the company Ms Neeta Nikhil Nawathe (alias Neeta Agrawal) who is declared defaulter by Debt Recovery Tribunal Mumbai to the extent of approximate Rs. 39 (Crores). The defaulter director is involved in money laundering activities may be through Company Secretary since Company Secretary, has not reported major issues. Therefore, impact of the fresh equity issue on the financial statement does not arise.



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b) 'The Board of Directors duly met 4 times on 4th June, 2012, 1st September, 2012, 7th November, 2012, 4th February, 2013 in respect of which meetings properly recorded and signed including the circular resolutions passed in the Minutes Book maintained for the purpose"; whereas there was no proper quorum of the Board of Directors in the Board meetings held after May, 2011 in respect of M/s. SCL Industries Ltd. as out of four directors, two Directors viz. Shri Subash Agrawal & his wife Ms. Durga Devi Agrawal had submitted their resignations to the Registrar of Companies, Mumbai on 24th December, 2013 and have not attended any board meeting after May, 2011. The other Director Shri Sharan Shaun Agrawal being United Kingdom citizen has not attended meeting of the Board in India on 1st September, 2012 (Date of passing of financial statement) his presence in India can be verified from the passport hence, after May 2011, therefore, all relevant resolutions & its impact on company are nullified. This is not reported by Respondent and his compliance report is false.

c) In Compliance report for the period ended 31st March, 2013 vide clause 4, the Respondent indicated that, "**We are informed the Provident Fund Scheme is applicable to the Company and Company has paid/deposited amount to the Provident fund department**" whereas the Provident fund scheme is not applicable to the company. The company has not deposited any sum towards Provident fund.

3. The Respondent, in his Written Statement dated 9th December, 2014 has contended as under: -

a) Mr. Subash Agarwal and Mrs. Durga Devi Agarwal both directors of the company had subsequently withdrawn their resignation. The Complainant directly and indirectly is not connected with the company.

b) After receiving the notice from the Institute, it has come to his knowledge that the company has not filed correct/rectified Compliance Report-2012 which was given by him to the company in the evening hours on 1st September, 2012 with a request that company should file only correct compliance report. The staff/management of the company had assured him that correct/rectified Compliance Report-2012 will be filed in time to ROC and that incorrect compliance will not be filed and it would be returned to him.

c) The Respondent is sorry for forgetting to collect the incorrect Compliance Report-2012 from the company and he has also not followed up with the company that the correct Compliance Report to be filed. The staff of the company inadvertently filed wrong/incorrect Compliance Report-2012, and the same wrong Compliance Report-2012 has been used against him for mailing his image.



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- d) As far as the Share Premium amount is concerned, Form 23AC for the year ended 31st March, 2012 was filed by the company through Chartered Accountant Ms. Shruti Prafulchandra Shah showing increase of Share Capital with huge Premium of Rs. 990 per share against average net worth Rs. 13.98 per share, he being a PCS has no right to stop such dealings. The company's Chartered Accountant has certified and recorded in the books of accounts of the company and he has reported the fact in his Compliance Report-2012. The issue of shares and Allotment Money with heavy Premium price received by the company is deposited in the Bank Account of the Company.
- e) After receipt of the complaint and upon inquiry it has come to his knowledge that Ms. Neeta Nikhil Nawathe (alias Neeta Agarwal) is declared as defaulter by the DRT Mumbai for Rs. 39 Cr and this was never disclosed to the company. A PCS is not concerned with the external DRT matter of Mrs. Neeta Agarwal director as individual it is the company which has to ask all details. Mrs. Neeta Agarwal Director of the company reported that she and complainant are directly and indirectly are connected with some cases where the DRT matter is pending against both of them for other issue and it is not connected with M/s. SCL Industries Pvt. Ltd. If the Respondent knows all the above issue than he would have incorporated such information in the Compliance Report. The Respondent was very sorry for these lapses.
- f) Statutory books have been verified and have been audited by the Chartered Accountant, Mrs. Shruti Prafulchandra Shah. Income Tax Return for 2012 containing the premium price received by the company at the time of allotment is already filed. Due diligence in this scenario is complied.
- g) The Respondent had verified the recorded minutes which are kept in the company and had verified that the Quorum was present. Shri Subash Agarwal and his wife Mrs. Durga Devi Agarwal both directors of the company have signed. Both directors of the company have withdrawn all their allegations and complaint against company which were submitted to ROC. The minutes books are available in the company's registered office therefore, the complainant's complaint has no relevance. Shri Subash Agarwal one of the directors of the company might have passed all internal and fabricated information to the complainant. It shows some fishy things between company and directors who resigned and later on withdrawn has taken place for which the PCS has been blamed. This information was never disclosed to PCS while preparing Compliance Report for 2012. Due diligence is always complied by the Respondent. Information's & Records not available in the company, therefore, not reported, otherwise, it would have been reported.
- h) The Respondent stated that on enquiry from the staff and management of the company about the issue of Provident Fund, Respondent was given information that all relevant provisions have been complied. Respondent submission about the Provident Fund,



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reported in clause no. 33 of Compliance report for the period ended 31st March, 2013 is based on information provided by the management of the company. Respondent is sorry for reporting because he believed the information given by the management.

- i) The Respondent is very sorry that due to some internal problems at his level, he could not keep up to date information about the company. So all these lapses have taken place. He will take care in future without any lapses. The Respondent seeks to pardon him and not to initiate any further enquiry.

4. The Complainant in his rejoinder dated 8th January, 2015 has contended as under:-

- i) Letter issued by two directors Shri Subash Agrawal & Ms. Durga Devi Agrawal to Registrar of Companies and Regional Director of Companies, Mumbai and subsequent letter to ROC is nothing to do with allegations levied. Both the directors had resigned w.e.f. May 2011 as per DIR-12 filed by the ROC.
- ii) The Respondent has *inter-alia* accepted the allegations with blame on the staff and management of the company. It clearly shows that the Respondent has not seen any books of the company. If the Respondent had looked statutory books before issuance of Compliance Certificate, he would have easily commented on issuance of shares and share price.
- iii) The Complainant questioned about the urgency to issue first Compliance report without inspection and verification when internet & MCA site was not working properly. Contention of the Respondent of not having knowledge of the wrong Compliance Certificate filed is not correct. The Complainant had sent an email dated 07.10.2014 to the Respondent which mentions about the equity shares issued by the Company.
- iv) The Respondent should produce the receipt of the search amount submitted on the MCA website for the search conducted on 01.09.2012 in the evening as stated by the Respondent.
- v) The Respondent failed to demand "Net Worth certificate" of M/s. SCL Industries Ltd. duly certified by the Chartered Accountant.

5. The Director Discipline has made following observations in the matter:

- i) Form 23AC has been filed by the company for filing the balance sheet and other documents with the Registrar of Companies through Chartered Accountant Ms. Shruti Prafulchandra Shah (Membership No 101499) showing increase of Share Capital. However, the fact of increase of share capital is not reflected in the Compliance Certificate.
- ii) The Respondent has stated that the Board of Directors has duly met 4 times during the period under review but it appears that the Board was not constituted as two directors had resigned for which the Respondent has stated that they had written to the ROC, but failed



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iii) Regarding the Provident Fund Scheme applicability is concerned, the Respondent instead of relying on the relevant documents has merely relied on the information provided by the company.

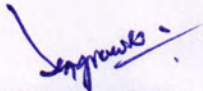
6. After considering the Complaint, Written Statement of the Respondent, Rejoinder of the Complainant, material on record and all the facts and circumstances of the matter, the Director (Discipline) is *prima-facie* of the opinion that the Respondent is *prima-facie* guilty of professional misconduct under item (7) of Part I of the Second Schedule to the Company Secretaries Act, 1980 for not exercising due diligence in certifying the aforesaid Compliance Certificates of the company.
7. The Disciplinary Committee at its meeting held on 17th October, 2017 after considering all the facts and circumstances in the matter agreed with the *prima facie* opinion of the Director (Discipline) that the Respondent is 'Guilty' of Professional or other misconduct under Item (7) of Part I of the Second Schedule to the Company Secretaries Act, 1980 and decided to proceed further in the matter in accordance with Rule 18 of the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007 read with the Company Secretaries Act, 1980.
8. The parties were provided with the copies of Interim Order passed by the Disciplinary Committee and *prima facie* opinion of the Director Discipline. The Respondent submitted his written statement dated 28th December, 2017 to the *prima-facie* opinion of the Director (Discipline) and the Complainant submitted his Rejoinder dated 1st January, 2018, reiterating their earlier submissions.
9. The parties were also called for hearing before the Disciplinary Committee on 5th October, 2018, where both the parties appeared in person.
10. The Respondent pleaded 'Guilty' under sub-rule (8) of Rule (18) of the Rules and requested the Disciplinary Committee to provide him an opportunity of being heard under Rule (19) of the Rule and also to pass an appropriate Order on the same day i.e. 5th October, 2018.
11. The Disciplinary Committee recorded the plea of the Respondent pleading guilty and decided to proceed as per the provisions of Rule 19 of the Rules.
12. 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. 5th October, 2018. Accordingly, an opportunity of being heard was immediately provided to the Respondent, before passing any order by the Disciplinary Committee 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



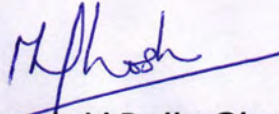
under Section 21B (3) of the Company Secretaries Act, 1980, in terms of sub-rule (1) of Rule 19 of the Company Secretaries (Procedure of Investigations of Professional and other misconduct and conduct of cases) Rules, 2007.

13. 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 of the charges, 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) Fine of Rs. 15000/- (Rupees fifteen thousand only) payable within 60 days from the date of receipt of this final order; and
- ii) In the event of default in payment of fine by the Respondent within 60 days from the date of receipt of this final order by him, the name of the Respondent shall be removed from the Register of Members of the Institute for a period of 45 days.



Santosh Kumar Agrawala
Member



Meenakshi Datta Ghosh
Member



Makarand Lele
Presiding Officer

